



November 15, 2021

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Jennifer Granholm
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

The Honorable Deanne Criswell
Administrator
FEMA
500 C Street SW.
Washington DC 20024

Dear Secretaries Buttigieg, Granholm, Mayorkas and Administrator Criswell:

The Energy Marketers of America (EMA), previously known as the Petroleum Marketers Association of America (PMAA), is a federation of 47 state and regional trade associations representing energy marketers throughout the United States. Energy marketers represent a vital link in the motor and heating fuels distribution chain. EMA members supply 80 percent of all finished motor and heating fuel products sold nationwide including renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. Moreover, energy marketers represented by EMA own and operate approximately 60,000 retail motor fuel stations nationwide and supply heating fuel to more than 5 million homes and businesses.

EMA appreciates the Administration's efforts to work with EMA to promote best practices for disaster response to ensure continuity of the downstream gasoline and diesel fuel distribution network. We appreciate the Federal Motor Carrier Safety Administration (FMCSA)'s extraordinary efforts to issue regional Hours of Service (HOS) waivers before disaster strikes. Proactive HOS waivers achieve tremendous improvements in disaster responses, notably through mitigating potential CDL driver shortages before, during and after disasters occur. Regional HOS waivers are particularly important because state waivers generally expire on different dates and contain different conditions. Moreover, a State of Emergency (SOE) is not required, reducing panics and runs on fuel and allowing for more efficient movement through weigh stations and facilitates along interstates to more distant supply sources when local terminals are closed.

There are multiple ways to minimize the driver shortage and improve disaster response, including:

- Expand the availability of EB3 Visas or offer short term emergency Visas-to qualified foreign drivers.
- Amend the hazardous materials training requirements under 49 CFR 172 to allow for training modules for the packaging and transportation of industry specific hazardous materials. For example, a training module that focuses on the petroleum transportation industry and the specific liquid petroleum hazardous materials drivers in that industry are likely to handle. Many hazardous material endorsement applicants are deterred by the breadth of general awareness training required under 49 CFR 172.704.1. Driver applicants often question why they must study and be tested on general hazardous material curricula that is unrelated to their job hauling petroleum products. EMA believes far more applicants would pass their hazardous material training and be qualified to drive if general awareness training is limited to industry specific hazardous materials. EMA believes the function specific training required under 49 CFR 172.704.2 is sufficient when industry specific curricula is included.
 - EMA ask the U.S. Department of Transportation (DOT) to further refine the hazardous material class designations under 49 CFR 173.120 with new subclasses. For example: *Hazardous Materials Class 3 Flammable and Combustible Liquids, Subclass "X", liquid petroleum products transported in bulk packagings*. While this subclass would limit a driver's qualification to a specific industry, retraining is available should the driver want to move on to another industry subclass or qualify for a hazardous material

endorsement under existing requirements. EMA understands that it would be impractical for the DOT to proactively establish a subclass designation for every specific industry transporting hazardous materials. Instead, the most efficient and practical approach would be to establish subclass designations upon petition by individual industry stakeholders.

- Allow for a hazardous materials endorsement (HME) exemption for Bobtail (up to 5,000 gallons) trucks during severe disaster situations so that we can have a bigger pool of drivers to deliver fuel into the communities and to hospitals.
- Create a system of communication from the ports to petroleum marketers regarding the availability of Transportation Workers Identification Card (TWIC) escorts at water borne terminals would lessen wait times at terminals during disasters. Before and after disasters, drivers are delivering to the disaster areas, which may involve pulling fuel from water borne terminals by drivers who do not usually do so, who instead only pull from land-based terminals. In these instances, many water borne terminals provide TWIC escorts for the drivers coming in without the port TWIC requirements. The issues are which terminals offer the escort option during disasters and hours the escorts are available. If terminals would make this information accessible, drivers will save time by not going to terminals without escorts available at the appropriate time. We understand that TWIC is under the jurisdiction of the Department of Homeland Security, however, it is important that the DOT and DHS work together to streamline the TWIC process.
- Ensure a flexible vaccine and COVID testing mandate that would not further exacerbate employee retention would help to minimize further loss of drivers. There is already a severe labor shortage, which is a significant contributor to ongoing supply chain delays and driver shortages. According to the Department of Labor Secretary, truck drivers are exempted from OSHA's Emergency Temporary Standard (ETS) which is welcome news and could alleviate the driver shortage.
- Support "The Drive Safe Act." The often-overlooked factor that contributes to the CDL driver shortage is finding qualified applicants. In some cases, carriers must reject 90 percent of applicants who fail to meet at least one of the CDL qualification prerequisites. There are many barriers to entry for new drivers: age requirements, CDL testing standards, strict drug and alcohol testing regimes and, perhaps most importantly for many carriers, unrealistic requirements for spotless driving records. "The DRIVE-Safe Act" would allow drivers 18 and older to operate across state lines if they meet rigorous training requirements — at least 400 hours of on-duty time with 240 hours of driving time, with an experienced driver training them. Training would also be restricted to trucks equipped with active braking systems, video monitoring systems and speed limiters set to 65 mph or slower. Although drivers of petroleum would not be covered under the Drive Safe Act since drivers must be 21 to qualify for a hazardous materials endorsement (HME). EMA supports the bill because it would expand the number of CDL drivers overall, some of whom may choose to obtain an HME in the future.

Additionally, EMA believes that the recently adopted hours of service (HOS) amendments are a significant step forward that helps ease supply chain disruptions and driver shortages, particularly as they affect short-haul HAZMAT drivers in the energy transportation industry. Most drivers employed by petroleum transporters fit into the short-haul exemption, almost exclusively. The additional two hours of driving time combined with the extended 150 air-mile radius within which short-haul drivers must operate under the HOS amendments are especially important as they expand the number of terminals drivers can pull product in the event of supply chain disruption. It is not unusual for small business petroleum transporters to seek out supply beyond the former 100 air-mile radius limit for short-haul drivers during such disruptions.

The additional drive time and expanded air-mile radius for short-haul drivers also allows energy transporters to schedule more delivery runs with fewer drivers. This is especially helpful given the chronic shortage of qualified drivers, particularly those with hazardous material endorsements. In this way, the HOS amendments help to maintain the continuity of the petroleum distribution supply chain while easing the impact of the shrinking pool of qualified drivers available for hazardous material transportation.

Finally, EMA will continue to improve communication lines between terminal operators and truck drivers concerning operation requirements for loading racks to prevent long lines at terminals that create supply bottlenecks during a disaster. EMA and its state associations across the country welcome the opportunity to work with the Administration to assist in formulating common sense policies to reduce the driver shortage.

Sincerely,

Mark S. Morgan, Esq.

Mark Morgan
EMA Regulatory Counsel

Sherri Stone

Sherri Stone
EMA Vice President

cc:

The Honorable Maria Cantwell
Chair, Senate Committee on Commerce, Science, & Transportation

The Honorable Roger Wicker
Ranking Member, Senate Committee on Commerce, Science, & Transportation

The Honorable Tom Carper
Chair, Senate Committee on Environment & Public Works

The Honorable Shelley Moore Capito
Ranking Member, Senate Committee on Environment & Public Works

The Honorable Gary Peters
Chair, Senate Committee on Homeland Security & Governmental Affairs

The Honorable Rob Portman
Ranking Member, Senate Committee on Homeland Security & Governmental Affairs

The Honorable Peter DeFazio
Chair, House Committee on Transportation & Infrastructure

The Honorable Sam Graves
Ranking Member, House Committee on Transportation & Infrastructure

The Honorable Frank Pallone
Chair, House Committee on Energy & Commerce

The Honorable Cathy McMorris Rodgers
Ranking Member, House Committee on Energy & Commerce

The Honorable Bennie Thompson
Chair, House Committee on Homeland Security

The Honorable John Katko
Ranking Member, House Committee on Homeland Security