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INTERESTED PARTIES FOR HMTA REAUTHORIZATION

February 15, 2002

The Honorable Norman Y. Mineta
Secretary
U.S. Department of Transportation
400 Seventh St., SW
Washington, DC 20590

FHCSA-2001-1117-2

RE: Preemptive Effect of the Interim Final Rule Implementing 49 U.S.C.
5103a

Dear Mr. Secretary:

On behalf of the undersigned organizations, we urge your immediate attention to the interim final rule being developed to implement the background check provisions mandated by the USA Patriot Act (49 U.S.C. 5103a). A statement clarifying the preemptive effect of the interim final rule is needed to avoid unnecessary duplication, conflict and potential litigation. Federal preemption of state background check legislation will enhance security and safety, a goal the undersigned share with you. The undersigned organizations represent shippers of all classes of hazardous materials and carriers in all modes of transportation. Inasmuch as over 90 percent of all hazmat shipments move by truck, we are all affected by the outcome of this issue.

Since the enactment of 49 U.S.C. 5103a, legislation has been introduced in a number of states to require, in various forms, background checks on individuals seeking commercial motor vehicle licenses. Some of the state proposals are limited to individuals seeking hazardous materials endorsements; some are applicable to all CDL (commercial driver license) applicants.

At this time, bills have been introduced in CA, IN, KY, MI, MN, NJ, PA, SC and VA. However, as state legislative sessions get underway, we expect to see more states follow suit. If the effect of these bills is to require duplicative, conflicting, or in any way non-reciprocal background checks to the federal program, we have great concern about the impact of these requirements on interstate trucking operations. Moreover, these state initiatives could well conflict with the Transportation Workers Identification Card project currently being developed by the Department's "Credentialing Direct Action Group."

Air Transport Association of America
American Chemistry Council
American Petroleum Institute
Council on Radionuclides and Radiopharmaceuticals
Compressed Gas Association
Conference on Safe Transportation of Hazardous Articles
Dangerous Goods Advisory Council
The Fertilizer Institute
Institute of Makers of Explosives
International Warehouse Logistics Association
National Association of Chemical Distributors
National Industrial Transportation League
National Paint & Coatings Association
National Private Truck Council
National Propane Gas Association
National Tank Truck Carriers, Inc.
Petroleum Marketers Association of America
Radiopharmaceutical Shippers & Carriers Conference, Inc.
Railway Progress Institute
Reusable Industrial Packaging Association
Truckload Carriers Association
Utility Solid Waste Activities Group
Vessel Operators Hazardous Materials Association

Section 5103a has been incorporated into chapter 51 of title 49 United States Code, federal hazardous materials transportation law (FHMTL). The FHMTL contains long-established standards of preemption at §5125 that should be applicable to §5103a. To avoid inappropriate action by states or local governments, as well as unnecessary administrative preemption proceedings or litigation, we urge DOT to include a statement in the interim final rule that makes clear the preemptive effect of the federal rule on non-federal requirements.

Sincerely,

Cynthia Hilton
Co-facilitator

Paul Rankin
Co-facilitator

cc: Michael Jackson, Deputy Secretary
Joseph M. Clapp, Administrator, FMCSA

LIST OF SIGNATORY ORGANIZATIONS

Air Transport Association of America	National Paint & Coatings Association
American Chemistry Council	National Industrial Transportation League
American Petroleum Institute	National Private Truck Council
Council on Radionuclides and Radiopharmaceuticals, Inc.	National Propane Gas Association
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