

TESTIMONY OF
PHILIP W. HASELTINE
DEPUTY ASSISTANT SECRETARY FOR POLICY AND
INTERNATIONAL AFFAIRS
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE A JOINT HEARING OF

THE HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION,
AND FINANCE
AND THE
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM

AND

THE HOUSE GOVERNMENT OPERATIONS COMMITTEE
SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION

JULY 16, 1986

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I am extremely pleased to appear before this joint hearing today on behalf of Secretary Dole to present the views of the Department of Transportation on H.R. 4612, the "Hazardous Materials Transportation Safety Amendments of 1986." The bill addresses a wide range of safety issues associated with the highway transportation of hazardous materials and proposes statutory and regulatory actions to resolve problems arising from those issues.

Secretary Dole has an unswerving commitment to safety in all modes of transportation and has initiated a program to improve the safety programs of all of the operating administrations. We strongly agree, therefore, with the underlying purposes of H.R. 4612. We recognize the need to have effective and efficient organizations to administer safety programs in a uniform manner;

we are committed to strengthening regulatory requirements and to enhancing safety enforcement; we support stricter driver licensing, training, and qualification standards; and we understand the needs of states and localities, and our responsibility to assist them in meeting their needs, in the area of emergency response planning and training.

I want to note, at the outset, that the majority of the issues addressed in the bill have been under review in the Department through the Secretary's Task Force reviews of the hazardous materials and motor carrier safety programs, through the deliberations of the National Hazardous Materials Transportation Advisory Committee, and as a priority program focus of both the Federal Highway Administration (FHWA) and the Research and Special Programs Administration (RSPA). As a result, the Department has a number of initiatives that will accomplish many of the objectives of the proposed legislation. These include efforts to improve program management, expand program resources, enhance the states' motor carrier and hazardous materials enforcement role, strengthen the Federal Motor Carrier Safety Regulations, improve driver training and licensing programs, and provide increased assistance to those responsible for preparing for and responding to hazardous materials transportation emergencies. I would like briefly to detail these initiatives for you.

Program Management

We have created a new Associate Administrator for Motor Carriers with responsibility for all truck and safety issues in order to remedy organizational inefficiencies and to reemphasize the Department's commitment to motor carrier safety. The Associate Administrator has direct line authority to the field staff, therefore helping to assure uniform application of the regulations and enforcement procedures at the regional levels. Equally important, the Associate Administrator provides increased visibility for and access to motor carrier safety programs within and outside the Department and is a vigorous advocate for safety within DOT, before the Congress, and with the industry. Similarly, RSPA, last year, completed a reorganization that eliminated an unnecessary and redundant management layer and brought the hazardous materials program directly under the authority of the Administrator. We believe that these organizational changes have significantly strengthened the motor carrier and hazardous materials safety programs and have made coordination between the two programs more effective.

Program Resources

The Department is committed to a significant expansion of inspection and enforcement resources. We were concerned that, in a deregulated environment, the number of motor carriers would grow beyond the Department's capacity to monitor their safety performance adequately. In response to this concern, the motor

carrier safety field forces, which have significant hazardous materials enforcement responsibility, is proposed to double in the next year and a half as 150 safety inspectors are added to the program. These safety specialists will be part of a refocused federal enforcement program that will utilize data from the states and other sources to make more efficient use of resources and to target unsafe carriers more effectively. The refocused program will include close monitoring of carriers identified as having deficiencies in operating practices and aggressive pursuit of enforcement penalties against chronic violators. The first 25 of these new inspectors are in training now and by the end of next month, 50 safety specialists will have been hired and have begun intensive training at the Department's Transportation Safety Institute.

Enhanced State Roles

The Department has long advocated a Federal/State partnership as the most effective approach for handling motor carrier and hazardous materials safety enforcement. The Motor Carrier Safety Assistance Program (MCSAP) is the major tool we have used to implement this partnership. Under MCSAP, states that agree to adopt and enforce the federal motor carrier and hazardous materials transportation regulations may be reimbursed by the Department for up to 80 percent of the cost of expanding their programs. This program can greatly increase the total level of

enforcement activity nationwide, with a corresponding increase in detection and correction of safety defects, driver deficiencies, and unsafe carrier practices. For fiscal year 1987, the Department is seeking nearly a 200 percent increase in MCSAP funding -- to a total of \$50 million. This money will be used by states to increase the total number of state inspectors that will be trained through the program, from 2,700 in 1985 to 4,000 in 1987. We estimate that by the end of 1987, the states will be conducting approximately 2 million roadside inspections annually. These will be in addition to those conducted prior to MCSAP. MCSAP will increase the number of annual intrastate safety compliance audits as well.

Strengthened Federal Regulations

The Motor Carrier Safety Act of 1984 requires that the Department reexamine and reissue the Federal Motor Carrier Safety Regulations. To facilitate this regulatory reexamination, the Secretary established a Departmental working group which is now completing its work. The review addressed the following regulations: driver qualifications, including alcohol and drug use; accident reporting; hours of service requirements; equipment requirements for vehicle parts and accessories, including brakes; and uniform standards for annual vehicle inspection.

In addition, the Department recently issued a Notice of Proposed Rulemaking (NPRM) that will significantly strengthen the

regulatory requirements applicable to cargo tanks. Cargo tanks carry hazardous materials such as flammable and combustible liquids, liquefied gases, and high vapor pressure materials and historically have been responsible for 15 percent of all hazardous materials highway incidents, over 90 percent of all hazardous materials highway fatalities, and over 75 percent of all hazardous materials highway property damages. The NPRM proposed improved maintenance, testing, and requalification procedures; improved accident protection devices; increased inspections; procedures to minimize corrosion problems; and improved design practices.

Driver Training and Licensing

The Department has long recognized that there are serious weaknesses in the current licensing system for commercial vehicle drivers. Until now our focus has been on working with the states and the private sector to strengthen driver licensing practices at the state level, where responsibility for driver licensing has traditionally resided. However, notwithstanding our best efforts, and the efforts of other interested organizations, we continue to experience two major problems:

- (1) Many states do not issue classified licenses to commercial drivers to assure that drivers are properly trained and qualified, nor are there nationwide, consistent minimum criteria setting forth appropriate qualifications for commercial drivers.
- (2) Multiple licenses, which enable drivers to divide their record of accidents and violations among several state record systems and avoid state enforcement actions are not against the law.

Yesterday, in testimony presented before the Senate Commerce, Science, and Transportation Committee, Associate Deputy Secretary Dorn outlined our program for a national and uniform commercial vehicle licensing system that would assure that all drivers have the skills and knowledge necessary to operate commercial vehicles safely and that each driver has only a single license and a single complete license record.

Briefly, our program includes the following:

- (1) We intend to develop rulemaking that would make it an offense for a commercial driver to hold more than one license and that would impose a significant penalty on offenders. We believe that this approach would have substantial deterrent value and could result in a significant reduction in the number of drivers holding multiple licenses.
- (2) We intend to develop uniform minimum standards for classified licenses that would be issued by the states. There is a clear need for effective minimum standards that would assure licensing consistency from state to state.
- (3) We intend to issue an ANPRM to address the complex enforcement issues involved in establishing a national commercial vehicle driver licensing program. The ANPRM asks for specific data, information, and views of the commenters on the myriad of questions that must be resolved as we implement licensing changes.

In addition, on May 13, 1986, the Department issued an NPRM designed to strengthen qualifications for hazardous materials drivers. Drivers operating cargo tank vehicles carrying hazardous materials in bulk, such as gasoline, propane, corrosive acids, and various poisons, and tractor-trailer operators hauling explosives, radioactive materials, or other packaged hazardous materials,

would have to meet additional or more stringent qualifications. The NPRM proposes: (1) prohibiting drivers from holding multiple driver licenses; (2) establishing minimum driver training and experience criteria; (3) requiring road tests for cargo tank drivers that approximate real-world driving conditions; and (4) requiring mandatory, periodic drug and alcohol tests for drivers.

Emergency Response Assistance

State and local jurisdictions have the primary role in responding to transportation emergencies. When an accidental release of a hazardous material occurs during transportation, it is vital that efforts to mitigate the hazard be initiated as rapidly as possible. Because of the infinite number of possible accident sites and the wide range of materials that may be involved there is a critical need for immediate action. The Department's objective in the area of emergency preparedness has been to augment the resources of local jurisdictions by providing the guidance and information that is impossible to develop at a state or local level.

To this end, the Department provides a 24-hour response center to assist local authorities in handling hazardous materials incidents. The center is data-linked to CHEMTREC, a service of the Chemical Manufacturers Association, which provides a centralized source of chemical emergency response information and assistance round-the-clock. In addition, we are establishing an

information clearinghouse, complete with a toll-free number. It will supply callers with the latest details available on training programs, emergency response teams, planning assistance, and other information useful in helping local communities to design and develop their own efforts. The Department has also distributed 1.5 million copies of the Hazardous Materials Emergency Response Guidebook (ERG), designed to enable persons who are unfamiliar with chemical names to identify a hazardous material and to determine the safety measures that should be taken immediately when there is an accidental release. The ERG is currently being revised. A new edition will be available in FY 1987.

As part of RSPA's recent reorganization, we have created a new Federal/State and Private Sector Initiatives Division. This Division will improve coordination of the emergency response assistance programs that are provided by the Federal government, provide up-to-date information to state and local governments, and work with all affected levels of government and the private sector to enhance emergency response programs at all levels.

Most recently, the Department has begun a rulemaking action designed to improve the quality and quantity of information available on-scene to emergency responders. RSPA will give priority to issuing an ANPRM on proposals to require: (1) that each hazardous material shipping paper bear a 24-hour phone number that will be manned by someone capable of providing information suitable for emergency response for each material listed on the

shipping paper; (2) that vehicles transporting hazardous materials carry emergency response information covering the materials being transported; (3) that each person involved in a hazardous materials shipment (e.g., handlers, loaders, unloaders, drivers) receive recurrent training in, among other subjects, emergency response actions appropriate to their level of involvement; and (4) that generic hazardous materials descriptions, which do not currently list the technical name of the material, bear a parenthetical reference to the technical name when entered on shipping papers or marked on containers.

The Department is committed to the safe transportation of hazardous materials and supports the objectives underlying H.R. 4612. However, we do have reservations about specific provisions of the bill. The three areas in the bill of greatest importance to the Department are: (1) proposals to reorganize significant elements of the Department's motor carrier safety and hazardous materials program structure; (2) proposed grant programs; and (3) major statutory or regulatory initiatives, including mandatory annual registration, licensing and training requirements, a hazardous materials flow study, and a risk analysis of high level radioactive materials shipments.

Reorganization

The Department opposes the provisions of Section 3 of the bill that would transfer the Bureau of Motor Carrier Safety (BMCS)

and RSPA's Office of Hazardous Materials Transportation to the National Highway Traffic Safety Administration. To the extent that this reorganization is intended to increase the efficiency and effectiveness of the Department's hazardous materials and motor carrier safety programs, it fails to recognize the steps we have already taken to accomplish this result. Moreover, the hazardous materials program is a multimodal transportation safety program. As such, we do not believe it appropriate to mix segments of that program into a Departmental element having a highway focus only.

The Department also opposes the transfer from a management perspective. We do not believe it is appropriate for the Secretary's discretion and flexibility to be hampered by the statutory assignment of functions and responsibilities within the Department, under Sections 3(b)(4) (transfer of BMCS) and 3(c)(4) (transfer of OHMT).

Grant Program

Sections 5 and 8 of H.R. 4612 would adopt grant programs to provide funds to states and their political subdivisions for designating and enforcing highway routes and parking sites (Sec. 5) and emergency response training (Sec. 8).

We have reviewed the provisions of Section 5 from two aspects -- the funding source, and the substantive requirements on route and parking site designations. As to the funding source,

the Department opposes drawing funds away from MCSAP's primary purpose of enforcement. We are relying heavily on MCSAP as the foundation for our efforts to increase the level of highway transportation safety enforcement (of which hazardous materials is but one aspect) nationwide. Any weakening of that foundation could seriously jeopardize the effectiveness of the current MCSAP program.

The Department agrees with the objectives of the remaining aspects of Section 5. We believe that there is a proper role for states and their political subdivisions in the designation of routes and parking sites. In addition, we believe that our guidelines on generic hazardous materials routing and alternate routing of high level radioactive materials are effective tools for enabling states and localities to develop successful routing plans.

The Department is examining this issue in the context of possible amendments to the Hazardous Materials Transportation Act. We are considering strengthening the uniformity of hazardous materials requirements by establishing in the Department exclusive regulatory jurisdiction over hazardous materials. The only exception would be routing, where states and their political subdivisions would have a role in making alternate route designations and establishing parking sites associated with those routes. The Department currently has the authority to propose and has already begun work on a rulemaking that will propose general

routing requirements for all hazardous materials. Consequently, we believe that Section 5 of the bill is neither necessary nor the most effective way to address this important issue.

The Department agrees that there are deficiencies in the area of emergency response training, particularly in the area of uniformity of training curricula and materials and delivery of training services. We are examining appropriate actions by federal, state and local governments and the industry to deal with the deficiencies we have identified. As a result of findings developed in our recently concluded study undertaken with the Federal Emergency Management Agency (mandated by legislation reauthorizing the Hazardous Materials Transportation Act for fiscal years 1985 and 1986), we have noted areas of consideration for improving coordination of existing emergency response assistance programs at the federal level, for enhanced federal, state, and local communication, for utilization of existing industry mechanisms for training and assistance, and for better use of existing funding, with enhancement of that funding if our assessment determines that to be necessary. The Department will explore all of these alternatives before making a decision.

Statutory and Regulatory Initiatives

Several important provisions of H.R. 4612 would statutorily mandate actions to be taken by the Department, primarily through rulemaking or the development of guidelines, studies, or analyses, in a wide range of areas. The Department generally agrees that

these areas require our attention and, in most cases, we have either already responded with actions we consider appropriate or we have begun actions that will address a demonstrated need.

Registration. Section 7 would change the Secretary's discretionary authority under the HMTA to require registration of persons involved in all phases of hazardous materials transportation to a mandate that she do so. In recognition of the need to determine the costs and benefits of registration in transportation safety, the Department has begun an assessment of the issue. As recommended by the Secretary's Safety Task Force, and under the direction of RSPA, we have initiated a study of a limited registration program. A key task in this effort is to determine the extent to which regulated entities already provide desired information to Federal agencies, including EPA and OSHA, and the suitability of that information (both its substance and form) to our needs. This assessment will enable us to engage in a pilot or study registration program targeted to high risk materials which, in turn, could serve as the foundation for extending registration to the maximum extent we determine is appropriate.

Licensing and Training. The Department wholeheartedly supports the objectives of Section 9. We share your view that there is a strong need to improve the licensing and training requirements for

all commercial motor vehicle drivers. As the national licensing program outlined earlier in my testimony demonstrates, we are significantly increasing the federal role in this area and are committed to working with the states to develop a workable and effective national licensing system. However, although we plan to issue regulations outlining minimum standards for state classified license programs, we do not support proposals that would link state adoption of the standards to reductions in MCSAP funding.

Flow Study. The proposals in Section 10 concerning an ongoing hazardous materials flow study seek to address an important aspect of emergency preparedness planning and response -- the gathering and use of information. The Department understands the indispensable value of hazardous materials information to planning and response, but believes that caution must be exercised in determining what information is most relevant and the means of obtaining it, lest the burdens imposed on the Federal Government and industry override the benefit.

In December 1985, we released a report synthesizing the results of seven demonstration projects sponsored by the Department that involved the needs, problems, and approaches of state, local, and regional governments in emergency response planning. This report, "Lessons Learned", is particularly relevant to the issue of a national flow study because it reveals that "in all the projects reviewed, the analysis indicated that

hazmat transportation was more commonly associated with use or generation in the project area rather than only transportation through the area." Because most hazardous materials traffic is local, it is unlikely to be reflected accurately in a national data base. The report also discusses methods that the planning body can use to determine which hazardous materials are present in the jurisdiction and what means of transportation are available to move them (e.g., highway counts, weigh station surveys).

With the exception of an analyses conducted by the Department of Transportation in 1983 designed to depict inter-and intra-regional bulk movements, there has been no national hazardous materials flow study undertaken. The Census Bureau, through its Commodity Transportation Survey, has, on a five-year cycle, collected commodity flow information. However, the Commodity Transportation Survey has critical limitations which reduce its value as a basis for a hazardous materials flow study, including failing to identify hazardous materials separately, examining only shipments from manufacturing sites to first destinations, and citing only the principal mode of transportation involved. Because there is a lack of hazardous materials flow surveying being done, the Department has no existing base on which to develop a flow study of the nature and extent contemplated by Section 10. Therefore, to comply with the mandated flow study would require the Department to undertake an expensive and labor-intensive census-like effort that we are not capable of at this time. The time lag required to collate a national data base

is usually three to five years: moreover, the level of aggregation results in limited utility for most hazardous materials problem solving exercises.

Nuclear Waste Risk Analysis. The final proposal I would like to address is the requirement in Section 11 that the Department conduct, within one year, a risk analysis of the transportation of spent nuclear fuel to the potential high-level nuclear waste repositories designated this year by the Department of Energy (DOE) under the Nuclear Waste Policy Act of 1982 (NWPAA). The Department believes that Section 11 of the bill is premature inasmuch as we are probably years away from actual selection of a final repository. In addition, Section 11 would assign to this Department activities currently a part of DOE's responsibilities under the environmental impact provisions of the NWPAA.

At the present time, DOE has not yet designated a final repository, nor has DOE received approval from Congress to construct a Monitored Retrievable Storage (MRS) facility. Therefore, we could not determine, for purposes of a risk analysis, the several routing possibilities -- geographic and modal -- that require analysis, or the total number of shipments, without making so many assumptions as to render the exercise meaningless. Furthermore, the analyses could very well be obsolete by the time the transportation of spent nuclear fuel under the NWPAA actually begins -- more than ten years from now.

The issue surrounding the transportation and disposal of high

level nuclear materials under the NWPA requires consideration of the relative importance of transportation versus geohydrological conditions. Beginning in 1998 and continuing for approximately 20 years thereafter, spent nuclear fuel will be transported in this country under the NWPA. However, the sites in which those materials will be deposited must be built to last for 10,000 years. Consequently, although transportation concerns are one of the factors important in site selection, they are not the paramount concern.

In closing, I think it is important to recognize that the protection of the American people and the environment from the risks inherent in the transportation of hazardous materials is an ongoing endeavor that requires the best efforts of the Congress, the Federal government, state and local governments, and the industry working cooperatively within the context of an overall national strategy. With a host of legislative, regulatory, and policy initiatives either underway or being planned for deployment in the near future, the Department asks the joint committee's forbearance on legislation such as H.R. 4612 until we have our program in place and functioning. The key aspects of that program will be: an improved driver licensing system that assures that only properly qualified drivers operate commercial vehicles; improved training requirements for all persons involved in hazardous materials shipments (not only for those carrying hazardous materials over the highways); a significantly expanded

enforcement staff; increased funding for state highway enforcement programs; improved hazard communication and emergency response information; strengthened federal regulatory jurisdiction over hazardous materials with a defined role for states and localities in routing; and development of stronger ties with our state and local counterparts in all phases of their hazardous materials programs and particularly in emergency response.

We believe that this program, which will have such a positive impact, is achievable within reasonable resource levels and without imposing increased burdens on the industries we regulate. The Department looks forward to working with the Congress to bring this program to fruition.

That concludes my testimony. I will be pleased to answer any questions you may have.