

1 **Policy: Hazardous Materials Transportation**

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3 **Committee: Transportation**

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5 **Type: Draft Policy Directive**

6 **Status: Requires formal approval; Updated to reflect discussion at 2011 Fall**  
7 **Forum**

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9 ~~While transportation accidents involving hazardous material are a small proportion of overall~~  
10 ~~traffic accidents, the potential consequences of a hazardous material release can be severe.~~  
11 ~~Responsibility for hazardous materials transportation safety is shared between the federal~~  
12 ~~government, and state and local governments. The federal Department of Transportation (U.S.~~  
13 ~~DOT) has the lead role in ensuring hazardous materials transportation safety through authority of~~  
14 ~~the Transportation of Hazardous Material law (USC 49 §5101 to 5127). Generally, this law and~~  
15 ~~the corresponding regulations set uniform national safety standards that apply to shipments of~~  
16 ~~hazardous material by highway, rail, air and water. A hazardous material is any material~~  
17 ~~designated by the Secretary of Transportation that, in a particular amount and form, may pose an~~  
18 ~~unreasonable risk to health and safety or property. Hazardous materials includes gasoline, poison~~  
19 ~~gas, explosives, radioactive materials, compressed gas and hundreds of other substances. (does~~  
20 ~~not contain policy position, background eliminated)~~

21  
22 ~~Federal law embodies the notion of a state-federal partnership in hazardous material~~  
23 ~~transportation safety, (moved to next section) thereby giving states a significant regulatory role.~~  
24 ~~State constitutional prerogatives to exercise police powers in the protection of the health and~~  
25 ~~safety of citizens and the existence of local conditions not addressed by national uniform~~  
26 ~~requirements are recognized. In passing laws, state legislatures seek to prevent accidents, to~~  
27 ~~minimize their adverse consequences and to ensure an adequate emergency response. In general,~~  
28 ~~states are free to enact laws and regulations that mirror federal requirements or that address areas~~  
29 ~~untouched by federal law. States have enacted some 450 laws that address hazardous material~~  
30 ~~transportation safety, including registration and permit programs, fees, routing requirements,~~  
31 ~~notification, financial liability, emergency response planning and training, inspection,~~  
32 ~~enforcement and various shipment restrictions. U. S. DOT has the administrative authority to~~  
33 ~~preempt state, tribal and local regulations that impede or present an obstacle to a regulated~~  
34 ~~person's compliance with federal law. (does not contain policy position, background eliminated)~~

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38 **State-Federal Regulatory Authority Partnership**

39 ~~While the federal law embodies the notion of a state-federal partnership in hazardous materials~~  
40 ~~transportation safety, the National Conference of State Legislatures believes that efficient~~  
41 ~~regulation of hazardous materials transportation should be accomplished through a clear~~  
42 ~~delineation of regulatory authority and responsibility at each level or branch of government. The~~  
43 ~~state and federal government must work together to develop and implement requirements that~~  
44 ~~improve public safety. -NCSL supports a federal role to: The appropriate federal role should be~~

- ~~to~~ coordinate the national regulation of hazardous materials transportation;
- provide technical guidance to states; and
- ~~and ensure adequate financial support for all federal requirements to be administered or implemented by the states. In any area where the federal government preempts state authority, the federal government has a responsibility for fully funding related activities. (Moved to lines ???)The federal government should have authority to~~ mediate disputes among states, while states retain authority to mediate disputes among their political subdivisions.

NCSL also supports an increased federal programmatic coordination of regulatory, training and data collection activities.

### **Uniform Federal Standards**

Uniform standards for technical requirements, routing, rerouting and notification should be developed by the federal government, in consultation with states. Federal law should not preclude state regulations that exceed the federal requirements and provide for an equal or greater degree of safety. In the absence of federal regulation in any aspect of a uniform subject, states must retain authority to regulate. States may adopt federal regulations or state requirements that are substantively the same as federal requirements. States should be allowed, through a waiver process, to establish standards that do not conform to the federal regulations.

### **Determination of Preemption**

NCSL finds the preemption determination process to be an improvement over the preexisting "inconsistency ruling" process. The utilization of the "substantively the same as" standard in assessing state conformance with federal requirements should ensure that the effect of a state requirement does not vary in effect with the federal standard. At no point during the administrative preemption determination proceedings should a state's option to seek judicial relief be denied.

### **Financial Support Financing (Need a better title)**

The federal government has a responsibility to full fund any activities administered or implemented by the states that are a result of federal requirements or federal preemption of state authority.

(lines 69-75 for the most part is addressed in our homeland security policy) Financial support to states to develop and maintain adequate training for enforcement and emergency response officials should reflect authorized levels.

~~NCSL is concerned that the funding mechanism for federal grants to state training and emergency response activities be continued. These concerns include the lack of congressional appropriations, high administrative costs, and lack of collection enforcement. As a consequence, S~~ states should have the ability to levy and retain fines for transporters without federal registration credentials.

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92 NCSL ~~sfurther~~ supports states ability to ~~-retain~~ing a percentage of the proceeds resulting from  
93 successful state enforcement of the federal registration program.

94  
95 States' fiscal autonomy in the regulation of fees and penalties and the expenditures of such fees  
96 and penalties should not be restricted in any manner.

### 97 98 **Federal Registration and Permitting**

99 Federal registration and permit programs should be reviewed for consolidation and  
100 administration by better established state programs. NCSL finds that the parallel federal  
101 programs, which questionably enhance the overall safety of hazardous materials transportation,  
102 are an unnecessary duplication of ongoing state programs and an ever-present threat to the  
103 autonomy of state-administered programs.

104  
105 NCSL continues to supports the recommendations of the Alliance for Uniform Hazmat  
106 Transportation Procedures to facilitate uniformity in state permitting and registration  
107 requirements. ~~\_These recommendations reflect extensive review and consideration of state and~~  
108 ~~local programs, as well as industry and environmental concerns. The consensus~~  
109 ~~recommendations accommodate, to the extent possible, specific public and private sector~~  
110 ~~concerns. NCSL supports the work done and the program itself.~~ NCSL urges the U.S. DOT to  
111 provide adequate incentives to states to participate in the program, but a state should not be  
112 forced into participation by either the U.S. DOT or Congress.

113  
114 The ability of states to incorporate administration of federal permit and registration requirements  
115 should also be examined for possible consolidation of dual government programs. Under current  
116 law, both state and federal programs are duly authorized.

### 117 118 **State Fiscal and Regulatory Authority**

119 ~~State authority includes oversight of political subdivisions' compliance with federal standards,~~  
120 ~~and the mediation of disputes between and among political subdivisions. (duplicative) States~~  
121 ~~should join with the federal government to develop and implement requirements that add to~~  
122 ~~public safety (added theme to introduction) . States should be considered as full partners with the~~  
123 ~~federal government in inspection activities. (moved) At the same time, if the state acts as an~~  
124 ~~administrative arm of the federal government, the costs of implementation should be defrayed by~~  
125 ~~the federal government. (repeat) States have a primary interest in the designation of highway~~  
126 ~~routes for hazardous materials transportation and should be consulted in the establishment of any~~  
127 ~~highway routing standards (moved under State-Federal Regulatory Authority). Finally, states'~~  
128 ~~fiscal autonomy in the regulation of fees and penalties and the expenditures of such fees and~~  
129 ~~penalties should not be restricted in any manner. (moved to financing)~~

### 130 131 **Coordination**

132 NCSL supports increased federal programmatic coordination of regulatory, training and data  
133 collection activities.

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135 *Expires Annual Meeting 2010*