

STATEMENT BY JAMES T. CURTIS, JR., DIRECTOR, MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION, BEFORE THE HOUSE PUBLIC WORKS AND TRANSPORTATION SUBCOMMITTEES ON AVIATION AND SURFACE TRANSPORTATION, MONDAY, MAY 10, 1976

Mr. Chairman and Members of the Subcommittees:

I am pleased to be before your Subcommittees to discuss the Department of Transportation's hazardous materials program, particularly as it relates to activities since January 3, 1975, the date the Hazardous Materials Transportation Act was signed into law.

Prior to the Hazardous Materials Transportation Act, the organizational structure within the Department for the handling of hazardous materials functions can best be described as "decentralized". This structure, providing each modal administrator with separate hazardous materials responsibility for his administration, was mandated by the legislation that established the Department of Transportation. However, the Department recognized that a shipment of hazardous materials may move through all or several of the modes of transportation over which the heads of the operating administrations have cognizance. It was therefore essential that shippers and carriers be able to refer to a cohesive set of authoritative regulations upon which they may rely in preparing, shipping, and transporting hazardous materials, regardless of the mode of transportation.

Recognizing this, the Department established the Hazardous Materials Regulations Board, which consisted of representatives of each modal administration and appropriate representatives from the Office of the Secretary.

The Board was responsible for:

- 1) developing the format of hazardous materials regulations;

- 2) developing procedures for handling proposed additions or changes to the regulations; and
- 3) reviewing proposals for new regulations or revisions to existing regulations, and recommending the adoption and issuance of those found to be satisfactory.

The establishment of the Board was an attempt to centralize the Department's hazardous materials functions. However, the effectiveness of this attempt was limited. The existence of the Board did not affect the authority of any operating administration to adopt and publish hazardous materials regulations or to carry out any other function relating to the safe transportation of hazardous materials.

In fact, the decentralized responsibility for hazardous materials functions mandated by statute, by its very nature, frustrated the development of any uniform approach to carrying out those functions. This situation was recognized in the enactment of the Hazardous Materials Transportation Act. The declared policy of Congress in passing that Act was to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials.

Certain of the provisions of the Act reflect that policy by accomplishing the following:

- . The removal of statutory restrictions on the Secretary's authority to centralize Department of Transportation regulatory activities relating to the safe transportation of hazardous materials by various modes.

- . The extension of the Secretary's authority to impose civil penalties to violations committed in the rail and highway modes.
- . A significant increase in the criminal sanctions for violations of hazardous materials regulations.
- . Provision of various forms of specific relief as additional enforcement tools.
- . A broadening of the definition of "commerce" to include transportation which affects interstate transportation.
- . A broadening of the application of hazardous materials regulations in certain geographical locations.
- . Federal preemption of inconsistent State and local regulations and law.
- . An extension of the Secretary's regulatory authority to the manufacturers of packages and containers used in the transportation of hazardous materials.
- . Authorization for the Secretary to require shippers and carriers of hazardous materials, and manufacturers of hazardous materials containers, to register with the Department of Transportation.

To effectively exercise the powers and perform the duties vested in the Secretary of Transportation by the Act, as well as those vested in him by earlier laws dealing with hazardous materials, the establishment of a line organizational element within the Department, reporting to the Secretary, was considered necessary.

On July 1, 1975, the Materials Transportation Bureau was formed to answer that need. The Bureau became operational on July 7, 1975, and is responsible for exercising the authority vested in the Secretary with respect

to intermodal hazardous materials functions and the issuance of all hazardous materials regulations and exemptions except for those regulations and exemptions governing bulk shipment of hazardous materials by water.

The organization of the Materials Transportation Bureau necessitated a series of redelegations within the Department to define the interface of responsibilities between the MTB and the operating modes. Although a substantial part of the Secretary's hazardous materials authority was delegated to the MTB, the individual modes retain responsibilities, primarily in the area of inspection, compliance and enforcement. There were several considerations that led to this result. First, it is necessary to adequate inspection that hazardous materials inspectors have a working knowledge of the mode by which a shipment is being carried. Second, the modes maintain existing field forces that have had considerable experience with inspection of hazardous materials shipments and it seemed prudent to use this experience.

In practice, this continued modal responsibility appears to be justified. In carrying out their responsibilities for monitoring and enforcing the regulations governing the actual transportation of hazardous materials by motor vehicle, railroad, vessel, and aircraft, the operating administrations are continuing to place increasing emphasis on inspections to detect and correct violations by shippers and carriers.

For example, during 1975, the number of hazardous materials inspections performed by the Federal Aviation Administration increased more than 50% over those performed during the previous year. Likewise, hazardous materials inspections by Federal Railroad Administration personnel in 1975 increased

more than 50% over those in 1974. In the case of the highway transportation of hazardous materials, the Federal Highway Administration's Bureau of Motor Carrier Safety in 1975 more than doubled the volume of their 1974 inspections. On the waterfront and on board vessels, the Coast Guard inspection activities continued at their previously established high level.

More importantly, the overall increase of inspection activity in 1975 was accompanied by marked improvement in compliance with the hazardous materials regulations. The various indicators by which compliance can be measured--violations detected and enforcement actions taken--showed a general downward trend in 1975. Particularly significant were the figures for aviation where detected violations were down 21%. This overall reduction in violations during a year when there was an increase in the amount of hazardous materials being transported and a 20% increase in inspections is, in our view, attributable in large measure to the educational efforts of the last few years (see attachments 1 and 2).

Training and educational activities of the MTB and the Department's modal administrations have been directed at adding to the knowledge and improving the skills of our own inspectors. In addition, the Department has devoted considerable effort to better informing the regulated industries--particularly shippers of hazardous materials and their employees who are the day-to-day packagers and handlers of the shipments of hazardous materials. Of equal significance have been the self-education activities of the regulated industries. Trade associations, shipper groups and carrier organizations have conducted public seminars and training sessions on various aspects of the transportation of hazardous materials. As evidenced by the requests we

have received for assistance and guidance in conducting these sessions, they have been held with increasing frequency and at a range of locations.

With passage of the Act, the Department faced the task of dealing with the ongoing and increasing stream of hazardous materials in commerce as well as implementing the new authority given to the Secretary under the Act. Even before the Materials Transportation Bureau was organized, the FAA moved to implement section 108 of the Act, in a notice of proposed rulemaking that was published in early February 1975. Section 108 required the Secretary to issue regulations within 120 days of enactment prohibiting the transportation of radioactive materials aboard passenger aircraft unless those materials are intended for use in, or incident to, research, or medical diagnosis or treatment, and unless they do not pose an unreasonable hazard to health or safety. This regulation was published in final form in April and became effective on the 3d of May, 1975, 120 days after the Act became law.

After the MTB was established, one of the first matters that it considered was the existing rulemaking under Docket HM-112. This rulemaking, which was published in final form last month, and which is scheduled to become effective on July 1 of this year, is essentially a consolidation of existing regulations that, like the Secretary's hazardous materials authority, were scattered through the regulatory provisions of the various modes. Provisions regarding air shipments appear in title 14 of the Code of Federal Regulations, water transport appears in title 46, while rail and highway appear in title 49. Consolidation, in addition to encouraging shipper compliance with the regulations will aid the Department's surveillance and enforcement efforts. HM-112 also

will result in clearer identification of hazardous materials to further lessen the chance of improper introduction of those materials into commerce. The rulemaking, moreover, provides for uniform placarding and labeling requirements to eliminate another source of difficulties with intermodal shipments. Finally, HM-112 also includes general editorial amendments improving clarity, removing references and requirements no longer necessary, and reflecting updated information.

The value of a uniform, consolidated set of hazardous materials regulations was recognized at the time the Department itself was organized, but it was not until 1971 that the Department was able to undertake a sustained effort to achieve that goal, given the extensive material involved (as a matter of interest, the final rule was about 700 typewritten pages). In January 1974, a notice of proposed rulemaking opened Docket HM-112, and the consolidation effort was still underway when the MTB came into existence last July. Given the effects of this rulemaking and the very substantial resources already devoted to it, we felt that completion of the rulemaking was imperative and gave it priority treatment.

Another matter which the MTB had to face immediately involved the exemption procedures of the Act. The Department had interpreted the Act's exemption procedures, which require Federal Register publication of all non-emergency applications for exemptions, to be ineffective until implementing regulations had been published as part of our overall implementation of the Act. Implementing regulations are required by the Act to be published "as soon as practicable" but in any event within two years. Several years before, a consumer group had commenced litigation over the exemption procedures

employed by the FAA. Shortly before the MTB became operational, this litigation resulted in a Federal District Court decision that the exemption procedures of the Hazardous Materials Transportation Act became effective at the same time the Act itself became law. In addition to jeopardizing FAA approvals of regulatory deviations granted since January 3, 1975, the effect of this decision was applicable to all the modes. As a result, the Department moved to immediately develop and promulgate implementing regulations for the Act's exemption procedures.

The various authorities to grant administrative relief from the hazardous materials regulations exercised by the four modal administrations under the laws predating the Hazardous Materials Transportation Act were consolidated and transferred to the MTB on July 7, 1975, together with the exemption responsibility under section 107 of the new Act. An immediate rulemaking (HM-127) was initiated to establish a single set of procedures which would fully implement section 107 and replace the various means by which the FAA, Coast Guard, BMCS and FRA separately and collectively have previously issued special permits, exemptions, authorizations to deviate and waivers. In less than three months the new procedures were finalized, issued and placed in effect. In addition to providing for public notice and comment opportunities in all but emergency cases, the new procedures provide for Federal Register publication of the action taken by the MTB on all applications including those involving emergencies. They also specify the criteria used by the MTB in deciding whether to grant emergency exemptions, criteria and procedures for the suspension or revocation of exemptions, and procedures for seeking protection of trade secrets from disclosure.

The District Court's order implementing its decision was ultimately vacated as a consequence of appellate court action, largely because we succeeded in establishing exemption procedures under the Act. Implementation of this consolidated and centralized system, however, has not been without operational difficulties. A major problem at the outset was how to handle the special situation in Alaska where the lack of other means of transportation was creating a need for over 100 grants of administrative relief per month for air shipments of hazardous materials. Nearly all of these situations were being handled by local FAA district offices in Alaska. In nearly every case there was a compelling reason for quickly granting the relief. However, few would qualify as "emergencies" within the section 107 concept of that term. Analysis of several hundred of the "waivers" that had been granted during the first six months of 1975 showed that with few exceptions they were for the same four or five basic purposes such as air transportation of explosives for blasting, gasoline and other flammable liquids for vehicles and heating, and propane for construction work.

Based on the experience gained under those "waivers", the MTB and the FAA proceeded to develop specific rules applicable to each group whereby the hazardous material could be safely transported. The regulations were then quickly amended to authorize the identified groups of hazardous materials to be transported by air, subject to the rules, in Alaska and to other remote areas not having other means of transportation (HM-128). In addition to providing a sizable reduction in the reliance on the exemption process, this use of experience gained under the exemption process as the basis for permanent regulations of general application demonstrates a valid technique which we anticipate putting to more frequent use in the future.

Having put the exemption procedures behind us, and with completion of the effort to consolidate the hazardous materials regulations, we published on March 3d a notice of proposed rulemaking (HM-134) which addresses the subject of reissuance of the existing regulations under the new authority of the Hazardous Materials Transportation Act. The effect of reissuance will be to place the Department's hazardous materials regulations, which at present are based on various laws that predate the Act, under the authority of the Act itself. Reissuance will have several important effects on our efforts to implement the Act which I would like to outline for you.

One very significant effect of reissuance will be to bring into play the new enforcement provisions of the Act: civil penalty authority, increased criminal sanctions, preemption of conflicting State law, and the assistance of Federal District Courts in halting violations and in dealing with situations involving the threat of imminent hazards where ordinary proceedings would be too time-consuming to be effective.

Violations of hazardous materials regulations for all modes have in the past been punishable by criminal penalties, therefore the increased criminal penalties provided in the Act fit readily into the existing enforcement framework. To some extent, imposition of the civil penalties authorized by the Act will require new procedures for full implementation. Although the Coast Guard and the FAA have authority to impose civil penalties that predates the Act, their existing civil penalty procedures may require some adjustment to meet the procedural requirements of the Act. Although the FRA and the Bureau of Motor Carrier Safety have been exercising civil penalty authority for other safety violations, in the past they have lacked

the authority to impose civil penalties for hazardous materials violations. Consequently, additional procedures will have to be added to the existing ones for those two modes.

At the present time, draft procedures that will implement the preemption and enforcement provisions of the Act are being reviewed by all the modal administrations of the Department with a view to publishing final procedures some time between the middle and end of this summer.

Another significant effect of reissuance will be extension of the geographic coverage of the Department's existing hazardous materials regulations to Puerto Rico, the Virgin Islands, American Samoa and Guam, in addition to all of the States to which they now apply.

Finally, reissuance will make the specifications for hazardous materials containers enforceable against the manufacturers of those containers. At present, the Department is able to enforce container specifications against shippers and carriers only. Following reissuance, we will be able to take the impact of enforcement authority directly to the sources of containers used to ship hazardous materials. In an evaluation of shipper and container manufacturer compliance with the hazardous materials regulations that was completed February 10, 1976, we found indications that container manufacturers have not been very well informed, in some cases, on the specifications applicable to the containers that they manufacture which are used to ship hazardous materials. In one instance, we found a manufacturer of fiberboard cartons which were used to ship hazardous materials who had constructed those cartons to specifications provided by a customer without reference to the regulatory specifications.

Quite probably out of an awareness that the Department is moving to exercise direct regulatory authority over the manufacture of packaging and containers under the new Act, a group of hazardous materials packaging manufacturers recently joined the growing list of organizations conducting seminars and training sessions.

Independent of reissuance, the MTB continues to review the field of hazardous materials transportation for improvements in our methods of operation and in the overall safety level that has been achieved. We have been examining the use of performance standards for certain classes of hazardous materials for possible replacement of some of the existing design standards now applicable to containers and packages. Performance standards are standards that are keyed to the actual performance of the package in question rather than the details of exactly how it is constructed. One advantage to the use of performance standards is that packaging innovations and changes in packaging technology can proceed without the necessity of recurrent changes in the applicable regulations or the interim use of exemption procedures.

Another very important area of continuing evaluation is the hazardous materials incident reporting system. Carriers are required to provide reports on incidents occurring in transportation that involve release of hazardous materials. Immediate notification is required of incidents resulting in death, injury, \$50,000 in property damage, or spillage of radioactive or etiological materials. For several years now these incident reports have been fed into a computer system to provide a data bank from which a statistical overview of such incidents can be compiled. Computer

retrieval allows a wide-ranging examination of particular aspects of hazardous materials incidents for repeated patterns, which is useful in spotting developing problem areas at an early stage, flagging possible changes in our regulations, as well as noting possible violations and unsafe practices by shipper or carrier. In 1975, approximately 11,000 such reports were filed (see attachments 3-5). The materials most frequently named in those reports were paint and its related compounds, gasoline and batteries and battery fluid (about 47%).

In addition to the efforts being made to finalize preemption and enforcement procedures that I previously mentioned, there are other areas of the Act for which we are developing implementation programs. One such area is the authority provided in section 106(b) of the Act under which the Secretary may require shippers and carriers of hazardous materials, as well as hazardous materials container manufacturers, to register with the Department. At the present time, we do not think that an across-the-board requirement that all such persons register with the Department would be prudent. Since the registration provision is directed at the problem of identifying such persons, we believe that registration should be considered on a case-by-case basis. For example, a requirement that all rail carriers handling hazardous materials register with the Department does not appear necessary since virtually every rail carrier handles some hazardous materials and rail carriers are relatively easy to identify. On the other hand, it may be appropriate to require carriers and shippers of, or container manufacturers for, a particular hazardous commodity to register where their identities are unclear and the hazard involved is sufficiently great to warrant exact identification.

Another provision of the Act which I would like to mention is section 109(d)(2), which requires the Department to establish and maintain a central reporting system and data center to provide law enforcement and firefighting personnel and other interested persons advice on meeting hazardous materials transportation emergencies. The Manufacturing Chemists Association, since 1971, has been operating the Chemical Transportation Emergency Center, or "CHEMTREC". CHEMTREC provides response information for chemical transportation emergencies from data on chemicals provided by the chemical producers themselves. This service is available by phone at any time, night or day. After providing advice on how to deal with a particular chemical transportation emergency, the system also immediately notifies the shipper by phone, as well as other entities that may have resources that could be brought to bear on the problem (the Nuclear Regulatory Commission, for example).

The second information system is known as the Chemical Hazard Response Information System, or "CHRIS", which is partially operational at present. It is being developed under contract by the Coast Guard and is directed primarily at emergencies involving the bulk water transport of hazardous chemicals. The CHRIS system will also provide, in addition to emergency information, certain basic non-emergency information to improve the level of safety in bulk shipment by water of hazardous chemicals. CHRIS will include a hazard assessment computer system and a series of reference manuals dealing with emergency responses as well as general and specific considerations regarding water carriage of hazardous chemicals.

The MTB, in addition to maintaining liaison with CHEMTREC, also answers inquiries regarding the proper classification of hazardous materials, as well as distributing a substantial number of publications to insure wide familiarity with requirements applicable to the packaging and shipment of hazardous materials.

Finally, in response to section 108(d)(1) of the Act, during fiscal year 1977, we expect to attempt to select a qualified laboratory to perform classification testing of hazardous materials. We have in the past relied on the Bureau of Explosives for such testing but intend, according to the mandate of the Act, to develop that capability ourselves.

I now have a few remarks on the subject of H.R. 13124, the Administration's proposed hazardous materials authorization bill which was introduced in the House on April 8 of this year.

The Administration's budget for fiscal year 1976, submitted to the Congress shortly after the Hazardous Materials Transportation Act was signed into law, included staffing and resource increases for meeting the Department's new responsibilities under the Act. Additional positions for this purpose were funded as part of the Department of Transportation Appropriation Act for fiscal year 1976 (Public Law 94-134), which became law on November 22, 1975. Recruiting and selecting persons having the requisite qualifications have been tailored to the Materials Transportation Bureau's newly assigned responsibilities under the Hazardous Materials Transportation Act, particularly those concerning regulatory authority over manufacturers of packages and containers for shipping hazardous materials and the revised exemptions program. We have already been fortunate in attracting several persons with outstanding qualifications.

H.R. 13124 would amend section 115 of the Act to authorize appropriations of \$7,000,000 for each of fiscal year 1977 and 1978. In the past, the Department has proposed that authorizations for this program be provided on a basis that would allow appropriations to be made in such amounts as required to carry out our responsibilities under the Act. However, in view of the desire of Congressional committees that specific annual amounts be authorized, the Administration bill H.R. 13124 proposes that authorizations for hazardous materials activities be extended for two years at the level of \$7,000,000, which is the amount Congress authorized for fiscal year 1976. While the proposed levels in H.R. 13124 exceed the amount recommended in the President's budget for fiscal year 1977, we believe those levels are appropriate and will provide sufficient latitude to meet foreseeable program needs.

The bill also proposes two clarifying amendments to the Hazardous Materials Transportation Act. An amendment to section 106 is proposed that will strike the word "extremely" from subsection 106(c). Section 106, as it was passed by the Senate, limited the requirement of registering with the Department of Transportation to shippers and carriers of, and manufacturers of containers for, "extremely" hazardous materials. The Conference Committee rejected this limitation and deleted the word "extremely" at several places in section 106 but apparently overlooked subsection 106(c), leaving an internal inconsistency.

A second amendment will adjust subsection 107(a) of the Act to make it clear that the Secretary's authority to grant exemptions extends to manufacturers of hazardous materials containers, as well as to shippers and

carriers. This change is consistent with the rest of the Act, which makes all three--shippers, carriers and container manufacturers--subject to the Secretary's safety authority.

This completes my statement, Mr. Chairman. I would be happy to answer any questions the Subcommittees may have.

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