ENERGY MARKETERS OF AMERICA EMA

May 5, 2025

Submitted via www.regulations.gov

The Honorable Sean Duffy
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs (Docket No. DOT–OST-2025–0026)

Dear Secretary Duffy:

The Energy Marketers of America (EMA) appreciates the opportunity to comment on the Department's request for information regarding opportunities for regulatory relief in the transportation sector. EMA respectfully submits the following recommendations, identifying specific areas where deregulatory initiatives would meaningfully reduce burdens on liquid fuels transportation without compromising safety.

EMA is a federation of 49 state and regional trade associations representing small business fuel distributors and retailers across the United States. EMA marketers are responsible for supplying 80 percent of all finished motor and heating fuel products nationwide, delivering motor fuels to approximately 40,000 gas stations and heating oil to more than five million homes and businesses. EMA companies safely transport a growing portfolio of liquid fuels in DOT-specification cargo tank vehicles to customers across the country.

Our detailed comments identifying specific opportunities for regulatory burden reduction follow.

1. National Highway Traffic Safety Administration (NHTSA) Regulations

a. *Fuel Economy Standards for Passenger Cars and Light Trucks*

In June 2024, NHTSA finalized fuel economy standards that increase at a rate of two percent annually for passenger cars (model years 2027-31) and for light-duty trucks (model years 2029-31).[1] These standards impose a cumulative increase of approximately nine miles per gallon through model year 2032, effectively mandating that automobile manufacturers electrify a substantial portion of their fleets.

The use of averaging to force electrification in the transportation sector violates the Energy Policy and Conservation Act (EPCA). As multiple stakeholders noted in the administrative record, setting fleetwide standards are unachievable for internal combustion engine vehicles results in a *de facto* electric vehicle (EV) mandate, which exceeds the agency's statutory authority. This approach is driven solely by unrealistic decarbonization efforts, ignoring consumer choice, inflationary pressures, and investments in low carbon liquid fuels.

EMA respectfully requests that NHTSA rescind its final rule and propose revised standards that consider cost burdens and fuel-related technological feasibility. Specifically, EVs should not be included in the baseline calculation of fleetwide standards but may continue to serve as a compliance flexibility mechanism, as originally intended by the EPCA.

b. *Side Underride Guards*

In 2023, NHTSA issued an Advanced Notice of Proposed Rulemaking that could lead to new requirements for side underride guards (SUG) for commercial truck trailers and semitrailers.[2] Such a mandate is not currently supported by safety data and is not technologically feasible for fuel cargo tank vehicles.

Retrofits of SUGs on cargo tanks are not cost-effective and could compromise tank integrity (*e.g.,* puncturing of the tank shell). Even the agency acknowledged that the costs likely outweigh the benefits. EMA urges NHTSA to formally close this rulemaking. In lieu of mandates, EMA would support further research into advanced driver assistance systems and other practical technologies that can help prevent side collisions.

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[1] *Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027 and Beyond and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030 and Beyond*, 89 Fed. Reg. 52540 (June 24, 2024).
[2] *Side Underride Guards*, 88 Fed. Reg. 24535 (April 21, 2023).

2. Federal Motor Carrier Safety Administration (FMCSA) Regulations

a. *Hours of Service – Regional Relief Based on Economic Conditions*

In 2023, FMCSA revised the definition of "emergency" to exclude events caused by economic conditions or market forces interrupting the delivery of essential services or supplies, such as fuel, unless the event poses an immediate threat to human life.[3] This modification contradicts the intent of the Motor Carrier Safety Act (FMCSA) and limits energy marketers' ability to adequately respond to abrupt supply chain disruptions that jeopardize public welfare in affected areas.

Liquid fuel marketers provide essential services and supplies before, during, and after emergencies. They ensure fueling stations remain adequately supplied and, in extreme cold weather, allow households to heat their homes, facilitating safe and swift recovery in affected areas. One of the most important actions FMCSA can take to support energy marketers' transportation operations in direct assistance of an emergency is to provide Hours of Service (HOS) regulatory relief under 49 C.F.R. § 390.23(b). This relief is essential for overcoming obstacles like increased fuel demand, road closures, long pickup routes, and terminal delays.

Restricting HOS emergency relief only to economic conditions that immediately threaten human life, as narrowly interpreted by the agency, detrimentally affects fuel logistics at times where market forces may present significant threats to the public welfare. With increased geopolitical conflict and an energy environment in constant flux, it is important for FMCSA to use its authority to provide regional regulatory relief based on market dynamics that could have broad societal repercussions, such as limited diesel supply for trucks delivering critical goods or delays in shipment to fuel-dependent sectors like agriculture and freight.

EMA respectfully urges FMCSA to broaden the definition of "emergency" to include events caused by market forces that pose an immediate threat to public welfare, in line with long-standing regulatory interpretations and MCSA's statutory framework.

b. *Commercial Driver's License Knowledge Test*

Under 49 C.F.R. Part 383, FMCSA sets minimum standards for states issuing commercial driver's licenses (CDLs), including hazardous materials knowledge tests (HazMat Test). While EMA supports efforts to ensure safety in the transportation of hazardous materials, the current testing approach imposes unnecessary burdens on fuel haulers.

The scope of the HazMat Test is overly broad. Fuel transport drivers often face questions unrelated to their work– such as those about nuclear waste transport—leading to test failures and staffing challenges. EMA urges FMCSA to work with states to tailor HazMat Tests by industry sector. This

[3] *Clarification to the Applicability of Emergency Exemptions*, 88 Fed. Reg. 70897 (Oct. 13, 2023).

targeted approach would reduce irrelevant testing burdens while preserving safety standards. EMA is ready to assist FMCSA in developing a focused test for fuel transportation professionals.

3. Pipeline and Hazardous Materials Safety Administration (PHMSA) Regulations

a. *Placarding Requirements for Hazardous Materials*

PMHSA accepted comments through April 28, 2025, on proposed amendments to the Hazardous Materials Regulations (HMRs), including cargo tank marking changes for petroleum distillate fuels.[4] EMA supported the proposal to allow fuel marketers to use the UN ID number for the lowest flash point in split loads and alternating straight loads of gasoline, diesel, heating oil, and gasoline blends with 10% ethanol (E10). However, EMA urged PHMSA to expand this flexibility to gasoline blends with up to 15% ethanol (E15), particularly when transported alongside fuels with lower ethanol content.

In 2015, PMHSA revised its long-standing interpretation of the lowest flash point exception to limit its application to split loads — where at least one compartment contains gasoline. The interpretation is contrary to the Hazardous Materials Transportation Act and arbitrarily complicates fuel logistics.

EMA strongly supports the agency's recent move to reverse its 2015 interpretation and extend the lowest flash point exception to alternating straight loads moving gasoline, diesel, heating oil, and up to E15 blends to market. The organization welcomes this regulatory clarification as it would improve transportation efficiency and reduce costs without compromising safety.

b. *Vapor Tightness Certification Requirement*

In 2024, the U.S. Environmental Protection Agency (EPA) finalized vapor tightness requirements for cargo tanks, modifying the standard to between 0.5 and 1.25 inches of water pressure drop, depending on tank size.[5] While PHMSA does not administer the Clean Air Act, it plays an integral role in regulating vapor tightness and must ensure that the rule's economic costs and technological factors are duly considered.

While the deadline of the new requirement is in 2027, gasoline distribution facilities are starting to require vapor tightness certification, as provided by the modified standard. This is straining fuel logistics, especially for small businesses with older tanks

EMA urges PHMSA to work with EPA to reevaluate the cost-benefit basis of the rule and ensure consistency with HMRs. EMA also recommends extending the compliance deadline to 2029 to

[4] *Hazardous Materials: Advancing Safety of Highway, Rail, and Vessel Transportation*, 89 Fed. Reg. 85590 (Oct. 28, 2024).
[5] *National Emission Standards for Hazardous Air Pollutants: Gasoline Distribution Technology Reviews and New Source Performance Standards Review for Bulk Gasoline Terminals*, 89 Fed. Reg. 39304 (May 8, 2024).

provide certainty to stakeholders while review is pending. Reducing the stringency of the vapor tightness requirement would provide relief to small business energy marketers.

c. *Registration and Fee Assessment for Hazardous Materials*

PHMSA has proposed fee increases on small business registrants to fund the Hazardous Materials Emergency Preparedness grants program, without accounting for risk factors involved in the transportation of hazardous materials.[6]

EMA recommends that PHMSA revise the fee structure to reflect business size and risk profile of the hazardous materials being transported, allocating increases to large business registrants that transport higher-risk materials (e.g., those that are toxic by inhalation, poisonous, infectious, or radioactive). Small business energy marketers should not be financially responsible for heightened risks that are not present in fuel transportation.

4. Transportation Security Administration (TSA) Regulations

Congress enacted the Transportation Security Screening Modernization Act to eliminate costly background check redundancies within the Transportation Worker Identification Credential, Hazardous Materials Endorsement, and TSA PreCheck programs. This legislation requires TSA to streamline the credentialing process by (1) allowing the enrollment in any security threat assessment program based on one background check, (2) permitting an expedited renewal process, and (3) aligning credential expiration dates.

To further enhance flexibility under the statute, EMA urges TSA to evaluate whether fingerprint collection is necessary for renewals. Since fingerprints are already collected at the initial enrollment stage, requiring them again at the point of renewal appears to be a redundant step in the process. Fuel marketers, especially those in rural areas, are disproportionately burdened by this requirement.

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EMA appreciates DOT's attention to these important issues and welcomes the opportunity to meet and discuss our recommendations. If you have any questions about our comments, please contact EMA's Regulatory Counsel, Jeff Leiter (jleiter@bmalaw.net) and Jorge Roman (jroman@bmalaw.net).

Sincerely,

Rob Underwood
President

[6] *Hazardous Materials: Adjusting Registration and Fee Assessment Program*, 89 Fed. Reg. 45806 (May 25, 2024).