

STATEMENT OF KENNETH L. PIERSON, DIRECTOR,
BUREAU OF MOTOR CARRIER SAFETY,
FEDERAL HIGHWAY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION,
BEFORE THE GOVERNMENT ACTIVITIES SUBCOMMITTEE
OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE

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Madam Chairwoman, Members of the Committee:

The Department of Transportation (DOT) is pleased to appear before this Subcommittee today to discuss the Federal regulatory program governing the transportation of hazardous materials and waste. In my testimony today, I will discuss the nature of the Federal regulatory program, the role of the DOT, the procedures by which the Federal Highway Administration carries out its responsibilities for highway movement of hazardous materials and waste, and the outlook for future improvements as a result of recent legislation.

It is very timely to be taking up this matter, since there is much public interest in the transportation of hazardous commodities on the public highways, and concern over the consequences of unintentional releases of these materials into the environment. While the benefits of chemistry to our national standard of living are well known, the nature of the risks, and the societal costs of these materials, and the respective roles of the States and the Federal Government are not well understood.

Authorities

The safe transportation of hazardous materials and hazardous wastes is regulated pursuant to the Hazardous Materials Transportation Act of 1974 and

the Resource Conservation and Recovery Act of 1976, as amended. The former act authorizes the Secretary of Transportation to designate a material as hazardous upon a finding that the use in commerce of a particular quantity and form of a material poses an unreasonable risk to health and safety or property, and to regulate the movement of such material for the protection of the public and transportation employees. The latter act requires the Administrator of the Environmental Protection Agency (EPA) to promote the protection of health and the environment and to conserve valuable natural and energy resources by regulating generators, transporters, and operators of hazardous waste treatment, storage, and disposal facilities.

The Secretary of Transportation has promulgated a comprehensive set of regulations governing the packaging, marking, loading, documenting, placarding, and handling of hazardous materials in package form or in bulk. Pursuant to a Memorandum of Understanding between the DOT and the EPA, executed on June 24, 1980, the DOT agreed to enforce the EPA's standards relating to the transportation aspects of the EPA's overall regulatory program. This agreement was reached to avoid dual standards, dual inspections, dual recordkeeping, and dual enforcement activities. This allows each agency to concentrate on those activities in which each has expertise and maximizes the use of manpower and resources.

DOT/EPA Relationships

Under the terms of the DOT/EPA agreement, the DOT has undertaken to include a review of compliance with hazardous waste requirements in its regular

program of roadside vehicle inspections of hazardous materials transporters and in hazardous materials shipper and carrier safety management audits. In addition, the agreement covers exchange of information and joint activities. We have established field counterpart contacts and conducted joint or demonstration road checks with or for the field staff of EPA. The EPA has furnished us a computer list of registrants under their registration program, and we have made available to EPA a complete copy of our Motor Carrier Census. In the field, each agency has consulted on hazardous waste casework and provided support as requested. Both agencies are cognizant of our respective roles and our mutual responsibility with the States.

Program Design

The principal thrust of the Federal hazardous materials safety regulatory program is the identification of specific hazardous materials, the design of procedures and containers for their safe handling, and the requirement for full documentation, labeling and vehicle placards to warn workers, the public, and emergency response personnel of the risks associated with the specific materials, and to provide an audit trail.

Under the laws and the regulations promulgated to implement the laws, hazardous materials and hazardous waste safety standards are set by public rulemaking with full opportunity for review and comment by interested parties. The notices of proposed rules and final rules are published in the Federal Register. This constitutes legal notice. Information about the rules and changes in the rules is also provided by many sources; among these are

professional schools, trade journals, newsletters of associations related to hazardous materials transportation.

There are two principal mechanisms used to assess compliance of shippers and transporters of hazardous materials and hazardous wastes. The first is the unannounced safety management audit. Those to be audited are identified from a target list generated by an automated data processing program which utilizes selection criteria established by the Bureau of Motor Carrier Safety and each Regional Office, from the Motor Carrier Safety Census file of some 200,000 motor carriers of record.

The criteria will include companies with high accident records, frequent violations or vehicle defects as shown by vehicle inspections, those that have large fleets, but have reported no accidents (an indication of possible noncompliance with reporting requirements), those transporting specific commodities, such as bulk flammable liquids or radioactive waste, and other categories that are of interest to the agency. Also carriers upon which written complaints are received can be selected for audit as part of the complaint investigation.

These audits include review of carrier or shipper practices, records, and vehicles, and interview of personnel. The review of payroll and hours of service records, maintenance and inspection records, personnel records, accident and insurance files, and other safety records, provides an assessment of relative safety compliance. The review of carrier or shipper practices,

including interview of employees and officials, can identify any weaknesses in their safety program. Each audit is concluded with an exit interview to point out areas in need of improvement and suggested remedies. These audits have the potential for improving the carrier's safety performance in its total operation.

The second principal mechanism is the unannounced roadside inspection. These inspections are conducted at State weigh scales, ports of entry, roadside rest areas, and other public land places in cooperation with State enforcement authorities. At these locations, the driver's documentation is examined, the cargo manifest or waybill is examined, and if a hazardous material or waste is being transported, the cargo is inspected for compliance. The vehicle is subjected to a rather complete vehicle inspection, including tests of safety appliances and brakes. If patently defective vehicles are discovered, they are impounded until repairs are made. Minor defects or violations are allowed to be corrected at a place convenient for repair, but must be certified as corrected and a form returned to the agency. These inspections result in the correction of serious defects at the place of inspection and place drivers and carriers on notice about less serious deficiencies.

Both the safety management audit report and the roadside inspection report are filed in the carrier's or shipper's compliance file and inputted into the data processing file for use in determining its overall safety rating. The safety rating is used in reporting to the Interstate Commerce Commission (ICC) the safety fitness of new ICC applicants or applicants for additional authority. It is also available to the public.

Enforcement Policy

With respect to our enforcement policy, we believe the sanctions available are for remedial purposes, not punitive purposes. The statutes and our policies require consideration of the nature and gravity of the offense, the degree of culpability, the previous compliance history, the size of the business firm, its financial status or the ability of the firm to stay in business, and any extenuating circumstances when assessing penalties and in the settlement of enforcement cases. We attempt to set civil penalties at a level that will obtain and retain a carrier's or shipper's interest in safety compliance. We currently process about 1,200 enforcement investigations annually which result in about 600 successful prosecutions and about \$1 million in collections. The fines are deposited with the U.S. Treasury. The typical case will result in a \$6,000 collection, but range from \$150 for a driver to \$100,000 for a large business firm.

In the conduct of our program, we coordinate and cooperate with a large number of organizations, both within the DOT and outside of the DOT, including State counterpart agencies. The principal agencies in DOT are the Materials Transportation Bureau of the Research and Special Programs Administration, the Federal Railroad Administration, the Federal Aviation Administration, and the United States Coast Guard. Outside agencies include the EPA, the Nuclear Regulatory Commission, the Bureau of Alcohol, Tobacco and Firearms and the U.S. Customs Service of the Treasury Department, the Food and Drug Administration, the ICC, the Occupational Safety and Health Administration, and others. We also work with carrier, shipper, and labor organizations in cooperative safety efforts.

Training

Training is becoming a very important part of our program. Training for our own staff is provided by the DOT's Transportation Safety Institute (TSI) at Oklahoma City, Oklahoma, and for State enforcement officers through several different strategies. State enforcement officers can attend TSI on a space available basis, a member of our field staff is an instructor at almost every State Policy Academy, and special training courses are conducted on request for State enforcement personnel. This instruction covers both general motor carrier safety and hazardous materials safety. We also co-sponsor training classes with the National Conference of State Transportation Specialists for State enforcement officers from time to time.

Rulemaking

The DOT is providing leadership in this field and more than 30 States have adopted the Federal rules as States rules for local enforcement. Our rulemaking activities are conducted pursuant to the Administrative Procedure Act, and involve public dockets and public hearings as deemed appropriate. We receive petitions, conduct research, safety analysis, economic analysis, small business impact analysis, and cost-benefit analysis as required by current law, Executive Orders, and DOT orders. The regulations are under constant review for opportunities to reduce paperwork and reporting burdens, and to eliminate rules no longer necessary. In this regard, we have provided alternative ways to recording drivers' hours of service, eliminated the requirement for an accident register, as examples, and have several reviews under way on accident reporting and personnel records.

Future Trends

In terms of the prospects for the future, we believe that Title IV of the recently enacted Surface Transportation Assistance Act of 1982 will allow for significant improvements by providing a mechanism for Federal/State approach to the issue of commercial vehicle safety. Through its Federal grant provisions, it will provide incentive for more State activities addressed to highway transport of hazardous materials and waste, and for uniformity in requirements and inspection/enforcement activity.

We fully expect to publish in the Federal Register interim rules for the Motor Carrier Safety Assistance Program and will be ready to make grants to States when funds are appropriated for Fiscal Year 1984. These funds are for both development of motor carrier safety and hazardous materials inspection programs in States where no program exists today, and for expansion of such programs where States have existing programs that conform to the statutory criteria in the Surface Transportation Assistance Act. While grants are not authorized until FY 1984, there is much State interest in participating in this program.

This completes my prepared statement and I will be happy to answer any specific questions or provide material for the record.

Thank you.