

STATEMENT BY JAMES T. CURTIS, JR., DIRECTOR, MATERIALS  
TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION,  
BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON INTERNAL  
SECURITY, WEDNESDAY, JUNE 23, 1976

Mr. Chairman and Members of the Subcommittee:

I am James T. Curtis, Jr., Director of the Materials Transportation Bureau, Department of Transportation. I appreciate this opportunity to appear before you today to discuss the Department of Transportation's hazardous materials program, especially as it relates to the safe transportation of explosives.

The authority for the Department's exercise of hazardous materials responsibilities is derived from several statutes. The Hazardous Materials Transportation Act of 1974 (Title I of Pub. L. 93-633) is the most recent expression of Congressional concern over the safe transportation of hazardous materials. At the time that Act became law on January 3, 1975, the responsibilities and authority of the Secretary of Transportation relating to the transportation of hazardous materials were widely delegated within the Department between the modal administrations and the Office of the Secretary. This diversity of responsibility for various facets of the Department's regulation of the safe transportation of hazardous materials was a matter of concern even before the passage of the Act. The Act made it possible to centralize hazardous materials responsibility and led to the establishment of the Materials Transportation Bureau (MTB) on July 1, 1975.

The Bureau was established as an operating element in the Department with responsibility for two programs: hazardous materials safety and

pipeline safety. The Bureau has the same organizational status as the existing DOT operating administrations. This status demonstrates the Department's commitment to ensuring the safe transportation of hazardous materials in commerce. Within MTB the hazardous materials safety functions are carried out by the Office of Hazardous Materials Operations.

Essentially, the Bureau exercises the Secretary's authority over intermodal hazardous materials functions, and over issuance of hazardous materials regulations and exemptions from those regulations.

Hazardous materials responsibilities that are exclusive to each individual mode, primarily inspection, compliance and enforcement functions, are carried out by the modal administrations within the Department. Those are the U. S. Coast Guard, the Federal Highway Administration, the Federal Railroad Administration, and the Federal Aviation Administration.

The Bureau pursues its safety mission through activities that are based on a continuing evaluation of all aspects of the handling of hazardous materials. The Bureau and the modal administrations conduct and participate in frequent industry seminars, and distribute substantial volumes of informational publications, to insure wide familiarity with existing and new requirements applicable to packaging and carriage of hazardous materials. Reports of incidents involving hazardous materials that occur in transportation, which are required to be filed by carriers, are examined for early identification of developing problem areas. The Bureau is also involved in various transportation planning, research and development activities.

Before discussing the MTB's present efforts with respect to the transportation of explosives, I would like to offer an historical view of the Federal Government's involvement in that subject.

Since 1908 regulations for the safe transportation of hazardous materials have been primarily issued under the authority of what is now popularly called the Transportation of Explosives Act codified in 18 U.S.C. 831-835. Section 834 of that Act authorizes the Interstate Commerce Commission to formulate regulations for the safe transportation of explosives and other dangerous articles. Other portions of the statute give the ICC various administrative powers over the transportation of hazardous materials. These functions of the ICC were transferred to the Secretary of Transportation by the legislation creating the Department of Transportation (see section 6(e)(4), Pub. L. 89-670, October 15, 1966).

Paragraph (e) of section 834 in the Transportation of Explosives Act provides in part:

In the execution of sections 831-835, inclusive, of this chapter the Commission may utilize the services of carrier and shipper associations, including the Bureau for the Safe Transportation of Explosives and Other Dangerous Articles . . . .

The Bureau for the Safe Transportation of Explosives and Other Dangerous Articles, presently entitled the Bureau of Explosives, is an element of the non-governmental Association of American Railroads. It was established in 1906 and during 1907 and 1908 worked with explosives manufacturers in an effort that culminated in the submission of a set of explosives regulations to the ICC for its consideration under the authority

granted by the 1908 legislation. The regulations, as submitted, were adopted by the Commission with but a few changes in October 1908. The promulgation by the Commission of the regulations for the transportation of explosives then led to the Association's preparation and adoption of regulations for the transportation of flammable articles and acids in September 1908. After some modification, these rules were adopted and promulgated by the ICC and made effective in 1911.

Between 1921 and 1967 the ICC, under the authority of section 834, relied heavily on the Bureau of Explosives to perform regulations drafting, conduct inspections, and to issue various types of approvals. In the process of using the Bureau, certain delegations of authority were made by the ICC to the Bureau. The most important of these is the delegation authorizing the Bureau of Explosives to examine and approve all new explosives except those of the Department of Defense and the Energy Research and Development Administration. Those agencies have the authority to classify and approve their own explosives for transportation. Even in the present DOT regulations, Bureau approval is required, except for certain shipments of samples, before a new explosive can be initially offered for transportation in commerce.

Recently, we have been examining the feasibility of establishing independent laboratory facilities in order to classify materials and determine if they may be safely introduced into commerce. This action is based on section 109(d)(1) of the Hazardous Materials Transportation Act, which directs the Secretary to establish and maintain facilities and technical staff sufficient to provide, within the Federal Government,

the capability of evaluating risks connected with the transportation of hazardous materials, including explosives. However, it cannot be denied that over the years the Bureau of Explosives has done a very credible job and has been widely recognized as an impartial authority on all aspects of the transportation of hazardous materials.

Because there has been a long history of Federal Government involvement in the area of transporting explosives, the body of regulations that has been developed to ensure safety to life and property during such transportation is very encompassing.

These regulations established classes of explosives depending on ease of initiation and destructive capability and sets up packaging, marking, labeling, handling, and stowage requirements for each such class.

These regulations are codified in three titles of the Code of Federal Regulations. Title 49, Parts 170-189, deals with the highway and rail modes; Title 46, Part 146, with the water mode; and Title 14, Part 103, with the air mode. Under a Materials Transportation Bureau rulemaking issued in April of this year, the hazardous materials regulations in those three titles have been consolidated in Title 49. That consolidation is scheduled to take effect on the 1st of July.

The Hazardous Materials Transportation Act of 1974, which I referred to at the beginning of this statement, did nothing to affect any of the existing requirements pertaining to explosives. 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 provisions of the Act clearly 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.

The Materials Transportation Bureau's efforts are directed to implementing the new authorities under the Hazardous Materials Transportation Act and maintaining the hazardous materials program activities that were in existence prior to the passage of that legislation.

With specific regard to explosives, the MTB is presently working toward a new set of criteria for classifying explosives. Admittedly, this and other regulatory efforts with regard to explosives is a major part of our overall program. However, thousands of other materials have been classified as hazardous for purposes of transportation, and it is the responsibility of the MTB to ensure an adequate level of safety for the transportation of those materials, as well as explosives.

This completes my statement, Mr. Chairman. I expect that you and Members of the Subcommittee would like to address specific areas that interest you. I would be happy to attempt to answer any questions the Subcommittee may have.