

**STATEMENT OF KENNETH L. PIERSON
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FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES
REGARDING TRUCK ACCIDENT NEAR CHECOTAH, OKLAHOMA**

DECEMBER 11, 1985

Madam Chairwoman, Members of the Subcommittee:

The Department of Transportation (DOT) is pleased to appear before this Subcommittee to discuss the Federal regulatory program applicable to transportation of hazardous materials over the public highways in interstate or foreign commerce. In my testimony, I will discuss the nature and extent of the Federal program, the interagency arrangements with the Department of Defense (DOD) concerning military movements of munitions by highway carriers, and the activities of the Bureau of Motor Carrier Safety (BMCS) with respect to the carrier involved in the explosion of military munitions near Checotah, Oklahoma, on August 4, 1985.

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 (STAA) 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 responsibility for 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 Motor Carrier Safety Assistance Program (MCSAP) authorized by the STAA of 1982 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 and provides opportunities for uniform training for State enforcement officers.

Nature of the Federal Program

The major attributes of the Federal highway 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 the promulgation of rules and regulations with the 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. The degree of compliance with the rules and regulations is established through unannounced roadside inspections of vehicles, drivers, and cargo by Federal and State officials. The results of these roadside inspections are entered into our automated data base and are used as one of the criteria 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 (ICC), the DOD and, upon written request, to insurance companies, shippers, and the public.

The results of roadside inspections and audits are also used in the processing of criminal and civil enforcement cases. Such cases usually involve instances of noncompliance that constitute disregard for rules and regulations.

Federal inspection and compliance activities have been, of necessity, targeted at high risk vehicles. Targeting maximizes the amount of improvement that can be accomplished with existing personnel. In recognition of the fact that motor carrier and hazardous materials safety are a mutual responsibility of Federal and State Governments, the Department has concentrated its resources and efforts toward the development and enhancement of State programs rather than attempting to expand the Federal presence. The States have been receptive to this approach as evidenced by some 28 States in the implementation stage and another 21 in the planning stage under the MCSAP.

Arrangement with the Department of Defense

Because of the special concern by the DOT and the DOD for ensuring public safety in highway movement of military explosives, the two agencies entered into an agreement with respect to motor carriers. The DOD maintains a list of ICC authorized motor carriers eligible to transport explosives and ammunition for the DOD's traffic operations. The BMCS, on a monthly basis, provides DOD the current safety rating assigned these motor carriers. The DOD requires that motor carriers performing transportation for

their traffic operations maintain a "Satisfactory" safety rating. When a carrier's safety rating changes to reflect other than a satisfactory rating, the BMCS immediately notifies the DOD which discontinues the service of that motor carrier until such time as it is restored to a satisfactory status.

The carrier must then effect remedial measures, and be reaudited by BMCS to confirm the actual improvements before its previous rating can be restored and the carrier again placed on the DOD list of approved carriers. This mechanism has worked well over the last 15 years in assuring, to the extent possible, that DOD utilizes the safest carriers in this special traffic requirement.

The Checotah, Oklahoma, Accident

On Sunday, August 4, 1985, at about 3:20 a.m. a tractor-semitrailer unit operated by Explosives Transports, Inc., of Oklahoma City, Oklahoma, transporting 10 "Mark 84," 2,000-pound general purpose bombs, collided with the rear of an automobile which had pulled off the highway and then reentered the traffic stream near Checotah, Oklahoma. This collision caused a fire which resulted in a series of explosions within 30 minutes, destroying the vehicles, the cargo, and leaving a crater about 30 feet across and 15 feet deep. The truck driver, the automobile driver and her passenger escaped the immediate scene of the accident. The Checotah Fire Department ordered an evacuation of the surrounding area at about 6 a.m. Minor injuries were

sustained by three Fire Department personnel, the three persons who were in the involved vehicles, and a number of others from flying glass and metal following the explosions.

BMCS Actions

Upon learning of the accident from a media report at about 7 a.m., a call was placed from the Regional Office to the Officer-In-Charge (OIC) in Oklahoma City requesting a preliminary inquiry. The OIC was dispatched to the scene by 11 a.m. to begin the preliminary investigation. A report was telephoned to the Washington Headquarters Duty Officer, and an alert relayed to the National Transportation Safety Board (NTSB) pursuant to existing procedures.

The NTSB arrived on the scene Sunday evening to begin its investigation and BMCS terminated its accident investigation, but continued its compliance investigation. The next day the OIC, in connection with his compliance investigation, began a safety management audit at the Oklahoma City domicile of Explosives Transports, Inc.

Upon finding violations because of lack of evidence of adequate insurance coverage and deficient inspection and maintenance records at the carrier's headquarters, a telephone report was made to the Regional Office, which in turn relayed the information by telephone to Washington Headquarters. This was followed up by surveillance of the carrier's terminal which resulted in findings of additional violations regarding loading and placarding and failure to attend explosive-laden vehicles.

The DOD was notified of these findings and the shipments in the carrier's possession were diverted to another carrier on the DOD list.

On August 19, Explosives Transports was officially rated as "Unsatisfactory" and removed from the DOD list of approved carriers. The BMCS is assembling an enforcement case based on its compliance investigation interviews and documentation. Explosives Transports' previous rating of satisfactory was based on a 1973 audit which noted substantial compliance. Four roadside driver vehicle inspection reports contained a total of five violations and no out-of-service vehicles in the intervening years, which would not indicate a change of rating, prior to another audit. The carrier is now rated unsatisfactory and will remain so until action is completed and explicit remedial action is taken by the carrier and verified by BMCS.

Subsequent Actions

After the Oklahoma incident, the DOD requested DOT to negotiate a Memorandum of Understanding to formalize our working relationship. The DOD also requested that we furnish them the date of each safety rating, and explore means of speeding up information transmission. We have exchanged documents and have an agreement in principle. We are revising the document with a view towards formal signature in the near future.

Motor Carrier Financial Responsibility

Your Subcommittee has expressed an interest in the manner in which the Department is administering the motor carrier financial

responsibility function assigned by the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982. These Acts established statutory minimum levels of financial responsibility which can be met by insurance, guarantee, surety bond or qualification as a self-insurer, as found acceptable to the Secretary of Transportation. In the rulemaking to implement the provisions of these Acts, the Department found only insurance or surety bonds acceptable for the protection of the public.

The financial responsibility requirements are currently being met by insurance and, in rare cases, by surety bond. The evidence of compliance with the public liability, property damage, and environmental restoration minimums is an endorsement on a required BMCS form MCS-90. This endorsement must be attached to the insurance policy and available for Federal and State inspector examination and available to the public upon reasonable request at the motor carrier's principal place of business. The monitoring of compliance with the requirement is done by examination of the MCS-90 endorsement during the 10,000 safety management audits conducted during each fiscal year, or by investigation upon receipt of complaints or specific information that a carrier does not have the required amount of insurance, or does not have the environmental restoration coverage, or does not have the required evidence of the coverage at its principal place of business.

Carriers discovered not to be in compliance with the requirements are required to provide the BMCS with a copy of the MCS-90. Upon failure to produce evidence of compliance, carriers are subject to civil penalties up to \$10,000 per offense.

Our experience has been that in the early years of the requirement, when insurance was readily available and at reasonable cost, compliance was nearly universal. However, as you may be aware, the casualty insurance field is currently experiencing a capacity shortfall which is impacting a carrier's ability to meet statutory requirements.

In 1984, about 25 percent of the carriers audited had one or more violations of the insurance rules. The vast majority were failure to have the required MCS-90 as evidence of compliance. Some cases of inadequate amounts of insurance or failure to have the environmental restoration coverage were discovered. Since October 1 of last year, the BMCS has processed 46 enforcement cases for violation of the insurance requirements.

The matter of transportation insurance capacity shortfall has been brought to the attention of several Congressional Committees during recent hearings dealing with motor carriers. We understand additional Congressional hearings are being scheduled on this issue.

We are greatly concerned about the ability of motor carriers to meet the financial responsibility requirements in the future, but recognize it is more than a transportation insurance issue and will have to be addressed by the Congress, State insurance commissions, and the insurance industry. Of course, we will

continue to enforce the financial responsibility requirements imposed on the motor carrier industry by law until Congress directs otherwise.

Conclusion

This completes my prepared remarks. I will be pleased to answer any questions that you may have, or have material provided for the record.