

INTERESTED PARTIES FOR HAZARDOUS MATERIALS TRANSPORTATION

March 29, 2006

The Honorable Peter King
Chairman
House Select Committee on Homeland Security
US House of Representatives
Washington, DC 20515

The Honorable Bennie Thompson
Ranking Member
House Select Committee on Homeland Security
US House of Representatives
Washington, DC 20515

RE: Markey "Extremely Hazardous Materials" Amendment to H.R. 4439

Dear Chairman King and Representative Thompson:

On behalf of the undersigned organizations, we are writing to express our strong opposition to an amendment offered by Representative Ed Markey to H.R. 4439, the Transportation Security Administration Reorganization Act. This amendment, entitled "Extremely Hazardous Materials Transportation Security" (EHM), would duplicate and possibly disrupt existing regulation pertaining to the transportation of hazardous materials.

The industries and public safety agencies we represent have operations in every state, have combined business revenues in excess of \$1 trillion, employ millions of workers, and have an enviable record of hazardous materials transportation safety and security. Representative Markey's proposal is antithetical to a uniform, comprehensive system of regulation that is prerequisite to the goals of hazardous material transportation safety and security. It would be extremely disruptive to interstate commerce and would degrade rather than enhance the safety and security of transportation of hazardous materials around the country.

Regretfully, the Markey EHM amendment was accepted, with others, by voice vote during mark-up in the Economic Security Subcommittee in a procedural move to clear H.R. 4439 for full committee consideration. While it was announced at the Subcommittee mark-up that the vote to include the Markey amendment and others was not an indication of the Subcommittee's support for these provisions, we are nevertheless concerned that the Markey amendment has survived this critical threshold in the press to move H.R. 4439. We urge you to resist a similar outcome when H.R. 4439 is considered in full committee.

The Markey EHM amendment (now §402 of H.R. 4439) requires the Department of Homeland Security (DHS) to regulate the commercial shipment of certain hazardous materials. Congress has long recognized the Department of Transportation (DOT) as the competent authority, both nationally and internationally, to prescribe regulations for the safe and secure transportation of hazardous materials in commerce. The creation of DHS did not impinge on this authority. In fact, Congress included provisions in the Homeland Security Act of 2002 (HSA) that require DHS to consult with DOT when "prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material" (Public Law No. 107-296, § 1711). In addition, HSA reaffirmed DOT's role by specifically directing DOT to ensure the security, as well as the safety, of commercial shipments of hazardous materials. DOT's authority in no way disparages DHS' overall authority to provide for transportation infrastructure security, the identification of transportation targets, to ensure that there are no gaps in protection efforts and to provide means for response and recovery. Recognizing these missions, DOT and DHS produced a memorandum of understanding which, among other things, states that "DOT retains statutory authority and responsibilities for ... the transportation of hazardous materials (including Security)."

Both DHS and DOT are committed to ensuring comprehensive, seamless security standards for hazardous materials transportation that eschew duplication. One of the primary weaknesses of the Markey amendment is that it would

mandate regulation by DHS in a number of areas already regulated by DOT. DOT has comprehensive regulations defining hazardous materials according to the risks they present in transportation. DOT has issued both safety and security training regulations for transportation workers. DOT has packaging standards recognized worldwide, mandated security plans for carriers and shippers, communication and notice requirements, rules for routing, and recently enhanced its civil penalties for hazardous materials violations. Any concern about the adequacy of current hazardous material regulations should be directed to DOT, rather than referred to another government agency.

If these duplicative regulatory mandates are stripped from the bill, all that is left are mandates for a report on hazardous materials transportation security that DHS is already addressing through in its Transportation Operations Security Plan; and whistleblower protection which is covered by other statutes.

This Markey EHM amendment is not needed because: (1) the authority to regulate these activities is already vested in DOT; (2) the amendment would mandate duplicative and possibly conflicting regulation by DHS; and (3) it would compromise efforts of both the regulated community to comply with and authorities who enforce an already complex and technical array of hazardous materials regulations. Moreover, DHS is not vested, as DOT is, with authority to ensure the national regulatory uniformity necessary to ensure that commerce is not unduly impeded.

For these and other reasons, the Homeland Security Committee defeated this amendment last year. In view of these facts, we urge you strip the Markey EHM amendment from H.R. 4439 before it is reported from committee.

Respectfully,

Agricultural Retailers Association
American Chemistry Council
American Petroleum Institute
American Pyrotechnics Association
American Trucking Associations, Inc.
Association of American Railroads
The Chlorine Institute, Inc.
Compressed Gas Association
Council on Safe Transportation of Hazardous
Articles
Commercial Vehicle Safety Alliance
Dangerous Goods Advisory Council
The Fertilizer Institute
Industrial Packaging Alliance of North America
Institute of Makers of Explosives
Intermodal Association of North America
International Vessel Operators Hazardous Materials
Association, Inc.

Lighter Association, Inc.
National Association of Chemical Distributors
National Association of Truck Stop Operators
National Paint & Coatings Association
National Industrial Transportation League
National Private Truck Council
National Propane Gas Association
National Tank Truck Carriers, Inc.
Nuclear Energy Institute
Petroleum Marketers Association of America
Petroleum Transportation and Storage Association
Railway Supply Institute
Reusable Industrial Packaging Association
Steel Shipping Container Institute
Truckload Carriers Association
Utility Solid Waste Activities Group

cc: Members of the Committee on Homeland Security