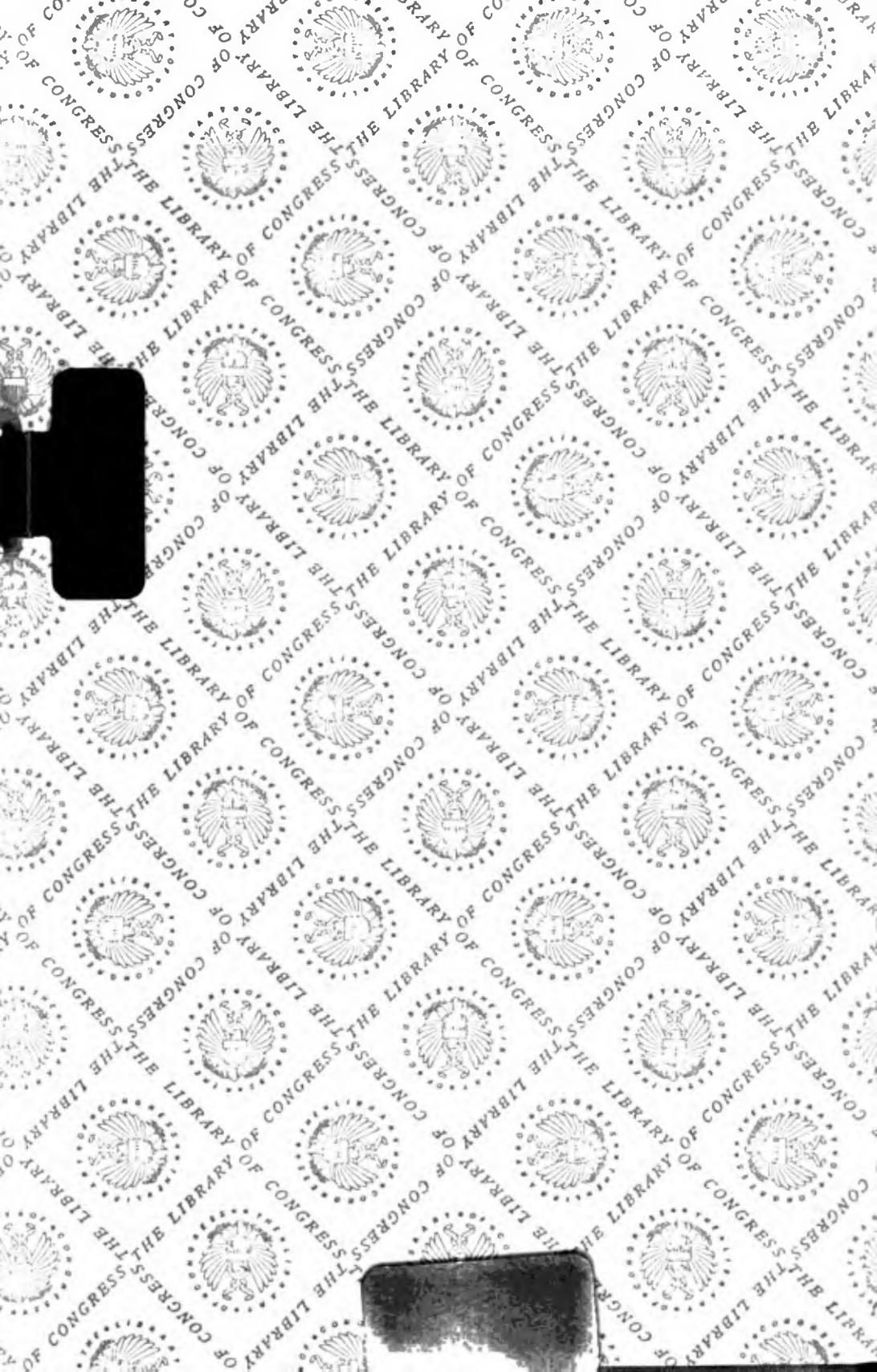
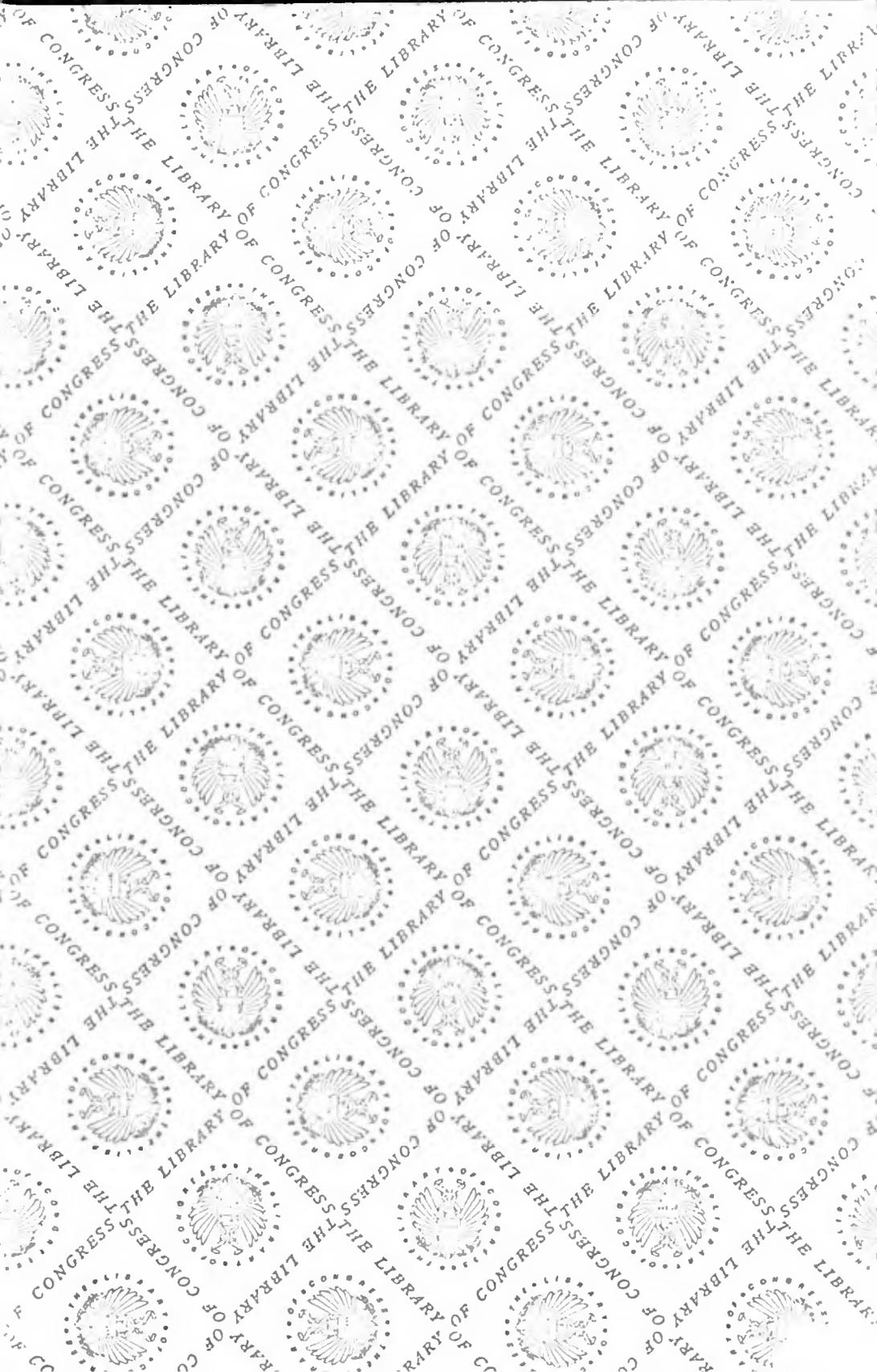


KF 27
. I5589

1978g





Foreign Commerce. Subcommittee on Transportation and Commerce

HAZARDOUS MATERIALS TRANSPORTATION ACT AUTHORIZATION C-361
250

HEARING
BEFORE THE
SUBCOMMITTEE ON
TRANSPORTATION AND COMMERCE
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 11871 and H.R. 11872

BILLS TO AMEND THE HAZARDOUS MATERIALS TRANSPORTATION ACT TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEARS 1979 AND 1980

APRIL 10, 1978

Serial No. 95-122

Printed for the use of the Committee on Interstate and Foreign Commerce



COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

JOHN E. MOSS, California	SAMUEL L. DEVINE, Ohio
JOHN D. DINGELL, Michigan	JAMES T. BROYHILL, North Carolina
PAUL G. ROGERS, Florida	TIM LEE CARTER, Kentucky
LIONEL VAN DEERLIN, California	CLARENCE J. BROWN, Ohio
FRED B. ROONEY, Pennsylvania	JOE SKUBITZ, Kansas
JOHN M. MURPHY, New York	JAMES M. COLLINS, Texas
DAVID E. SATTERFIELD III, Virginia	LOUIS FREY, Jr., Florida
BOB ECKHARDT, Texas	NORMAN F. LENT, New York
RICHARDSON PREYER, North Carolina	EDWARD R. MADIGAN, Illinois
CHARLES J. CARNEY, Ohio	CARLOS R. MOORHEAD, California
RALPH H. METCALFE, Illinois	MATTHEW J. RINALDO, New Jersey
JAMES H. SCHEUER, New York	W. HENSON MOORE, Louisiana
RICHARD L. OTTINGER, New York	DAVE STOCKMAN, Michigan
HENRY A. WAXMAN, California	MARC L. MARKS, Pennsylvania
ROBERT (BOB) KRUEGER, Texas	
TIMOTHY E. WIRTH, Colorado	
PHILIP R. SHARP, Indiana	
JAMES J. FLORIO, New Jersey	
ANTHONY TOBY MOFFETT, Connecticut	
JIM SANTINI, Nevada	
ANDREW MAGUIRE, New Jersey	
MARTY RUSSO, Illinois	
EDWARD J. MARKEY, Massachusetts	
THOMAS A. LUKEN, Ohio	
DOUG WALGREN, Pennsylvania	
BOB GAMMAGE, Texas	
ALBERT GORE, Jr., Tennessee	
BARBARA A. MIKULSKI, Maryland	

W. E. WILLIAMSON, *Chief Clerk and Staff Director*

KENNETH J. PAINTER, *First Assistant Clerk*

ELEANOR A. DINKINS, *Assistant Clerk*

WILLIAM L. BURNS, *Printing Editor*

Professional Staff

ELIZABETH HARRISON	CHRISTOPHER E. DUNNE
JEFFREY H. SCHWARTZ	WILLIAM M. KITZMILLER
BRIAN R. MOIR	MARK J. RAABE
KAREN NELSON	THOMAS M. RYAN
ROSS DAVID AIN	

J. PAUL MOLLOY, *Associate Minority Counsel*

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

FRED B. ROONEY, Pennsylvania, *Chairman*

RALPH H. METCALFE, Illinois	JOE SKUBITZ, Kansas
BARBARA A. MIKULSKI, Maryland	EDWARD R. MADIGAN, Illinois
JAMES J. FLORIO, New Jersey	NORMAN F. LENT, New York
JIM SANTINI, Nevada	SAMUEL L. DEVINE, Ohio (Ex Officio)
MARTY RUSSO, Illinois	
BOB GAMMAGE, Texas	
JOHN M. MURPHY, New York	
HARLEY O. STAGGERS, West Virginia (Ex Officio)	

WILLIAM T. DRUHAN, *Staff Director*

CONTENTS

Text of—	Page
H.R. 11871.....	2
H.R. 11872.....	3
Statement of—	
Benner, Ludwig, Chief, Hazardous Materials Division, National Transportation Safety Board.....	4
Garner, Elmer, Chief, Railroad Division, National Transportation Safety Board.....	4
King, Hon. James B., Chairman, National Transportation Safety Board.....	4
Roberts, Alan I., Director, Office of Hazardous Materials Operations, Department of Transportation.....	13
Santman, Leon D., Acting Director, Materials Transportation Bureau, Department of Transportation.....	13
Additional material submitted for record by—	
National Transportation Safety Board:	
Status of open recommendations—Intermodal.....	7
Safety recommendation status—Intermodal.....	8
Transportation Department; attachments to Mr. Santman's prepared statement:	
Attachment A—Hazardous materials.....	38
Attachment B—Semi-annual regulations report (MTB-OHMO).....	39
Attachment C—Department of Transportation 1977 hazardous materials inspectors.....	46
Attachment D—Hazardous materials regulations violations and enforcement actions.....	47
Attachment E—Research and special programs directorate.....	48
Attachment F—1977 hazardous materials training conducted by the Transportation Safety Institute.....	77
Attachment G—Hazardous materials educational program.....	78

17, a 79

6/13 26, 201

KF21
I 55, 89
1978g

LCC 79-600512

HAZARDOUS MATERIALS TRANSPORTATION ACT AUTHORIZATION

MONDAY, APRIL 10, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. The committee will come to order, please.

This morning we are commencing hearings on the Hazardous Materials Transportation Act.

This subject has received considerable publicity in recent weeks due to a rash of railroad accidents.

Although this act pertains to all modes of transportation, our jurisdiction pertains solely to the transportation of these materials by rail.

Last month, this subcommittee held extensive hearings with regard to rail safety, which by its very nature, included much of the subject which we are discussing today. At the same time I hope that we will not be repetitive of the information that we elicited last month.

The importance of transporting hazardous materials cannot be over-emphasized. Railroad accidents in themselves can be a tragedy, but a railroad accident combined with hazardous materials can be catastrophic. Between 1976 and 1977 the number of hazardous material incidents rose by 34 percent. Any hazardous material incident is intolerable.

It will be the continuing goal of this subcommittee to make every effort to assure that the number of hazardous material incidents decreases to the optimum of zero. It is my understanding that there has been sufficient funding to adequately administer the program. I intend to insure that adequate funding continues to be available and to also determine what further actions are required to attain the goal of completely safe transportation of hazardous materials.

Without objection, at this point, the text of H.R. 11871 H.R. 11872, and agency report thereon will be placed in the record.

[The text of H.R. 11871, H.R. 11872 follows:]

(1)

17 ja 79

95TH CONGRESS
2D SESSION

H. R. 11871

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 1978

Mr. ROONEY introduced the following bill; which was referred jointly to the Committees on Interstate and Foreign Commerce and Public Works and Transportation

A BILL

To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal year 1979.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 115 of the Hazardous Materials Transportation
4 Act (49 U.S.C. 1812) is amended by: (1) striking out
5 "and" after September 30, "1976," (2) striking the comma
6 after "1977", and (3) inserting after "1978" the following:
7 " , and \$3,727,000 for the fiscal year ending September 30,
8 1979."

95TH CONGRESS
2D SESSION

H. R. 11872

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 1978

Mr. ROONEY (by request) introduced the following bill; which was referred jointly to the Committees on Interstate and Foreign Commerce and Public Works and Transportation

A BILL

To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1979 and 1980.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 115 of the Hazardous Materials Transportation
4 Act (49 U.S.C. 1812) is amended by: (1) striking out
5 “and” after September 30, “1976,” (2) striking the
6 comma after “1977”, and (3) inserting after “1978” the
7 following: “, and such sums as are necessary for the fiscal
8 years ending September 30, 1979 and September 30,
9 1980.”.

Our first witness this morning will be the Honorable James B. King, Chairman of the National Transportation Safety Board.

You may proceed, Mr. King.

STATEMENT OF HON. JAMES B. KING, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD, ACCOMPANIED BY LUDWIG BENNER, CHIEF, HAZARDOUS MATERIALS DIVISION, AND ELMER GARNER, CHIEF, RAILROAD DIVISION

Mr. KING. I would like to thank you for the best single statement I have ever heard in a week. I welcome the opportunity to be before you today to discuss some of the results of the Safety Board's public hearing on derailments and the carriage of hazardous materials as they apply to the subject today, the Hazardous Materials Transportation Act, Public Law 93-633, as amended.

As you and members of the subcommittee may know, the Safety Board last Thursday concluded public hearings on derailments and the carriage of hazardous materials as related to the 112A/114A jumbo tank cars. This hearing provided the Safety Board an opportunity to examine the Hazardous Materials Transportation Act as it is being administered by the Materials Transportation Bureau.

The Safety Board has had several concerns about the manner in which the Materials Transportation Bureau is administering the Act, and the testimony during the hearing has reinforced these concerns.

One major area in which the Safety Board has not been satisfied with the Materials Transportation Bureau's performance is information and lessons from hazardous materials incidents and accidents.

Section 109(d) (2) of the act requires that the Secretary:

Establish and maintain a central reporting system and data center so as to be able to provide the law enforcement and firefighting personnel of communities and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and Materials Transportation Bureau responses.

The Materials Transportation Bureau incident reporting system focuses on container performance.

The National Transportation Safety Board proposed that the Materials Transportation Bureau redesign its system to develop lessons learned from the handling of HM incidents.

The Materials Transportation Bureau agreed such information would be valuable, but no change has yet been made, and this is 1½ years ago, Mr. Chairman.

Needs of firefighters and other local public safety officials remain unmet. None of the many parties publishing emergency handling guidelines has adequate information to evaluate the quality of what they disseminate. Is this present system what Congress intended; or did you intend a stronger, more responsive role for the Materials Transportation Bureau?

Another area of concern is registration under section 106(b) where the National Transportation Safety Board recommended registration of high-risk bulk flammable gas haulers.

Materials Transportation Bureau rejected the recommendation, saying cargo tank registration was already adequate for dealing with the human side.

The National Transportation Safety Board requested reconsideration of this particular judgment but the Materials Transportation Bureau held fast to its original position.

Results to date: Congressional mandate to establish new comprehensive registration program under section 106 is still unmet; Materials Transportation Bureau still focusing only on controlling containers, not operators.

A final area of concern is the problem of control of releases and emergency response.

During the hearing, several public witnesses testified to the need for a national one-call system. Such a system would assure quick and accurate technical information for firefighting and law enforcement personnel in the event of an accident.

Currently, there are four systems which disseminate technical information. The Materials Transportation Bureau distributes a handbook which addresses only the first 30 minutes of a hazardous materials emergency and includes only 42 products. The Association of American Railroads, Bureau of Explosives issues several handbooks, the National Fire Prevention Association distributes a handbook and the Manufacturing Chemists Association has an online CHEMTREC, one-call system which meets some needs, but not all. Additionally, several public witnesses recommend that the Federal Government have a role in providing minimum requirements for a hazardous materials response center in every State, minimum training requirements for emergency personnel, and a central source to obtain exact information for specific hazardous material tank cars involved in an accident from the railroad system involved. The railroad information system would then tie into a national one-call emergency system linked to the State emergency agency.

Another suggestion made by the public was the need for at least one Federal agency to have an emergency hazardous material team on call to assist in conflagrations beyond their expertise or control. The Board has recommended that the Department of Transportation establish active communications with all fire services to instruct them in specific procedures for the safe handling of railroad hazardous materials emergencies.

As we listened to representatives of firefighters and State and local emergency response personnel, we were encouraged by their innovative and creative approaches. But the Materials Transportation Bureau did not appear as a participant in this work, much less as a leader. One firefighter's representative, who spoke for 2,100 fire department training centers, testified that they used a Bureau of Explosives curriculum. One major State emergency response coordinator testified that he had never heard of the Materials Transportation Bureau.

One of the reasons we appear here today is to ask for your guidance. Is that what Congress intended when it passed the Hazardous Materials Transportation Act? If it is, we will silence ourselves. But if not, we intend to continue pressing for change, under the guidance of this committee and other congressional bodies concerned with hazardous materials.

Mr. Chairman, first, may I apologize for not having a written statement prepared for you in advance. There were serious problems mechanically.

I will have this to you, sir, within 1½ hours.

Mr. ROONEY. I understand that you were very busy with your hearings.

Mr. KING. My profound apologies. We are prepared to respond to any questions you might have. I thought for the record, we would enter the recommendations we have made to the Materials Transportation Bureau. Included in this are the ones they have accepted and the status of the others.

Mr. ROONEY. Without objection, they will become part of the record.
[The following material was received for the record:]

STATUS OF OPEN RECOMMENDATIONS—INTERMOOD

Log	Date: notation: recommendation No.	Source	Recommendation subject	Status
I-5	May 26, 1972; 838; 1-72-1.	DOT transportation safety impact statements	DOT to require safety impact statements on all DOT action which may effect demand for traffic or divert demand to different modes.	Open unacceptable action.
I-6	Mar. 21, 1973; 1017A; 1-73-1.	Various NTSB studies.	Accident cost accounting procedures.	Open acceptable action.
I-10	Sept. 25, 1975; 1653; HM-75-1; HM-75-2.	MTB—Hazardous materials regulations, proposed exemption rules.	1. Content and form for application for exemption. 2. Require safety analysis statement to be on prescribed form.	Open acceptable.
I-11	Mar. 3, 1975; 1497A; 1-76-1; 1-76-2; 1-76-3; 1-76-4.	Wenatchee, Wash. railroad accident involving monthly/amine nitrate solution.	1. Examination of transport condition for applicants of detonable materials. 2. Publish guidelines for conducting safety analysis for detonation risks. 3. Explosive classification definitions and test procedures that address way in which detonable materials could explode. 4. Regulations for quality control in manufacture, packaging, and loading of detonable materials.	Oo. Oo. Oo. Oo.
I-12	June 21, 1976; 1801A; 1-76-5; 1-76-6.	Tank truck overturn fire and explosion, Eagle Pass, Tex., Apr. 29, 1975.	1. Research for new approaches to reduce injuries and damages caused by accidents on liquefied flammable gas. 2. Require safety registration statements of persons transporting bulk shipments of pressurized, liquefied petroleum gases in form and quantity to cause widespread damage in transportation accidents.	Oo. Closed unacceptable.
I-13	Aug. 24, 1976; 1849; 1-76-7; 1-76-8.	Railroad accident report on derailment, fire, explosion, Chicago, Rock Island and Pacific R.R. Co., Des Moines, Iowa, Sept. 9, 1975.	1. Firefighting procedures to reduce hazards. 2. Disseminate information to fire services—procedures on safe handling of hazardous materials.	Open unacceptable. Oo.
I-14	Oct. 20, 1976; 1894A; 1-76-9; 1-76-10; 1-76-11.	Various accidents in which emergency personnel were killed or injured while performing duties. Training procedure for these people.	1. Data on emergencies for use in training. 2. Reporting procedures to Federal agencies. 3. Periodic review of hazardous materials accident procedures to keep practices up to date and responsible.	Oo. Oo. Oo.
I-15	Apr. 25, 1977; 2045; 1-77-1.	Highway accident report, Transport Co. of Texas tank truck collision with bridge column (referred to as ethylolite ammonia, Houston, Tex. May 11, 1976).	Guidelines for local and State agencies to designate and check routes for the erdous material carriers.	Open acceptable action.
I-16	Nov. 1, 1977; 2191; 1-77-2; 1-77-3.	Railroad derailment, radioactive uranium hexafluoride. Fire in ammonium nitrate, Rockingham, N.C. Mar. 31, 1977.	1. Emergency response procedures on scene coordination. 2. Procedures to minimize time to identify radiation dangers.	Open. Do.

SAFETY RECOMMENDATION STATUS—INTERMDAL

Recommendation No.	Date issued	To	Subject	Response due	Response received	Evaluated	Letter sent	Meeting
I-71-2	Aug. 17, 1971	HMRB	Amend 49 CFR 170.15(b) to limit hazardous materials special permits.		Dec. 9, 1971—Current practice is sufficient. Public Law 93-633, title 1, sec. 107(e) legislates 2-yr limit.	Feb. 7, 1975—closed, acceptable action.	No.	No.
I-71-3	do	HMRB	Monitor special permits to gather information to support regulatory action.		Dec. 9, 1971—Experience reports are filed at end of permit life. Problems during life are monitored. Field investment may be possible in future.	do	No.	No.
HM-75-1	Sept. 25, 1975	DDT	Prescribe content and form for safety analysis statement for exemptions to MTB regulations.		June 1976—OHM newsletter states that MTB will undertake task to formalize format and methodology of safety analysis.	May 23, 1977—open, acceptable action.	Mar. 21, 1977	Quarterly meetings Apr. 27, 1977 and Aug. 30, 1977.
HM-75-2	do	DDT	Require submission of safety analysis statements in exemption application.		Oct. 14, 1975—107.103(b)(4)-(7) and (9) cover safety analysis statement requirement.	do	No.	Do.
I-76-1	Mar. 3, 1976	DDT	Require examination of risks for proposals to transport detonable materials.		June 1, 1976—Current practices fill part of the problem. A more detailed program of detonable material accountability will be established.	June 24, 1976—open, acceptable action.	No.	Quarterly meetings Aug. 30, 1977.
I-76-2	do	DDT	Publish guidelines for safety analyses to discover detonable risks. Standards to be met in proposal.		June 1, 1976—Many systems available—no one best. MTB is continuing study. Must be evaluated before rulemaking.	do	No.	Quarterly meetings, Apr. 27, 1977 and Aug. 30, 1977.
I-76-3	do	DDT	Amend 49 CFR 173—establish appropriate explosive classifications and test procedures to address ways detonable material could explode.		June 1, 1976—MTB will continue review of classification system. Will refine safety analysis methodology. Much R. & D. on subject.	do	No.	Do.
I-76-4	do	DDT	Establish regulations for quality and quantity control in manufacture, packaging, and loading of detonable materials.		June 1, 1976—Existing regulations commendation. Product quality control is covered by the Act only in transportation.	June 24, 1976—open, unacceptable action.	June 24, 1976	Do.
I-76-5	June 21, 1976	DDT	Research new ways to reduce injuries and damages due to liquid flammable gas released from pressurized bulk transport vehicles.		Sept. 21, 1976—Study will be initiated for liquefied, pressurized gases and other materials such as liquefied ammonia.	Open, acceptable action	Apr. 21, 1977	No.
I-76-6	do	DDT	Require safety registration statements for transportation of bulk LPG.		Sept. 21, 1976, June 13, 1977—Present reporting provisions of 49 CFR 177.824(d) is adequate for registration. No action will be taken.	Oct. 7, 1977—closed, unacceptable action.	Apr. 21, 1977 request reconsidered.	Quarterly meetings Aug. 30, 1977.

1-76-9	Oct. 20, 1976	DOT	Generate information as to actions taken, why, end effect of action.	Mar. 11, 1977—Data could be valuable, should come from fire and police officials. DOT cannot regulate locals. Current report OK.	Open, unacceptable action.	Feb. 24, 1978 to DOT requesting affirmative action on these 3 recommendations.	Quarterly meetings Apr. 27, 1977 and Aug. 30, 1977.
1-76-10	.....do	OOT	Develop procedure to report information to Federal and State agencies responsible for emergency training.	Mar. 11, 1977—limited MTB resources keep MTB from pursuing this recommendation. Will give information when asked.	.....do	.....do	00.
1-76-11	Oct. 20, 1976	OOT	Develop a review procedure to evaluate hazardous materials advice promulgated by DOT.	Mar. 11, 1977—Because I-76-9 and 10 are not to be done, available information would be so small as to be worthless.	Open unacceptable action	.....do	00.
1-77-1	Apr. 25, 1977	FHWA	Develop guidelines for local and State officials for routes of hazardous materials in urban areas.	Nov. 10, 1977 Jan. 25, 1978—No action to be taken until NYC hearings completed. (Hearings decision made Apr. 5, 1978.)	April 1978—open, acceptable action.	.....do	00.
1-77-2	Nov. 1, 1977	DOT	Guidelines for coordination of emergency activities at scene of radioactivity accident.	Feb. 2, 1978	Open, unacceptable action.	.....do	Mar. 22, 1978 with OOE-ERGA people.
1-77-3	.....do	DOT	Procedures to minimize time to identify radioactivity hazard at accident.	.....do	.....do	.....do	00.
1-78-1	Jan. 17, 1978	DOT	List of regulated hazardous materials that cross-reference with U.S. UN, IMCO, IATA descriptions and numbers.	Apr. 17, 1978	No response—overdue	.....do	.....do

Mr. KING. Thank you Mr. Chairman.

Mr. ROONEY. Mr. King, I believe last month your Board issued a statement that all of those tank cars should be retrofitted by the end of this year.

Mr. KING. Yes, Mr. Chairman.

Mr. ROONEY. Was that a proposal adopted by the Board?

Mr. KING. The Board has now adopted it. We have circulated this internally and the members have all signed off on it.

It is in unanimous agreement that mechanically, shelf couplers and headshields on the 112A and 114A jumbo tank cars can be done by Christmas of this year.

Mr. ROONEY. I understand there are four companies in the United States that do this; is that correct?

Mr. KING. There are 100 private shops and the railroad shops. One of the things we try to do there—there have been discussions of how much time—when you talk about a piece of work that takes 10 hours, do you take 10 hours or get 10 people to do it in 1 hour?

The reports we have had to date indicate the coupler took between 6 to 8 working hours. The American Petroleum Institute stated 1 to 3 hours for a coupler. Some places went as high as a full workday for a coupler.

When we pulled the coupler in front of our building, it took 7½ minutes. I went out to a freightyard, before we did that, where the conditions weren't optimal.

There was a tiny forklift and three men. It took them 9 minutes to remove the coupler. In that case, we needed a cutting torch because it was damaged and heavily corroded.

We saw, under extreme kinds of field conditions, that a coupler could be changed in less than 10 minutes. To retrofit a coupler to a shelf coupler would provide a large element of safety but would not complete the next part of the system as agreed upon by all the parties but what they needed was a headshield at that location.

About 85 percent of the head punctures, which are the most common puncture in this type of car, could then be protected. The cost of a shield was a large part of the discussion.

Mr. Chairman, it is like you discussing with me about purchasing an automobile. I can purchase a vehicle brand new today for probably \$3,600 but with very little on it.

Mr. ROONEY. There would be nothing on it.

Mr. KING. I can go all the way up to the \$75,000 bracket for transportation. It would be various types of things for comfort, and what-have-you.

What we have had is the industry used the highest probable price in the field while the administration used what they found in their field testing to be a shield that met standards, do what you would like it to do, and yet, would create a minimum of economic pressures.

We feel such a shield meets the design standards of the Federal Railroad Administration. It took 93 minutes. The projections from the industry, were that this job took 1 to 3 days.

What we said is now if you use a multiplier, if you will, if you are writing an essay or speech, someone might say that will take you an hour.

If I give you six additional people, it does not mean it would take you 10 minutes because only you could create that product.

In this situation, you could put welding teams on each end of his car with railroad people out there, and pull the couplers.

You would completely retrofit the cars from a point of view of 10 to 12 minutes maximum. If it were badly damaged, that could be done in the field. That doesn't require any kind of housing.

It is arc welding. There are portable units. I am sure you have seen them operated throughout the country. The weight of a head shield is approximately 1,000 pounds, Mr. Chairman.

It can be lifted. It doesn't have to have a special crane.

It is a question of will and willingness. Up to now, the economic incentives haven't been there for the tank car owners.

We recommended to the Federal Railroad Administration for an economic incentive for safe tank car operations. We want to make safety profitable and foot dragging unprofitable.

If there is a rupture, no one in the United States, we find, has ever recovered any damages from a tank car owner. They recover from the railroad, but the railroads don't own the tank cars.

Ninety-eight percent of the cars are owned by corporations and individuals who own them for investment and tax reasons. They are all on a lease agreement, sir. It is next to impossible to recover any damages.

We are not concerned with liability. We are concerned with safety, as you are, but the economic issues do play a role in the strategies to resolve those issues.

I think we asked the Federal Railroad Administration for their point of view on the strategy. For example, could they apply the cost for handling those cars individually to their owners?

When you are building a train, you go forward with the locomotive. You start with a few cars, and move forward. You can't hump these tank cars.

With head shields and shelf couplers on, you can handle these cars a lot more expeditiously. That is money saved, Mr. Chairman. Is that money passed on or does the unsafe car cost the same to be handled? That is the issue that I think the Federal Railroad Administration is looking at.

Altogether, we are talking about a 93-minute procedure.

Mr. ROONEY. You talk about the incentive. Has the Board studied any kind of a tax incentive other than those now existing?

Mr. KING. What we did was find out in the process that there were enormous tax advantages to owning a tank car, if you fell into certain high income categories, because some of the benefits do encourage people to buy railroad rolling stock.

Our Board doesn't have a role in the economic issues. It is strictly safety. As those issues surface, we realize there should be a strategy brought to the attention of the Federal Railroad Administration in the hope they might examine it.

Mr. ROONEY. Last month, I believe you recommended that the tank car carriers pay the cost of the head shield and thermal painting. Isn't that already the case?

Mr. KING. That the owners pay for it?

Mr. ROONEY. Right.

Mr. KING. Yes. Part of it has been the confusion in the public mind, I think, but not in this committee.

I think you have known better for some time. Here are the poor railroads virtually wanting to announce it cost \$107 million to retrofit these big cars.

They are saying, "Here is a bankrupt railroad who can't fix its right-of-way, where are they going to get the money for safety measures?"

What we wanted to indicate was that people who own those cars and the people who are doing the retrofitting can afford it. The cost is \$2,000.

If you amortized the cost over 20 years, which is half the life of a car—it would cost \$9 a month, which even for the most modern investor, is not overwhelming, not for the kind of safety we are talking about.

We want to indicate where the responsibility lies for the action, and that the railroad itself can't require a car to be made safe.

They are common carriers, and if DOT says this car is certified as being safe, as a common carrier, they have to take the car, then bear the responsibility and the bad publicity we have all seen.

I am not sure we are being fair to the railroads.

Mr. ROONEY. Does Chemtrec sufficiently satisfy the requirements of central reporting system, in your opinion?

Mr. KING. No, Mr. Chairman.

Mr. ROONEY. What cost would be involved in setting it up if it doesn't satisfy the requirements?

Mr. KING. I think what you are talking about—let me yield to Mr. Benner, who is the materials person.

This is Ludwig Benner.

Mr. BENNER. Mr. Chairman, it depends on what kind of system you want to set up. It is becoming increasingly apparent that the needs of the firefighters during these emergencies are different from those envisioned when CHEMTREC was established.

Basically, you need current information to help the firefighters diagnose the specific problem. CHEMTREC simply transmits written information that has to be interpreted by the firefighters.

So, if we get to a system that is responsive to the firefighting diagnostic needs, we are talking about regional or perhaps national squads of experts, or small groups of experts, that can help the firefighters diagnose their specific problems in a specific emergency.

The cost of that has not been fully determined.

Mr. ROONEY. What is the production forecast for retrofitting?

Mr. KING. We were asked, Mr. Chairman, about shields and the availability of shields and couplers.

We talked to one producer. He said that he can produce 1,000 a week. The railroad said that they can't begin until production is started.

The manufacturer said that he watched it take 9 years to get to this point. He didn't purchase materials, and make the outlays and then learn that his product wouldn't be used.

So, it is a chicken and egg situation. There should be an incentive. There is no commitment to get production started.

The economic incentives weigh toward foot dragging. We are encouraging noncompliance under the present structure.

Mr. ROONEY. Are there any shops around here that we might take a look at? What is the closest one?

Mr. GARNER. A tank-car shop in Philadelphia is doing some work for Du Pont in Delaware, applying full head shields.

Mr. ROONEY. They are doing that now?

Mr. GARNER. Yes, they are.

Mr. KING. Welding shields on the jacket.

Du Pont has been the most progressive company. You might do well seeing the Du Pont operation. They are doing something called rhythm. If you go up there, Mr. Chairman, we would be delighted to make suggestions about some of the things you might like to examine through your staff, sir.

Mr. ROONEY. Mr. Biaggi.

Mr. MADIGAN. I have no questions, Mr. Chairman.

Mr. ROONEY. Thank you very much. I appreciate your appearing here this morning.

Mr. KING. Thank you, Mr. Chairman, especially for your understanding about the statement.

Mr. ROONEY. Our next witness will be Mr. Leon Santman, Acting Director, Materials Transportation Bureau, Department of Transportation.

You may proceed, Mr. Santman.

STATEMENT OF LEON D. SANTMAN, ACTING DIRECTOR, MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ALAN I. ROBERTS, DIRECTOR, OFFICE OF HAZARDOUS MATERIALS OPERATIONS

Mr. SANTMAN. Mr. Chairman, I am Leon Santman. I am accompanied by Alan I. Roberts, who is the Director of the Office of Hazardous Materials Operations.

With your permission, sir, I would like to enter my full statement for the record and summarize what I believe to be the significant points.

Mr. ROONEY. Without objection, your entire statement will become part of the record.

Mr. SANTMAN. Thank you, Mr. Chairman.

SUMMARY OF HAZARDOUS MATERIAL PROGRAM

Mr. SANTMAN. Mr. Chairman and members of the subcommittee, I am pleased to be before your subcommittee to discuss the Department of Transportation's hazardous materials program, particularly the activities since the last authorization hearing on the Hazardous Materials Transportation Act, held by the House Public Works and Transportation Subcommittees on Aviation and Surface Transportation on May 10, 1976.

RULEMAKING RESPONSIBILITY

The hazardous materials program is conducted by five of the operating elements in the Department of Transportation. To insure a uniform approach to regulation, the Secretary delegated the major rulemaking responsibility to the Materials Transportation Bureau, when it was established in July 1975. With one exception, formulation and issuance of regulations are Bureau responsibilities. Regula-

tion of bulk transportation of hazardous materials by the marine mode remains the responsibility of the Coast Guard which issues and enforces the applicable regulations.

Internal departmental procedures specify that hazardous materials transportation rulemaking matters peculiar to a single mode of transportation will be dealt with by the cognizant operating administration in terms of evaluation and development of substantive provisions of regulations and coordination with the Bureau's Office of Hazardous Materials Operations, headed by Mr. Roberts, which performs a review function with particular emphasis on the hazardous materials concerned.

Notices of the proposed rulemaking and exemptions are then issued by the Director of the Office of Hazardous Materials Operations and final rules by the Director of the Materials Transportation Bureau.

The Hazardous Materials Transportation Act extended the Department of Transportation's regulatory authority to the manufacturers of packagings and containers used in the transportation of hazardous materials.

COMPLIANCE AND ENFORCEMENT AUTHORITY

The Materials Transportation Bureau exercises compliance and enforcement authority primarily over these entities and multimodal shippers of hazardous materials. The Department's four modal operating administrations—the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, and the U.S. Coast Guard—have responsibility for conducting technical research and enforcing regulations pertaining to the respective modes of transport, in addition to contributing to the development of the Bureau's regulations. Inspection, compliance, and enforcement actions related to carriers by the specific modes are planned and carried out by these administrations.

The increasing diversity of hazardous materials technology, the requirements for shipping materials over greater distances, and increased emphasis on international transportation of hazardous materials have contributed to the expansion of the overall transportation industry and to more intermodal transfers of hazardous materials. The resulting increase in complexity requires careful coordination of regulatory and enforcement activities within the Department of Transportation to insure uniformity and preclude duplicative efforts.

ORGANIZATIONAL INITIATIVES

Recognizing the need for a strong and efficient organizational structure to support the multimodal hazardous materials program, the Secretary of Transportation, in the recent reorganization of his immediate staff offices, consolidated technical and research functions, and placed the Materials Transportation Bureau along with them in the new Research and Special Programs Directorate.

Under this parent organization, a number of relationships are developing or expanding, including those of the Bureau with the Transportation Systems Center in Cambridge, Mass., in the areas of data and information systems and laboratory testing.

We are also joined by the Transportation Safety Institute in Oklahoma City. They are currently handling training and educational programs for us in both the hazardous materials and the pipeline safety programs.

A reorganization within the Materials Transportation Bureau itself is currently pending approval by the Secretary. That reorganization will enable the Bureau to be restructured into four separate offices: an Office of Pipeline Safety Regulation and an Office of Hazardous Materials Regulation; a third Office of Operations and Enforcement; and a fourth Office of Program Support.

This, I believe, will greatly improve procedures and will enable more effective utilization of resources across the two major safety programs for which we are responsible.

Moreover, I expect the separation of responsibility and management of establishing the rules from implementing and enforcing them to improve both aspects of the hazardous materials program.

This background on how the Department of Transportation is organizationally set up to regulate hazardous materials transportation is particularly relevant to some recent program initiatives and achievements.

RECENT REGULATORY REVISIONS

Less than 2 years ago, the hazardous materials regulations governing transportation by air, rail, highway, and water and previously contained in three different volumes of the Federal code, were consolidated and reduced by approximately 700 pages. In addition to the consolidation of the regulations, similar portions from each title were standardized and organized together for ease of understanding. As an example, the regulations dealing with shipping papers, marking, labeling, and placarding were made uniform and consolidated into one place in the regulations.

The completely revised communication system prescribes uniform labels and placards which facilitate intermodal transfers and which are readily identifiable by both routine handlers and emergency response personnel who need to be alert to any actual or potential risk. These new regulations include an expanded list of definitions to better facilitate understanding of the various terms which previously were associated with only one mode of transportation.

This consolidation has encouraged compliance with the regulations, as well as aided the Department's surveillance and enforcement efforts. The same rulemaking action, I would like to point out, removed certain regulatory requirements from small-package goods, including common household items such as cleaning solvents and aerosol packaged deodorants which present little hazard in transportation. The new materials classification, "Other regulated materials," ORMS's, exempts limited quantities of such consumer goods from labeling and packaging requirements.

INTERNATIONAL STANDARDS DEVELOPMENT

In the field of international hazardous materials, in the development of international standards, the U.S. position has been to promote a worldwide system to provide necessary consistency between modal and regional recommendations to insure, insofar as practical, that hazardous materials shipments may move freely between the various modes and regions of the world in full compliance with applicable regulations.

This is particularly important to the economic interests of the United States which now enjoys a \$3 billion-a-year favorable balance of trade in chemicals.

Department of Transportation personnel participate actively with the United Nations Economic and Social Council's Committee of Experts on the Transport of Dangerous Goods in developing international standards for identifying hazardous materials and communicating their hazards. During the past year, the United States sponsored a number of proposals, including recommended criteria for the classification of liquids presenting toxic risks in transport as a result of their volatility, and a proposal for standard worldwide requirements pertaining to documentation, marking, labeling, and placarding of dangerous goods in international commerce.

The Department of Transportation participates with other intergovernmental "specialized" agencies, such as the Intergovernmental Maritime Consultative Organization and the International Civil Aviation Organization, which primarily develop recommendations of an operational nature to insure safe transportation of the hazardous materials by the involved mode of transportation, and the International Atomic Energy Agency, which develops international standards for transport of radioactive materials.

NEW TANK-CAR REGULATIONS

Whereas simplification, clarification, and uniformity have been important regulatory concerns, the primary factor in establishing rule-making priorities and plans is the requirement for safety to life and property.

For example, in September 1977, the hazardous materials regulations were amended to require tank-car owners to:

1. Retrofit DOT specification 112 and 114 tank cars with head shields or protective head jackets to reduce the number of head punctures caused by the impact of couplers or broken coupler shanks;
2. Install on the 112 and 114 cars bottom and top shelf couplers capable of resisting vertical disengagements to reduce coupler overrides that are the principal cause of head punctures; and
3. Install thermal protection on cars used to transport flammable gases to prevent overheating of the contents and reduce the potential for boiling liquid expanding vapor explosions.

The new regulations require these features on all new 112 and 114 tank cars constructed after January 1, 1978, and provide for retrofitting of existing 112 and 114 tanks care in phases, but all changes must be made by January 1, 1982. While the regulations provided what was considered to be an appropriate timetable for the thermal protection, head protection, and coupler retrofits, the recent rash of derailments has led the Federal Railroad Administration and the Materials Transportation Bureau to undertake a reconsideration of the timetable to determine if accomplishment of the requirements can be accelerated. As you may be aware, the Federal Railroad Administration conducted a hearing last Friday, April 7, as part of a departmental effort to determine whether it is feasible to accelerate this schedule.

I might add, we expect to formulate an answer to this question before the 20th of April.

HAZARDOUS MATERIALS INCIDENT DATA

The Materials Transportation Bureau's centralized reporting system is the Department of Transportation's primary source of hazardous materials "incident" data.

During 1977, nearly 16,000 releases of hazardous materials were reported by carriers to our reporting system. Of that 16,000, over 14,000 of these releases occurred in the highway mode of transportation.

A summary of the reported incidents is attached to my written statement.

Mr. ROONEY. That will become a part of our hearing record [see attachment A, p. 38].

REGULATORY REVIEW AND DEVELOPMENT PLAN

Mr. SANTMAN. Since the most effective incident preventive measure is sound, clearly stated, and well understood safety regulations, the Materials Transportation Bureau plans with the additional resources requested for fiscal year 1979 to increase its emphasis on reviewing existing regulations and acting upon formal petitions for rulemaking.

Responding to both the President's recent Executive Order 12044 on improving Government regulations and the Secretary of Transportation's internal memorandum on the same subject published in the Federal Register on March 8, the Bureau has developed a regulatory review and development plan.

As part of that plan, an annual schedule of anticipated regulatory actions is included. A copy of the first annual publication of this schedule is also provided with my written statement.

Mr. ROONEY. Without objection, that will be made a part of the record [see attachment B, p. 39].

ENFORCEMENT ACTIVITIES

Mr. SANTMAN. In future publications of the plan we expect to project beyond 1 year and eventually address projects to be accomplished over the ensuing 5 or more years with a level of priority assigned to each project.

Although we believe this plan to be a realistic statement of planned MTB rulemaking activities and resource commitments for the forthcoming year, as with any plan of this type, allowances must be made for regulatory projects not contemplated at the time of its initial preparation.

Enforcement activities of the Department are known to promote safety through deterrence of noncompliance with the regulations.

The application of legal sanctions in the area of hazardous materials transportation has significantly increased recently, particularly by the Federal Railroad Administration and the Materials Transportation Bureau.

In January 1977, the Bureau reissued the hazardous materials regulations under the authority of the Hazardous Materials Transportation Act, therefore providing civil penalty authority and increased criminal sanctions. Violations of hazardous materials regulations have in the past been punishable by criminal penalties by all modes, but only the Federal Aviation Administration and the U.S. Coast Guard had authority to assess civil penalties.

The Federal Railroad Administration also issued, in October of 1977 its procedures for carrying out civil penalty sanctions and are currently giving top priority to the hazardous materials enforcement activities.

In 1977, the Department had roughly 235—I would point out that my written statement incorrectly cites this number as 269 but the number should be 235—safety inspectors conducting a department-wide total of roughly 20,000 inspections of facilities, 59,025 inspections of transport vehicles and 713 accident investigations.

Again, attached to my statement, there is a breakdown of these inspections in conjunction with the number of actual inspectors and enforcement cases handled by each of the operation administrations.

Mr. ROONEY. Without objection, they will be made a part of the record [see attachment C and D, pp. 46 and 47].

FEDERAL-STATE RELATIONSHIPS

Mr. SANTMAN. At present only the Federal Highway Administration has cooperative agreements, generally of a voluntary nature, with State agencies in regard to enforcing the Federal hazardous materials regulations. However, as local and State authorities become more interested in regulating transportation of hazardous materials through their jurisdictions, the relationship between Federal and State regulatory agencies is a matter of increasing concern to us.

In enacting section 112 of the Hazardous materials Transportation Act, the Congress endorsed the principle of Federal pre-emption in order to preclude a multiplicity of State and local regulations in the area of hazardous materials transportation.

As I am sure you are aware, in 1976 New York City forbade the transportation of most radioactive materials within its boundaries.

Last week the Bureau issued, at the request of a Long Island highway shipper who had filed with us, an administrative opinion concerning pre-emption of the City's ordinance under the act.

Although that opinion stated that the New York City Code is not inconsistent with the requirements of the Hazardous Materials Transportation Act or regulations issued under it to date, it does not preclude the possibility that other statutes may, in fact, pre-empt the ordinance.

The ruling does, however, recognize that there may be a need for prescribing routing requirements for highway carriage of radioactive materials.

Within 60 days, the Materials Transportation Bureau will issue an advance notice of proposed rulemaking to solicit public comments to aid in the decision as to whether the Federal Government should designate the routing requirements for certain hazardous materials by selected modes.

Again, a copy of our decision has been provided with my written statement.

Mr. ROONEY. Without objection, that will be made a part of the record [see attachment E, p. 48].

HAZARDOUS MATERIALS TRAINING

Mr. SANTMAN. Of course, State and local ordinances are prompted by concerns for the safety of their citizens. It is the Department of Transportation's responsibility, as mandated by the Congress, to insure such safety to life and property while not impeding the flow of hazardous materials in commerce. Our safety program consists not

only of regulation, inspection, and enforcement, but also education and training of those involved in shipping, handling, or carrying hazardous materials.

Our Transportation Safety Institute, a sister element in the Research and Special Programs Directorate, with our financial and technical support, develops and conducts in-depth training of industry personnel, as well as departmental inspectors concerned with hazardous materials regulations compliance.

The Bureau and operating administrations routinely participate in private industry-sponsored training programs.

A descriptive listing of courses and activities are also attached to my statement.

Mr. ROONEY. Without objection, they will be made a part of the record [see attachment F, p. 77].

EMERGENCY RESPONSE INFORMATION

Mr. SANTMAN. Additionally, we maintain approximately 30 fact sheets and pamphlets on regulatory provisions and in 1977 distributed over 775,000 items in response to 5,200 requests for information. We currently are working with the Nuclear Regulatory Commission to disseminate newly developed guides for handlers of radioactive materials in transportation.

The recent series of derailments and resulting releases of hazardous materials has underscored the fact that adequate hazardous materials containment regulations are not enough to prevent accidents and human disruption. We in the Department of Transportation and the concerned transportation industry must devote more attention to providing communities and emergency response personnel with the technical information necessary to plan for and respond to hazardous materials transportation emergencies when they do occur.

Assistance of various types is generally required of and often provided by the shippers, nearby industries, and military organizations in amelioration of spills. An ever-increasing number of local jurisdictions are, as a part of cooperative community emergency response planning, attempting to provide for handling and containment of spills. However, availability of resources at the local level is a continuing problem and, additionally, there is a need for better guidelines to enable local action in developing such plans.

During the year 1977, the Department's Transportation Safety Institute held 22 emergency service workshops, attended by nearly 1,000 emergency services personnel and State training officials. In addition, the Bureau has recently issued the 1978 edition of the Emergency Action Guide for Selected Hazardous Materials. The manual outlines the hazards of certain materials and contains technical information which will help emergency personnel during the first 30 minutes following a spill involving volatile, toxic, gaseous and/or flammable material shipped in bulk. General and specific safety procedures to follow are provided in spill guides arranged alphabetically by hazardous material. This manual has been revised and reprinted a number of times since its development in 1973, and over a half million copies have been distributed.

Realizing that community emergency action plans and trained personnel are needed to correctly assess and efficiently deal with hazardous

materials transportation incidents when they do occur, the Materials Transportation Bureau contracted with the National Fire Protection Association for the development of a comprehensive training course for emergency response personnel. The 20-hour course stresses the importance of defining the roles and responsibilities of the various concerned response groups and places particular emphasis on communication and command considerations.

In addition, the course presents a general overview of hazardous materials transportation, characteristics and classification of materials, sources of technical assistance, and situation analysis and decisionmaking, but perhaps its most important feature is its guidelines for use by local fire departments and police department in their development and implementation of their own community emergency response plans. The course will be available for distribution early next month. I believe it will prove a useful tool for strengthening the emergency planning and response capability of communities.

I would like to conclude my comments by touching briefly on the proposed hazardous materials authorization bills, H.R. 11871 and H.R. 11872.

The first bill, H.R. 11871, would authorize appropriations of \$3,727,000 for fiscal year 1979.

This is the amount projected in the President's budget request. We believe this amount is appropriate for the program as planned, based on a thorough review using a zero-base budgeting process of assessing the objectives and the impact of various funding levels. However, it does not take into consideration any contingencies that might arise during the year requiring additional appropriations.

The administration's view, as reflected in H.R. 11872, is to request authorization for such sums necessary to carry out responsibilities under the act for fiscal years 1979 and 1980. If the committee desires that specific annual amounts be authorized, we believe the level should provide sufficient latitude to meet both foreseeable program needs and any unanticipated requirements which might arise based on events.

This completes my statement, Mr. Chairman.

Mr. Roberts and I would be happy to answer any questions the subcommittee may have.

[Testimony resumes on p. 80.]

[Mr. Santman's prepared statement follows:]

STATEMENT OF L. D. SANTMAN, ACTING DIRECTOR, MATERIALS TRANSPORTATION
BUREAU, RESEARCH AND SPECIAL PROGRAMS DIRECTORATE, DEPARTMENT OF
TRANSPORTATION

Mr. Chairman and Members of the Subcommittee:

I am pleased to be before your Subcommittee to discuss the Department of Transportation's hazardous materials program, particularly the activities since the last authorization hearing on the Hazardous Materials Transportation Act, held by the House Public Works and Transportation Subcommittees on Aviation and Surface Transportation on May 10, 1976.

The authority under current legislation to appropriate funds expires at the close of this fiscal year. We are before this Subcommittee seeking legislation to authorize future appropriations in support of the continuing efforts of the Department and the Administration to ensure safe movement of hazardous materials in commerce. During the past two years, there have been a number of regulatory and enforcement program initiatives, and we have made significant advancements in implementing the provisions of the Hazardous Materials Transportation Act.

The hazardous materials program is conducted by five of the operating elements in the Department of Transportation. To ensure a uniform approach to regulation, the Secretary delegated the major rulemaking responsibility to the Materials Transportation Bureau, when it was established in July 1975. With one exception, formulation and issuance of regulations are Bureau responsibilities. Regulation of bulk transportation of hazardous materials by the marine mode remains the responsibility of the Coast Guard, which issues and enforces the applicable regulations. Internal Departmental

-2-

procedures specify that hazardous materials transportation rulemaking matters peculiar to a single mode of transportation will be dealt with by the cognizant operating administration in terms of evaluation and development of substantive provisions of regulations and coordination with the Bureau's Office of Hazardous Materials Operations, which performs a review function with particular emphasis on the hazardous materials concerned. Notices of proposed rulemaking and exemptions are then issued by the Director of the Office of Hazardous Materials Operations and final regulations by the Director of the Materials Transportation Bureau.

The Hazardous Materials Transportation Act extended the Department of Transportation's regulatory authority to the manufacturers of packaging and containers used in the transportation of hazardous materials. The Materials Transportation Bureau exercises compliance and enforcement authority primarily over these entities and multimodal shippers of hazardous materials. The Department's four modal operating administrations - the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, and the United States Coast Guard - have responsibility for conducting technical research and enforcing regulations pertaining to the respective modes of transport, in addition to contributing to the development of the Bureau's regulations. Inspection, compliance and enforcement actions related to carriers by the specific modes are planned and carried out by these administrations. There were several considerations that led to the operating administrations' retention of this responsibility. First, adequate inspection requires that hazardous materials inspectors have

-3-

a working knowledge of the mode by which a shipment is being carried. Second, the operating administrations have existing field forces with considerable experience in inspecting hazardous materials shipments. However, the Secretarial delegations do not draw a rigid line around enforcement responsibilities of the administrations versus the Bureau. Rather, there is sufficient flexibility to allow a Bureau technical expert in hazards of materials or containers to participate in an enforcement case involving a carrier. Similarly, should a Federal Railroad Inspector detect a violation by a container manufacturer, he is authorized to pursue that case.

The increasing diversity of hazardous materials technology, the requirements for shipping materials over greater distances, and increased emphasis on international transportation of hazardous materials have contributed to the expansion of the overall transportation industry and to more intermodal transfers of hazardous materials. The resulting increase in complexity requires careful coordination of regulatory and enforcement activities within the Department of Transportation to ensure uniformity and preclude duplicative efforts.

Recognizing the need for a strong and efficient organizational structure to support the multimodal hazardous materials program, the Secretary of Transportation, in the recent reorganization of his immediate staff offices, consolidated technical and research functions and placed the Materials Transportation Bureau along with them in the new Research and Special Programs Directorate. The hazardous materials mission and

-4-

operational program of the Bureau remain unchanged, but this new organizational alignment strengthens the support services available, particularly those in areas of administrative, budgetary, and research and technology capability. Under this parent organization, a number of relationships are developing or expanding, including those of the Bureau with the Transportation Systems Center in Cambridge, Massachusetts, in the areas of data and information systems and laboratory testing, and the Transportation Safety Institute in Oklahoma City, in hazardous materials training and educational programs.

The Materials Transportation Bureau's internal organization has sustained the identity and structures of the Offices of Pipeline Safety Operations and Hazardous Materials Operations as they existed in the Office of the Secretary prior to the Bureau's establishment. A reorganization proposal, currently pending final approval by the Secretary, will enable the Bureau to restructure into four offices--separate Offices of Pipeline Safety Regulation and Hazardous Materials Regulation, an Office of Operations and Enforcement, and an Office of Program Support. This realignment of functions, by consolidating the common operational and support-type activities which generally involve similar procedures, will enable more effective utilization of resources across the two safety programs. Moreover, I expect the separation of responsibility and management of establishing the rules from implementing and enforcing them to improve both aspects of the hazardous materials program.

This background on how the Department of Transportation is organizationally set up to regulate hazardous materials transportation is

particularly relevant to some recent program initiatives and achievements. An area of concern has been the complexity and resultant degree of difficulty in understanding and using the hazardous materials regulations. Less than two years ago, the hazardous materials regulations governing transportation by air, rail, highway, and water, and previously contained in three different volumes of the Federal Code (Title 49, Title 46, and Title 14), were consolidated and reduced by approximately 700 pages. In addition to the consolidation of the regulations, similar portions from each title were standardized and organized together for ease of understanding. As an example, the regulations dealing with shipping papers, marking, labeling, and placarding were made uniform and consolidated into Part 172 of Title 49 to form the Hazardous Materials Communication Regulations. The completely revised communication system prescribes uniform labels and placards which facilitate intermodal transfers and which are readily identifiable by both routine handlers and emergency response personnel who need to be alert to any actual or potential risk. These new regulations include an expanded list of definitions to enable understanding of the various terms which previously were associated with only one mode of transportation.

This consolidation has encouraged compliance with the regulations, as well as aided the Department's surveillance and enforcement efforts. The same rulemaking action removed certain regulatory requirements from small-package goods, including common household items such as cleaning solvents and aerosol packaged deodorants, which present little hazard in transportation. The new materials classification, Other Regulated

Materials or ORM's, exempts limited quantities of such consumer goods from labeling and packaging requirements.

In addition to issuing, modifying, or terminating the hazardous materials regulations to improve clarity and to facilitate intermodal and multimodal shipments in commerce, the Department of Transportation participates in the development of international hazardous materials transport standards, not only to achieve safety, but also to assure a uniform acceptance of United States hazardous materials transportation practices which have proven safe and reliable through our own experience. The United States position has been to promote a world-wide system that provides necessary consistency between modal and regional recommendations to insure that, insofar as practical, hazardous materials shipments may move freely between the various modes and regions of the world in full compliance with the applicable regulations. Department of Transportation personnel participate actively with the United Nations Economic and Social Council's Committee of Experts on the Transport of Dangerous Goods in developing international standards for identifying hazardous materials and communicating their hazards. During the past year the United States sponsored a number of proposals, including recommended criteria for the classification of liquids presenting toxic risks in transport as a result of their volatility, and a proposal for standard world-wide requirements pertaining to documentation, marking, labeling, and placarding of dangerous goods in international commerce. The Department of Transportation participates with other intergovernmental "specialized" agencies, such

-7-

as the Intergovernmental Maritime Consultative Organization and the International Civil Aviation Organization, which primarily develop recommendations of an operational nature to insure safe transportation of the hazardous materials by the involved mode of transportation, and the International Atomic Energy Agency which develops international standards for transport of radioactive materials.

Whereas simplification, clarification and uniformity have been important regulatory concerns, the primary factor in establishing rule-making priorities and plans is the requirement for safety to life and property. For example, as a result of a series of accidents involving uninsulated pressure tank cars carrying such hazardous gases as liquefied petroleum gas or propane, vinyl chloride, and anhydrous ammonia, the Materials Transportation Bureau and the Federal Railroad Administration put great emphasis on seeking appropriate regulatory solutions to the problem. The regulations promulgated under Docket HM-144 were the result of that effort.

In September 1977, the hazardous materials regulations were amended to require tank car owners to¹ (1) retrofit DOT Specification 112 and 114 tank cars with headshields or protective head jackets to reduce the number of head punctures caused by the impact of couplers or broken coupler shanks at high speeds;¹ (2) install on the 112 and 114 cars bottom and top shelf couplers capable of resisting vertical disengagements to reduce coupler overrides that are the principal cause of head punctures; and¹ (3) install thermal protection on cars used to transport flammable gases to prevent overheating of the contents and reduce the potential for boiling

-8-

liquid expanding vapor explosions (BLEVE's).

✓ The new regulations require these features on all new 112 end 114 tank cars constructed after January 1, 1978, and provides for retrofitting of existing 112 end 114 tank cars in phases, but all changes must be made by January 1, 1982. While the regulations provided what was considered to be an appropriate time table for the thermal protection, head protection, and coupler retrofits, the recent rash of derailments has led the Federal Railroad Administration and the Materials Transportation Bureau to undertake a reconsideration of the timetable to determine if accomplishment of the requirements can be accelerated. As you may be aware, the Federal Railroad Administration conducted a hearing last Friday, the 7th of April, as part of a Departmental effort to determine whether it is feasible to accelerate this schedule. It is the Department's technical opinion that when the retrofit program is concluded, the safety measures will be very effective in reducing serious leading incidents involving these tank cars. Certainly, industry implementation of these new requirements will significantly reduce the potentially severe consequences of tank car derailments and coupler overrides, and early retrofit can improve safety.

The Materials Transportation Bureau's centralized reporting system is the Department of Transportation's primary source of hazardous materials "incident" data. For reporting purposes, an incident is defined as any unintentional release of hazardous materials, ranging from a spill of a small quantity of paint, battery acid, or other less hazardous materials to major vehicular accidents involving hazardous materials release resulting in fire or explosion. During 1977, carriers reported 15,954 incidents,

a 34 percent increase over the 11,898 incidents reported in 1976 (see Attachment A). It should be noted, however, that this increase in reported accidents may in large part be attributed to increased industry awareness of DOT reporting requirements.

A sampling of incident reports submitted in 1976 involving releases from highway cargo tanks and trailers indicated that 84 percent of the incidents resulted from human error (including those which caused vehicular accidents), while 16 percent resulted from equipment failure. These figures do not preclude noncompliance with the regulations as a contributing factor. Noncompliance can be determined only by on-site investigation. Information furnished in 1976 by carriers indicated that 24-1/2 percent of reported incidents involved possible or probable regulatory noncompliance by the carrier, 14-1/2 percent possible or probable noncompliance by the shipper, and 3-1/2 percent possible violations by both the carrier and the shipper or by the container manufacturer. The remaining 57-1/2 percent did not appear to involve regulatory noncompliance.

Since the most effective incident preventive measure is sound, clearly stated and well-understood safety regulations, the Materials Transportation Bureau plans with the additional resources requested for Fiscal Year 1979 to increase its emphasis on reviewing existing regulations and acting upon formal petitions for rulemaking.

Responding to both the President's recent Executive Order 12044 on improving government regulations and the Secretary of Transportation's internal memorandum on the same subject published in the Federal Register on March 8, the Materials Transportation Bureau has developed a Regulatory Review and Development Plan. A copy of this first annual publication

is provided in Attachment B. Future publications of the plan are expected to project beyond one year and eventually address projects to be accomplished over the ensuing five or more years with a level of priority assigned to each project. Although we believe this plan to be a realistic statement of planned MTB rulemaking activities and resource commitments for the forthcoming year, as with any plan of this type, allowances must be made for regulatory projects not contemplated at the time of its initial preparation.

Enforcement activities of the Department are known to promote safety through deterrence of noncompliance with the regulations. The application of legal sanctions in the area of hazardous materials transportation has significantly increased recently, particularly by the Federal Railroad Administration and the Materials Transportation Bureau.

In January 1977, the Bureau reissued the hazardous materials regulations under the authority of the Hazardous Materials Transportation Act, therefore providing civil penalty authority and increased criminal sanctions. Violations of hazardous materials regulations have in the past been punishable by criminal penalties by all modes, but only the Federal Aviation Administration and the U.S. Coast Guard had authority to assess civil penalties. The Federal Railroad Administration published in the Federal Register, in October 1977, its procedures for carrying out civil penalty sanctions and has stated that hazardous materials regulations enforcement is receiving top priority. Because of their concern over the recent accidents and derailments, they plan to continue their emphasis in this area. Since the Federal Highway Administration published its procedures for processing claims in April 1977, it has initiated 37 actions for civil penalties.

-11-

Also in January 1977, the regulations prescribing the Materials Transportation Bureau's enforcement procedures under Section 110 of the Hazardous Materials Transportation Act became effective. In September the Bureau started initiating civil penalty actions for violations by container manufacturers and shippers. To date 13 penalties totaling \$17,850 have been assessed and collected and one compliance order has been issued. Five additional actions are pending.

Assessed penalties have ranged from \$200 to \$9,000. Representative examples of the violations include a drum reconditioner's failure to properly rate and mark a non-DOT specification drum as a qualified container; a corrugated fiberboard box manufacturer's failure to construct a box in accordance with the DOT specification marked on it; a shipper's failure to properly describe material on the shipping paper, to mark containers properly, and to use containers meeting the required DOT specifications; and a shipper's reuse of a non-reusable compressed gas cylinder.

In 1977, the Department of Transportation had 268.7 person-years available for the hazardous materials compliance enforcement program. Safety inspectors conducted a Department-wide total of 19,792 inspections of facilities, 59,025 inspections of transport vehicles, and 713 accident investigations. Attachments C and D contain breakdowns of these inspection and investigation activities in conjunction with the number of inspectors and enforcement cases for each operating administration.

-12-

At present only the Federal Highway Administration has cooperative agreements, generally of a voluntary nature, with State agencies in regard to enforcing the Federal hazardous materials regulations. However, as local and State authorities become more interested in regulating transportation of hazardous materials through their jurisdictions, the relationship between Federal and State regulatory agencies is a matter of increasing concern.

In enacting Section 112 of the Hazardous Materials Transportation Act, the Congress endorsed the principle of Federal preemption in order to preclude a multiplicity of State and local regulations and the potential for varying, as well as conflicting, regulations in the area of hazardous materials transportation. The Materials Transportation Bureau has implemented regulations under 49 CFR Part 107 which provide for preemption by the Secretary of any requirements of a State or political subdivision which are not consistent with requirements promulgated under the Act. Further provisions are made for petitions to the Department by States or political subdivisions to continue in force any requirements which have been determined to be not consistent, provided that it can be shown such requirements do not unduly burden commerce. In this manner, we have established a mechanism for resolving or accommodating many of the differences that exist or are likely to arise between Federal and State or political subdivision requirements.

As I am sure you are aware, in 1976, New York City forbade the transportation of most radioactive materials within its boundaries.

-13-

Last week the Bureau issued, at the request of a Long Island highway shipper, an administrative opinion concerning preemption of the City's ordinance under the Act. Although that opinion stated that the New York City code is not inconsistent with the requirements of the Hazardous Materials Transportation Act or regulations issued under it to date, it does not preclude the possibility that other Federal statutes may, in fact, preempt the ordinance. The ruling does, however, recognize that there may be a need for prescribing routing requirements for highway carriage of radioactive materials. Within 60 days, the Bureau will issue an Advance Notice of Proposed Rulemaking to solicit public comments to aid in the decision as to whether the Federal Government should designate routing requirements for certain hazardous materials by selected modes. A copy of our decision is in Attachment E.

Of course, State and local ordinances are prompted by concerns for the safety of their citizens. It is the Department of Transportation's responsibility, as mandated by the Congress, to ensure such safety to life and property while not impeding the flow of hazardous materials in commerce. Our safety program consists not only of regulation, inspection, and enforcement, but also education and training of those involved in shipping, handling, or carrying hazardous materials.

The Transportation Safety Institute, a sister element in the Research and Special Programs Directorate, with our financial and technical support, develops and conducts in-depth training of industry personnel, as well as Departmental inspectors concerned with hazardous materials regulations compliance (see Attachment F). The Materials Transportation Bureau and the operating administrations conduct additional training sessions and

-14-

routinely participate in private industry sponsored training programs (see Attachment C). Additionally, we maintain approximately 30 fact sheets and pamphlets on regulatory provisions and in 1977 distributed over 775,000 items in response to 5,200 requests. We currently are working with the Nuclear Regulatory Commission to disseminate newly developed guides for handlers of radioactive materials in transportation.

The recent series of derailments and resulting releases of hazardous materials have underscored the fact that adequate hazardous materials containment regulations are not enough to prevent accidents and human disruption. We in the Department of Transportation and the concerned transportation industry must devote more attention to providing communities and emergency response personnel with the technical information necessary to plan for and respond to hazardous materials transportation emergencies when they do occur.

Assistance of various types is generally required of and often provided by the shippers, nearby industries, and military organizations in amelioration of spills. An ever-increasing number of local jurisdictions are, as a part of cooperative community emergency response planning, attempting to provide for handling and containment of spills. However, availability of resources at the local level is a continuing problem and, additionally, there is a need for better guidelines to enable local action in developing such plans.

During 1977, the Department's Transportation Safety Institute held 22 emergency services workshops, attended by nearly 1,000 emergency services personnel and State training officials. In addition, the MTB

-15-

has recently issued the 1978 edition of the Emergency Action Guide for Selected Hazardous Materials. The manual outlines the hazards of certain materials and contains technical information which will help emergency personnel during the first 30 minutes following an spill involving volatile, toxic, gaseous and/or flammable material shipped in bulk.

General and specific safety procedures to follow are provided in spill guides arranged alphabetically by hazardous material. This manual has been revised and reprinted a number of times since its development in 1973, and over a half million copies have been distributed.

In regard to providing emergency response information, Section 109 (d)(2) of the Hazardous Materials Transportation Act requires the Department of Transportation to establish and maintain a central reporting system and data center to provide law enforcement and firefighting personnel with advice on meeting hazardous materials transportation emergencies.

Since 1970, when what is now Section 109(d)(2) was just enacted, the Department has been of the view that the Manufacturing Chemists Association's CHEMTREC system provides just such a 24-hour centralized hazardous materials emergency response capability. Considerable Federal staffing and support resources would be required to duplicate the CHEMTREC program. Much of the technical information used by CHEMTREC is now freely and fully provided by hundreds of industry participants. It is questionable as to whether a Federal mandatory arrangement could gain a similar rapport due to concerns that would be generated over the possible Federal use of information, supplied for emergency information purposes, for other activities such as enforcement.

-16-

Realizing that community emergency action plans and trained personnel are needed to correctly assess and efficiently deal with hazardous materials transportation incidents when they do occur, the Materials Transportation Bureau contracted with the National Fire Protection Association for the development of a comprehensive training course for emergency response personnel. The 20-hour course stresses the importance of defining the roles and responsibilities of the various concerned response groups and places particular emphasis on communication and command considerations. In addition, the course presents a general overview of hazardous materials transportation, characteristics and classification of materials, sources of technical assistance, and situation analysis and decision making, but perhaps its most important feature is its guidelines for use by local fire departments and police departments in their development and implementation of their own community emergency response plans. The course will be available for distribution early next month. I believe it will prove a useful tool for strengthening the emergency planning and response capability of communities.

I now have a few remarks on the proposed hazardous materials authorization bills, H.R. 11871, the Subcommittee's bill, and the Department of Transportation's request, H.R. 11872, both of which were introduced in the House on April 4 of this year.

H.R. 11871 would amend Section 115 of the Hazardous Materials Transportation Act to authorize appropriations of \$3,727,000 for Fiscal Year 1979, the amount projected in the President's budget request. We do believe this amount is appropriate for the program as planned, based

on a thorough review using the zero-based budgeting process of assessing objectives and impacts of various funding levels. However, this level of authorization does not take into consideration any contingencies that might arise during the year, requiring additional appropriations.

The Administration, in H.R. 11872, has requested authorization for such sums necessary to carry out responsibilities under the Act for Fiscal Years 1979 and 1980. If the Committee desires that specific annual amounts be authorized, we believe the level should provide sufficient latitude to meet both foreseeable program needs and any unanticipated requirements which might arise based on events.

This completes my statement, Mr. Chairman. I would be happy to answer any questions the Subcommittee may have.

HAZARDOUS MATERIALS

INCIDENT REPORTS AND INVESTIGATIONS, 1976-1977

Mode	Incidents Reported		Reporting Carriers		Fatalities		Injuries		Investigations	
	1976	1977	1976	1977	1976	1977	1976	1977	1976	1977
Air Carriers	84	130	24	50	0	0	4	9	100	130
Rwy Carriers (on-Hire) 10,255	13,000		429	500	12	13	568	488	317	269
Rwy Carriers (private) 372	1,250		125	150	4	17	49	60		
Rail Carriers.....	939	1,500	42	50	2	1	198	233	373	314
Water Carriers.....	15	50	8	20	0	0	1	0	0	0
Freight Forwarders....	12	20	8	10	0	0	0	0	0	0
totale	11,897	15,950	636	780	18	31	820	750	780	713

**SEMI-ANNUAL REGULATIONS REPORT
(NTB-ORNO)**

I. MAJOR REGULATIONS

Title	Summary	Contact	Date
Development of New Standards for transportation of Hazardous Waste Materials. (Project No. 260-78)	<p>A. Summary: New standards and procedures for the transportation of hazardous waste materials.</p> <p>B. Why Major: Major rulemaking due to its significant impact on the operating administrations and another Federal agency.</p> <p>C. Chronology: NPRM jointly developed with EPA; Public hearing held on October 26, 1977; targeted date of issuance 6-1-78; targeted date of final rule to be issued 10-1-78.</p> <p>D. Citation: 49 CFR Parts 171, 172, 173, 174, 175, 176, and 177.</p>	A. Roberts 426-0656	NPRM, 6/78

SEMI-ANNUAL REGULATIONS REPORT
(MTB-ORNO)

I. MAJOR REGULATIONS

Title	Summary	Contact	Date
Preemption/Safe Routing of Radioactive Materials. (Project No. 269-78)	<p>A. <u>Summary</u>: Consideration of an administrative ruling as applied to transportation routing of hazardous materials.</p> <p>B. <u>Why Major</u>: Major rulemaking due to substantial public interest and controversy; and has a significant impact on another operating agency.</p> <p>C. <u>Chronology</u>: Published a public notice and invitation to comment on 8/15/77; Public hearing was held on 11/10/77; Targeted date of issuance of NPRM, 7/1/78; Targeted date of final rule, 11/1/78.</p>	D. Crockett 755-4972	ANPRM, 7/78
	D. <u>Citation</u> : 49 CFR Part 107.		

**SEMI-ANNUAL REGULATIONS REPORT
(NTB-ORNO)**

II. NON-MAJOR REGULATIONS

Title	Summary	Contact	Date
Cryogenic Liquids. (Docket No. HM-115)	Standards and procedures for the transportation of cryogenic liquids.	P. Seay 755-4906	NPRM, 11/78
Intermodal Portable Tank. (Project No. 193-72)	Standards for new specifications for portable tanks and procedures for use of these portable tanks for certain hazardous materials.	A. Roberts 426-0656	NPRM, 8/78
Use of Metric System. (Project No. 258-77)	To allow the use of metric system of measurements in place of the present United States liquid measure and the Avoirdupois weight measurement.	A. Roberts 426-0656	NPRM, 6/78
Recodification of Operating Procedure For Motor Vehicles. (Project No. 261-78)	Simplification and recodification of the existing operating procedures for transportation of hazardous materials by motor vehicles as prescribed in Part 177.	D. Goodman 426-1700	NPRM, 3/79
Recodification of Radioactive Requirements. (Project No. 262-78)	Consolidation, simplification and recodification of the existing requirements applicable to the transportation of radioactive materials.	A. Grella 426-2311	NPRM, 9/78

SEMI-ANNUAL REGULATIONS REPORT
(MTB-ORNO)

II. NON-MAJOR REGULATIONS

Title	Summary	Contact	Date
Use of United Nations Materials Shipping Terminology/Numbers. (Project No. 266-78)	Incorporation of shipping descriptions and serial numbers from United Nations Regulations covering the transport of dangerous goods.	A. Roberts 426-0656	NPRM, 12/78
Operating Safety Concerns for aircraft. (Project No. 265-78)	Standards for the safe operation of aircraft having certain hazardous materials aboard.	C. Tenley 755-4972	NPRM, 11/78
Availability of Shipping Papers to Emergency Response Personnel. (Project No. 259-78)	To require shipping papers covering hazardous materials to be made available by train crew to emergency personnel.	J. Horning 755-4902	NPRM, 11/78
Revision of Certain Requirements Applicable to Radioactive Materials (Project No. 267-78)	To require labeling of excepted radioactive materials packages and notation on shipping papers regarding losses of radioactive shipments.	A. Grella 426-2311	NPRM, 12/78
Definition of a Flammable Solid. (Docket No. HM-118)	New standards for classifying a material as a flammable solid.	C. Schultz 755-4906	NPRM, 3/79
Blasting Agents. (Docket No. HM-143)	New standards for the transportation of blasting agents.	C. Schultz 755-4906	FR, 9/78

**SEMI-ANNUAL REGULATIONS REPORT
(MTB-ORHO)**

II. NON-MAJOR REGULATIONS

Title	Summary	Contact	Date
Forbidden Materials. (Docket No. HM-159)	Proposed standards to add the names of materials to the Hazardous Materials Table that are known to be too hazardous to be permitted in commercial transportation.	C. Schultz 755-4906	NPRM, 2/79
Transportation of Asbestos. (Docket No. HM-160)	Standards to control asbestos emissions during transportation.	A. Roberts 426-0656	FR, 8/78
Radiation Exposure of Transportation Workers (Project No. 263-78)	Consideration of methods which will reduce radiation exposure levels to transportation workers.	A. Grella 426-2311	NPRM, 3/79
Retrofit Program for DOT 112 and 114 tank Cars. (Docket No. HM-144)	Consideration of possible changes in the current schedule to retrofit DOT 112 and 114 tank cars with safety devices.	W. Black 426-2748	NPRM, 5/78
Safety Improvement Program for DOT 105 Tank Cars. (Project No. 264-78)	Consideration of possible changes to current safety performance standards of DOT 105 tank cars.	W. Black 426-2748	NPRM, 7/78

SEMI-ANNUAL REGULATIONS REPORT
(MTB-ORMO)II. NON-MAJOR REGULATIONS

Title	Summary	Contact	Date
Repairs and Maintenance of Vehicles. (Docket No. HM-110)	Establish conditions under which repair and maintenance may be performed on motor vehicles containing hazardous materials.	D. Goodman 426-1700	FR, 7/78
Location of Manhole Assemblies and Certification Plates on Cargo Tanks. (Docket No. HM-136)	Specifies the location of a manhole assembly on a cargo tank and authorizes the attachment of certification plates to an integral supporting structure of certain cargo tanks.	J. Horning 755-4902	FR, 8/78
Requirements for Radioactive Materials. (Docket No. HM-152)	Revision of certain sections of Part 175 which will reduce the exposure to radioactive materials for passengers aboard aircraft.	A. Grella 426-2311	FR, 1/79

SEMI-ANNUAL REGULATIONS REPORT
(MTB-OHMO)

II. NON-MAJOR REGULATIONS

Title	Summary	Contact	Date
Color Coding of Compressed Gas Packages. (Docket No. HM-141)	Reconsideration of color standard to be applied to compressed gas cylinders as a safety measure.	A. Roberts 426-0656	Withdrawal, 9/78
Conversion of individual exemptions and minor regulatory adjustments to regulations of general applicability. (Docket No. HM-139)	Incorporation of provisions for selected exemption applications or existing exemptions and incorporation of miscellaneous minor changes based on petition requests.	D. Raines 755-4962	NPRM, every two months
Commercial Detonators and Detonating Primers. (Project No. 268-78)	Standards for establishing appropriate shipping descriptions and hazard classifications for many detonators which are currently used in commercial service.	C. Schultz 755-4906	NPRM, 6/78

DEPARTMENT OF TRANSPORTATION
1977 HAZARDOUS MATERIALS INSPECTORS

Attachment C

	<u>USCC</u>	<u>FAA</u>	<u>FRMA</u>	<u>FRA</u>	<u>RSPD</u>	<u>Total</u>
Full-time Inspectors	0	20	9	16	5	50
Part-time Inspectors						
Number Inspectors	(717)	(129)	(128)	(42)	(3)	(1,019)
% of Time	(15)	(35)	(20)	(15)	(6)	-
Person-Years	<u>107.6</u>	<u>45.2</u>	<u>35.6</u>	<u>6.3</u>	<u>.2</u>	<u>184.9</u>
Total Person-Years	107.6	65.2	34.6	22.3	5.2	234.9

1977 HAZARDOUS MATERIALS INSPECTIONS AND INVESTIGATIONS

	<u>USCC</u>	<u>FAA</u>	<u>FRMA</u>	<u>FRA</u>	<u>RSPD</u>	<u>Total</u>
Operations/Facilities						
Carriers		11,892	1,662	2,208	20	15,782
Shippers			1,267	613	35	1,915
Container Manufacturer			194	41	26	261
Freight Forwarders				93	2	95
Waterfront	1,736	-			3	1,739
Vehicles/Vessels						
Railroad Tank Cars				9,700		9,700
Railroad Freight Cars				5,040		5,040
Vessels	40,842		3,443			40,842
Motor Vehicles						3,443
Accidents/Incidents		<u>130</u>	<u>262</u>	<u>314</u>	-	<u>713</u>
Totals	42,578	12,022	6,835	18,009	86	79,530

Attachment D

HAZARDOUS MATERIALS REGULATIONS VIOLATIONS AND ENFORCEMENT ACTIONS

OPERATING ADMINISTRATION	ACTION	1976	1977	Change	CHANGE %
USCC					
(Bulk and non-Bulk)	Violations for which				
	Civil Penalty Actions Initiated	988	1,836	+848	+86
	Civil Penalty Actions Completed	240	430	+190	+79
	Total collected.....	\$85,660	\$130,620	+\$44,960	+52
	Average penalty collected	\$ 357	\$ 304	-\$ 53	-15
FAA	Civil Penalty Actions Initiated	116	105	- 11	-9
	Civil Penalty Actions Completed	94	103	- 9	-10
	Total collected.....	\$81,675	\$ 72,600	-\$ 9,075	-11
	Average penalty collected	\$ 869	\$ 705	-\$ 164	-19
PHVA ^{1/}	Criminal Cases Initiated				
	Criminal Cases Completed				
	Fines Adjudged				
	Average Fina				
FRA	Criminal Cases Initiated	1	18	+17	-
	Criminal Cases Completed	0	5	+ 5	-
	Fines Adjudged	0	\$4,350	+\$4,350	-
	Average Fina	0	870	+ 870	-
	Prosecution Declined By Department of Justice	1	9	+ 8	-
	Civil Penalty Actions ^{2/}	10	14	+4	+40
	Total Collected	\$15,500	\$23,225	+\$7,725	+50
	Average Penalty Collected	\$ 1,550	\$ 1,660	+\$ 110	+ 7
RSPD ^{3/}	Criminal Penalties Initiated	0	0	0	0
	Civil Penalty Actions Initiated	0	14	+14	-
	Civil Penalty Actions Completed	0	7	+7	-
	Compliance Orders Initiated	0	1	+1	-
	Compliance Orders Completed	0	0	0	-
	Total Collected	0	\$ 3,850	+\$ 3,850	-
	Average Penalty Collected	0	\$ 550	\$ 550	-
	Warnings	133	42	-91	-

1. Data will be forthcoming.

2. Actions undertaken by FRA, under the Federal Railroad Safety Act of 1976, for alleged violations of Emergency Order No. 5 prohibiting humping and cutting off while in motion DOT 112A and 114A placarded tank cars.

3. RSPD/MTB initiated its enforcement program in October 1977. No enforcement work had been accomplished by MTB prior to that date.

DEPARTMENT OF TRANSPORTATION
 Research and Special Programs Directorate
 Materials Transportation Bureau

Inconsistency Ruling (IR-1)
April 4, 1978

Applicant: Associated Universities, Incorporated, Upton,
 Long Island, New York 11973.

Respondent: City of New York (Bureau for Radiation Control,
 Department of Health).

Laws Affected: Local: New York City Health Code, §175.111, as
 amended through January 15, 1976, pro-
 hibiting transportation of radioactive
 materials in or through the City.

Federal: HMTA, §§104, 105.
 49 CFR Parts 170-173, 177.

Mode Affected: Highway.

Ruling: Section 175.111 of the New York City Health Code,
 as amended through January 15, 1976, is not inconsistent
 with requirements of the HMTA or with requirements in
 regulations issued to date thereunder.

Announcement of intent to commence rulemaking to
 consider the need for routing requirements under
 the HMTA for highway carriage of radioactive materials.

TABLE OF CONTENTS

I. Background.	
A. Chronology of the Inconsistency Ruling Application of Associated Universities, Incorporated.....	1
B. Department of Transportation Hazardous Materials Regulations.....	2
C. Department of Transportation Preemption Procedures.....	4
II. Section 175.111 is Not Inconsistent With Requirements Contained in the Text of the HMTA.....	7
III. Section 175.111 is Not Inconsistent With Regulations Presently in Force Under the HMTA.....	8
A. It is Possible to Comply With Both Section 175.111 and the DOT Hazardous Materials Regulations.....	8
B. Section 175.111 Does Not Stand as an Obstacle to the Accomplishment and Execution of Regulations Presently in Force Under the HMTA.....	8
IV. Conclusion.....	12
FOOTNOTES.....	15
APPENDICES.....	18

I. Background.

A. Chronology of the Inconsistency Ruling Application of Associated Universities, Incorporated.

Associated Universities, Incorporated (AUI) is a corporation chartered by the New York State Board of Regents. AUI's Board of Trustees includes members from nine northeastern universities. Since 1947, AUI has operated Brookhaven National Laboratory at Upton, Long Island, under a prime contract with what is now the United States Department of Energy (DOE). Two research reactors in use at Brookhaven consume fuel consisting of enriched uranium and produce a variety of other radioactive materials. Spent fuel from the reactor is stored at Brookhaven until shipped to a recovery facility for reclamation of valuable materials and eventual disposal of the rest. Brookhaven's practice has been to ship spent fuel six times over a six-week period each year. In the past, both the fuel used by the Brookhaven reactors and the by-products have moved extensively in interstate commerce, subject to the Department's Hazardous Materials Regulations (49 CFR Parts 170-179).

For highway carriers of radioactive materials, access to the mainland from Long Island was, and still is, controlled by regulations of the New York and New Jersey Port Authority (Port Authority), the Triborough Bridge and Tunnel Authority (Triborough Authority), as well as by the City itself. The facilities in the Port area that connect New York with New Jersey are generally regulated by the Port Authority. The Triborough Authority controls the area's intrastate toll crossings, while the four lower Manhattan bridges across the East River from Brooklyn and Queens are operated by the City's Department of Transportation. Between the requirements of the Port and Triborough Authority, a hazardous materials highway carrier must cross one of the City bridges to reach the mainland from Long Island. Prior to enactment of Section 175.111, the City allowed radioactive materials carriers to cross only the lower level of the 59th Street Bridge with a police escort that was generally required while the carrier moved through the City on one of a number of possible truck routes. Leaving Manhattan for the mainland, under Port Authority regulations, was possible only by crossing the George Washington Bridge into New Jersey. Although the route used by AUI's carriers before Section 175.111 became effective varied somewhat, the 59th Street Bridge and

the George Washington Bridge were necessary points in the route, necessitating passage through Manhattan (see map, Appendix A).

Section 175.111 became effective on January 15, 1976, after notice and hearing (Appendix B). It has the practical effect of forbidding the transportation of most commercial shipments of radioactive materials in or through the City. On the same day, the Federal Government asked the Federal District Court for the Southern District of New York for declaratory and injunctive relief, arguing that Section 175.111 is preempted under the Supremacy Clause and the Commerce Clause of the United States Constitution, and by the Atomic Energy Act of 1954 and the regulations issued under that Act.¹ A preliminary injunction was denied, and the case has not yet been argued on the merits. Shortly after the Section 175.111 effective date, several of AUI's shipments of radioactive materials, otherwise subject to Section 175.111, were carried by passenger ferry from Long Island to Connecticut, in order to avoid the City.

On March 1, 1977, AUI, affected by Section 175.111 as well as by the Hazardous Materials Transportation Act (HMTA, Title I of Pub. L. 93-633), filed an application for an inconsistency ruling, asking the Department of Transportation for its opinion as to whether Section 175.111 is inconsistent with, and thus preempted by, the HMTA or regulations issued thereunder, based on the City's interdiction of truck traffic in radioactive materials from AUI's facilities on Long Island, New York, through the City to destinations in other States.

The docket for this proceeding includes extensive public comment as well as the transcript of a public hearing held on November 10 and 11, 1977, all of which is available for public inspection in the Dockets Section, Room 6500, 2100 Second Street, S.W. Washington, D. C. 20590.

B. Department of Transportation Hazardous Materials Regulations.

This inquiry concerns requirements of the HMTA and regulations issued under the HMTA. The substantive transportation regulations issued under the HMTA are codified at 49 CFR Parts 170-179 and are referenced as the Hazardous Materials Regulations.

A discussion of the DOT Hazardous Materials Regulations is aided by a familiarity with the basic history of those regulations. Federal regulations concerning hazardous materials shipments by highway have existed since the first decade of this century under the administration of the Interstate Commerce Commission. In 1967 those safety functions were transferred to the Department of Transportation.

On January 3, 1975, the HMTA was enacted, and on January 3, 1977, the DOT Hazardous Materials Regulations were simultaneously coalesced under 18 U.S.C. 834 (for highway carriage) and reissued under the HMTA (HM-134, 41 FR 38175, September 9, 1976), for present purposes, essentially unchanged. On the same date, the preemption regulations, under which this proceeding has been conducted, became effective (HM-138, 41 FR 38167, September 9, 1976).

Several observations may also be useful. First, under 18 U.S.C. 834, the Hazardous Materials Regulations applied to interstate carriers and their shippers, but not to purely intrastate carriers and their shippers. This distinction remains valid at present, although the HMTA authorizes application of the regulations to transportation that affects interstate commerce.² Second, the history of the Hazardous Materials Regulations for highway carriage has been one of an accommodation of Federal and State interests that is pragmatic and that recognizes, as have the courts, that local interest in highway safety is well established and proper, and that a local exercise of police powers in support of that interest is not to be lightly displaced.³ Third, the scope of Federal preemption in air, rail and water transportation is historically greater than in highway transportation. This document examines only highway transportation. The effects of Section 175.111 on the other modes of transportation are not considered.

Generally, the existing DOT Hazardous Materials Regulations address highway transportation by prescribing the packaging necessary for shipment of particular hazardous materials (such as radioactive materials), package marking for the identity of the material contained therein, package labeling for the material's hazards, preparation and use of shipping papers to show the identity, amount and hazard of each material shipped, and placarding of transport vehicles for the hazards of the cargo. The regulations employ a syntax that is prohibitory in nature, such as ". . . no person may transport a hazardous material . . . unless that material is handled and transported in accordance with this subchapter."⁴

Most of the Hazardous Materials Regulations concerning highway carriage were transferred over to the HMTA from Title 18, U.S.C. However, the Federal Motor Carrier Safety Regulations have continued to rely in part on Title 18.⁵ Their application is not limited to hazardous materials carriers, but Part 397 of the Federal Motor Carrier Safety Regulations, which does concern the transportation of hazardous materials, was not reissued along with the Hazardous Materials Regulations because it was anticipated that 49 CFR Part 177,

which also deals with highway carriers of hazardous materials, would be revised to incorporate the pertinent requirements of Part 397. Thus, before the HMTA was implemented, the routing instructions in 49 CFR 397.9 and the DOT Hazardous Materials Regulations for highway carriers were parts of essentially one regulatory scheme developed under 18 U.S.C. 834. The present scheme, so far as preemption goes, is bifurcated between the HMTA and Title 18. For reasons subsequently stated, this inconsistency ruling will not attempt to interpret 49 CFR 397.9.

C. Department of Transportation Preemption Procedures.

This proceeding has been conducted pursuant to 49 CFR 107.203-.211 and Section 112 of the HMTA (49 U.S.C. 1811). Section 112 of the HMTA expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or regulations issued under the authority of the HMTA. Procedures codified at 49 CFR 107.203-.211, which consider prior court decisions regarding Federal preemption, provide a means for the Department to interpret, in specific fact situations, whether a State or local requirement is inconsistent with requirements of the HMTA or the regulations issued thereunder (which include 49 CFR Parts 102, 107 and 170-179). One of the purposes of the preemption regulations issued under the HMTA is to provide, in the field of transportation safety, a source of clarification of this Federal-State relationship as an alternative to litigation. Another purpose is to provide a basis for a waiver of preemption ("nonpreemption determination"), should that be necessary (49 CFR 107.215-.225).

The City has argued that the word "inconsistent," as used in Section 112 of the HMTA, is more restrictive than described by regulation at 49 CFR 107.209(c).⁶ Under that description, upon which this proceeding is based, "inconsistency" describes situations wherein it is not possible to comply with both Federal and State requirements, and situations wherein State requirements are an obstacle to the accomplishment and execution of the Federal law. The City asserts that "inconsistent" refers to situations described only by the first test, citing Jones v. Rath Packing Co., 430 U.S. 519 (1977). However, an analysis of Jones indicates that the case does not stand for the proposition that "inconsistent" means only the dual compliance test.⁷ Even if the City's view of the holding in that case is accurate, there is little reason to believe that Congress had in mind only the first test in Section 112 of the HMTA. Congress intended that

Section 112 be capable of precluding both "a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." This purpose requires preemptive results much wider than a voiding only of those State laws whose effects are either to drive persons into noncompliance with Federal requirements, or to penalize those persons that do comply.⁸

Another point supporting the DOT position on use of both tests to ascertain the occurrence of preemption under Section 112 arises from the purpose of Section 112(b). Under paragraph (b), preemption of a State requirement is waived if the State demonstrates to the Secretary that its requirement meets two additional tests: the State requirement must provide a level of safety at least equal to that provided by Federal requirements under the HMTA, and must not unduly burden commerce. The statutory history⁹ indicates that paragraph (b) waivers were thought likely to be used in emergency situations, although they are clearly not limited to emergencies, since a waiver continues in effect so long as the State requirement is effectively enforced and administered. It is difficult to see how a paragraph (b) waiver could be of significant use in an emergency situation unless that waiver gives the State requirement a clean bill of health under the HMTA. If the waiver applies only to the extent that a dual compliance problem exists, the possibility of preemption under the second test will continue to hinder necessary State action.

The effect of Section 112 depends heavily on the word "requirement" as well as on the word "inconsistent." Preemption cannot occur without the existence of a Federal "requirement" under the HMTA, which we construe to mean an obligation to act or to refrain from action. An HMTA requirement may completely regulate a given subject, or may represent an affirmative finding that only limited regulation is desirable. In either event, to determine whether preemption has occurred under Section 112 of the HMTA, it is necessary first to identify an HMTA requirement against which an identified State or local requirement can be evaluated for inconsistency.

The importance of an adequate identification of an HMTA requirement in evaluating a possibly inconsistent State or local law also follows from the language of Section 112(b). When an HMTA requirement cannot be adequately identified, a waiver of preemption for a State requirement may not be possible, since the first waiver criterion in Section 112(b) may not be met because the level of safety established by Federal requirements cannot be determined. Even if it is

possible to grant a waiver for State requirements ostensibly preempted under unidentified Federal requirements, the value of such a waiver would be minimal, since it would never be clear whether the waiver would successfully survive subsequent amendments to the requirements of the Hazardous Materials Regulations.¹⁰ The point of an express statement of preemption such as Section 112 is to clarify respective Federal and State responsibilities. An adequate identification of preemptive Federal "requirements" is inherent in that purpose.

Once a Federal requirement under the HMTA has been identified, then the two tests for preemption stated at 49 CFR 107.209(c) are employed to determine whether preemption occurs. The first test concerning dual compliance is logically a subset of the second test, but it is stated separately because it is a convenient and relatively easily applied test. In fact, the inability of a member of the public to comply both with Federal and State requirements is a result of conflict between two requirements, the Federal requirement in itself being an explicit statement of Congressional purpose carrying specified penalties for noncompliance.

The Federal requirements which this proceeding must consider are to be found in regulations issued by the Secretary of Transportation to implement the HMTA (see Part II of this document). Since the general purpose of the HMTA is stated therein to be the improvement of the Secretary's regulatory and enforcement authority to protect the Nation against inherent risks in the transportation of hazardous materials, and the HMTA consists primarily of grants of discretionary authority to the Secretary, the "achievement and execution" of the HMTA occurs essentially through regulations issued by the Secretary. As a consequence, an examination of a regulatory requirement issued under the HMTA must rely heavily on the regulatory objectives intended by issuance of the regulation in question. If a State and a Federal regulation can both be complied with, the second test will require an examination of the purposes of the Federal regulation in the context of the body of regulations in which it appears, as well as in the context of the HMTA itself.

It is our view that any preemption that may occur under the HMTA (at least to the extent that the Federal interest in issue concerns an imposition of obligations on members of the public) is described in Section 112. That section applies to "any requirement" in the HMTA or in regulations issued under the HMTA. To view Congress' use of the word "inconsistent" as

limiting Section 112 preemption to that occurring under the dual compliance test is to restrict that section to an extremely limited function, not a result sanctioned either by the language of the section or by the legislative history.

II. Section 175.111 is Not Inconsistent With Requirements Contained in the Text of the HMTA.

Express preemption under Section 112 of the HMTA occurs upon the existence of mutually inconsistent HMTA and State or local requirements.¹¹ Such requirements, or obligations to act or to refrain from action, exist both in the text of the HMTA and in regulations issued under the HMTA.

The word "requirement" as used in Section 112 will most frequently concern requirements imposed by the Secretary, by regulation, on shippers, carriers, container manufacturers and others involved in the transportation of hazardous materials; otherwise it will concern requirements imposed by the HMTA on those persons who violate regulations issued under the HMTA by the Secretary. In either case, requirements of this kind imposed on members of the public require implementing regulations to exist, since without implementing regulations, the HMTA does not impose obligations on members of the public. Such requirements as the HMTA imposes that exist without implementing regulations are requirements on the Secretary and consequently are not pertinent to this proceeding.¹² As a result, it is in regulations issued under the HMTA that requirements must be found upon which this proceeding's interpretation can be based.

This view of HMTA preemption conforms to Section 114 of the HMTA which directs that actions taken under prior laws (such as 18 U.S.C. 834) continue to be valid while the DOT hazardous materials regulatory program is brought into conformity with the HMTA. Imposition of preemption-backed requirements on shippers and carriers as an immediate result of enactment of the HMTA would disrupt this phased transition from regulation under older statutes to regulation under the HMTA, which generally leaves the imposition of requirements to Secretarial discretion.

In view of this, it is clear that Section 175.111 is not inconsistent with any requirement contained in the text of the HMTA.

III. Section 175.111 is Not Inconsistent With Regulations Presently in Force Under the HMTA.

The DOT Hazardous Materials Regulations implement the HMTA by prescribing as obligations for shippers, carriers and other persons, the necessary conditions for highway transportation of hazardous materials. Compliance with the Hazardous Materials Regulations is necessary for transportation of hazardous materials by interstate highway carrier but does not relieve a shipper or highway carrier of its obligation to comply with State and local laws. State and local regulatory agencies obviously have and exercise transportation safety responsibilities, especially as regards traffic control and immediate reaction to emergency situations. Conditions not addressed under the HMTA may be properly regulated by State and local agencies within bounds set by other Federal laws.

A. It is Possible to Comply With Both Section 175.111 and the DOT Hazardous Materials Regulations.

While it is true that compliance with Section 175.111 logically results in the absence of radioactive materials shipments in New York City and the consequent absence of radioactive materials transportation activities within the City to which the Hazardous Materials Regulations can apply, the proper test is whether compliance with Section 175.111 can trigger enforcement action under the HMTA, or vice-versa.¹³ Clearly, Section 175.111 does not require any action that could conceivably result in a violation of the DOT Hazardous Materials Regulations, and the fact of compliance with HMTA requirements cannot cause a violation of Section 175.111.

B. Section 175.111 Does Not Stand as an Obstacle to the Accomplishment and Execution of Regulations Presently in Force Under the HMTA.

Essentially, four arguments are available to support AUI's assertion that Section 175.111 is inconsistent with regulations issued under the HMTA.

ARGUMENT (1) The Hazardous Materials Regulations authorize shipment of radioactive materials made in conformity with requirements therein. A complete ban that applies to most radioactive materials shipped by interstate carrier in compliance with those regulations frustrates that authorization.

This argument fails to identify adequately a requirement in the Hazardous Materials Regulations from which inconsistency may be deduced. To say that Section 175.111 addresses radioactive materials that are also regulated under the HMTA is not sufficient to establish inconsistency, since inconsistency is keyed to the existence of "requirements." Present requirements under the HMTA concerning radioactive materials carriage by highway do not circumscribe radioactive materials so as to control routes of movement, which is the basic thrust of Section 175.111.¹⁴ Even assuming all HMTA regulations concerning radioactive materials may be treated as a single requirement, those regulations do not obligate any carrier to avoid certain locations.

ARGUMENT (2) Section 175.111 is inconsistent with HMTA regulations concerning radioactive materials transportation. Those regulations generally preempt State and local regulations on that subject, in support of the regulatory scheme developed under the Atomic Energy Act of 1954.

The compatibility between the DOT Hazardous Materials Regulations and those under the Atomic Energy Act is intentional, reflecting a division of overlapping transportation authority between the Atomic Energy Act and transportation statutes such as 18 U.S.C. 834, which is addressed in a Memorandum of Understanding (MOU)¹⁵ between DOT and the old Atomic Energy Commission. One example of reliance on the Atomic Energy Act which occurs frequently in DOT regulations is reference to the Nuclear Regulatory Commission regarding qualification of Type B packagings. However, the basic difficulty with this argument is that the Atomic Energy Act cannot cause preemption under the HMTA.

Certainly, the regulatory scheme developed under the Atomic Energy Act was known and accommodated by the MOU and the regulations themselves, but neither the HMTA,¹⁶ the Hazardous Materials Regulations, nor the MOU reflect any special status for radioactive materials. The DOT regulations in fact treat radioactive materials in essentially the same fashion as other hazardous materials, except for the distinct techniques necessary to deal with radiation hazards instead of chemical or biological hazards. The MOU recognizes that the division of responsibilities for regulating the transportation of radioactive materials, as agreed by the signatory agencies, is "subject to their respective statutory authorities . . ." The agreement was entered at a time when DOT regulations were based on 18 U.S.C. 834, but reissuance of DOT regulations

under the HMTA has not affected the agreement or the regulations themselves insofar as radioactive materials are concerned: the DOT regulations treat radioactive materials as one of a number of classes of materials with recognized transportation hazards. The fact that radioactive materials, rather than explosives, flammables, or some other class of hazardous materials, are the subject of certain DOT regulations does not carry with it special or distinctive preemptive effects.

ARGUMENT (3) Section 175.111, by forbidding transportation of radioactive materials, is inconsistent with DOT regulations which also forbid transportation of certain materials or categories of materials, but which do not forbid the movement of radioactive materials.

An examination of the Hazardous Materials Table (49 CFR 101) reveals that some materials are intrinsically so dangerous that their transportation is completely forbidden. This argument concludes that, because radioactive materials have been thoroughly considered at 49 CFR 389 at seq. and are not forbidden from transportation, the City may not forbid their transportation. In essence, the City's choice of a forbidden material is said to be inconsistent with the forbidden materials identified under the HMTA.

Materials forbidden from transportation under the HMTA include, for example, unstable explosives and loaded firearms. In most cases, transportation is forbidden because the material in question behaves in an unpredictable manner. Unstable explosives may detonate and loaded firearms may discharge regardless of any practical packaging or handling precautions taken by shipper or carrier.

Radioactive materials, by comparison, are notably predictable in the radiation hazards they pose and can without question be shipped safely in the normal course of transportation. It would be extremely hard to support the assertion that radioactive materials, even materials with very high radiation levels, cannot be moved safely under any circumstances, given the excellent twenty-five year record of their commercial transportation. The City's assertion, however, is that Section 175.111 is necessary because of the population density¹⁷ of the City, not because the characteristics of radioactive materials render them absolutely unsuited to transportation. Consequently, Section 175.111 does not frustrate the purposes of identification under the HMTA of materials forbidden from transportation.

**ARGUMENT (4) Section 175.111 is Inconsistent With
49 CFR 397.9.**

The City has urged that Section 175.111 supports and advances the purposes of 49 CFR 397.9. This provision of the Federal Motor Carrier Safety Regulations is a requirement binding certain highway carriers of hazardous materials to avoid densely populated areas unless there is not any other practicable route, "practicable" being defined thereby to exclude consideration of the carrier's operating convenience. The City urges that water carriage of AUI shipments is a "practicable" alternative.

The City's position essentially is that its dense population justifies the expense and inconvenience of moving radioactive materials by non-highway modes along routes outside the City, because the consequences of a major accident are too extreme to be tolerable, however remote the probability. The City has expressed concern with the effects of the Port Authority and the Triborough Authority's restrictions on use of the bridges which access the mainland from Long Island, which before enactment of Section 175.111 had the effect of funneling traffic in radioactive materials through Manhattan.

An opinion of the Department of Transportation General Counsel, issued in 1976, is attached as Appendix C. That opinion interprets 49 CFR 397.9 as not requiring a highway carrier to consider transshipment by a non-highway mode. The Federal Motor Carrier Safety Regulations have not been issued under the HMTA,¹⁹ and consequently any preemptive effects that 49 CFR 397.9 may have do not arise under the HMTA. Should that provision have the effect of preempting Section 175.111, the HMTA does not provide any basis for a waiver of preemption. For these reasons, this discussion will attempt no further elaboration of 49 CFR 397.9 beyond that contained in Appendix C.

However, the City's reliance on 49 CFR 397.9 reflects the fact that the City's "bsn" considered in terms of its purposes does not differ analytically from a routing restriction. To assert the contrary is to assert that there is not any local jurisdiction whose characteristics would justify its total avoidance by hazardous materials highway carriers. Such an assumption is implicit in 49 CFR 397.9, which authorizes carriage through populous areas if there is not any other practicable alternative highway route. However, no such assumption appears in any of the regulations issued under the HMTA, since those particular regulations do not now include any routing requirements, even though the HMTA authorizes the imposition of such requirements.

IV. Conclusion

There is not any identifiable requirement in the text of the HMTA or its regulations issued thereunder that provides a basis for a finding of inconsistency with Section 175.111.

Section 175.111 is most analogous to a routing requirement in terms of its purposes and effects. The lack of a routing requirement under the HMTA, which expressly authorizes such a requirement, means that existing regulations issued under the HMTA do not occasion inconsistency with Section 175.111. Although 49 CFR 397.9 is a routing requirement, it is not based on the HMTA and a finding regarding inconsistency under the HMTA cannot apply to that provision of the Motor Carrier Safety Regulations.

Even considering the HMTA Hazardous Materials Regulations generally, those regulations do not relieve carriers of their obligation to comply with local requirements such as Section 175.111. The fact that Section 175.111 and the Hazardous Materials Regulations both apply to radioactive materials carries no special preemptive significance, since radioactive materials are addressed in the Hazardous Materials Regulations as merely one of a number of classes of hazardous materials. Because Section 175.111 is not concerned with whether it is possible under any conditions to carry radioactive materials safely by highway, it does not conflict with identification under the Hazardous Materials Regulations of those materials for which transportation is entirely forbidden in U.S. commerce.

In considering the above, the MTB has decided to issue, within the next sixty days, an advance notice of proposed rulemaking, to aid in a decision as to whether some form of Federal routing requirement is needed.

In spite of the conclusion reached that Section 175.111 is not presently preempted by the HMTA, there are several aspects of that local requirement which concern the Materials Transportation Bureau.

(1) A basic concern is the inclusion of almost all radioactive materials shipped commercially within a single category in Section 175.111. All are subjected thereby to a near total prohibition in transportation. Justification for the prohibition relies on the remote possibility of a substantial release of high specific activity radioactive materials. Radioactive materials, like corrosives and other classes of hazardous materials, range over a wide spectrum of hazard levels, and the

Federal regulatory scheme makes distinctions between levels of activity. The Federal scheme also distinguishes between the physical and chemical forms in which a given material may be shipped, which bears on the likelihood of the material being easily dispersed. These distinctions find no place in Section 175.111.

(2) Any attempt at evading the Section 175.111 prohibition will probably involve transportation in unlicensed motor vehicles, in violation of DOT requirements (evidence of noncompliance with Section 175.111 has not been raised in this proceeding).

(3) Section 175.111 is causing the diversion of radioactive materials shipments to avoid the City. Brookhaven has shipped by truck using a route including a journey by passenger ferry to Connecticut. Some of the truck shipments intended for air carriage from Kennedy International Airport are being diverted to other airports. One effect of this diversion of traffic from customary commercial routes may be the creation of situations uncommon to the places in which they occur, with the result that persons involved in the transportation network, and emergency response personnel, may be faced with unfamiliar circumstances, or with numbers of shipments that exceed their established handling abilities. A shift of traffic has obvious implications for both Federal and State enforcement programs.

(4) It may not be prudent for safety decisions of the far reaching effects of Section 175.111 to be made solely by local governments. It is unfair, and possibly not conducive to overall safety, to ask other locations to accept and handle additional commerce in materials which a jurisdiction such as New York City decides it will not accept. As is true in other areas of State and local activity, neighboring jurisdictions may find it necessary to reciprocate. A proliferation of local bans like Section 175.111 dealing with hazardous materials carriage will result in a disrupted national transportation network that is at best confusing, at worst chaotic, and neither condition advances transportation safety.

On the other hand, in the absence of Section 175.111 the number of shipments of high level radioactive materials through the City is likely to increase substantially. Brookhaven is a relatively small shipper of radioactive materials, since its activities are research oriented. Long Island Lighting Company (LILCO) expects, possibly within twelve years, to be operating three reactors at two sites on Long Island for the commercial production of electric power. While Brookhaven

14

usually makes six shipments of reactor wastes each year, the kind of activities LILCO is undertaking will result in a very substantial increase in such shipments. It is also clear that despite a reduction in the National effort to develop a plutonium-based fission technology, the United States will increasingly depend on nuclear fission for a substantial part of its energy needs.²⁰ The problem of establishing a suitable permanent radioactive waste disposal site may be solved as early as 1988,²¹ which may also result in an increase in the shipment of wastes since the existence of a permanent disposal site will facilitate the construction of new reactors.

The legal validity of Section 175.111 is still subject to serious doubt. This opinion dealt only with highway carriage, as raised by AUI. Air, rail and water carriage are more thoroughly imbued with a Federal interest and this opinion does not apply to transportation by those modes. New York City and any other jurisdictions which have, or are contemplating similar ordinances, should also bear in mind the fact that Section 175.111 may be preempted by the Commerce Clause of the United States Constitution, or by the Atomic Energy Act of 1954 and regulations issued thereunder. In addition, we think it well established that the text of 49 CFR 397.9, contrary to the City's assumption, does not require a highway carrier to ship by water, for example, if transportation through the City is the only practicable highway route. Finally, whatever the ultimate legal fate of Section 175.111, such provisions may face a necessary future harmonization with rulemaking that results from the inquiry MTB intends to undertake.



L. B. Santman
Acting Director
Materials Transportation Bureau

FOOTNOTES

1. United States v. City of New York, No. 76 Civ. 273 (S.D.N.Y., filed January 15, 1976).
2. HMTA, § 103(1). Authority for regulating intrastate commerce is discussed in the preamble to the final rule in Docket HM-134 (41 FR 38175 et seq., September 9, 1976).
3. This view is articulated in cases, such as South Carolina v. Barnwell Brothers, Inc., 303 U.S. 177 (1938), which concern application of the Commerce Clause to State legislation in circumstances that do not involve Congressional action. For a recent similar example, see Raymond Motor Transportation, Inc. v. Rice, 46 LW 4109 (February 21, 1978). This view has also been employed by the Supreme Court as a principle of statutory construction. Welch v. New Hampshire, 306 U.S. 79, 85 (1939); Maurer v. Hamilton, 309 U.S. 598, 614 (1940); Jones, at 525.
4. 49 CFR 171.2(b).
5. 49 CFR Parts 390-397. The Federal Motor Carrier Safety Regulations generally cite § 204 of the Interstate Commerce Act as amended (49 U.S.C. 304) as authority. Part 397, which concerns parking and driving rules for the transportation of hazardous materials, also cites 18 U.S.C. 834, upon which the Department's Hazardous Materials Regulations for highway carriage relied until reissued under the HMTA. The Federal Motor Carrier Safety Regulations (except §§ 397.3 and 397.9) have since been incorporated by reference in regulations under the HMTA. HM-157, 43 FR 4858, February 6, 1978.
6. Letter from N.Y.C. Assistant Corporation Counsel to Office of Hazardous Materials Operations, October 21, 1977.
7. The Supreme Court has previously noted that many words have been used to describe the relationship between State and Federal law that results in statutory preemption, "inconsistent" being one of them. Hines v. Davidowitz, 312 U.S. 52, 67 (1941). The Court itself seems to have used the word to refer to more than just the dual compliance test. Jones, at 526. In Jones, the Court was not construing a statutory use of the word "inconsistent" but rather used that term to address the relationship between an express preemption provision of

the Fair Packaging and Labeling Act and a California requirement concerning display of weight of contents on packages of flour. The FPLA preemption provision only covered one section of the FPLA rather than the entire Act (unlike § 112 of the HMTA). The Court found preemption based on the purposes of the FPLA as a whole, after concluding that the narrower terms of the express preemption provision did not cause preemption. The Court expressed the latter conclusion by stating that the California requirement was not inconsistent with the FPLA express preemption provision. However, that provision was limited, rather than encompassing the full range of preemption that could occur under the FPLA.

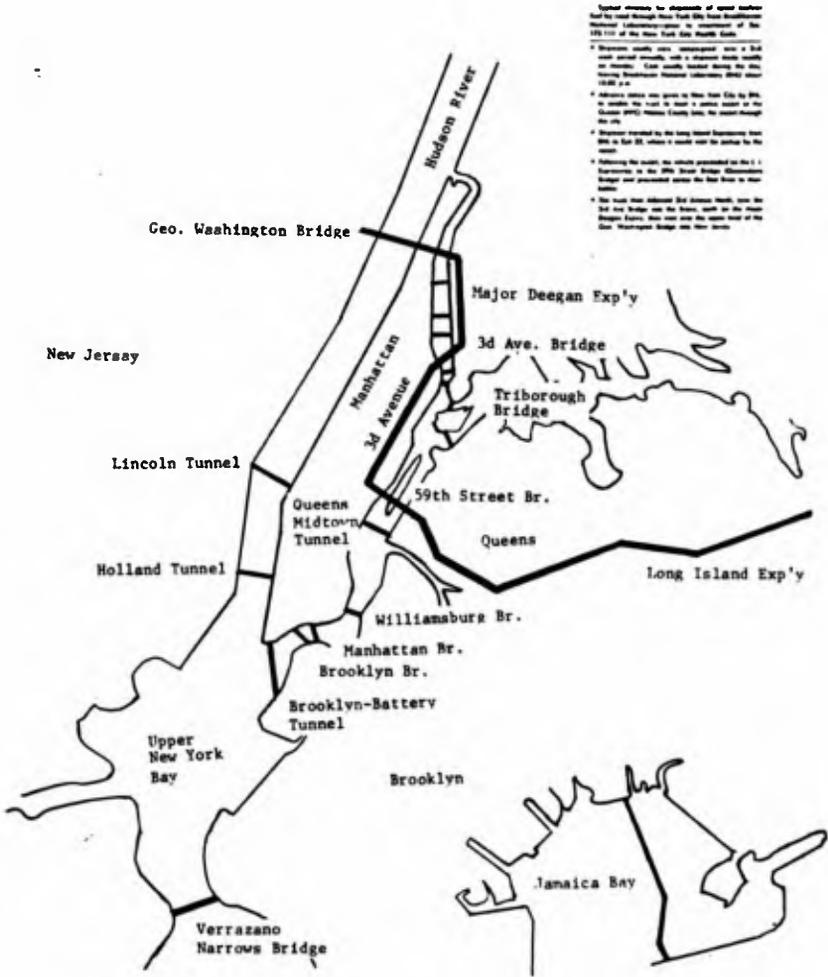
8. S. Rept. 93-1192, 93rd Cong., 2nd Sess., 37-38 (1974).
9. Id.
10. Although the HMTA, in § 112(b), provides that a waiver of preemption continues in effect so long as the local requirement for which waiver is given is effectively administered and enforced, a new regulatory requirement issued under the HMTA after the date the waiver occurs may cause preemption of the local requirement. The waiver cannot apply prospectively to regulatory requirements not in existence at the time it is granted.
11. This discussion should not be confused with questions involving common carrier obligations and tariff restrictions. Such questions do not involve HMTA preemption of State or local transportation requirements.
12. See HMTA, § 105(c) for an example. The general purpose of the HMTA as stated in § 102 is "to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." The exercise of most of that authority is discretionary rather than mandatory.
13. Cf. Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963).
14. The Secretary of Transportation is specifically authorized to issue regulations governing routing in consultation and cooperation with the Interstate Commerce Commission. HMTA, § 105.

15. Memorandum of Understanding (MOU) Between the U.S. D.O.T. and the U.S. A.E.C. for Regulation of Safety in the Transportation of Radioactive Materials Under the Jurisdiction of the D.O.T. and the A.E.C., March 22, 1973. This MOU is still effective despite the separation of the AEC into the Nuclear Regulatory Commission and the Energy Research and Development Administration, and the latter's incorporation into DOE.
16. § 108 of the HMTA does directly concern the shipment of radioactive materials by passenger-carrying aircraft, but the section has no particular relevance to the proposition that regulations under the HMTA do not reflect an intention to preempt State and local requirements to the extent they might be preempted by action under the Atomic Energy Act of 1954.
17. Letter from N.Y.C. Assistant Corporation Counsel, n. 6, supra; Testimony of Dr. Leonard Solon, Director, Bureau for Radiation Control, Public Hearing on the Transportation of Radioactive Materials, November 10-11, 1977, Transcript at 20 et seq.
18. Letter from N.Y. C. Assistant Corporation Counsel, n. 6, supra.
19. See n. 5, supra.
20. As much as 20% of the electricity supply of the United States may be fission-generated by 1985. Executive Office of the President, The National Energy Plan 71 (April 29, 1977).
21. DOE, Report of Task Force for Review of Nuclear Waste Management 12 (February, 1978).

APPENDICES

- A. Map showing route used by AUI's carrier prior to enactment of Section 175.111.
- B. Text of Section 175.111.
- C. DOT General Counsel's opinion interpreting 49 CFR 397.9.

APPENDIX A



Special attention to diagrams of great number
 had to read through them. Each one had its own
 particular characteristics in connection with
 the 1911 of the New York State Health Code.

1. Diagrams usually were accompanied with a list
 of names and usually with a reference table showing
 the names. Each usually headed through the
 names, sometimes however containing other
 data, etc.

2. Diagrams were also given in New York City by the
 Health Department in order to make a general study of the
 same. (See also Health Code, for more details)
 the city.

3. Diagrams prepared by the Long Island Railroad from
 1911 to 1913, when it would not be possible to be
 used.

4. Following the health law which provided for the
 construction of the New York State Health
 Code and prepared under the Health Code in
 1911.

5. The map was obtained from various health maps of the
 City and State and the State, such as the
 Health Code, and was used in the same way as the
 other transportation maps and other data.

APPENDIX B

**HEALTH SERVICES ADMINISTRATION
DEPARTMENT OF HEALTH**

Resolutions Adopted

*Published in The
City Record, Tuesday
Jan. 30, 1976*

AT A MEETING OF THE BOARD OF HEALTH OF THE DEPARTMENT OF Health held January 15, 1976, the following resolution was adopted:

Resolved, that section 175.111 of the New York City Health Code, as repealed and reenacted by resolution adopted on the fifteenth day of November, nineteen hundred seventy-three and filed with the City Clerk on the twentieth day of November, nineteen hundred seventy-three, be and the same hereby is amended by adding a new subsection (1) thereto, to follow subsection (k) thereof, to be printed together with explanatory notes, to read as follows:

(1) Notwithstanding the foregoing provisions of this section, a Certificate of Emergency Transport issued by the Commissioner or his designated representative shall be required for each shipment, to be transported through the City or brought into the City, of any of the following materials:

(1) Plutonium isotopes in any quantity and form exceeding two grams or 20 curies, whichever is less;

(2) Uranium enriched in the isotope U-235 exceeding 25 atomic per cent of the total uranium content in quantities where the U-235 content exceeds one kilogram;

(3) Any of the actinides (i.e., elements with atomic number 89 or greater) the activity of which exceeds 20 curies;

(4) Spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies; or

(5) Any quantity of radioactive material specified as a "Large Quantity" by the Nuclear Regulatory Commission in 10 CFR Part 71, entitled "Packaging of Radioactive Material for Transport."

NOTES: Subsection (1) was added by resolution adopted on January 15, 1976 to require the approval of the Commissioner or his designated representative through the issuance of a Certificate of Emergency Transport for the transport or the bringing into this City of specified large quantities of plutonium, enriched uranium and other actinides and spent reactor fuel elements which would present a great hazard to public health in this densely and highly populated City. It is intended that such Certificate will be issued for the most compelling reasons involving urgent public policy or national security interests transcending public health and safety concerns and that economic consideration alone will not be acceptable as justification for the issuance of such Certificate. Such Certificates are also intended to be issued for hectocurie and kilocurie cobalt-60 and cesium-137 teletherapy sources employed in therapeutic radiology and biomedical research or educational purposes and for medical devices designed for individual human application (e.g., cardiac pacemakers) containing plutonium-238, promethium-147 or other radioactive material. This subsection is not intended to apply to small quantities of specified radioactive materials intended for therapeutic radiology and biomedical research or educational purposes.

Resolved, further, that subsection (c) of section 175.111 of the New York City Health Code, as repealed and reenacted by resolution adopted on the fifteenth day of November, nineteen hundred seventy-three and filed with the City Clerk on the twentieth day of November, nineteen hundred seventy-three, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

(c) This section shall not apply to radiation sources shipped by or for the United States Government for military or national security purposes or which are related to national defense. Nothing herein shall be construed as requiring the disclosure of any defense information or restricted data as defined in the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, as amended.

NOTES: Subsection (c) was amended by resolution adopted on January 15, 1976 to conform its provisions with subsection (1) adopted by the same resolution.

Resolved, further, that this resolution shall take effect immediately.

A true copy.

120

PATRICIA J. CARUSO, Acting Secretary.



APPENDIX C
 OFFICE OF THE SECRETARY OF TRANSPORTATION
 WASHINGTON, D.C. 20590

MAY 12 1976

Peter L. Strauss, Esq.
 General Counsel
 Nuclear Regulatory Commission
 Washington, D. C. 20555

Dear Mr. Strauss:

This is in response to your letter of March 16, 1976, requesting the Department of Transportation's (DOT) interpretation of 49 CFR §§ 397.3 and 397.9, two Federal Highway Administration (FHWA) regulations dealing with the safe transportation of hazardous materials in commerce. The regulations at issue are contained in 49 CFR Part 397 - Transportation of Hazardous Materials; Driving and Parking Rules, and read as follows:

§ 397.3 State and local laws, ordinances, and regulations.

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

§ 397.9 Routes.

(a) Unless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with this paragraph.

(b) Before a motor carrier requires or permits a motor vehicle containing Class A or Class B explosives to be operated, he must prepare a written plan of a route that complies with the rules in paragraph (a) of this section for that vehicle and must furnish a copy of the written plan to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the driver begins his trip at a location other than the carrier's terminal.

The issues raised by your letter concern the validity of three assertions.

1. The assertion that 49 CFR § 397.3 is intended to require compliance with local restrictions that are tantamount to a ban on the transportation of radioactive materials through or in the local jurisdiction.

In adopting § 397.3 on March 31, 1971, the Director of FHWA's Bureau of Motor Carrier Safety (EMCS) made the following statement:

. . . § 397.3 merely applies to vehicles transporting hazardous materials, a rule which has been in force for interstate carriers generally for many years (see 49 CFR § 392.3). No undue burdens appear to have resulted from requiring those same carriers to obey local and State laws. The only novelty in restating the rule in Part 397 is that it will now apply to interstate movements of hazardous materials by interstate carriers. The claim that this action will impose new and unbearable obligations appears to be an overstatement. 36 FR 4874, March 13, 1971.

The full meaning of the statement that ". . . § 397.3 merely applies to vehicles transporting hazardous materials, a rule which has been in force . . . for many years (see 49 CFR § 392.2)" becomes clear when the relationship between Parts 392 and 397 is understood. These Parts both contain driving and parking rules applicable to motor carriers (common, contract, and private) who engage in interstate or foreign commerce. The rules in Part 392 are of a general nature and are to be complied with by motor carriers without regard to the property being transported. The rules in Part 397 are additional driving and parking rules considered necessary to ensure the safe transportation of hazardous materials by motor carriers. When hazardous materials are being transported a motor carrier must comply with the driving and parking rules of both Part 392 and Part 397.

Section 392.3, referred to in the above statement, has been redesignated § 392.2 and is, except for minor language differences, identical to 49 CFR § 397.3. The substance of present § 392.2 has been in existence (under various other section designations) since 1952. Whatever the section designation, it has always been embodied under a part entitled "Driving of Motor Vehicles" having the same applicability as present Part 392.

Although § 397.3 was not adopted until 1971, there did exist for many years prior to 1971 other regulations (Part 397 and its predecessor Part 197) relating to the driving and parking of motor vehicles which transport hazardous materials. The addition of § 397.3 was made, along with other changes to Part 397, in an effort further to reduce the level of risks involved in the movement of hazardous materials. By adopting § 397.3, the EMCS gave specific recognition, as the ICC had under § 392.2 with regard to general driving rules, to the limits of Federal Government

authority and capability to establish rules governing all phases of the driving and parking operations of motor vehicles containing hazardous materials. As stated by the Director, BMCS, on March 13, 1971, "The only novelty in restating the rules (§ 392.2) in Part 397 is that it will now apply to intrastate movements of hazardous materials by interstate carriers."

Because Parts 392 and 397 both contain parking and driving rules and since § 397.3 is simply a restatement of § 392.2, differing only in that it has a limited application to motor carriers transporting hazardous materials, the scope of compliance with State and local laws, ordinances, and regulations that can be required under the language of § 397.3 cannot be broader than that required under § 392.2. An historical view of § 392.2 is therefore necessary.

The present form of § 392.2 was first seen (with minor language differences) as part of a major revision to the Interstate Commerce Commission's Motor Carrier Safety Regulations (49 CFR Parts 190-197) published on May 15, 1952 (17 FR 4422).^{1/} The predecessor of § 392.2 was contained in Part 192 - Driving of Motor Vehicles:

§ 192.3 Driving rules to be obeyed.

Every motor vehicle shall be driven in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless such laws, ordinances, and regulations are at variance with specific regulations of this Commission which impose a greater affirmative obligation or restraint.

In the ICC Report (54 M.C.C. 337) setting forth the general basis and purpose of the May 15, 1952 amendments to their Motor Carrier Safety Regulations, the Commission stated the following with regard to amended Part 192:

1/ Prior to the 1952 amendment to Part 192 the only reference to complying with State and local driving laws was with regard to speed limits:

In no event shall a motor vehicle be driven in or through any State, legal subdivision thereof, the District of Columbia, or any area under the control of the Federal Government at a speed greater than that permitted by such State, legal subdivision thereof, District of Columbia, or the Federal Government.

When the 1952 amendment to Part 192 was proposed on January 3, 1951 (16 FR 23), the then existing requirement of compliance with State and local speed limits was retained (see § 2.062 of January 3, 1951 proposal at 16 FR 26). When the proposals were finalized on May 15, 1952, § 192.3, as shown above, was adopted.

A number of driving rules in the proposed revision of this part are objected to on the ground that they are in conflict with certain State laws, local ordinances, and police regulations. It is not our intention to occupy this field either exclusively or in any great detail so as to supersede or duplicate local driving regulations, and in only a very few compelling instances such as, driving while under the influence of alcoholic beverages, stopping of certain vehicles at railroad crossings, and placing of emergency signals for stopped or disabled vehicles, do we think it necessary to prescribe rules of this nature. We have reviewed the proposed revision with this in mind and with a few exceptions, such as indicated, those rules which would fall into the category of State or local driving regulations are not being adopted. Instead we are prescribing a rule which provides that motor vehicles shall be driven in accordance with the laws, ordinances, and regulations of the jurisdiction in which they are being operated, except to the extent that specific regulations of this Commission impose a greater affirmative obligation or restraint. (Emphasis supplied.)
54 MCC 337, 348.

The rules that "fall into the category of State or local driving regulations" that "are not being adopted" number 22. In the proposal of January 3, 1951, they are identified as follows:

- § 2.03 Reckless driving forbidden.
- § 2.061 Speed must be reasonable and prudent.
- § 2.062 Legal limits must be observed.
- § 2.063 Reduced speeds during periods of darkness.
- § 2.065 Traffic signs, signals, markings or devices must be obeyed.
- § 2.11 Keep to right.
- § 2.121 Maintaining adequate space between vehicles.
- § 2.122 Following too closely.
- § 2.133 No gear changes on crossings (precautions at railroad grade crossings).
- § 2.134 All drivers must ascertain that the course is clear (precautions at railroad grade crossings).
- § 2.143 All drivers must ascertain that the course is clear (precautions at drawbridges).
- § 2.15 Other users of highways must not be endangered.
- § 2.161 Vehicle must be in proper position for making turns.
- § 2.162 Extreme caution to be exercised in making turns.
- § 2.163 No "U" turn on curve or crest of grade.
- § 2.17 Special care in overtaking or passing.
- § 2.18 Overtaking must not be prevented by speeding up.
- § 2.20 Overtaking and passing buses.
- § 2.25 Not more than four road-lighting lamps to be illuminated.
- § 2.27 Minimum visibility requirement for road-lighting lamps.
- § 2.28 Spotlight must not blind other users of the highway.
- § 2.32 Lamp[s] or flag[s] on projecting load.

By deleting the above sections from the final rule the Commission did not intend that motor carriers be free from regulatory control with regard to that category of regulations. The deletion of those sections and the adoption of § 192.3 were effected in recognition of the interest State and local authorities have with regard to the driving and handling of motor vehicles within their jurisdictions. Requiring motor carriers to comply with State and local driving laws, ordinances, and regulations did no more than fill the gap in the Federal driving rules left by the deleted sections. As such, § 192.3 was intended to require compliance with State and local laws, ordinances, and regulations of the type addressed by the deleted sections identified above and did not require compliance with State and local laws, ordinances, and regulations relating to other matters.

This conclusion has been supported by both the ICC and the FHWA. I direct your attention to a March 14, 1955 opinion (L-25077) by the Director of ICC's Bureau of Motor Carriers. The opinion was given in response to a question of whether carriers subject to the Commission's Motor Carrier Safety Regulations may be required to comply with hours of service requirements of the State of New York while engaged in operations in interstate or foreign commerce. It appears from the opinion that New York was relying on § 192.3 as the basis for requiring the carrier to comply with the State law. The opinion reads in part as follows:

You are correct in your assumption that section 192.3 was intended to require compliance with State and local driving rules of the kind contained in Part 192, unless a comparable Commission regulation imposes a greater affirmative obligation or restraint. You will note that Part 192 covers what might be called the mechanics of driving and handling of vehicles.

In a more recent interpretation issued on October 23, 1975 (40 FR 50671), the FHWA's Bureau of Motor Carrier Safety said the following with respect to the scope of § 392.2 (as before stated, § 192.3 is the predecessor of § 392.2):

Since this rule is contained in Part 392 and not among the 'General' regulations in Part 390, the Bureau takes the position that it was intended to relate to State and local driving laws and regulations roughly comparable to those in Part 392, including safe loading, but not to include State laws and regulations relating to other matters.

Because 49 CFR § 392.2 cannot be read more broadly than to require compliance with State and local laws, ordinances, and regulations relating to the "mechanics of driving and handling of vehicles" of the type contained in Part 392, and since the scope of compliance with State and local laws, ordinances, and regulations that can be required under the language of § 392.3 cannot be broader than that required under § 392.2, I must conclude

that § 397.3 cannot be read more broadly than to require compliance with State and local laws, ordinances, and regulations relating to the "mechanics of driving and handling of vehicles" of the type contained in Part 397.

It is my opinion that local restrictions that are tantamount to a ban on the transportation of radioactive materials through or in the local jurisdiction cannot be considered to be related to the mechanics of driving and handling of vehicles of the type contained in Part 397 and, as such, are not required to be complied with under § 397.3.

2. The assertion that the "no practicable alternative" proviso of 49 CFR § 397.9 refers to alternate modes of transportation, as well as alternative motor vehicle routes.

The express language of § 397.9(a) speaks to this issue:

Unless there is no practicable alternative, a motor vehicle . . . must be operated over routes which do not go through or near heavily populated areas, . . . , or alleys. (Emphasis supplied.)

Section 397.9(a) thus addresses itself to the behavior of motor vehicles and indicates that the operators of those vehicles are to choose less populous routes. To interpret § 397.9(a) to require a motor carrier to consider other than motor transportation as a "practicable alternative" would take that section beyond the scope of the particular statutory authority under which it was issued (18 U.S.C. 834 and 49 U.S.C. 304). That authority is limited to regulating for the safety in highway transportation.

Clearly the regulation could have gone so far as to prohibit the transportation of hazardous materials ". . . through or near heavily populated areas, . . . , or alleys." A motor carrier would then have the alternative of finding an alternate motor vehicle route or refraining from carrying the material. That the rulemaking authority was not exercised to that extent in § 397.9(a) is made clear by the language of the section.

It is therefore my opinion that the "no practicable alternative" proviso of 49 CFR § 397.9 is not intended to require a consideration of the practicability of transportation modes alternate to the motor vehicle.

3. The assertion that local restrictions on the transportation of radioactive materials through a metropolitan area, when tantamount to a ban, merely effectuate the policy embodied in 49 CFR § 397.9 of avoiding heavily populated areas when transporting hazardous materials.

The DOT recognizes that certain risks are associated with the transportation of hazardous materials and has, by regulation, taken steps to reduce those risks to a level that will ensure safety in transportation.

Certain materials, regardless of packaging and handling precautions, present so great a risk to safety that they are prohibited from being transported in commerce.^{2/} However, § 397.9(a) addresses itself to those materials that are not prohibited from being transported. That section reflects the DOT's determination under its statutory responsibility (18 U.S.C. 834 and 49 U.S.C. 304) that the risks associated with those materials, when transported in accordance with DOT regulations, do not require a prohibition on their movement through populated areas by motor vehicles. This is consistent with my conclusion that § 397.9(a) does not require a consideration of the practicability of transportation modes alternate to the motor vehicle in order to avoid those areas.

Because § 397.9(a) does not go so far as prohibiting the motor transportation of hazardous materials ". . . through or near heavily populated areas, . . . , or alleys", I must conclude that a local restriction establishing such a prohibition cannot be said to effectuate the policy of that section.

Sincerely,

ORIGINAL SIGNED BY
John Hart Ely

^{2/} For examples of prohibited materials, see 49 CFR §§ 172.5, 173.21 and 173.31.

1977 Hazardous Materials

Training Conducted by the Transportation Safety Institute

<u>Course</u>	<u>Participants</u>	<u>Number of Classes</u>	<u>Number of Students</u>
Air Transportation of Hazardous Materials	FAA Safety Inspectors	4	63
Motor Carrier Transportation of Hazardous Materials	FHWA Investigators; State personnel	3	69
Air Transportation of Hazardous Materials (Industry)	Air Carrier, Air Taxi, Air Shipper Personnel	5	92
Intermodal Transportation of Hazardous Materials	Industry and State Personnel	2	37
Rail Transportation of Hazardous Materials	FRA Inspectors	1	16
Transportation of Hazardous Materials Seminars	Industry and State Personnel	9	748
Nonresident Programmed Instruc- tion (Consumer Commodities)	Industry and Govern- ment Personnel		157
Emergency Services Workshop	State Training Officials and Emergency Services Personnel	22	983
		<u>46</u>	<u>2,165</u>

Attachment C

HAZARDOUS MATERIALS EDUCATIONAL PROGRAM

<u>Sponsor</u>	<u>Orientation</u>	<u>Sessions</u>	<u>Attendees</u>
FAA	Aviation Safety Inspectors.....	198	1,584
	Air Carriers, Freight Forwarders, Shippers, Aircraft Operators, Other Industry Personnel.....	426	24,000
USCG	Industry	13	
	Coast Guard Personnel.....	18	360
PHWA	Industry and State Personnel.....	1,044	64,320
FRA	States, Rail Carrier Operating Personnel, Shippers	58	4,800
MTB	Industry, State and Federal Personnel.....	11	1,676
	Emergency Services Personnel.....	8	479
	Trade Associations, Other Industry Meetings.....	5	236
	Total	1,781	97,455

Materials Transportation Bureau
Hazardous Materials Awareness Seminars in 1977

	Date	Location	Attendees
Multimodal	March 8-9	Anchorage, Alaska	150
	March 11-12	Fairbanks, Alaska	100
	September 28-29	San Antonio, Texas	85
	December 13-14	Newark, New Jersey	225
	December 15-16	Newark, New Jersey	140
Government Agencies	April 19-21	Cape Kennedy, Florida (National Aeronautics and Space Administration)	92
	May 17-19	Oakland, California (General Services Administration)	600
	May 24-26	Sunnyvale, California (National Aeronautics & Space Administration)	95
	June 20	Richmond, Virginia (Defense Logistics Agency)	60
	July 26-27	Huntsville, Alabama (National Aeronautics & Space Administration)	95
	September 14	Arlington, Virginia (General Services Administration)	25
Emergency Services	January 25	Alexandria, Virginia (Cameron Station HQ US Army DGLGC)	12
	January 25	Kenilgton, Maryland (Fire Department)	37
	February 1	Baltimore, Maryland (Fire Academy)	80
	February 3	Baltimore, Maryland (Fire Academy)	80
	February 15	Baltimore, Maryland (Fire Academy)	80
	February 17	Baltimore, Maryland (Fire Academy)	80
	March	Washington, D.C. (Pesticide)	27
	March 10	Anchorage, Alaska (Fire Department)	60
	March 13	Prudoe Bay, Alaska	35
	Other Organizations	March	Atlanta, Georgia (National Conference of Transportation Specialist)	15
March		Burlington, Massachusetts	49
April 20		Olean, New York (Enchanted Mountain Traffic Club)	65
May 2		Lexington, Kentucky (Explosive Seminar Commonwealth of Kentucky Department of Mines & Minerals)	32
May 11		Montreal, Canada (American Society of Cleaners and Solvents Lubrication Engineers)	75

Mr. ROONEY. Thank you very much, Mr. Santman.

The Chair recognizes the gentleman from Illinois, Mr. Madigan.

Mr. MADIGAN. Thank you, Mr. Chairman.

Mr. Santman, as you are using the term "transport vehicles," what do you mean that to include?

Mr. SANTMAN. Trucks, railroad cars, vessels, barges, aircraft.

Mr. MADIGAN. Things that might be transporting hazardous materials?

Mr. SANTMAN. Yes, sir.

Mr. MADIGAN. What percentage of the spill incidents in the past 24 months have included trucks only?

Mr. SANTMAN. I am not sure that I can give you a precise breakdown in terms of spills. The incident reporting system that I made reference to is keyed to receiving reports of releases of hazardous materials.

That may be leakage from a paint can, release of some vapor or something to the extreme involving an entire railroad car.

Mr. MADIGAN. Would you have figures on how many transport vehicles have been involved in accidents resulting in spills?

Mr. SANTMAN. I believe in the rail mode, the Federal Railroad Administration may have provided breakdowns along those lines at the time of Mr. John Sullivan's recent appearance before this committee.

Many of the releases we are talking about do not involve a collision of a truck or a derailment. I believe we can provide you with such a breakdown.

I do observe the number that we quoted you, approximately 14,000 of the 16,000 reported releases were in the highway mode, which is a pretty consistent figure.

It is one that you can trace back through the years with very little variation.

Mr. MADIGAN. That may or may not relate to accidents.

Mr. SANTMAN. That is correct.

Mr. ROBERTS. I might point out the incident reporting program has been in effect since 1971, and many of the incidents reported to us do not involve collisions or derailments.

An incident quite often involves handling across the freight dock, where a package is dropped or is discovered to be defective, and does not involve a transportation accident in the sense of a vehicle going off the roadway.

A vast number of the reports we receive are of this type of incident. Given a specific time frame, we could provide information as to those involving derailments or vehicle collisions going off the roadway, and give you a breakdown of that for a given period of time if you desire.

Mr. MADIGAN. I am interested in determining or seeing if you can determine if the incident of spills, as a result of accidents, is on the increase, is on a constant figure or exactly what it is.

Mr. ROBERTS. This is a common question and we often have the press coming down to our office and looking at our statistics, charts, and tables and things like that.

Keep in mind the program started in the year 1971, with the full-blown regulatory requirement that reports be made.

The first year, I believe, we received 1,200. Last year, I believe we received 16,000.

This does not give us any trending. It tells us we have improved compliance with the reporting requirement.

What we have done is to take, for example, the largest motor carriers and if we receive no reports in a given period, we notify the Federal Highway Administration to go and check. We can't accept the fact that they would have zero reports.

We have had much improved compliance with the reporting requirements. There is no way we can state there is an increasing trend in the number of accidents.

As a personal opinion, based on the volume of material moving, I would say it would probably be the other way for each of the transportation modes; there were fewer accidents. This is strictly a personal opinion and is not based on figures.

Mr. MADIGAN. Fewer accidents per what?

Mr. ROBERTS. Just straight numbers, not miles traveled. We attempted to break down the statistics in a number of fields but we have never attempted to do it by ton mile.

Mr. MADIGAN. Is it reasonable to assume there was more of this material moving by transport vehicle in 1978 than there was in 1972?

Mr. ROBERTS. Yes, sir. One of the major factors overlooked in recent years—as recently as 2 years ago—the Wall Street Journal in New York City quoted me as saying that approximately 4 billion tons of this material was being transported annually.

In the last 10 years, we have regulated a whole new range of material. Diesel fuel is now subject to our regulations, whereas in 1969 it was not subject to our regulations.

This has resulted in a vast increase in our regulated population of materials.

I think we can all accept the fact there has been a growing amount of hazardous material being moved each year as our economy expands, but it is not anywhere near the statistics shown in the press.

Mr. MADIGAN. It is sheer suspicion, although the volume of this material moving has increased, the number of incidents of actual spills has decreased?

Mr. ROBERTS. I wouldn't say that for actual spills, based on the figures we have. Based on fatalities and injuries where we have pretty solid data disregarding the recent events in Florida and Tennessee we have not seen any severe or serious growing trend in the number of fatalities.

I believe 1976 was one of the lowest years on record. It was much lower than 1975. These injuries and fatalities are those resulting directly from the transport of hazardous materials.

That is probably the best way we have knowledge on this. The consequence of the injuries and fatalities. I have not seen any growing trend.

Statistically, in the years 1975, 1976, and 1977, our average fatality for railroad transport of hazardous materials was one per year.

This year, 1978, we all know the story.

Mr. MADIGAN. How many of the 13 stiff penalties mentioned in your testimony were levied against railroads?

Mr. SANTMAN. I have to take you back to some other parts of my testimony that I perhaps brushed over a little lightly in summarizing.

In the way the Secretary has delegated enforcement responsibilities in the Department, he has attempted to utilize, to the maximum extent

possible, the existing field forces of the major operating Administrations—the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the U.S. Coast Guard. They have the principal responsibility for inspecting and carrying out whatever enforcement actions flow from those inspections of the rail carriers, the air carriers, and the highway carriers, and the water carriers.

The principal area of the fifth and perhaps junior member of the organization, in terms of size, is our enforcement and inspection activity aimed at the gaps in the system, so to speak.

We address primarily container manufacturers and intermodal types of operations. For example, the largest civil penalty action that we have completed since we started actively pursuing enforcement activities last fall involved what we called an intermodal tank.

This is a portable tank that can be moved on board the deck of a ship, on a truckbed, and on railroad cars. This enforcement action would perhaps have fallen through the cracks if left to a single operating administration.

We traced it through its labyrinth and found there was a leasing operation that did not perform the required periodic test and inspections and these tanks were being used to carry an extremely hazardous material.

That is the nature of the Bureau's enforcement activities. We will not be directed at going to a particular mode, but aiming at things that would tend to not be squarely addressed by FRA tank car inspectors, or Coast Guard vessel inspectors or the FAA aircraft inspectors.

Mr. MADIGAN. You have responsibility for inspecting containers being loaded on a ship but you have no responsibility for inspecting railroad tank cars?

Mr. SANTMAN. No, that is not the impression I was trying to give you.

We do go to the container manufacturers. We have a lot of emphasis on compressed gas cylinders on the front end, on inspection and introduction into the marketplace, where shippers use them and rely upon the markings on those containers as being proper.

We would get into a waterfront or railyard inspection only as a natural followthrough on something that we picked up, either through a complaint that involved an intermodal activity or as an outgrowth of some inspection of the container business, the packaging business.

Mr. MADIGAN. Your Agency, as I understand it, would not be able to make a realistic estimate of how many incidents of chemical spills, hazardous chemical spills occurred 5 years ago or 10 years ago.

You would have no way of telling the subcommittee what that number would be?

Mr. SANTMAN. I think we could give you some readings on that.

To go back to a description of our incident reporting system, we would get a report on very minor things as well as a very major thing, and we could go back and sort out those reports.

For example, one of the things that we do internally each month is to have the person who runs the incident reporting system give us a breakout of every incident reported in the previous month in which there was a death, injury, or cause for moving people out of a community, or some kind of an evacuation.

That kind of indicia is one we enter into our data bank. I would imagine we could establish some other kind of indicia in terms of dollar damage.

I am not quite sure how we would equate spills. A 5-gallon paint can could be a spill and so could a 10,000-gallon paint release.

Mr. MADIGAN. You mentioned your cooperation with agencies within other countries. Is this an international problem?

Mr. SANTMAN. Yes, I believe it is.

I would ask Mr. Roberts to respond to questions on that because he has been our principal agent attending those international meetings.

He recently returned from a series of meetings in Geneva.

Mr. ROBERTS. I believe you will find this has been an equivalent problem with other countries. I don't consider it to be major relative to other safety problems we are faced with. The Netherlands have had a number of hazardous materials accidents.

Several have been reported in Rotterdam. There was one major one on one of their freeways. As a result, they have increased the standards for hazardous materials compliance and enforcement.

They told me they had 44 full-time hazardous materials inspectors in the Netherlands on the highways and in the railroad yards looking at hazardous material shipments, most of which are international in nature.

Mr. MADIGAN. Thank you, Mr. Roberts and Mr. Santman.

Thank you, Mr. Chairman.

Mr. ROONEY. Thank you, Mr. Madigan.

Mr. Santman, how many inspectors do you have?

Mr. SANTMAN. We, in the Bureau, have eight positions dedicated to field inspection work at this time.

Mr. ROONEY. How can you do a job effectively with eight inspectors?

Mr. SANTMAN. We are dependent, in large measure, on the operating administrations and the resources they bring to the field in examining shipments at airport terminals, in examining railroad tank cars, in examining vessels and waterfront leakages and discharges.

Most of the numbers that I quoted to you in terms of inspections performed during 1977 are attributable to inspections carried out by personnel from our operating administrations.

In other words, the inspection and enforcement business is divided five ways in an effort to avoid duplication; that is, to avoid having another body of inspectors calling on the same railroads that have the FRA knocking on their door; to avoid having another body do inspection followed by OSHA and the FAA at the airport terminals. The Materials Transportation Bureau, the organization I represent here today, has conducted enforcement activities, but; our modest efforts we have utilized people whose expertise is aimed not at transportation vehicles but more at the engineering and the technology associated with the materials themselves.

We have what I believe to be some of the top people in the compressed gas cylinders area, and certainly one of the Nation's finest men in explosives, that we use to do our inspections and point out problem areas. They assist in backing up the operating administrations people who are specialists in vehicles.

Mr. ROONEY. With the incidents increasing by some 34 percent why has the number of investigations decreased from 790 to 713?

Mr. SANTMAN. I can only report that comes to me from the operating administrations.

Mr. ROONEY. I would suggest you check the source of your information because that is a shocking statistic, in my opinion.

Mr. SANTMAN. I might mention to you, sir, the Secretary's concern has caused it to be a topic for rather thorough discussion in advance of his 1980 budget planning.

Some time during the month of May, in connection with laying out his priorities and budget requests for fiscal year 1980, my office has been instructed to provide help for his immediate staff with a series of questions and probings that go on the path that you suggested, sir.

Mr. ROONEY. Mr. King, obviously, is not satisfied with your performance. Do you want to comment on that?

He mentioned that in his testimony earlier.

Mr. SANTMAN. I am quite aware of how the NTSB feels about the retrofit schedule, that couplers and headshields can be on the 22,000 cars out there by Christmas, at the end of the year.

Mr. ROONEY. You don't think that is possible?

Mr. SANTMAN. We conducted a hearing last week—Mr. Roberts sat as a member of that panel—on Friday, and the group collectively will be providing its advice to the Secretary, and I guess, technically to me, on the question of whether or not that schedule can be changed.

I think there will be two separate pieces: One, the coupler, and second, the headshield, which is a more difficult question to examine in terms of possible shortening of the period.

Mr. ROONEY. Didn't he testify that it took 91 or 92 minutes?

Mr. SANTMAN. I believe that is what he said.

Mr. ROONEY. Do you want to comment on that, Mr. Roberts?

Mr. ROBERTS. There is no dispute as to the display held on Independence Avenue as to the timetable. What was not taken into account was the logistics, getting everything together to do the job.

For example, I think your staff may find it beneficial to get a copy of the testimony made by Mr. J. R. Kruizenga, president of Union Tank Car Co., who gave the opposing view in terms of all the problems, such as the building of a plant in Texas at a cost of \$6 to \$9 million.

He pointed out that it took a year to get EPA approval for the disposal system. When you clean and purge a tank car, you can't dump the material out on the ground.

There are other agencies involved in this also that affect this timetable. The 7.5 minutes to put the coupler on is only a part of it.

That is to say, it only takes a few minutes to build an automobile, but how far back in the production cycle do you have to go in gathering all the part and the pieces for the automobile?

We are taking a very serious look at the timetable. I don't think there is any great disagreement between us and the NTSB regarding the timetable. It should be accomplished as rapidly as possible.

This is what we are going to attempt to do.

Mr. ROONEY. In light of the safety board's testimony and your testimony on the central reporting system, perhaps the act should be amended to repeal that particular section. What are your views on that subject?

Mr. SANTMAN. I believe the safety board's comments here today were aimed at our reliance on the CHEMTREC system for providing response information.

We have, in the response guide you have—we have distributed roughly a half million copies of that—on each of the 42 pages, where we provide that first 30-minute guidance, made mention of CHEMTREC and its phone number for obtaining additional advice.

We participate—again, Mr. Roberts is our key persons in this—in an overview of the management and operation of CHEMTREC and the establishment of the kinds of information they provide.

We see benefits to maximizing utilization of industry resources in this regard.

To date, we find, and we expect it to continue, that the CHEMTREC operation is provided in an objective manner.

There has not been reluctance on the part of the management of CHEMTREC to come forward and provide at no cost to the Government, but with a willingness to be guided by our advice, very solid information.

I think that that provision of the act talks about two things.

It talks about collecting data and it also talks about providing assistance and advice to the local management response people.

Of course, the comments I made go to the second part, providing emergency response information.

Mr. ROONEY. I will direct this question to Mr. Roberts. What is the time element between when a new material becomes available on the market, when it is determined to be a hazard and when the regulations governing the packaging and the transportation take effect?

Mr. ROBERTS. That is a good question, sir.

Mr. ROONEY. That is why I asked it.

Mr. ROBERTS. I think it is important to realize that we operate what I call a negative regulatory program.

I never come up with the best terms. I am sure the lawyers could do a better job. We have a complete listing of criteria, what we consider to be hazardous materials classifications: explosives, flammable solids, toxic materials, radioactive materials, et cetera.

We define these classifications.

A lot of people look at our commodities list, and in the commodities list are a number of generic terms backed up by specific quantitative definitions.

There may be more than 20,000 materials covered by the regulations. That is probably not a bad guess when we take into account formulations for such things as cosmetics.

You may not ship a material if you invent it today unless you ship it in compliance with our regulations.

It is either given a specific name in our regulations or we regulate it under a generically described class. It isn't a matter of creating a term. It is a hazardous material according to our regulations, and the classification guides the shipper in terms of shipping it or transporting it today, so there is no time lag from this standpoint.

The time lag comes in recognizing the innovations of industry—the people who feel they have a better way of moving the materials or such things as the 5-mile-an-hour bumper for an automobile. General Motors submitted a petition for rulemaking. We didn't want to register 13,000 General Motors dealers under an exception to ship the automobile with these bumpers on them, which we regulate.

Mr. ROONEY. I wonder what your relationship is with OSHA.

Mr. SANTMAN. There are a number of areas where the transportation business in Government got on the scene first, so to speak. Compressed gas cylinders is an example.

Mr. ROONEY. Do you have an overlapping or a conflicting jurisdiction?

Mr. SANTMAN. Yes; we have. It depends on how we exercise it. On the face of statutes, certainly, we have overlapping jurisdiction.

Mr. ROONEY. Don't you think that is unfair?

Mr. SANTMAN. I am not sure how you turn it off. Let me give you an example.

Under our regulations governing the transportation of radioactive materials by aircraft, we have a fixed limitation of not more than 50 TI on an aircraft. That is a technical term that describes the total outside radiation effect.

Because of the growing use of radioactive pharmaceuticals there have been a number of specialized carriers who have come to us and asked for an exemption to carry more than 50 TI. These carriers are dedicated exclusively to carrying radioactive pharmaceuticals to supply hospitals and cancer research centers.

To us, this had a great appeal. We preferred to have them in the hands of specialists who are used to handling them and who know what they are doing.

So, it was an attractive request, from our viewpoint.

On the other hand, we saw that people who were doing that handling were going to be handling a greater volume. What we did in that regard was to incorporate by reference to OSHA guidelines, requirements for workers in radioactive plants and facilities. In that case, we have utilized one of their standards and borrowed on it and incorporated it.

They, on the other hand, have utilized some of our materials. They have given recognition to the way we label or require items to be labeled in transportation.

Those same labels stay on when it goes into the workplace and they serve OSHA's purpose.

So, I don't think it is an area that one can draw a nice, hard line and say that each of you should stay in your own backyard.

I think there are certain advantages to bit of cross-fertilization. It is up to us who are in the agencies to minimize the adverse impacts on the industries that are at this interface between transportation and workplaces.

Mr. ROONEY. I wonder if you will tell the committee what the Bureau is doing in relationship to the transport of carcinogenic materials.

Mr. ROBERTS. We issued an advance notice of proposed rulemaking more than a year ago on this subject under the term environmental health effects materials.

Since that time, the major part of the activity from my office, in this particular area, has been addressed to trying to come up to speed with the EPA on hazardous waste regulations.

So, by and large, we are well behind EPA and OSHA looking at carcinogens.

I issued a notice of proposed rulemaking several months ago on asbestos for transportation purposes. That is presently an open rulemaking action before us concerned with the potential risks of asbestos in the transportation environment where we would attempt to lay out transportation controls for that portion of the business.

Mr. SANTMAN. Mr. Chairman, Mr. Roberts' mention of hazardous waste brings to mind a point I would like to make to the committee.

In a number of these areas, be it recombinant DNA carcinogens, hazardous waste, toxic substances, or matters which other agencies around town have recently received legislative authority to address, we are in the process of addressing that question.

Each of these presents a relationship to our business of regulating hazardous materials when they are in transportation.

I think we have seen, from our perspective, evolving a process whereby we can provide a degree of expertise based on our experience and our knowledge of the transportation industry in how these particular substances may best be regarded in terms of containers, shipments, handling, and paper while they are in transportation.

I believe the Resource Conservation and Recovery Act, which is the basic authority under which EPA is addressing hazardous wastes, contains a very wise provision.

It in effect said to EPA, you have the authority and indeed the responsibility to regulate persons who generate hazardous waste, persons who move it and persons who dispose of it.

However, in that middle ground, when you are talking about persons who move it, you should first go to the Department of Transportation to see what it could do under the Hazardous Materials Transportation Act in terms of addressing the concerns that you and EPA see in connection with its movement and transportation.

I think the relationship which has evolved between our organization and EPA, which is an outgrowth of that provision, is sound. We are cultivating it, and we hope it can be the foundation for dealing with such other things coming along as the Toxic Substances Control Act and its implementation and other items where the true technical expertise as to the hazard involved, whether it is a carcinogen, recombinant DNA or what, whether it is located in our national EPA, our National Institutes of Health, or whatever agency.

We believe what is happening in the resource recovery and conservation area in terms of hazardous waste is providing a good pattern and hopefully will be a guide for our own relationship with other agencies.

Mr. ROONEY. Which mode of transportation do you think is most effective in transporting hazardous materials?

The railway aides asked me this, so I thought I would pass it on to you.

Mr. SANTMAN. I think we are talking about the two commodities moved in bulk that are at the heart of the rail accidents, propane in the winter for obvious needs, industrial heating purposes, and anhydrous ammonia, which is really the heart of our farm industry's fertilizer, in the summer.

The other alternative for most of the places that you want to get it to, if you can't get it by rail or by truck, is a very limited amount of pipeline transportation.

Aircraft does not seem to be the appropriate means there.

So, with that question, irrespective of the kinds of accidents we have been having, rail does seem to be the preferred method for that particular substance.

When you talk about something else, for example, radioactive materials, perhaps air is the best method of transporting them.

We have, on occasion, been required to look at the question of moving high explosives to remote places.

Obviously, if we are trying to supply explosives for construction use and acetylene for construction jobs in the remote parts of Alaska, the only choice is aviation because of natural geography.

You could have a barge system in other areas for materials of a kind that provide less exposure for accidents.

It is hard to say one mode is safer or preferred for the transportation of hazardous materials.

Mr. ROONEY. On page 14 of your statement you say, "DOT must devote more attention to providing communities and emergency response personnel with the technical information necessary to respond to hazardous materials transportation emergencies when they do occur."

I do have a copy of the red book which I think happens to be an excellent start. But the red book, as I understand it, only governs the first 30-minute period, from the time of the incident. I wonder if you would tell the committee what recommendations you might have to cover tragedies like the one in Waverly, where I understand the tank car was sitting approximately 48 hours between the time of derailment and the explosion. Would you comment on that?

Also, I was wondering whether or not you were consulted during that 48-hour period.

Mr. SANTMAN. I do not believe we were. I would prefer to wait until the NTSB has laid out the specifics before attempting to second-guess what action was taken there.

I am mindful of the fact that both the police and fire chiefs were killed in the accident. I would observe that some of the requirements or some of the recommendations contained in our emergency guide do not at this point appear to have been followed precisely but, again, I would prefer to reserve specific comment until we have a good, solid recitation of the facts.

With respect to the words in the statement, we are very impressed with the NFPA course. The particular thing about it that I think is new is that it is structured in such a way as to be conducted by the training officer of a police department or a fire department, and he or she is encouraged to get a mix of people, not just firemen or policemen, but include a mix of people in that community—hospital people, State police as well as local police—and cause, in the context of this course, a cross-fertilization of thinking and get that combination of people looking at what is unique about their town.

Perhaps there are some facilities in that town that regularly require feeding of a hazardous material. If there is a Clorox factory in your city, you know it is going to be chlorine.

In farm communities, you know in the summertime there are tank cars and trucks moving all the anhydrous ammonia that is coming through.

Some of this is answered with commonsense that one would engage in if one had a little reminder.

This is one feature of this course that I think is a great new addition to what we can offer these local communities in terms of their emergency response planning needs.

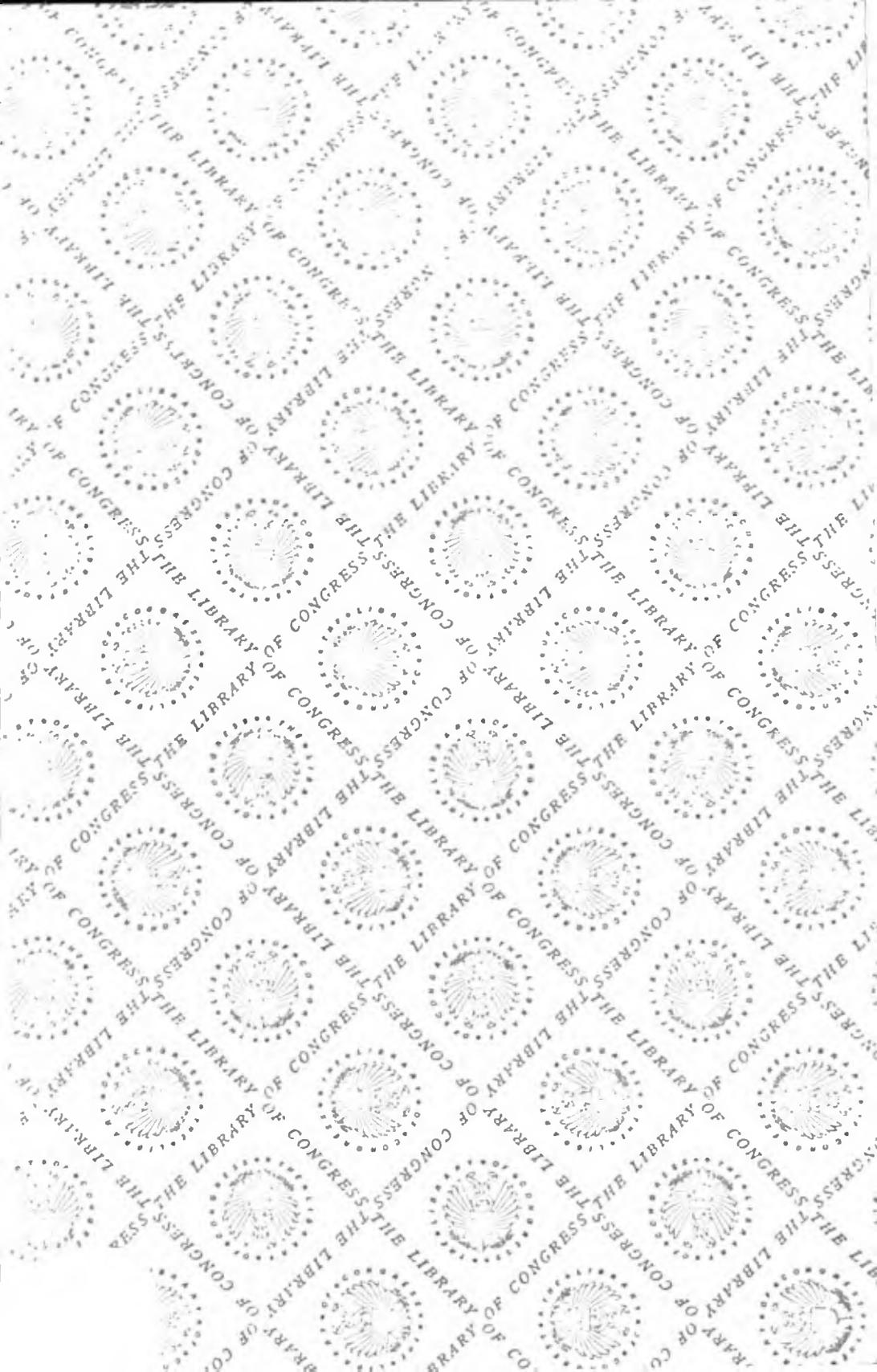
Mr. ROONEY. Thank you very much, gentlemen.

I appreciate your being here.

That concludes our hearing.

[Whereupon, at 11:25 a.m., the subcommittee adjourned.]

H 135 79





MAR 79

N. MANCHESTER,
INDIANA 46962



LIBRARY OF CONGRESS



0 018 387 295 3