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U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION AND FINANCE, COMMITTEE ON
ENERGY AND COMMERCE, AT DENVER, COLORADO

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Mr. Chairman, Members of the Subcommittee:

The Department of Transportation (DOT) is pleased to appear before this Subcommittee to discuss the Federal regulatory program applicable to the movement of hazardous materials over the public highways in interstate and foreign commerce. In my testimony, I will discuss the applicability, nature, and extent of the Federal program, and the respective roles of Federal, State, and local authorities in the safe transport of hazardous materials.

Authorities

The principal authorities relied upon in the exercise of Federal regulatory authority over highway hazardous materials movements are the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act of 1976 as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the 1983 recodification of Title 49, United States Code, Transportation, and the Motor Carrier Safety Act of 1984. In addition, the Surface Transportation Assistance Act of 1982 provides financial assistance to States to enhance and expand State commercial vehicle safety activities, including inspection and enforcement of Federal and State hazardous materials rules and regulations.

The Hazardous Materials Transportation Act authorizes the Secretary to designate materials as hazardous upon a finding that their movement in commerce in a particular quantity and form poses an unreasonable risk to health and safety, or property. This statute also authorizes the regulation

and enforcement of rules issued under this statute for the protection of the public and transportation employees. The Resource Conservation and Recovery Act authorizes the Administrator of the Environmental Protection Agency (EPA) to protect the health of persons and to protect the environment by regulating the generators, transporters, and receivers of hazardous waste. By agreement between the DOT and EPA, the DOT exercises the enforcement of EPA and DOT standards relating to the transportation aspects of this regulatory program. Similarly, the Comprehensive Environmental Response, Compensation and Liability Act designates a long list of hazardous substances requiring EPA and DOT regulation. The Motor Carrier Safety Act of 1984 reauthorizes the Federal motor carrier safety program, updates authorities, improves penalties, and establishes new requirements regarding motor carrier safety fitness. The grant program authorized by the Surface Transportation Assistance Act promotes uniformity of Federal and State rules, provides funds to States which guarantee a threshold level of State support for State commercial vehicle safety programs or initiate such programs if not previously conducting such programs, and provides opportunities for uniform training for State enforcement officers.

Nature of the Federal Program

The major attributes of the Federal hazardous materials transportation safety program are the designation of hazardous materials; hazard communication, including shipping papers, package labeling, and vehicle placarding; package requirements and specifications for containers; cargo and equipment standards; driver qualifications; and hours of service. These features are designed to protect the public and transportation employees from the risks inherent in the transportation of hazardous materials, and to aid emergency response personnel in handling transportation accidents involving hazardous materials.

The statutes are implemented by promulgation of rules and regulations with opportunity for comment by the public, State agencies, shippers, carriers, and other interested parties.

Inspection and Compliance

Inspection activities directed at the highway hazardous materials transportation community take several forms. Through unannounced roadside inspections of vehicles, drivers, and cargo, the degree of compliance with the rules and regulations is established. The results of these roadside inspections, when entered into our automated data base, are one of the criteria used for the selection of carriers for safety audit. The inspection and audit results are also factors in determining carrier safety fitness ratings which are furnished to the Interstate Commerce Commission, the Department of Defense and, upon written request, to insurance companies, shippers, and the public.

Moreover, the results of the roadside inspections and audits are used in the processing of criminal and civil enforcement cases. Such cases usually involve patterns of noncompliance that constitute willful disregard for rules and regulations, as opposed to clerical error, unintentional or scattered violations in a highly regulated activity.

The Federal inspection and compliance activities have been, of necessity, targeted at the worst offenders, thereby maximizing the amount of improvement that can be accomplished within personnel and resource limitations. In recognition that motor carrier safety and hazardous materials safety are a mutual responsibility of the Federal Government and State government, we have concentrated our expanded resources in the area of the State grants, rather than attempting to expand the Federal presence. The States have been receptive to this strategy as evidenced by some 27 States in

implementation status, and another 20 in the planning status under the Motor Carrier Safety Assistance Program.

Routing of Hazardous Materials

Specific hazardous materials routing has been established by DOT only in the area of highway routing of controlled quantities of radioactive materials. Special provisions for Class A and Class B explosive highway movements require a routing plan which must accompany the driver. For all other classes of hazardous materials, the general rule is to avoid heavily populated areas. States and localities are heavily involved in establishing hazardous materials routes, and the Federal rules require adherence to these State and local laws if not contrary to Federal requirements. Gauging by the amount of controversy which surrounded the establishment of the radioactive materials routing rules, States do not appear to support Federal establishment of routes for all hazardous materials, and indeed the DOT gives strong deference to States in their designation of hazardous materials routes since they know the geographics, weather, state of repair of roads and bridges, and other factors in their State. As a matter of policy, DOT has stated that States and localities may impose routing requirements provided that all affected jurisdictions are permitted to participate in the route selection process and that the effect of the routing requirement does not reduce overall public safety. Our concern is that State and local routes have "connectivity" for the through movement of interstate commerce. States may not enact bans on hazardous materials transportation or designate routes which merely shift the risks to another jurisdiction because these could result in barriers to movement or inordinately long travel times.

The Denver Torpedo Accident

Knowing of this Subcommittee's strong interest in the facts and circumstances in the truck overturn accident of August 1, 1984, in which a

commercial vehicle laden with Class A explosive torpedoes overturned at the interchange of I-25 and I-70 in Denver, Colorado, I will outline the DOT's involvement in the investigation of this accident and the disposition of our preliminary findings.

On August 1 at 6 a.m., we learned of the occurrence of this accident through the news media. Upon verification from the Denver Police Department we immediately assigned Orris Gram to investigate the accident, and under our formal agreement with the National Transportation Safety Board (NTSB), alerted our Headquarters office and they alerted the NTSB. When the NTSB formally advised DOT that they were exercising their prerogative to take over the formal accident investigation, we then became a part of their investigations team and furnished the NTSB all information available to us at that time. As a result of the preliminary information available to us, on August 24 an assignment was made for the conduct of a compliance investigation to determine whether the facts and circumstances surrounding this incident constituted violations of the Federal Motor Carrier Safety Regulations or the DOT Hazardous Materials Regulations that warranted civil or criminal prosecution. The initial investigation was completed on August 24, and the report of the investigator was issued on September 5, 1984.

During this same time frame, city and State authorities were considering enforcement actions against the carrier and the driver involved under city and State laws, which were of concern to us because of the BMCS enforcement policy of deferring to local authorities for violations that constitute both local and Federal violations.

On September 11, a copy of the report of the Bureau of Motor Carrier Safety's (BMCS) investigation was received by the Headquarters office of

BMCS. It was the subject of a review meeting in the Office of the Director. After a review of the report and other information which came to light subsequent to the report, particularly that the carrier's vehicle was on a city and county approved route and within the terms of a prepared route plan, it was decided that the single count alleged by the report of failing to avoid a heavily populated area had been sufficiently weakened to the point that it would preclude successful prosecution of the case. The Region was advised of that determination and transferred the case to our Regional Office in Kansas City, Missouri, which was the office with jurisdiction over the area in which the carrier was domiciled. Review by that Regional Office and the Regional Counsel confirmed that the case was weak, and the case was closed.

Meanwhile, the BMCS was named a party of interest in the NTSB proceeding and was represented at the hearings held in Denver by the NTSB. Nothing developed in the formal NTSB hearing that caused BMCS to revise its decision to close the case. Also, the BMCS was a party to meetings with the Department of Defense (DOD) and the Materials Transportation Bureau to consider remedial action to remedy weaknesses disclosed in emergency response procedures and technical assistance provided by the Federal Government in incidents involving military shipments of munitions by highway. These meetings resulted in proposed revisions to telephone manning of emergency numbers furnished in transportation documentation and mutual aid among the military services when military munitions are involved in hazardous materials incidents.

Conclusion

While we fully expect highway movements of hazardous materials and hazardous wastes will increase, we believe that the potential impact of the

Federal/State enforcement partnership under the Motor Carrier Safety Assistance Program will be felt before the predicated increases materialize.

The Motor Carrier Safety Assistance Program is a mechanism designed to prepare Federal and State agencies to deal with emerging hazardous materials and hazardous waste highway transportation issues. Based on the success of the Federal/State partnership in highway construction and improvement as a role model, and the success of a federally funded four-state demonstration program involving stepped up State inspection as a means of significantly reducing truck accident involvement, we are optimistic that the challenges for the future can be met.

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

Thank you.