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STATEMENT OF JOHN W. BARNUM, THE UNDER SECRETARY, DEPARTMENT
OF TRANSPORTATION, BEFORE THE SENATE COMMITTEE ON COMMERCE,
WEDNESDAY, JUNE 12, 1974, ON S. 2064.

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to meet with you to discuss the Department of Transportation's hazardous materials program and the various hazardous materials legislative proposals. First, I would like to provide you with a brief overview of the Department's hazardous materials program and regulatory authorities, and then discuss the urgent need for legislation in this area.

The Department has three basic sources of authority for regulating hazardous materials. The Transportation of Explosives Act provides regulatory authority with respect to shippers and highway and rail carriers of hazardous materials. This statute provides only criminal remedies. The Federal Aviation Act of 1958 provides the Department with regulatory authority over the transportation of hazardous materials by air carriers. This Act provides both criminal and civil remedies. The third source of authority, the Dangerous Cargo Act, provides the Department with authority over water shipments, and provides both criminal and civil remedies. While the Department of Transportation Act provides that all this authority vests in the Secretary, it further specifically provides that the hazardous materials authority with respect to the highway, rail, and air modes is delegated to the Federal Highway Administrator, Federal Rail Administrator,

and the Federal Aviation Administrator, respectively. The Secretary has also delegated the authority with respect to water carriage of hazardous materials to the Commandant of the Coast Guard.

I must stress to you the basic intermodal nature of the hazardous materials program. The regulations of the Department describe the way a container must be built, the way it must be marked, the necessary shipping papers, and the specific methods of carrier protection, among other matters. Most shipments of hazardous materials -- if not the great majority -- travel by more than one mode. You cannot have each mode requiring a different type of container, or a different set of markings.

To promote consistency in approach, the Department has created a Hazardous Materials Regulations Board, with representatives from each mode and from the Office of the Secretary. The Board reviews all intermodal hazardous materials matters and regulations. The Board does not vote by majority vote but rather each individual mode must decide whether to adopt a joint regulation as applicable to that mode. This procedure of individual voting is required because of the required delegations in the DOT Act.

The Office of Hazardous Materials, within the Secretary's office, provides the necessary input with respect to the drafting of intermodal regulations. Once a regulation is adopted, each mode must provide enforcement, with assistance from the Office of Hazardous Materials with respect to the intermodal problems of shippers and manufacturers of hazardous materials containers.

I think this very brief statement of the organization and authority of the Department should provide some insight into the complexity of the hazardous materials program and our frustrations in this area.

If the Department is to make more progress in this area, we need new legislation eliminating the three major problems confronting us. Specifically, we require statutory authority to (1) regulate the manufacturer of hazardous materials containers, (2) impose civil as well as criminal penalties for any violation by any person in any mode, and (3) make discretionary delegations within the Department of hazardous materials authority in order to more effectively regulate and respond to multimodal problems. S. 2064 would give us the basic statutory tools we need to eliminate these three problems.

Control over the transportation of hazardous materials must begin with control over the manufacturer of the hazardous materials container. Many containers utilized to transport hazardous materials are highly sophisticated. If they are not properly fabricated and tested, there is little that the shipper or carrier can do to ascertain the integrity of the container. The Department's regulations recognize this situation and provide that the carrier and shipper may accept the manufacturer's certification that the container is fabricated according to the specifications contained in the Department's regulations. However, the Department only has authority with respect to shippers and carriers, and cannot impose a civil or criminal penalty against a manufacturer when the manufacturer wrongly certifies a container to meet our specifications. This lack of enforcement authority over manufacturers of hazardous materials containers has served as a source of frustration to the Department in its efforts to provide for more effective regulation of the transportation of hazardous materials. This lack of authority has also long been recognized as a serious deficiency particularly

by persons engaged in the transportation of hazardous materials by air. Section 6 of S. 2064 would give the Department direct control over the manufacturer.

Secondly, as I indicated before, the Department may impose only criminal penalties for shipper and surface carrier violations. For water and air carriers, however, both criminal penalties and civil penalties are authorized. As you are no doubt aware, the imposition of a criminal penalty requires a finding of guilt beyond a reasonable doubt, and other procedures associated with a criminal trial. Civil penalties are administered within the context of a civil trial, with a requirement that prior to the imposition of a penalty -- there can be no imprisonment -- the court find by a preponderance of the evidence that the regulation was violated.

The basic statutory inconsistency of having civil penalties for some violations but not for those committed by shippers and surface carriers has prevented the development of a fair, uniform, and effective enforcement policy for all modes of transportation. While criminal penalties are appropriate for intentional or "knowing" violations of the various statutes and regulations relating to the transportation of hazardous materials, we believe civil penalties provide a more effective means of assuring compliance with regulations and a more appropriate form of redress for most violations. Civil penalties imposed administratively are less formal and time-consuming, and avoid further burdening the already overcrowded dockets of the criminal courts. Thus, providing a civil penalty for enforcement of violations by all modes will provide uniform treatment for violators as well as a more

effective means of enforcement of violations of the hazardous materials regulations. Section 5 of S. 2064 would authorize the imposition of civil penalties for violations in all the modes.

Lastly, S. 2064 would remove the mandatory statutory delegations of authority. As you can see, the hazardous materials problem is intermodal, and the program is Department-wide, while the present statutory authority is split piecemeal throughout the Department. We need to be able to rationalize the structure of our program. The need is especially acute with respect to shippers and manufacturers. The approach to shipper and manufacturer enforcement must be centralized. We do not want to have a situation where a shipper is first visited by an inspector from Federal Highway, then one from Federal Rail, and then one from the Federal Aviation Administration. That is why we have proposed removing the mandatory delegations. This will allow the Secretary to best organize the hazardous materials function with respect to shippers and manufacturers and to make appropriate adjustment when necessary. I must stress that the removal of these statutory delegations is not to be seen as a diminishment of the role of the modal administrations in the hazardous materials program. We recognize that the modes have the particular carrier expertise and that they will have to carry the brunt of the carrier enforcement program.

I would like to conclude my testimony by reemphasizing the need for this legislation. The Department is committed to a good hazardous materials program -- especially with respect to enforcement -- but we cannot effectively and efficiently administer the program without the adoption of the legislative

changes proposed by the Department in S. 2064. We again urge the Committee to act favorably upon this legislation.

Pending enactment of S. 2064, the Department will continue to promote an effective hazardous materials program within the limitations of existing law. As a result of efforts during the past months to ascertain where the problems lie, it is evident that there are numerous shippers of hazardous materials who have never heard of the regulations. As an attempt to get to these people, the Federal Aviation Administration held a preliminary meeting concerning air shipments of hazardous materials on May 17, 1973. This meeting demonstrated the need for a concentrated effort to impart regulatory information to all shippers by various modes of transport. It was decided that the Department as a whole should conduct a national meeting in an effort to contact all types of shippers, big and small, and inform them what future actions this Department intends to take with regard to the public demand for strict adherence to regulatory requirements. A notice to this effect has been filed in the Federal Register. It is intended that this meeting be held October 2 and 3 of this year at the Shoreham Hotel.

Mr. Chairman, this completes my prepared statement, and we will be pleased to answer any questions you or the other Committee members may have.