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Safety Administration
U.S. Department of Transportation
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Re: *Hazardous Materials: California's Reusability Requirement for Propane Cylinders*, 91 Fed. Reg. 1029 (Jan. 9, 2026) [Docket No. PHMSA-2025-0776; PDA-41(R)]

Dear Mr. Coyle:

The California Attorney General submits these rebuttal comments on the application (Application) of Worthington Enterprises, Inc. (Worthington), for a determination by the Pipeline and Hazardous Materials Safety Administration (PHMSA) whether a California statute requiring that most propane cylinders sold in the State be reusable or refillable starting in 2028 (Senate Bill [SB] 1280),¹ is preempted by the Hazardous Materials Transportation Act (HMTA),² or its implementing regulations, the Hazardous Materials Regulations (HMR).³ We have reviewed comments in support of the Application submitted by the California Grocers Association; Cleveland-Cliffs, Inc.; the Attorneys General of Kansas and Ohio; the International Association of Machinists and Aerospace Workers, District 10; the National Propane Gas Association; and the coalition of California wildlife conservation organizations. We also have reviewed comments opposing the Application submitted by the California Product Stewardship Council, Californians Against Waste, the Solid Waste Association of North America, and Special Waste Associates.

Among SB 1280's primary aims is to protect public safety. It was enacted to protect workers in the municipal waste and recycling industries from the dangers of handling improperly disposed propane cylinders.⁴ As such, it falls squarely within California's traditional police powers and is entitled to the presumption against preemption.⁵ Furthermore, neither the

¹ 2024 Cal. Stat. Ch. 466, codified at Cal. Pub. Res. Code §§ 42395–42395.2.

² 49 U.S.C. §§ 5101 *et seq.*

³ 49 C.F.R. §§ 171.1 *et seq.*

⁴ SB 1280 also furthers important resource conservation goals, which are also legitimate state objectives.

⁵ *See, e.g., Wyeth v. Levine*, 555 U.S. 555, 565 (2009); *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, 520 U.S. 806, 814 (1997).

Application nor submitted comments raise colorable arguments that SB 1280 falls within any of HMTA’s three express preemption provisions. SB 1280 merely mandates a transition to the sale of reusable cylinders and authorizes the adoption of implementing regulations. Implementing regulations have yet to be adopted that might set requirements or specifications for reusable cylinders. The HMR already authorizes reusable cylinders—indeed, propane cylinders that comply with HMR construction specifications are in common use and easily available. Therefore, at this point, it is not impossible to comply with both the reusability mandate of SB 1280 and the HMR,⁶ California has not set requirements that are not substantially the same as those required under the HMR,⁷ and California requirements do not stand as an obstacle to the HMR.⁸ For these reasons, we ask that PHMSA deny the Application.

I. SB 1280 IS A PUBLIC SAFETY STATUTE.

SB 1280 is a short statute, spanning three sections of the California Public Resources Code, that sets forth a simple mandate: “On and after January 1, 2028, only reusable or refillable propane cylinders shall be sold or offered for sale in this state.”⁹ SB 1280 defines “reusable” and “refillable” to mean cylinders “designed and marketed to be utilized multiple times for the same product,” “[d]esigned for durability to function properly in its original condition for multiple uses,” and “[s]upported by adequate infrastructure to ensure the cylinders can be conveniently and safely reused or refilled for multiple cycles.”¹⁰ SB 1280 establishes an exception for certain types of cylinders¹¹ and directs CalRecycle to adopt implementing regulations.¹²

One of the primary purposes behind this simple mandate is the protection of workers in the municipal waste and recycling industries from the dangers of handling improperly disposed propane cylinders, particularly small, one-pound cylinders. Although state law requires cylinders containing propane gas to be disposed as hazardous waste, an estimated 3 million of the approximately 4 million one-pound disposable propane cylinders sold in California annually enter municipal waste landfills not certified to receive hazardous waste.¹³ Many of these cylinders contain residual amounts of gas of which the user is unaware.¹⁴ When damaged or crushed during disposal or recycling, residual gas may explode, causing injury. Hazardous materials disposal facilities have special procedures for ensuring cylinders are emptied before crushing; however, municipal waste and recycling workers are unlikely to be familiar with or apply these procedures, placing them at risk for injury.¹⁵ Furthermore, cylinders are often left in household trash and recycling bins or dumpsters, mixed with other waste, and workers who empty these bins are unlikely to know they are handling potentially explosive material.¹⁶ As

⁶ 49 U.S.C. § 5125(a)(1).

⁷ *Id.* § 5125(a)(2).

⁸ *Id.* § 5125(b).

⁹ Cal. Pub. Res. Code § 42395.1.

¹⁰ *Id.* § 42395(a).

¹¹ *Id.* § 42395(b).

¹² *Id.* § 42395.2.

¹³ Cal. Legislature, Senate Comm. on Env’tl. Quality, April 3, 2024 Analysis at 2-3.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ See Cal. Statewide Com’n on Recycling Markets & Curbside Recycling, Submittal of New and Updated Policy Proposals (Dec. 20, 2021) at 105, available at <https://calrecycle.ca.gov/recyclingcommission/>.

noted by other commenters, even when propane cylinders are properly disposed as hazardous waste, the special procedures required for safe handling imposes significant costs on local hazardous waste agencies, likely costing California taxpayers more than \$3 million annually.¹⁷

SB 1280 addresses these safety and cost issues by requiring a transition to the sale of reusable propane cylinders in most cases, including one-pound consumer propane cylinders, thus reducing the number of cylinders entering the State’s municipal waste streams and hazardous waste facilities. The California Legislature is not alone in finding a need to address the risks posed by disposable cylinders. For example, in its letter submitted in opposition to the Application, the Solid Waste Association of North America (SWANA), an association of professionals in the solid waste industry, echoed the safety concerns motivating the enactment of SB 1280, writing that the risk that residual gas in improperly disposed cylinders “is a major safety concern for SWANA members.”¹⁸

II. SB 1280 IS NOT PREEMPTED BY THE HMTA OR HMR.

a. The HMTA Expressly Preempts State and Local Regulation That Is Inconsistent with Uniform National Regulations of the Transportation of Hazardous Materials Prescribed by the HMR.

The HMTA “protect[s] against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in . . . commerce.”¹⁹ The HMTA therefore grants PHMSA authority to “prescribe regulations for the safe transportation, including security, of hazardous materials in . . . commerce.”²⁰ Congress enacted the HMTA to “replace a patchwork of state and federal laws and regulations concerning hazardous materials transport with a scheme of uniform, national regulations”²¹ which promote safety through uniformity.²²

The HMTA ensures uniform national regulation of transportation of hazardous materials through three express preemption provisions. First, the HMTA preempts state or local regulation if it is “not possible” to comply with such regulation and the HMTA or the HMR.²³ Second, the HMTA preempts state or local regulation if such regulation “is an obstacle to accomplishing and carrying out” the HMTA or HMR.²⁴ Finally, state and local regulation of certain subjects—including “designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component . . . for use in transporting hazardous material”—is preempted if such regulation imposes a requirement “that is

¹⁶ <https://flamekingproducts.com/collections/1lb-refillable-program>.

¹⁷ See Comments of Solid Waste Association of North America, at 2 (noting that each cylinder costs local jurisdictions up to \$65 for proper disposal); Comments of Californians Against Waste, at 2 (same).

¹⁸ Comment of Solid Waste Association of North America, at 3 (“Local governments and waste authorities bear the operational and financial consequences of fires, explosions, equipment damage, and service disruptions caused by improperly discarded hazardous products.”)

¹⁹ 49 U.S.C. §5101.

²⁰ *Id.* §5103(b).

²¹ *S. Pac. Transp. Co. v. Pub. Serv. Com’n of Nev.*, 909 F.2d 352, 353 (9th Cir. 1990).

²² *Colo. Pub. Util. Com’n v. Harmon*, 951 F.2d 1571, 1580 (10th Cir. 1991).

²³ 49 U.S.C. § 5125(a)(1).

²⁴ *Id.* § 5125(a)(2).

not substantially the same” as requirements of the HMTA or HMR.²⁵ “A nonfederal requirement is ‘not substantively the same’ unless it ‘conforms in every significant respect to the Federal requirement.’ ”²⁶ State or local requirements that are in addition to federal requirements are not substantively the same as federal requirements.²⁷

The HMTA authorizes the PHMSA to issue a decision on whether a state or local regulation is preempted under the aforementioned provisions upon application of a person “directly affected” by such regulation.²⁸ As explained further below, none of these preemption provisions apply to SB 1280.

b. Applicable Preemption Principles

As the U.S. Supreme Court has repeatedly recognized, “in all pre-emption cases, and particularly in those in which Congress has legislated in a field which the States have traditionally occupied,” the analysis must “start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.”²⁹ The Supreme Court has explained that the presumption applies notwithstanding federal regulation of a field for decades “because respect for the States as ‘independent sovereigns in our federal system’ leads us to assume that ‘Congress does not cavalierly pre-empt state-law causes of action.’ ”³⁰

And as the U.S. Supreme Court (and the appellate courts of many states) have also repeatedly recognized, “the historic police powers of the State include the regulation of matters of health and safety.”³¹ Because a major factor motivating the California Legislature to enact SB 1280 was to protect municipal landfills workers, PHMSA’s analysis should incorporate the presumption against a finding of preemption set forth in decisions of the Supreme Court and other courts.

c. The HMR Do Not Address Reusability; Therefore, SB 1280’s Reusability Requirement for Propane Cylinders Does Not Differ from Comparable Federal Requirements.

The HMTA states that, with certain exceptions, “a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe . . . that is not substantively the same as a provision of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland

²⁵ *Id.* § 5125(b).

²⁶ *Roth v. Norfalco LLC*, 651 F.3d 367, 377 (3d Cir. 2011) (quoting 49 C.F.R. § 107.202(d)).

²⁷ *Id.*

²⁸ *Id.* § 5125(d).

²⁹ *Wyeth v. Levine*, 555 U.S. 555, 565 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) and *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

³⁰ *Id.* at 565 n.3 (quoting *Lohr*, 518 U.S. at 485).

³¹ *De Buono*, 520 U.S. at 814; *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985); *cf. Cammon v. City of New York*, 95 N.Y.2d 583 (2000) (recognizing that “protecting workers employed in the state is within the historic police powers of the State,” citing *Gravatt v. City of New York*, No. 97-cv-0354(RWS), 1998 WL 171491, *12, (S.D.N.Y. Apr. 10, 1998)).

Security, is preempted” if it is about certain enumerated subjects, including “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.”³²

Assuming *arguendo* that cylinders containing propane are a “package” within the meaning of the HMTA, and therefore any state requirement regarding their “designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing” must be “substantially the same” as any requirement under the HMR, there is no requirement in SB 1280 that is not substantially the same as a requirement under the HMR. None of the comments on the Application directly address this preemption provision, though several emphasize that SB 1280 would prohibit the sale of single-use propane cylinders authorized under the HMR.³³ To the extent comments raise an argument that SB 1280 imposes requirements that are “not substantially the same” as HMR requirements, it is without merit.

The HMR sets specifications for cylinder designs in 49 C.F.R. part 178, subpart C. These specifications include single-use propane cylinders, but nowhere do the regulations prohibit the design of refillable or reusable cylinders. Elsewhere, the HMR recognizes that cylinders may be designed for repeated use. For example, 49 C.F.R. § 178.35(c) provides inspection requirements specifically for “non-refillable cylinders,” while 49 C.F.R. § 173.301 requires inspection before “each filling” of a cylinder with compressed gas, as well as life-cycle and recertification requirements for such cylinders.

Indeed, as the California Stewardship Council points out in its comment on the application, reusable propane cylinders are authorized under the DOT-4BA standard.³⁴ A report of California’s Statewide Commission on Recycling Markets and Curbside Recycling notes that five-gallon propane cylinders designed for barbecues and twenty-gallon propane cylinders use in forklifts “have been made refillable for decades.”³⁵ A cursory internet search for “reusable one-pound propane cylinders” returns numerous results for one-pound reusable cylinders and refill kits for sale at Amazon, Home Depot, Costco, and other major retailers. The Flame King brand advertises that their reusable one-pound propane cylinders are DOT compliant.³⁶

Given that the HMR does not require that propane cylinders be single-use, there can be no preemption on the basis that SB 1280’s requirement that most propane cylinders be reusable is not substantially the same as a requirement under the HMR.³⁷

³² 49 U.S.C. § 5125(b)(1)(E).

³³ See Comments of Cleveland-Cliffs Inc., at 1 (“California’s reusability requirement . . . prohibits the sale in California of non-reusable or non-refillable propane cylinders, known as DOT-39 cylinders in the Federal hazardous material transportation regulations.”); Comments of Cal. Grocers Ass’n, at 1 (“California’s law requires that propane cylinders be explicitly designed to be utilized multiple times and to ensure that they are reused. In contrast, Federal hazardous material transportation law authorizes non-refillable cylinders (49 C.F.R. § 178.65).”).

³⁴ Comments of Cal. Product Stewardship Council, at 2-3.

³⁵ Cal. Statewide Com’n on Recycling Markets & Curbside Recycling, *supra*, at 105.

³⁶ <https://flamekingproducts.com/collections/1lb-refillable-program>.

³⁷ See, e.g., *See Am. Chemistry Council v. Dep’t of Transp.*, 468 F.3d 810, 818 (D.C. Cir. 2006) (no preemption where challenged local requirement for unloading of hazardous chemicals not addressed by HMTA or regulations).

d. SB 1280 Is Not an Obstacle to the Purposes of the HMTA.

Under PHMSA’s implementing regulations, the HMTA also preempts a nonfederal requirement if that nonfederal requirement is “an obstacle to accomplishing and carrying out” the HMTA or the HMR.³⁸ This provision does not provide a basis for a preemption determination here.

“In determining preemption under the obstacle test, the Supreme Court has examined whether the state law ‘stands as an obstacle to the accomplishment and execution of the *full purposes and objectives of Congress.*’”³⁹ The HMTA’s purpose is to promote safety in the transportation of hazardous substances through uniform federal regulation.⁴⁰ SB 1280’s reusability requirement does not create any obstacle to this purpose; indeed, it furthers an interest in safety by reducing the number of cylinders containing residual propane that are brought to and disposed in municipal landfills where they could be crushed and ignited. In addition, the reusable cylinders required by SB 1280 must meet all applicable HMR requirements.

Some commenters in favor of a preemption determination raised concerns about the effect of SB 1280 on jobs, commerce, and consumer costs.⁴¹ Whatever the merits of these policy concerns, none of them relate to safety in the *transportation* of hazardous materials. Indeed, reusable cylinders are already in wide use. And larger propane cylinders have long been refillable and designed and marketed for refilling. In sum, the argument that a requirement that propane cylinders be reusable would stand as an obstacle to the purposes of the HMTA, when the use of such cylinders is already commonplace, has no merit.

e. Compliance with SB 1280 and the HMTA Is Clearly Possible.

Under PHMSA’s regulations implementing 49 U.S.C. § 5125, the HMTA preempts a nonfederal requirement if “[i]t is not possible to comply with” both the nonfederal requirement and “a requirement under the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.”⁴²

None of the comments on the Application assert—much less demonstrate—that it would be impossible to comply with both SB 1280’s mandate and the HMR, and for good reason. Because the HMR does not require that propane cylinders be made for single use—to the contrary, the HMR contemplates reusable cylinders—it is possible for Worthington (and others similarly situated) to comply with federal requirements placed upon it under the HMR as a producer of propane cylinders, as well as to satisfy SB 1280’s reusability requirement.

³⁸ 49 C.F.R. § 107.202(b)(2).

³⁹ *Colo. Pub. Utils. Com’n.*, 951 F.2d at 1581 (quoting *Hillsborough Cty.*, 471 U.S. at 713 (emphasis in original)).

⁴⁰ *Id.*; *Roth*, 651 at 377); 49 U.S.C. § 5101.

⁴¹ See Comments of Cleveland-Cliffs Inc., p. 1 (discussing the origin of the steel used to make non-reusable and reusable cylinders); Comments of the International Association of Machinists and Aerospace Workers, District 10, p. 2 (noting that non-reusable cylinders are currently manufactured in a Wisconsin facility); Comments of Rocky Mountain Elk Foundation, et al., p. 1 (noting that reusable cylinders will cost more for outdoor recreationists).

⁴² 49 C.F.R. § 107.202(b)(1).

CONCLUSION

For the foregoing reasons, the California Attorney General requests that PHMSA deny the Application and issue a determination that the HMTA does not preempt SB 1280.

I certify that a copy of this comment has been sent to Joseph Hayek at the address specified in the Federal Register.

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