

STATEMENT OF L. D. SANTMAN, DIRECTOR, MATERIALS TRANSPORTATION  
BUREAU, DEPARTMENT OF TRANSPORTATION, BEFORE THE COMMITTEE ON  
THE JUDICIARY, UNITED STATES SENATE

OCTOBER 21, 1983

I am pleased to appear before the Judiciary Committee today to discuss the Department of Transportation's views regarding the proposed Central Interstate Compact on low-level radioactive waste management. The Committee's letter of invitation to Secretary Dole requested that the Department's testimony address Senate bill 1581, a bill to secure Congressional consent for the Central Interstate Low-Level Radioactive Waste Compact. In March 1983 the Department testified before this committee in detail regarding its view on the various proposed regional compacts and their potential impact on the Department's hazardous materials transportation program. Today I shall concentrate on the specific compact proposed by S. 1581.

DOT's Regulatory Program

At the outset, I would like to provide a brief description of the Department's existing regulatory program as it relates to the transportation of low-level wastes. The Hazardous Materials Transportation Act (HMTA), enacted in 1975, establishes the broad regulatory authority under which the Department regulates the transportation safety of all hazardous materials in commerce, including radioactive materials. Under that authority, the Department has adopted a comprehensive body of regulations (the Hazardous Materials Regulations, or HMR) affecting all aspects of the transportation of hazardous materials, including packaging, shipping papers, marking, labeling, placarding, and handling.

As it relates to the transportation of radioactive materials, the Department's authority overlaps the regulatory authority granted the Nuclear Regulatory

Commission under the Atomic Energy Act. In order to avoid duplication or conflicts between the two regulatory programs, the Department and the NRC in 1979 entered into a Memorandum of Understanding delineating each agency's regulatory responsibilities. Generally, under this agreement, the NRC is responsible for the development of safety standards for packaging of higher level radioactive materials (those exceeding Type A limits) and for the development of shipment security requirements, and the Department is responsible for developing safety standards for other packaging and all other aspects of transportation. In addition, each agency agreed to adopt and enforce, within the scope of their respective jurisdictions, regulations compatible with those developed by the other. As intended, the agreement assured that the pre-existing comprehensive body of regulations applicable to the transportation of radioactive materials would not be duplicated.

In 1981, pursuant to this agreement and the authority established in the HMTA, the Department issued additional regulations, known as HM-164, relating primarily to the highway routing of radioactive materials. While the primary focus of the rule is the routing of spent fuel and other large quantity radioactive materials shipments, the rule also includes a general requirement that shipments of materials containing lower levels of radioactivity, including most shipments of low-level waste, be transported along the safest and most expeditious routes.

#### Preemption Under the HMTA

Section 112(a) of the HMTA provides that any state or local requirement that is "inconsistent" with that Act or the HMR is preempted. To assist in the interpretation and application of this provision, the Materials Transportation Bureau (MTB), which is the agency within the Department that administers the HMTA, has issued regulations establishing procedures for the

issuance of advisory "inconsistency rulings." To date, the MTB has issued six such rulings. These rulings set forth the Department's views with regard to the validity of various state and local requirements under the preemptive scheme of the HMTA and establish the policy framework in which we have reviewed other interstate compacts on the management of low-level wastes.

In short, in issuing inconsistency rulings, MTB applies two tests that have been borrowed from judicial precedents: first, whether it is possible to comply with both the Federal regulations and the nonfederal requirement (the "dual compliance" test); and, second, whether the nonfederal requirement presents an obstacle to the accomplishment of the purposes of the HMTA and the regulations issued under it (the "obstacle" test). In applying the "obstacle" test, which in almost all cases is the critical test, the MTB looks to two primary purposes of the HMTA, as expressed in the statute and its legislative history. First, Congress' overriding purpose in adopting the Act was to enhance overall public safety. Thus, if the effect of a nonfederal requirement is to reduce overall safety, it is inconsistent with the HMTA. Second, in adopting the preemption provision of the HMTA, Congress expressed a purpose to promote uniformity in the area of hazardous materials transportation regulation. Thus, if the effect of a nonfederal requirement is to interfere substantially with the uniform regulatory system established by the Federal regulations, then it is inconsistent with the HMTA.

#### Compatibility of S. 1581 with Existing Federal-State Framework

I am pleased to report that the Department's examination of S. 1581 reveals that concerns previously expressed about language in several proposed compacts have been specifically addressed in the proposed language of S.1581. Article III, paragraph (e) acknowledges the pre-eminence of Federal law, most notably the

HMTA, and the HMR, pertaining to the packaging and transportation of radioactive materials including wastes. By making the party states responsible for enforcement of applicable Federal laws and regulations that section of the compact reduces the likelihood of a state adopting packaging standards that differ from those in the Federal Hazardous Materials Regulations. Indeed, it can be read as encouraging party states to assume increased responsibility for enforcement of the Federal Regulations. This is a policy which the Department strongly endorses and which is entirely consistent with the State Motor Carrier Safety Assistance Program established by the Surface Transportation Assistance Act of 1982.

Article VI also reflects an acceptance of our previous recommendation before this committee to provide language that reduces the potential for inconsistencies with Federal law which might arise by the way in which such a compact is implemented. Article VI, Section (a) (1) provides a specific disclaimer that nothing in the compact shall be construed to abrogate or limit the applicability of any federal law where Congress has expressly spoken.

In summary, the Department is very encouraged by the progress made to date in the development of all the compacts. We are particularly pleased in this instance, where the minor concerns previously expressed have apparently been eliminated in S. 1581.

This completes my prepared remarks. I will be pleased to respond to any questions you may have.