

Before the
United States House of Representatives
Committee on
Transportation & Infrastructure

Statement of

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Regarding

Hazardous Materials Transportation Act Reauthorization

On Behalf of



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Introduction

Chairman Denham, Ranking Member Brown, and members of the Subcommittee on Railroads, Pipelines and Hazardous Materials, thank you for the opportunity to testify today about reauthorizing the Hazardous Materials Transportation Act. My name is William Downey and I am Executive Vice President for Corporate Affairs and the Chief Security Officer for The Kenan Advantage Group.

The Kenan Advantage Group is North America's largest tank truck transporter and logistics provider to the petroleum, specialty products and merchant gas industries. KAG operates approximately 370 terminals, satellite locations in forty-two states and five Canadian provinces and territories, and has the ability to deliver within all forty-eight contiguous states, as well as to Canada and to Mexico. Although The Kenan Advantage Group is the largest transporter of gasoline in the United States, we represent but a drop in the bucket of total national daily gasoline deliveries. We employ approximately 9,000 people and are the only fuels delivery carrier with a national presence. We are based out of North Canton, Ohio.

I am testifying today on behalf of the American Trucking Associations (ATA). Founded in 1933, ATA is the nation's preeminent organization representing the interest of the U.S. trucking industry. Directly and through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation. The Kenan Advantage Group is also a member of the National Tank Truck Carriers. ATA and NTTCC are members of the Interested Parties for Hazardous Materials Transportation and both endorse the IP Group's comprehensive recommendations for Hazardous Materials Transportation Act reauthorization.

The trucking industry is an integral component of our Nation's economy, transporting more than 81% of our nation's freight bill and employing approximately 7 million workers in trucking-related jobs, including more than 3.2 million commercial drivers. It is important to note that the trucking industry is comprised primarily of small businesses, with 97.3% of trucking companies operating 20 trucks or less, and 90.6% operating six trucks or less.¹

More importantly, about 75 percent of all U.S. communities depend solely on trucks to deliver and supply their essential commodities. Included in these deliveries are roughly 800,000 daily shipments of hazardous materials that provide chemicals for water treatment facilities, medical products and supplies, vital manufacturing inputs, and a number of other products that are important components of our daily lives. In terms of product value, tonnage, and number of shipments, trucks move more hazardous materials than all other transportation modes combined.²

Background

ATA and its members are grateful for the hard work and bipartisan leadership demonstrated by this Committee and the U.S. House of Representatives in reauthorizing the HMTA two years ago as part of the Moving Forward for Progress in the 21st Century Act of 2012 (MAP-21).³ By passing the American Energy and Infrastructure Jobs Act of 2012's (H.R. 7) hazardous materials title, this committee underscored the importance of the safe and secure transportation of hazardous materials.

¹ American Trucking Associations, *American Trucking Trends 2014* (March 2014).

² Bureau of Transportation Statistics, *2012 Commodity Flow Survey*.

³ Public Law 112-141 §§ 33001-17, 126 Stat. 405, 832-41, (July 6, 2012).

MAP-21's hazardous materials title instituted several improvements, including requiring the Government Accountability Office (GAO) to study the Pipeline and Hazardous Materials Safety Administration's (PHMSA) proposed wetlines rule before it could be promulgated, clarifying inspectors' authority to open hazardous materials packages en route, requiring the Federal Motor Carrier Safety Administration (FMCSA) to publish changes to hazardous materials routes before they could take effect, instructing the FMCSA to review its process for issuing Hazardous Materials Safety Permits, and instituting an electronic shipping paper pilot program, among other provisions.

This committee has an opportunity to capitalize on the successes of MAP-21. Today, I want to propose four common sense solutions that will improve the safety, security, and efficient operations of transporting hazardous materials. The present background screening process for a hazardous materials endorsement on a commercial driver's license (CDL) can be reformed to save commercial drivers and the federal government both time and money without compromising security. In accordance with the GAO's recommendations, the proposed wetlines rule can be halted. The hazardous materials regulations can be strengthened by better allocating responsibility for safety functions between shippers and carriers. Finally, the state hazardous materials permitting process can be improved to maintain current safety practices and state funding streams while easing carriers' application burden.

Reforming the Hazardous Materials Endorsement (49 U.S.C. § 5103a)

Any driver transporting placardable quantities of hazardous materials must obtain a hazardous materials endorsement on her CDL. Presently, a Transportation Security Administration-administered (TSA) fingerprint-based background check is required for all hazardous materials endorsements. This background check costs \$86.50 in states that utilize the TSA's contractor to conduct their checks, but can cost as much as \$150 in states that perform the check themselves.⁴ This security check is required for transporting all hazardous materials, including those that pose little threat of weaponization—such as paint, nail polish, or alcohol-based products like perfume.

Congress can maintain our current level of hazardous materials transportation security by limiting fingerprint-based background checks to drivers transporting weaponizable hazardous materials. Both PHMSA⁵ and TSA⁶ have issued lists of security-sensitive hazardous materials (SSHM) and have harmonized them.⁷ All drivers transporting hazardous materials would still be required to pass the relevant safety tests for a hazardous materials endorsement as well as a name-based background check. Drivers transporting hazardous materials that appear on the SSHM lists would also be required to undergo a fingerprint-based background check by acquiring a separate credential with a check equivalent to the current fingerprint-based threat assessment.

ATA asks this committee to work with the Committee on Homeland Security to implement legislation that achieves this effect. Such proposed legislation passed the House in 2009 with bipartisan support as the SAFE Trucker Act.

⁴ <https://hazprints.tsa.dhs.gov/Public/> (accessed March 30, 2014).

⁵ 49 C.F.R. § 172.800(b) (2013).

⁶ 75 Federal Register 45, *Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements*, 10974, 10976 (March 9, 2010).

⁷ *Id.*

Banning Unnecessary Proposed Wetlines Regulation

Wetlines are fuel loading lines used to fill and drain cargo tank trucks. Wetlines are placed underneath tank trucks (bottom-filling) to promote safety by allowing workers filling tanks to remain on the ground and to ensure that gasoline fumes do not leak into the atmosphere. Worker safety and environmental concerns, in fact, are why tanks are loaded from the bottom today. MAP-21 forbade PHMSA from issuing any final wetlines regulation until the GAO could study its proposed regulation and weigh in about any societal benefits or drawbacks in the proposed rule.

GAO issued its report in September 2013, stating that PHMSA's "incident data cannot be used to reliably identify risks from [wetlines] incidents" and that information about the consequences of wetlines incidents is not accurate.⁸ PHMSA's proposed regulation studied the roughly 365 million gasoline deliveries in a decade and found only eight fatalities that could be reliably traced to a wetlines-incident.⁹ There are far more cost efficient and effective ways to lower the release of flammable liquids from tank trucks, such as installing anti-rollover technology on vehicles and training drivers to anticipate and avoid rollovers before they occur. GAO therefore recommended withdrawing the rule for lack of a rationale to impose it.

Despite GAO's statement that the proposed rule's benefits were few to none and that its costs were underestimated, PHMSA has not withdrawn the rule. Rather, PHMSA staff have indicated their intent to promulgate a rule despite the GAO report's conclusions.¹⁰ In the last HMTA reauthorization, this committee initially recommended that PHMSA be restricted from promulgating any wetlines regulation, but MAP-21's final text was reduced to a study of the problem. Given the GAO's findings and PHMSA's refusal to withdraw the rule, this committee's previous wetlines provision is more appropriate than ever today.

Equitably Assigning Responsibility between Shippers and Carriers (49 U.S.C. § 5123(a)(2))

The Hazardous Materials Regulations consist of over 500 pages of individualized requirements governing the packaging, marking, and labeling of hazardous materials, as well as other requirements that vary based upon each individual material being transported. As the party that knows the specific qualities of their products, shippers are tasked with complying with these regulations. But, because most violations are discovered during roadside inspections, drivers and motor carriers frequently receive citations for violations of the Hazardous Materials Regulations that they cannot reasonably be expected to discover, know of, or prevent.

The law can encourage accountability by distinguishing between the functions that are performed by shippers and the functions that are performed by carriers. Present interpretations are able to draw such a line only when a driver picks up a pre-loaded and pre-sealed trailer and the driver is instructed not to break the seal except under the direction of law enforcement.¹¹ Current regulations that define loading a trailer as both a "pre-transportation" (shipper) function¹² and a transportation

⁸ GAO Report 13-721 *Cargo Tank Trucks: Improved Incident Data and Regulatory Analysis Would Better Inform Decisions about Safety Risks Highlights* (September 11, 2013).

⁹ Richard Moskowitz, *Comments of the American Trucking Associations*, Federal Docket ID PHMSA-2009-0303-0046 at 2 (quoting supporting material placed in the rulemaking docket by PHMSA).

¹⁰ Statement of Charles E. Betts, Director of Standards & Rulemaking Division U.S. DOT/PHMSA to the January meeting of the Council on the Safe Transportation of Hazardous Materials (January 15, 2014).

¹¹ PHMSA Interpretation Letter Reference No. 13-0035 (November 13, 2013).

¹² 49 C.F.R. § 171.1(b)(12) (2013).

(carrier) function¹³ simply confuse matters. HMTA reauthorization can promote accountability by drawing a bright line between shipper and carrier responsibilities.

Reforming State Hazardous Materials Transportation Permits (49 U.S.C. § 5119)

Finally, the specific dangers inherent to each different class of hazardous materials transported require complex regulations. Because of their complexity, the national rules are uniform. Congress regulated both interstate and intrastate hazardous materials transport. States may require motor carriers to apply for permits to transport hazardous materials within their state. Some states do so, though not all and not for all types of hazardous materials.

But, the Hazardous Materials Regulations forbid states from enacting any regulations or permit requirements that “are not substantively the same” as the federal regulations.¹⁴ Because the Hazardous Materials Regulations set both a minimum and a maximum for regulation, state permits do little more than apply federal criteria to qualify for a state credential. Carriers compliant with federal requirements will by definition also be compliant with state permit requirements.

To address this issue, five states; Michigan, Nevada, Ohio, Oklahoma, and West Virginia; formed the Alliance for Uniform Hazmat Transportation Procedures (Alliance). The Alliance states have amalgamated their application processes online so that a carrier can visit the site once, provide all necessary information through a single interface, select the states in which the carrier transports hazardous materials, and pay a single registration fee. The Alliance then takes care of distributing the permit fees amongst the states.

Carriers would prefer to do away with these duplicative permits. But, if these permits are to remain, states should be compelled to join the Alliance. States are already effectively required to form similar programs for administering fuel costs and processing state motor carrier registrations.¹⁵ Requiring all states to participate in the Alliance will lower administrative costs for carriers and for states while preserving States’ revenue streams from permit applications.

Conclusion

ATA and its member companies like The Kenan Advantage Group support the safe and secure transportation of hazardous materials. Present levels of security can be maintained by requiring fingerprint-based background checks only for drivers transporting security-sensitive hazardous materials. Similarly, the proposed wetlines rule, which is not projected to have any safety benefits but is projected to have significant costs, should be withdrawn. Bright lines of responsibility can be drawn between shippers and carriers and enforcement can be given the tools to hold the actual violator accountable. Finally, requiring states to participate in the Alliance for Uniform Hazmat Transportation will ease administrative burdens on both states and carriers.

Again, on behalf of The Kenan Advantage Group, ATA and its members, I thank you for the opportunity to share some comments and our suggestions regarding reauthorizing the Hazardous Materials Transportation Act. I look forward to answering any questions from the Members of this Committee.

¹³ 49 C.F.R. § 171.1(c)(2) (2013).

¹⁴ 49 C.F.R. 107.202(a) (2013).

¹⁵ States and Canadian provinces allocate gasoline tax revenues via the International Fuel Tax Agreement and handle registrations via the International Registration Plan.