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Meeting of the Assembly Legislative Task Force on the Transportation of Extremely Hazardous Materials

Assembly Transportation Committee

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MEETING OF THE
ASSEMBLY LEGISLATIVE TASK FORCE ON THE
TRANSPORTATION OF EXTREMELY HAZARDOUS MATERIALS

November 2, 1987
Los Angeles, California



Honorable Richard Katz, Chairman

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Hon. Jim Costa
Hon. Robert C. Frazee
Hon. Terry B. Friedman
Hon. Bev Hansen
Hon. Marian W. La Follette

Hon. Jack O'Connell
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Meeting of the
ASSEMBLY TASK FORCE ON THE TRANSPORTATION OF HAZARDOUS MATERIALS

November 2, 1987
Los Angeles, California

CHAIRMAN RICHARD KATZ: Good morning. I would like to introduce the members of the committee. On my left, Assemblyman Robert Frazee, who came up by Amtrak from San Diego, the Chairman of the Subcommittee on Mass Transit. That's appropriate. Assemblyman Terry Friedman on my right represents the west side of Los Angeles and parts of the San Fernando Valley. I'm Assemblyman Richard Katz.

The Task Force essentially has been created to deal with the transportation of extremely hazardous materials, and it came out of the concern that we all heard about. It started with the rocket fuel controversies on the Ventura Freeway. Its need became very evident when I met with the Commissioner of the Highway Patrol, Jim Smith, who expressed his own concern that everyone was focused on rocket fuel and no one was looking at the magnitude of the entire transportation industry, what was happening on the roads, what safety precautions were being taken, time of travel, etc. That's how this hearing came about.

This hearing and this task force are designed to look at the bigger picture, all the chemicals. As we said earlier, there are over 170 million tons of hazardous materials that are transported annually in California. Four to five million truck loads are shipped on California highways each year. Some of them are extremely hazardous; and the materials that you see on the chart on the far left are some of the 80 most hazardous gases, or have the potential to change into gas when they come into contact with air, that are transported.

Rocket fuel is just the tip of the iceberg. One of the most often transported materials on that list is chlorine. It's shipped as a liquid. It's used to bleach paper as wood pulp and textiles. A 32-foot spill of chlorine

requires an evacuation range one mile long by seven-tenths of a mile wide. So we're dealing with chemicals that have the potential to cause major problems -- major problems from a safety standpoint and a health standpoint, not to mention from a traffic congestion and gridlock standpoint.

The point of this hearing is to talk about how much is going, where it's going, how it's going, and whether we're doing the best job possible in protecting the public. There are a lot of questions that aren't answered.

We discussed a bill a little while ago that dealt with the toxic inhalants -- those chemicals on that list over there plus some more -- following the federal example, creating a separate category of toxic inhalants and dealing with it separately: routing after public hearings, notification of local safety officials, increased safety requirements for transportation. That's all going to be discussed as part of the Preprint; but as you'll hear in this hearing today, that's just one part.

We also are concerned about drivers' licenses and the qualifications of the people transporting the materials. The Department of Motor Vehicles has been working for some two and a half or three years now to try to implement a certification program in compliance with the 1985 law.

We have concerns about the time the materials are transported. We have concerns about the containers of the materials and the placard system. That's what this hearing is going to focus on. It is a fairly wide subject, but then again we have a lot to do.

To some extent it may seem that we're taking excessive measures or spending a lot of time on an industry that has an outstanding safety record. While the safety record is good, I don't think you can be too well prepared when it comes to dealing with chemicals that have the potential, underline potential, to cause the kind of devastation that these chemicals can.

With that, unless any of the committee members would like to make a comment, we'll start with the first witness. The first witness was supposed to be Supervisor Sunne McPeak, who has not gotten here yet, so I'd like to ask Chief Gary Girod to come forward, who is from the Hazardous Materials Section of Ventura County. Chief Girod is one of the people who has been vocal on this for a long time, and has been in Sacramento before toxics committees in the past. I appreciate you being here today, Chief.

CHIEF GARY D. GIROD: Thank you very much, Assemblyman Katz.

You asked me to discuss basically five points. Some are very general, very open-ended, and would be very difficult to cover in great detail. But I would like to try to give you an overview maybe from the perspective of the first responder.

As an instructor in hazardous materials, as an instructor teaching not only California Highway Patrol, police officers, and firefighters throughout the State of California, obviously we are the first ones on scene. We are the first ones who must deal with the emergency. We are the first ones who must make decisions relative to the toxicity of the material and what its potential is, not only to us, the first responders, but also to the general public, the surrounding public.

It's extremely difficult at best to make those initial decisions to either fight or run. When it's on the Los Angeles freeways, the Ventura and Santa Barbara freeways, we can't run. Our job is to protect the public. Our job is to rescue. Our job is to evacuate.

One point that I made in the rocket fuel hearings, one point that I want to bring out before your committee here is, where possible, if we can designate alternative travel routes for these extremely toxic materials, if we can place these materials on remote roadways, we do not have to deal with the emergency.

We can evacuate, if necessary. We can rescue. We don't have to jeopardize our firefighters. We don't have to jeopardize police officers and Highway Patrol to mitigate, contain, or deal with the emergency. We can let it take its course if no one is going to be hurt. We don't need to deal with the phosgene, with the arsines, with those materials that we don't even know the results of the potential toxic, cancer-causing capabilities long range in the future. The one key point I want to leave you with here today is, where possible, the transportation of these materials on remote roadways can eliminate the disastrous results of toxic vapor gas spread and the death and injury of multiple-thousands of people.

CHAIRMAN KATZ: On that point, we've had discussions before, and you always hear it's the trade-off question. Do you go to a two-lane road, where the potential for accident may be higher but the people you have to deal with in case of an accident are far fewer, as opposed to the Ventura Freeway, where the accident rate supposedly is less but there are more people? It seems you'd rather risk a little bit higher incidence of accident because it would be easier to contain or deal with the emergency.

CHIEF GIROD: One of the key things that we in the emergency services do in our training, in our tactical response, is to take the path of best resistance, not necessarily the least resistance. The path of best resistance in dealing with an emergency where people potentially are going to get hurt, especially with us the firefighters, is let it burn, let it blow up, let it do whatever it wants to do. When it gets finished, the owner by law must come in and clean up. If there's no one going to be hurt, we don't have to mitigate, dike, contain, plug the leak. If there's no one to be rescued or evacuated, we can watch it from a distance with binoculars and deal with it after it gets finished, not jeopardizing our personal safety.

That's the point I want to make. Law enforcement, Highway Patrol, and firefighters have an obligation to first of all protect themselves, secondly to rescue, thirdly to evacuate, and finally to save valued product if it has some value based upon the degree of hazard. But we don't have the responsibility to jeopardize our personal safety just to save product.

Firefighters and police officers are dying of cancer three to one over the general population. Now, there's a reason for that, and that reason is compounding itself drastically. And we in the emergency response services want you to be aware of our concerns.

Now, enough of that. I'd like to go into the safest road is not necessarily the safest route. That's the question you asked.

We have a freeway through the metropolitan Los Angeles area that is a city 40 miles long. You simply cannot expect to transport Class A poisons, toxic pesticides, the acids through a city 40 miles long and expect there not to be an emergency. If you transport these materials in remote areas -- the route that I laid out for the toxic rocket propellant, nitrogen tetroxide, only impacted less than 700,000 compared to 5.6 million people; and the transportation only took an hour and a half longer. So the safest road by roadway surface is not necessarily the safest route of travel based upon who's going to be responsible and take the blame when we have a leak, a fire.

One thing that's not been brought out in these hearings that we in the fire service are vividly aware of, you impinge flame on the upper vapor space of these tanks -- I don't care what's in it -- you impinge flame on it, the material is going to weaken, the pressure inside is going to build up, and what is going to occur is what we refer to as a BLEVE, the acronym for boiling, liquid, expanding vapor explosion. You will have a sudden release of the entire contents of that tank. How many transportation accidents are only leaks and not

fires? A lot are, but a lot of them are involved in fire. And those tank containers -- I don't care what it's made out of. You can make the safest tank in the world, you put it under fire and heat conditions and you put flame impingement on the upper vapor space of that tank, in a given period of time, sometimes less than 10 minutes, the metal of that tank will fatigue, the pressure inside will rupture it, you'll have it coming apart. The contents immediately will vaporize, burn, or explode; and you have a sudden release of the entire 6,000 to 10,000 gallons of commodity, whatever it is. That's happening across the nation day after day.

So the safest road is not necessarily the safest route. In my opinion, where we have the option, where the material is not coming into Los Angeles -- it's going north to San Francisco, but it's coming from back East -- there's no reason in the world why this material can't take a route out through the desert. It doesn't have to go by metropolitan Freeway 101 through Los Angeles. It can go an alternate route, and I recommend materials that are toxic inhalation hazards and materials that are Class A poisons under the Code of Federal Regulations -- and they're required by this Code -- to take the least traveled route and the safest route, but no one is able to monitor that route.

In my opinion, those materials should, on their shipping papers, have a designated route that they are to take away from metropolitan areas. If they are not going to transport to those areas, they need to take a route that is safe; and that's federal law now. They just do not do it. They take what they feel is the safest route based upon their convenience, and the law says it shall not be based on convenience.

But yet, who monitors it? There's no way of knowing.

First of all, the Highway Patrol doesn't have the resources or the personnel to deal with every truck that comes through their scales. In my statement here,

I've made some identification as to the problems; and I've discussed in great detail with the California Highway Patrol the problems associated with the trucking industry and the inspections. They are able to inspect between 5 and 8, maybe as high as 10, percent of the trucks that come through the Highway Patrol scales. That's all they have the personnel to inspect. Of those 5 to 8 percent, one out of every three trucks must be repaired -- by law, when given a citation, must be repaired -- before they can continue on the highway. That alone tells us the problem in the trucking industry. They're willing to take the chance of not getting caught because they know they can only inspect less than 10 percent of the trucks that come through the inspection scales.

The fines are too weak so it's worth it for them to take the chance. In my county, a misdemeanor hazardous material violation is \$250.00. They simply take the chance. If they get caught, they're willing to pay the fine. These fines have to be boosted, beefed-up; and in my opinion, the local judges should be mandated by state law that a fine of a minimum amount should be administered for misdemeanor hazardous material violation. There's just not enough penalty to warrant them complying with the law.

In my statement, I've identified a number of other things. Requiring notification -- yes, I think that's appropriate, but I think other things can be done and should be done, equally as important as the notification.

State and federal training to local authorities -- you asked me to comment on that. Assemblyman Katz, we do not even have one hazardous material training site in this state. We do not have one training site to train first responders in dealing with hazardous materials. We do not have one site where we can give hands-on, first-hand training. You can't do brain surgery unless you've been there under the tutoring of a brain surgeon. You mentioned a chlorine truck. You can't fight a hazardous material chlorine tank emergency unless you've had

hands-on simulated training. We don't have any training like that in the State of California. We do have that in other states. I just taught a class in Wisconsin, a small state like Wisconsin. They have two full-blown training facilities for hands-on training for their hazardous material first responders. We're very weak because we don't have the funds on the state level.

How are we going to get those funds? A number of ways.

CHAIRMAN KATZ: Assemblywoman La Follette had a question on that point, I believe.

ASSEMBLY MEMBER MARIAN W. LA FOLLETTE: I did. Last year the Governor signed into law AB 2702, which was to develop a statewide coordinated training program for all of those who are on the front line of fire, you might say. Have you been involved at all in that curriculum development? October, I understand, was the date for the curriculum to have been developed and prepared; and almost everybody in the State of California has had something to do with it, it seems. I say that a little bit facetiously because, as the bill moved along, everybody wanted to be a part of it. Certainly the fire departments are a part of it. The implementation of the program and the curriculum is supposed to be ready by at least the beginning of this next year for training and instruction in community colleges. Are you aware of that at all?

CHIEF GIROD: Yes, I am, and that's a good step.

ASSEMBLY MEMBER LA FOLLETTE: Well, as I understand it, it's the first step.

CHIEF GIROD: It's the first step. It's classroom training, and I don't have any problem with classroom training. That's fine, and the curriculum, as established, I'm all for. I've been involved in that curriculum development over the years. But the problem that I foresee is that there's not enough funding to get this material out to qualified instructors and to pay those instructors and to provide the first-hand, hands-on simulated training where

there are props, where we have a railroad tank car, where we have a truck, where we have a simulated spill, where we can exercise our acid suits, where we can, under controlled conditions, learn those things.

ASSEMBLY MEMBER LA FOLLETTE: Well, I understand the point you're making. So now that we have the curriculum developed, now that we're going to have classroom instruction, then the next major step is hands-on practice.

CHIEF GIROD: Yes.

ASSEMBLY MEMBER LA FOLLETTE: And certainly that should be tied in with AB 2702.

CHIEF GIROD: I agree, but we cannot pass this training on to the local junior college. We have to substantiate the validity of the training with state certified instructors.

ASSEMBLY MEMBER LA FOLLETTE: Yes, and actually there is a part of the measure -- the Office of Emergency Services, I understand, will also be conducting classes. Well, the points that you bring up are refinements, of course, for the improvement of an attempt to provide people who are well qualified and ready to respond to these emergencies.

CHIEF GIROD: The initial "hazmat" first responder, the person that has to do the actual hands-on work -- obviously our first engine companies will be there and will respond; but if they, through their binoculars, see that they cannot deal with it, then they're going to back off because they don't have the proper protection and gear to deal with it.

I might mention that we need three training sites in this state, one central, for north and central, and two southern training sites, to deal with this simulated hands-on training. We have a good start at CSTI-San Luis Obispo, and there's some projected planning for that. But the metropolitan southern California area is where most of the firefighters and most of the population is located, and that's where we need those training sites.

We need money to fund those sites so that we can have a systematic transfer of people in and out of there. One of the key areas, that I don't think you understand, is that we just can't send a firefighter to training. We have to fill that fire station behind him. That costs money, and the fire chief cannot fund the overtime necessary to fill up that fire station while the individual goes for training. So there needs to be funds available to take care of that training requirement from a budgetary standpoint.

I've identified some alternatives to funding on page 4 of my document. I did not identify there the hazardous material violations for the trucking industry. I really feel strongly that the trucking industry, where the accidents are occurring, along with the shipper of the material, should be funding the statewide first responder emergency training -- primarily for law enforcement, Highway Patrol, and firefighters.

I'm very discouraged with the way the new state law is going to allow drivers of hazardous materials to go into the Department of Motor Vehicles and take a multiple-choice test and go jump in their trucks full of phosgene and drive it down the road.

CHAIRMAN KATZ: Are these the new state regulations the Department...?

CHIEF GIROD: New regulations they'll be running out next year. The way I understand it -- and I've talked to the people who are in power and are making the decisions now -- the way it stands now, the only requirement to drive hazardous materials in the State of California, when these new regulations are adopted, is that they pass a supplemental multiple-choice examination. As you well know, those examinations get out. A person that can barely read English can study the examination and pass the test, and then they can drive hazardous material, including the Class A poisons. There needs to be tighter regulations. There needs to be a way to certify that a specific quantity and quality of

training be accomplished prior to being able to take that test. I really feel that, if this slips through and next year an individual can go in and take a multiple-choice test and have his driver's license stamped hazardous materials, we will be the losers. There needs to be tighter, much tighter, regulations for quantity and quality of instruction.

CHAIRMAN KATZ: Have you been involved with the process DMV's been going through since 1985?

CHIEF GIROD: Yes.

CHAIRMAN KATZ: I would assume they started out somewhere much tougher than a multiple-choice test. What's basically been happening with the process?

CHIEF GIROD: Well, initially they had the multiple-choice test, but they had to bring in a certificate of training to indicate that they had been trained. That's not going to happen, the way I understand, now. All they have to do is take the test. I believe personally that there should be specific audiovisual training aids available to the employer, who has the responsibility to ensure that his truck drivers are trained, that the responsibility to provide for his drivers specific quantity and quality training needs to be mandated by the state. It needs to be verified at least that the employer can substantiate that he has given, or has contracted with somebody to give, his people training. They have had x-number of hours of quality training, and they did pass the state test. That's at least the absolute minimum that we should be doing.

A question?

ASSEMBLY MEMBER LA FOLLETTE: Yes, just before you leave that subject. Aren't they liable now? The person who hires a truck driver -- aren't they liable now? But you think that an additional certification or some kind of affirmation that they're going to sign is going to make a difference to them?

CHIEF GIROD: There's a certain amount of liability attached to the owner of a trucking firm who substantiates that his drivers have had a certain quantity and quality of training and then they've passed the state test. To my knowledge, all the state law requires is that they must do some training. Now, the biggest problem is they don't document that training, if they do the training.

ASSEMBLY MEMBER LA FOLLETTE: I know, but what I'm saying, in actuality a good lawyer can make a good case against that trucking company who hired that driver who wasn't prepared and became involved in an accident. So my question is, is it really going to make much of an impact on them if they have to sign it? I suppose if they see something they actually have their name on, it might reinforce the idea to them.

CHAIRMAN KATZ: The owner liability they have at this point, I believe, is the general liability as a business person. There's no specific liability. There's no extraordinary training required. There's no liability for not training them. I think what the Chief is going after is a specific liability for failure to train the drivers. There is no liability attached to that. There's just your normal operating business liability at this point.

CHIEF GIROD: Yes, there's federal law under CFR Title 40 that says they must train their people, but it doesn't say how or how much or require a verification. It just says they must.

CHAIRMAN KATZ: Training the people could mean giving them the answers to the multiple-choice test.

CHIEF GIROD: That's correct. The state has done a good job of breaking that requirement down into specific identifiable modules of training. What I'm suggesting is that each employer be required to substantiate that their employee has been trained in that specific material, rather than to just pass the buck

and say, "Well, if you want to work for me, go take the test. If you pass the test, you can work for me." And there's no requirement for the employer to ensure that he has the capability of driving hazardous material.

The other thing that I want to mention is that we, the first responders, have a difficult time identifying the material. The Department of Transportation placarding system is okay, but it's not adequate. They don't even have to placard Class B poisons, and they don't even have to placard until they have 1,000 pounds. Yet four drops of methyl parathion on the back of your hand, by skin absorption, will kill you; and they don't have to placard that until they have 1,000 pounds on the truck. That holds true with many of the pesticides and many of the other materials. The Class A poisons, those gaseous poisons such as these listed toxic inhalants here, these are required to be placarded no matter what the quantity. One ounce, one pound, one stick of dynamite has to have a placard, but there are other materials that are extremely toxic with no placarding requirements until 1,000 pounds under Table I and Table II commodities. That needs to be more restrictive with certain materials such as these that we see here.

The other thing that we need for our first responders, for the Highway Patrol officer who's first on the scene, for the firefighter who's first on the scene -- material safety data sheets are required in industry to be made available to the worker. Yet there's no material safety data sheet required in any of the trucks on any of the highways. At an absolute minimum, the Class A poisons, the toxic inhalation hazards, and the live, disease-causing materials should have stapled to the shipping paper a material safety data sheet. We deserve the opportunity of looking at what this material is and what it will do to us and how to deal with not only the clean-up, but of understanding its toxic properties and its hazardous characteristics.

We have to reference our own books. As we respond, the emergency response guidebook provided by the federal government is a good quick reference; but it doesn't give us the threshold limit values. It doesn't give us the flammability, the flashpoint. It doesn't give us anything about cancer-causing, disease-causing. Many of these materials on here, especially those that are halogenated, those with chlorine, fluorine, bromine, and iodine, those materials are the cancer-causers. Those materials, mixed with hydrocarbons, are the primary cancer-causers; and we the first responders, who have to rescue and decontaminate ourselves when we get it on us, deserve to know that. And the shipping papers should be required to have a material safety data sheet for those key materials.

It's nothing for the industry that's shipping to take the shipping papers. They're required by law to have the material safety data sheet right there when that truck leaves. It's nothing for them to take a copy out and staple it to the shipping papers so that we, the first responders, can determine what the material is. We don't trust the placards because the truck driver can change the placards, they can blow off, or they can be incorrect. But the shipping papers will be correct because the payment at the other end is based upon those shipping papers. If you ship somebody 10,000 gallons of arsine, they're going to pay for 10,000 gallons based upon the shipping papers. They will be correct, and that's what I teach CHP officers to look for. Get your hands on the shipping papers. That will be correct. If anything is correct, the shipping papers will be correct because it's tied to money.

CHAIRMAN KATZ: Assemblyman Frazee has a question.

ASSEMBLY MEMBER ROBERT C. FRAZEE: Yes, on that particular subject of identification of materials, is it not the case generally in an accident where there's not ready access to those shipping papers; and is there need for better

identification on the outside of the vehicle, better placarding or better requirements that the placards be more specific?

CHIEF GIROD: Under the federal law now, any commodity above 110 gallons in a tank vehicle is required by law to have a four-digit commodity identification number within the placard. Those four numbers are referenced through the emergency response guidebook, which is located in every Highway Patrol and every fire vehicle. We can reference the material by those four numbers to determine the name of the material. Now, the problem is that a transport vehicle that is not a tank vehicle -- there's no requirement for those four numbers to be there. All we have is a placard on the side of the truck that says it's a poison or a corrosive or one of the eight hazard classes. They just have to identify the hazard class. The four numbers within the placard we reference to determine exactly what the name of the material is, and then we can get some general idea of its characteristics and its toxicity.

ASSEMBLY MEMBER FRAZEE: So a truckload of drums of a hazardous material need not be identified specifically.

CHIEF GIROD: It will be identified by a placard that places it into one of the eight hazard classes: flammability, toxicity by poison or corrosive, if it's an acid, just the general classification.

ASSEMBLY MEMBER FRAZEE: But nothing specific.

CHIEF GIROD: Nothing specific, not required by law at all. That's why it's vital that, with a cargo carrier, we have to get the shipping papers to find out what it is. If that truck is spilling, leaking, or on fire and the driver is dead, if we can't get our hands on the shipping papers, we have no way of knowing what's being transported.

ASSEMBLY MEMBER LA FOLLETTE: We're going to be having a hearing on first-time response and emergency preparedness later on in November, but I do

need to ask you some questions because I'm hearing some things that I haven't heard before. I understand now that there's no official requirement for notification to local officials when hazardous materials are being transported.

CHIEF GIROD: None that I'm aware of.

ASSEMBLY MEMBER LA FOLLETTE: All right, would it be of benefit to have copies of these shipping papers sent to the local administrating authority?

CHIEF GIROD: No, we'd have rooms full of paperwork.

ASSEMBLY MEMBER LA FOLLETTE: If they were only related to shipping of hazardous material.

CHIEF GIROD: One out of every three trucks is transporting hazardous material in some form on our highways today.

ASSEMBLY MEMBER LA FOLLETTE: So then I'm getting the feeling that, because so much of this is being done, then you're not particularly interested in what maybe the potential routes are going to be or what loads are going to be passing through Ventura or wherever?

CHIEF GIROD: Well, I'm interested in those key materials, the inhalation hazards and the Class A poisons; and in my document I've identified for you that, yes, we would like to know when those are coming into our community or passing through. More importantly, we want to know when they're coming into the community and are going to be taking our side streets, are going to be off-loading or loading these extremely toxic materials. That way we can reference safer routes of travel, times of day, and other things that will better not only protect the general surrounding public, but also alert our first responders that we have a load of phosgene, arsine, coming in. And we have some lead time, and the importance here is that a chief officer, a fire captain, says, "Well, I don't remember what arsine is. I heard about it six months ago." So he looks it up. He gets prepared to deal with this commodity. He's not

going to have that many loads of highly toxic inhalation hazard Class A poisons coming into his fire district; but if headquarters said, "You've got a load of arsine coming in next week," he would by golly look up and see what it is and get a little bit prepared for it.

ASSEMBLY MEMBER LA FOLLETTE: Okay, that's what I was trying to think out loud -- if there was some way to achieve this. I certainly don't want to overburden everybody with all kinds of papers that aren't necessary or essential to them, but are the shipping papers always available at a time of an accident? A truck turns over and explodes...

CHIEF GIROD: Usually they are available. Usually if there is an accident, the driver will grab the shipping papers when he leaves the vehicle. We try to get our hands on those shipping papers right up front, first stop, so that we can reference, because one truck could have 15 or 20 different hazardous materials. A tank truck has one hazardous material, one commodity. That's why the four numbers are important. But a cargo van could have some poisons, some acids, some reactives; and you could have 20 or 30 different things all on the shipping papers. That's why the mixing of these materials and on fire -- we really don't know what effect will occur when they mix or whether they're reactive, explosive, in contact with each other.

ASSEMBLY MEMBER LA FOLLETTE: Well, I just think that there are some times when it would warrant the extra work and the extra looking at some papers to be prepared.

CHIEF GIROD: I totally agree.

I've covered enough things here. You can read my statement. If you have further questions, I would be happy to answer them.

I really would like to leave you with a couple of key thoughts. We in the fire service, and I also represent law enforcement -- I know they're here, but I

teach California Highway Patrol and police officers emergency and first responder problems associated with hazardous materials. We have to be prepared in order to deal with hazardous materials on a priority basis. If the material is spilling or leaking, is going to explode or is potentially going to be reactive, because people are there, trapped, and are going to die if we don't do something, we simply have to take remedial measures. We don't have the option of backing off. I would like for you to strongly consider not only training for us, the people who have to deal with it, so we can do it properly and safely; but also we really need better identification, better notification, and funding to deal with these materials and to deal with the inspections required to keep our trucks safe on the highway. I strongly encourage you to look at the fines and the fees for violations. It's just easy for them to violate. They're just shining us on. They're saying, "We just drive on through. We take a chance. So we get a ticket, it's \$250.00 and we have to put a new tire on. Well, let's drive it and get 2,000 more miles out of that tire." That's the right front tire, and that thing blows and rolls that truck over -- we've killed people. I would ask you to look strongly at helping us, the first responders, law enforcement and firefighters who have to deal with this. We need to be trained adequately; but if we can let it go on an alternate rural roadway and not jeopardize our own safety, I'd ask you to look at that also. Thank you very much.

CHAIRMAN KATZ: Chief, Assemblyman Friedman had a question.

ASSEMBLY MEMBER TERRY B. FRIEDMAN: Chief, I'd like to explore a little bit your suggestion that there be a mandatory minimum fine for misdemeanor transportation of hazardous material violations. Could you spell out for me what you think an appropriate minimum would be.

CHIEF GIROD: Well, right now in our county -- and I think each county can set their own fines -- you have a misdemeanor and you have infractions. Infractions are those mechanical violations not related to hazardous materials. A hazardous material misdemeanor is \$250.00 per violation in our county.

ASSEMBLY MEMBER FRIEDMAN: Up to \$250.00.

CHIEF GIROD: Up to \$250.00. The judge has the option of reducing that or simply not even requiring it at all if the individual comes before the judge, and this is happening consistently. Some of our judges are very good, but some are very lenient in these areas.

ASSEMBLY MEMBER FRIEDMAN: So you would suggest that there be a statutory minimum that the state would set.

CHIEF GIROD: And then a compounded multiple after each incident, second violation, third violation, so that it becomes very financially burdensome for them to continue to allow unsafe trucks on the highway because the fine is required to be paid by the driver but, in most cases, the trucking firm will pay that ticket. I think that it should be compounded. The responsibility for the safe truck falls with the owner of the truck. Yet he's not obligated to pay the fine. There needs to be a burden placed on the trucking industry, the firm who allowed that truck to leave the yard in an unsafe condition.

ASSEMBLY MEMBER FRIEDMAN: Rather than necessarily the driver.

CHIEF GIROD: That's correct.

ASSEMBLY MEMBER FRIEDMAN: What about the amount? What would you see as a reasonable amount for a first, second, third violation?

CHIEF GIROD: I would like to see it doubled. I would like to see a state minimum of \$500.00. I would like to see that doubled on each subsequent violation. It would compound very quickly. I would also like to see a percentage of that amount placed into a state hazardous material first responder

contingency fund in order to build these simulated props and sites that we need to train our firefighters. We're the ones who have to deal with the emergencies. Therefore, those who are causing the emergencies should be paying for it. I also believe we need some method of requiring out-of-state processors and transporters -- it's their commodities coming into our state -- to assist in funding our training necessary to deal with their emergencies.

ASSEMBLY MEMBER FRIEDMAN: The nature of these violations -- is there a range, some being fairly minor and technical and others being more serious; or are they all of a potentially serious nature?

CHIEF GIROD: All are potentially serious. Basically, the shipping papers, incorrect. Wrong name of the commodity. Wrong number -- the four digit commodity identification number with an improper hazardous material named can reference us to not do the proper thing regarding that hazardous material. There are four basic things that are required to be on shipping papers. Every Highway Patrol officer is trained in knowing what those are. If any one of those are incorrect, it's a violation. That's one primary thing. Where the shipping papers are kept -- they're required by law within reach of the driver, available to that driver so he doesn't have to dig around. The reason for that is, if the driver is not there or he's dead, we, the first responders, can find it easily.

The other thing is the hazardous material violations on placarding. They have four placards required. If they don't check those placards when they leave the yard, two placards on the truck could be one thing and two placards could be another thing, or they could be "Drive Safely" instead of the placard on the back. Well, when the accident occurs, when we approach the scene of that emergency, the reason for placarding on all four sides is so we can identify from a distance what that problem is. There's no reason why they can't walk

around that truck and insure that the proper placard coincides with the shipping papers before they leave the yard.

The mechanical violations that are occurring -- everything from broken springs to, mostly, brakes out of adjustment, brakes that are worn out, tires that are bald, lug bolts that are missing, vehicles that are just an accident waiting to happen.

ASSEMBLY MEMBER FRIEDMAN: Thank you very much.

CHAIRMAN KATZ: Chief, thank you very much. I appreciate it.

Before we go to the Commissioner, I'd like to hear from Supervisor Sunne McPeak, who has been struggling all morning to get here from Concord and has to leave. Supervisor McPeak is also currently First Vice President of the County Supervisors Association. I appreciate the effort, Sunne. I know what you had to go through to get here.

SUPERVISOR SUNNE W. McPEAK: Thank you, Chairman Katz. It's a test of my commitment to what you are doing here today that I endured the transportation system of California. And that's the subject of another hearing.

I am going to speak from a very generic point of view as a county supervisor, and I am a past President of the County Supervisors Association and chair the California Partnership for Safe Hazardous Materials Management for the County Supervisors Association.

Chief Girod, I think, had many important comments to make.

Let me just tell you, from Contra Costa County's point of view -- we have a highly industrialized petrochemical base in the northern tier of our county. We have two interstate freeways that are major transportation routes, I-80 and I-680, two state highways, SR 24 and SR 4; and we have experienced our share of disasters of hazardous materials being transported on those networks, including a fire in the Caldecott Tunnel, which we responded to, and molten sulphur being

spilled on the bridge that links our county to Solano. So we've had some experience.

In 1980 our county began a stepped-up initiative to bring together all of the pertinent agencies, ranging from fire to police, to Highway Patrol, to the industries themselves, the county, the cities, to put in place a coordinated response team. While that's been very helpful, I'm here to support what you, Assemblyman Katz, have proposed as additional legislation. Our experience is that it's needed. Since your call last week to invite me to be here today, I've talked with many of our people who are on the front lines, who do respond; and across the board, their position is that, in a qualitative manner, we need better regulations, better enforcement, better training. It is our experience, as Chief Girod has said, that oftentimes at the scene of an accident there's not sufficient information for the responders. You don't know exactly what the substance is, the shipping papers are not accurate, and we have confusion that should not reign.

We, of course, have no notification. That is why we are supporting the notification requirement in your proposed legislation. Also the fact that there should be better placarding and, in addition to that, the stiff penalties if those regulations are not followed.

I would also like to point out that we have studied this concern about how we more safely transport hazardous materials. I think you are appropriate to go after the inhalation hazards to zero in on because they, of course, are the most difficult for the responders and the community if there should be an accident or a spill. But in looking at this dilemma, we find that simply being given the option to route the transport of materials is not sufficient since we have no choice. The interstate system and state highway system that I outlined for you earlier are really the only routes we would choose to transport in our county

since the alternatives are surface streets through very congested neighborhoods or business areas or on very rural roads that are not adequately prepared to handle the transport or are near such important resources as water. So when we studied the area and said, "How are we going to transport hazardous materials?", we've looked oftentimes at the feasibility of regulating the time of transport, which is what we have gone to on the Caldecott Tunnel, as an example. We're also trying to reduce the transport of hazardous materials across the bridges that link Solano and Contra Costa County by agreement with the industry.

You also need to realize that there is not the adequate training of personnel.

CHAIRMAN KATZ: In terms of the times of shipment, that was done through statute or through private/public partnership agreement?

SUPERVISOR McPEAK: On the Caldecott Tunnel, that became state legislation. Our county asked for that, and the State Legislature passed laws that regulate, through tunnels, the time of transport of gasoline, flammables. On the bridges, it is now simply by agreement, by a partnership, that we have the industries restricting the time of transport, to the extent possible, across the bridges. You get into very extensive dialogue on interstate commerce and the convenience to business when you start trying to too-constrict when products can move; but when you're also faced with a grid system that is your only transportation in a certain area, then sometimes time regulation becomes the best second choice.

When we reviewed the laws that are in place a couple years ago through our county hazardous waste task force, we concluded that we needed more resources dedicated to the Highway Patrol for enforcement of existing law, both checking on the vehicles and certainly better requirements of the drivers in terms of their qualifications and knowing what to do, which is why I support your proposal in the bill to have two trained drivers, adequate equipment; and for

the inhalation hazards, the most toxic of materials, I think the escort vehicle may be appropriate. I come from a trucking family, and we used to have from time to time the transported explosives from military installations and often an escort vehicle, depending on what the content was. Not so with most of the inhalation hazards.

The last thing I would like to say is that the shippers who do the contracting for the shipment of these materials should bear responsibility to assure that, before that truck leaves, the driver is qualified and that it is adequately placarded and that there are accurate shipping papers on board.

I'd be happy to answer any specific questions.

CHAIRMAN KATZ: I think you answered most of mine in your statement. The key points that we were looking at were notification, which you addressed, and also the question of the training, which Chief Girod talked about. Speaking on behalf of the Supervisors Association, one of the comments the Chief made earlier was on the difference between the safest road and the safest route. Some of the more rural counties might have a problem if all the stuff seems to go through their area because there are fewer people impacted and it's easier to deal with it. Has the Association dealt with that question?

SUPERVISOR McPEAK: We have, but not very successfully. There is that dichotomy among the counties. I think the safety of the road itself needs to be taken into account, as opposed to simply an area that is not as congested or inhabited. There needs to be some consideration in choosing those routes to what might be additional assistance to those rural areas to respond, because they would have even fewer resources than the more congested or populated areas. As you have proposed in your legislation, many of the fire districts in those areas would not even be notified, according to the criteria here, because they're mostly volunteer fire districts. So notification in those rural areas

is going to have to be coordinated, perhaps with the Office of Emergency Services. The Association is trying to encourage regional coordination and cooperation on all of the hazardous materials, hazardous waste planning, including transportation, when we're doing the Tanner plan; and that plan should designate what is your team for responding in the case of a spill. Our philosophy is, a hazardous material becomes a hazardous waste when you have a spill. When you have an accident, you have a hazardous waste instantly, so the transport of materials and keeping them from becoming waste is something we're encouraging be put into the plan and that be done as a matter of coordination and cooperation among several counties.

CHAIRMAN KATZ: Thank you. Assemblywoman La Follette has a question.

ASSEMBLY MEMBER LA FOLLETTE: You were here earlier so you heard the testimony of Chief Girod. I have the feeling that he was saying that the trucking companies themselves should be held more responsible for following the present regulations and seeing that everything complies with the law. Now, you are saying that the shippers also should bear responsibility.

SUPERVISOR McPEAK: Yes, I am saying they should also bear responsibility. The companies themselves should bear the first responsibility, and legislation in this area is going to necessitate almost a new industry of transporters with high standards of training. And I think you may also want to look at, which I did not mention, the truck design itself. Not all tankers are as stable as they could be. I think we need to look at that as an issue. We have tried to look at truck designs even to get at safer transporting in our county. But I am saying, in addition to the responsibility that should be borne by the company who is engaging, as a matter of business, to transport the inhalation hazards, that the shipper bears responsibility to insure that the commodity is accurately designated on the shipping papers and that they have contracted with a qualified

firm to transport the substance that they say they are shipping. So it is more than just leaving that to a trucker or a trucking firm. I can assure you that the truckers are not going to be able to handle alone the verification of what the substance is or the accuracy of shipping papers, so I think you have to bring the shippers into the picture.

CHAIRMAN KATZ: Thank you.

SUPERVISOR McPEAK: Thank you for listening.

CHAIRMAN KATZ: Commissioner Smith.

COMMISSIONER J. E. SMITH: Good morning.

CHAIRMAN KATZ: Welcome, Commissioner. As I mentioned in the beginning, a lot of the Task Force's mandate grew out of a conversation with the Commissioner, where he was pointing out the fact that we have much more than just rocket fuel on the highways. Commissioner, I appreciate that conversation and your action on the rocket fuel in Ventura but also your willingness to look at the whole range of chemicals that are on the roadway.

COMMISSIONER SMITH: Thank you. Let me thank you for inviting me down and congratulate the committee on undertaking such a task as you have. Even the Speaker, with his great power, I'm sure might not have gotten some real willing subjects to jump into this very difficult area. I admire that, and I wish you the best. It is a very difficult thing that all of you are undertaking here.

Before we get into the testimony or response to the questions you posed to me, Mr. Chairman, let me clarify something. We heard testimony so far about a lot of things -- hazardous materials -- and hazardous materials is a very, very broad, very complex subject -- very high numbers, thousands and thousands of chemicals involved. When we talk here today, we hear some people talk about the inhalation hazards that are transported, or radioactive materials; and all of these are, if you will, subdivisions within that. So I hope that the panel,

when we're discussing some of these things, will question me as to whether I mean hazardous materials in general, which refer to such things as Chief Girod testified to regarding training, or maybe a higher level of hazard in some other area, such as perhaps radioactive material or the toxic inhalants here that we might be discussing again later. I think there have to be distinctions made between those. Hazardous materials are dangerous, but they react in different ways depending upon what they are, what the environment is, and how you come into contact with them.

Most certainly, I want to support the need for further training in quick identification for first responders in particular, which my officers throughout the state all participate in. That is very, very necessary; but I think, if I read correctly, the purpose of this discussion and the discussion that the Chairman and I had relate to those perhaps yet-undefined but higher level of hazardous materials that are moved out there that pose a very special problem to law enforcement and to the public. Those are the ones which, if they're involved in an incident or accident, you're unable to control or contain. By their very nature, they're very toxic, they're very dangerous, and they disperse into the community at varying distances and with various degrees of toxicity. Those, I think, pose a very special hazard, one that is not subject to control by the first responder.

We talk about evacuation. Yes, that's true. If it's possible, you do evacuate if you have enough advanced notice and so forth; but in reality, like the Chief says, you can't send your officers in to be killed, if you know that's what they're facing. So I think these particular commodities, if you will, are the ones that I had in mind when I met with the Chairman of this committee and expressed my concern, not just about the rocket fuel issue itself but the many others that we see up here that I believe need to be defined and need to be

dealt with. I hope that, as we move along, if we talk about hazardous materials, that we'll come back to exactly what do we mean by hazardous materials.

So with that in mind, if you agree, I'll respond as briefly as I can to the questions you posed to me. I have a written response which I'll provide for the committee, but I'd like to touch briefly away from that, in my own words here, the response to your questions. Most certainly, I'll answer any questions you have as we go along.

You asked me to describe for the Task Force how the current explosive transport routes were developed and how they're updated. And do I think that this process can be improved? And what input do locals have to this process?

First, the map that you see up here is a map of the explosives routes throughout the State of California. Those were developed in 1957, I believe, or in the 1950's, by the State Fire Marshall; and the responsibility for the further maintenance of them was transferred to the CHP in the early 1970's. This is a network of roadways that are outlined for the transportation of explosives. There are three different classes of explosives; and just like we talk about hazardous materials, the classes of explosives vary in their danger and how they are to be handled. For instance, the Class C, or the least dangerous, is not even route specific. They aren't even required to remain on these routes as they travel throughout the state. But explosives is a particular kind of hazardous materials; and depending upon the nature of the commodity, its reaction is fairly predictable. Therefore, the primary concern in the explosives routing situation is that we avoid an accident. First and foremost in our minds in developing these routes is to avoid an accident in the first place. It's not a question, such as we've talked about here, of containing the results of the accident, but let's avoid it.

Since the Highway Patrol has assumed the legislative responsibility for maintaining this system, we have a process where they are updated twice each year. In April and in October, our area commanders throughout the state, which covers every county and every community throughout California, are required to review the routes that are within their command responsibilities. If there are significant changes in that highway, such as major construction that's underway or perhaps rock slides or things that have changed the nature of the roadway, the area commander would then consult with the local fire department, police department, public works in that community and get recommendations as to whether or not those changes are sufficient to recommend that they be removed from the list temporarily or permanently. This occurs twice a year.

During the process of the update or review, there are no public hearings held. Public hearings are held any time a new route or a new roadway is to be added to the network. In that case, our commanders are required to consult with the local fire department. They are encouraged and so, as a matter of routine, consult with the local police and public works. The roadway or highway, if it meets the guidelines for an explosive transportation route, then is listed with the Office of Administrative Law and is published in a register and is available for public hearing. It is fairly routine, although there are not at this stage of the process many new roadways being developed.

This is a system that has been around for some time, which includes not only the kind of highway for explosives to be moved upon but considers, on that highway, the places where that vehicle may stop, such as to get fuel, food, or repairs, things of that nature, other than emergencies. So routinely, along that route, vehicles transporting explosives cannot just stop at any place they so desire. There are designated stopping locations, and that's a part of the route selection process.

A couple or three years ago, I believe, because of the concern over the rocket fuel and the toxicity of it, the rocket fuel, which created a lot of the concern here in Los Angeles and throughout the state and in fact throughout the nation now, was added to the routing for explosives in California by legislative action. As a result, the rocket fuel, by being required to follow these explosive routes, then was entitled to travel on any of the roadways such as you see on the map. They were required to follow the explosives routes without concern or, I believe, adequate concern for what happens if there is an incident, rather than the question of what's the best way to avoid one. I think the Chief addressed that very well in the question of safe road versus safe route.

CHAIRMAN KATZ: Can you respond a little to the Chief's comments in that area. I know your comments also address that later on, but I'd like you specifically to give the Patrol's view.

COMMISSIONER SMITH: Most certainly, when it comes to these kinds of hazards, I agree. I do believe that the basis for establishing explosive routes is correct. I do believe that the first and foremost concern there is to avoid an accident, because the results of that accident may be, to some degree at least, predictable. But within the area over here, to say these kinds of materials should follow explosive routes, I don't agree with that. I believe that different criteria should be used to judge the best route for transporting these, and I agree with what the Chief said.

CHAIRMAN KATZ: As I understand it, the reason the nitrogen tetroxide was in the same category as explosives was that we didn't have this other category for hazardous inhalants. We don't have that in existence currently in California.

COMMISSIONER SMITH: We don't have it today. You're correct, Mr. Chairman. There is no other means by law or statute or any authority that we in the

Highway Patrol have to set aside a hazardous material of a category such as this. We do not have the authority to define them as such, to restrict them to certain roadways, or anything else. What we did have was a legislative action that picked up about four commodities and said, "Hey, these are bad. Therefore, because they're bad, you must follow explosive routes." And I don't think the same basis for determining explosives routes is valid for both cases.

Is there any other question on how we got to the explosives routes issue at this time? If not, I'll move on to the question you asked about the routing under AB 1861, which was Statutes of 1985. I'll address that, if I might.

AB 1861 provided the authority for me, as the Commissioner of the Highway Patrol, or the Highway Patrol, to prohibit the movement on state highways of hazardous materials -- again, remember, hazardous materials in the broad generic sense -- and also allowed local officials, having jurisdiction over local roads, to prohibit the movement of hazardous materials on their roads. In other words, route specifically to prohibit the movement of hazardous materials given that there were alternate routes available and that there was a good sound reason obviously for prohibiting the movement. The Governor signed that bill; and it has, I believe, very good provisions for the input of industry, input of local government, as well as the state interests, in prohibiting the movement of hazardous materials on any given highway.

Since it has been enacted, the Highway Patrol has only received two requests from locals to bar or ban the movement of hazardous materials on given and specific highways. In the first case, the Patrol did react and we have posted Highway 154 near the Casmalia Dump Site against the movement of hazardous materials because of the water supply nearby. In another case, the San Pablo Dam road up north was of concern, and that was handled by a specific piece of legislation when it appeared that it might not meet all of the environmental impact concerns that the other process would take.

I do believe this is a very good thing. However, again it only allows the locals or the state to bar the movement of hazardous materials in a given local situation. It does not address the overall movement throughout the state.

You asked me to provide the Task Force with a description of my role in notification of local officials. As we've heard earlier, there is no statutory provision that the CHP be notified of anything except the movement of commercially produced spent nuclear fuel. We are, in that case, required to be notified in advance of the shipment. But for all the materials we have here, including explosives on the other side, there is no requirement at the present time that we be notified.

We have had cooperation, however, from the military at Vandenburg over the years in the movement of rocket fuel. They have voluntarily told us when this was moving; and as a result, we notify the departments in the jurisdictions through which this would pass when we are so told. The military has worked very closely with local government, to my knowledge, in and around the Santa Maria Vandenburg Air Force Base and had worked out a voluntary procedure by which they would notify the Santa Barbara County communications center in advance of any movement of this fuel.

What I've been told is that there had been a breakdown for a period of time in this notification process. It's my understanding that the Santa Barbara County communications center underwent some modernization and a change in computers; and about that time, for reasons we do not know, the notification process broke down. The process called for the Air Force to notify the communications center, who would then notify both the Ventura County Fire Department and the Santa Barbara office of the Highway Patrol. This is how we learned of the notification in that area. The Ventura County Fire Department would notify all of the local agencies affected in Ventura County, the Ventura

office of the Highway Patrol, and also the Los Angeles County Fire Department. After these modifications were made in the communications center in Santa Barbara County, we did not receive any notifications. It is my understanding that most of the agencies at that time understood, or believed, that there were no shipments being made when in fact there had been apparently some attempts to make notifications, but they just did not get through.

However, we've been assured now that has been corrected, that the numbers are correct, and that the notification system is in place today. My staff informs me that we were notified that they were moving some rocket motors. These aren't required to be notified. On those there is no fuel involved, but it was a good test to show that the system does work.

You also asked: "Should there be other kinds of materials that require advanced local notification?" Yes, I very strongly believe that if we are able to identify -- and I'm at a loss to name it -- some sort of super class or toxic inhalants or whatever we come up with as a name for this group of very toxic materials, yes, I think we need to be much more specific in the handling of that. There needs to be a cooperation of every level of local government, of every level of first responder, and the transportation systems, both local and state, as well as, of course, the federal government, in the movement of these goods. There needs to be a required advanced notification. That does not mean we will prevent every accident or incident from occurring. I don't believe that is reasonably possible, but advanced notification would provide the people who are charged with the responsibility to be at least prepared when the most serious of these chemicals are passing through our communities.

CHAIRMAN KATZ: Commissioner, you're talking about the same thing again -- those chemicals that require widespread evacuation, inhalation hazards, or those chemicals that are different than the explosive because of the way you have to respond?

COMMISSIONER SMITH: Exactly, and we heard testimony and questions, I believe, at the press conference earlier -- reporters saying, "You're going to have rooms full of paper." I believe Chief Girod even indicated the same thing. It is impossible, from what I know today, to meaningfully handle any kind of notification of all hazardous materials. There are just too many. I'm informed that there are probably 1,500 new ones being added to the list every year. There's no meaningful way to handle that kind of information; and even if we had it, what would we do with it? But I do believe, if we're able to identify, label, somehow get a handle on this situation...

CHAIRMAN KATZ: The worst.

COMMISSIONER SMITH: The worst, the ones that we are unable to control at the scene, which are the ones of concern to me, then notification would be important. Specific routing would be important. Extraordinary precautions in terms of vehicle design, driver qualifications, most certainly specific routing, an escort if necessary -- whatever precautions are necessary for the safe movement of that would be appropriate; and I would support those.

One qualification is, we do not know today -- I do not know, and I do not know of anyone else who knows -- exactly what the quantities or frequency of those movements are. Now, I say that this type of control or regulation is desirable. That's all with the qualification that the amount of it that's being moved is manageable in terms of what our society demands and what's going out there today. Most certainly we need some means of making a reasonable assessment before I could have any kind of feeling on what kind of resources or commitment of those resources it would take in order to do the job. We should not attempt to do something if we don't know what we're facing and we don't have the resources necessary to do the job right.

I've been kind of general, but I believe I've responded to most of the concerns you asked about, with the exception of one. That question was, "What's our ability to regulate the Department of Defense shipments?" The jury is still out on that.

CHAIRMAN KATZ: You and I had that conversation, and you told me something that I found frightening. Perhaps you could relay that to the committee. It won't surprise anybody, but nevertheless it's not any more reassuring. That's what I think we're trying to get to.

COMMISSIONER SMITH: The Chairman refers to our conversation earlier on, and the question became, "What is the federal preemption, and what is the state's role?" I didn't know. I asked the question -- and I must admit it's informal -- in three different places as quickly as I could. I asked the federal Department of Transportation. I asked the Department of Defense and the U.S. Attorney's Office in Sacramento. The answers I got were basically: "Yes, the State does have the authority to regulate this movement." "No, the State does not have the authority to regulate the movement." And last was: "Maybe, but it would probably have to be litigated to find out for sure whether you could or not."

CHAIRMAN KATZ: The last came from the U.S. Attorney's Office.

COMMISSIONER SMITH: The last came from the U.S. Attorney's Office; but in deference to any attorneys present, I didn't want to say that. Most certainly, since that time, we've asked a lot of questions; and I must tell you, we still do not know precisely the answer. My recommendation to you is, the State should proceed with the assumption that we can regulate the contract carrier movement. If it is a Department of Defense vehicle operated by the Department of Defense, they're exempt. I don't think there's really much doubt about that. But if it's being operated in commerce under contract, we should proceed as if we have

the authority; and it may have to be litigated. We may have to answer that finally in court. That would be my recommendation to you.

CHAIRMAN KATZ: I appreciate that. Questions for the Commissioner? Mr. Friedman.

ASSEMBLY MEMBER FRIEDMAN: Yes, Commissioner, I asked Chief Girod before about his recommendation to set forth a mandatory minimum fine for violations on the shipping papers or the placarding or mechanical violations in the vehicles. Do you have views on the advisability of the State imposing a mandatory minimum? He talked about \$500 for first offense with a doubling for each subsequent offense, his rationale being that under present law it's too discretionary and local jurisdictions handle it so differently.

COMMISSIONER SMITH: That's very true. It is a difficult area for law enforcement to venture into the amount of fine or punishment that results from a conviction of crime. But let me address it in this way: Increasing the penalties that are paid by trucking companies, which are frequently for equipment-type violations -- if that's mandated, my concern is that it becomes a cost of doing business. It may not have the desired effect unless it becomes so great that the business itself is jeopardized. I believe that where an individual is concerned, when you or I have to pay a speeding ticket and that cost is doubled, I believe we will think twice before we do it. So I make a distinction, I think, between when an individual might be called to account versus a company, which might make it a cost of business. I'm not sure it has the desired effect. I do believe in stringent penalties; and perhaps a better way of dealing with it, in my mind, would be a prohibition from the moving of this kind of goods from then on. In other words, a fine, but in addition to that, they forfeit the right to participate in that commerce for some period of time. I'm not sure that could be worked out. I'm not sure that we have a

management information system that's capable of keeping track of these things. It seems like most of the courts now cannot keep track of even the second offense versus the first. So maybe we're speaking of the ideal, not reality.

ASSEMBLY MEMBER FRIEDMAN: You're thinking in terms of suspension of license to transport.

COMMISSIONER SMITH: That perhaps might be one penalty, yes. I think that should be explored. I think that this Task Force here has so many items you must look at, but this is one of them. I wouldn't just assume that increasing the fine would be the total answer, although it may be.

ASSEMBLY MEMBER FRIEDMAN: You said it would have more of an impact on an individual, rather than on a company. Are you speaking of an individual owner, or are you speaking of the driver?

COMMISSIONER SMITH: What we find is that in motor vehicle accidents, and trucks are the same, the vast majority of the accidents are caused by driver error, not by equipment. In 90 percent, the driver is speeding, the driver is on the wrong side of the road, the driver is drunk in some cases. Those kinds of violations should be paid for by the driver, and the driver should be held responsible. I believe perhaps that the courts should not be lenient in suspending any part of the fine when the driver is out there. I'm more concerned about him drinking and driving a load of this down the freeway or exceeding the speed limit driving a load of this down the freeway than I am about him continuing to run on a tire that might be getting a little thin. I think that the chances are, if they have the notification of the tire, they'll replace that. They might try to get an extra trip out of it, and that should be dealt with. I don't mean to minimize that. But I'm more concerned about what the driver does out there. I think the drivers that are moving this stuff need to be dealt with very strictly by the court, and fines will have an impact on

them. I'm not sure that raising the fine for an equipment violation will have the same effect.

CHAIRMAN KATZ: But fines for failure to notify should be a company responsibility, if you have that kind of legislation?

COMMISSIONER SMITH: Yes, either the shipper or the carrier or whatever. Yes, definitely, although the driver has a responsibility in that as well, Mr. Katz. The driver that goes out of the yard has a responsibility to check the equipment on that vehicle before it goes. The placarding, the bill of lading, all of the material -- those things are to be checked by the driver before they go too. He has a role in that, although ultimately I agree that the company is the one which probably should be responsible.

ASSEMBLY MEMBER FRAZEE: You do support then an additional level of qualification or certification testing for drivers that are handling a category of hazardous materials?

COMMISSIONER SMITH: Yes, I do. I think there is a very strong need for that. The ability to comprehend, read, and write English, which most of the bills of lading are provided in, is something that has to be dealt with. All of those kinds of ability to comprehend and respond in times of emergency are critical, I think, Mr. Frazee.

ASSEMBLY MEMBER FRAZEE: What level of qualification? I understand that what's being proposed is something that would be merely, as was suggested, a multiple-choice test. Do you think that something should be stronger than that in qualifying?

COMMISSIONER SMITH: I'm not intimately familiar with that. I know my department has been involved in providing input to the Department of Motor Vehicles, but I can't really address what's going to be in the regulations. I have not seen them. I believe someone is here from the Department of Motor

Vehicles, who should be able to address that later on. What I do support is that we need a professional driver who is well qualified and well trained and who has demonstrated, in past driving, a level of maturity and integrity and responsibility, if you will, to the people out here in the State of California, because they're going to be moving these kinds of materials through the communities.

ASSEMBLY MEMBER FRAZEE: I wouldn't want to generalize, but it would seem that individuals who would accept employment handling very hazardous materials -- I'm wondering if some psychological screening would show that these people by nature may have a tendency not to be as cautious. I know that some of them would perhaps be more cautious, but I wonder if there is an additional level of risk because of the background of the individual.

COMMISSIONER SMITH: That would be very difficult for me to address. I do know that segments of the trucking industry have been very supportive of, for instance, mandatory drug testing, those kinds of things, for people who would be in this category; and perhaps those are areas that should be explored. But the psychological end, Mr. Frazee, I'm sure I'm not qualified to...

ASSEMBLY MEMBER FRAZEE: We do it with police officers. On the subject of inspections, is there now any extra level of inspection at the truck stations for hazardous transporters or any effort to inspect those to a greater degree than the ordinary truck which comes through?

COMMISSIONER SMITH: Yes, there is a focus on those. Our whole commercial vehicle operation seems to revolve around two or three items, that being, of course, bus transportation, school bus primarily, and hazardous materials movement, both for waste and the vehicles themselves. What's not known perhaps to a lot of people is that most of our scales have geiger counters to detect radiation from vehicles that are going through. That's not commonly known, but

it does. Our staff is instructed to, and they do, focus on them; but we just physically cannot inspect every vehicle that goes through there in the road operation. There's just too many. We do inspect all cargo tanks which, of course, are for gasoline over 120 gallons; and we do license carriers of hazardous materials. At the time of licensing and periodically ever after, we go into their place of business or their terminal and review their records. We inspect a random selection of the vehicles to determine what condition they're maintaining them in. We do license them, as I say.

We are doing a lot of work for out-of-state carriers to transport the commodities in California. If they come into this state, we then must go inspect that vehicle, the tank, to license it, even though it's not based in this state. To be licensed here, we do the inspection for out-of-state vehicles. Whereas if we had a universal program throughout the United States, Wisconsin or Georgia or whoever would inspect the vehicles based in their state to a given level.

ASSEMBLY MEMBER FRAZEE: There isn't any reciprocity in that?

COMMISSIONER SMITH: Not nationwide, no. California, even though it may appear we're behind in some things, we are actually leading the nation when it comes to regulation, control and inspection in this area. We are perhaps, for a big state at least, the most stringent of any.

CHAIRMAN KATZ: Commissioner, along that same line, part of what's frightening is, you talk about inspecting the trucks, we have that same problem with licenses. We have no ability to require those out-of-state drivers to be licensed to the same certification levels as we're pursuing here in California. We talked about this just in regular truck licensing and driver licensing. I believe it is in Montana where you can get a license to drive an 18-wheeler by taking a test in your private car, even if your private car is a VW bug. You

get that license and you get behind the wheel of that 18-wheeler and you bring it into California legally.

COMMISSIONER SMITH: That is very true, Mr. Katz. There is a serious lack at the present time of uniformity throughout the United States. I believe the Danforth bill that will be taking effect in the next two to three or four years -- and I'm sure the Department of Motor Vehicles representative can speak to that better than I can -- will address some of that in terms of a national driver's license. The whole question of a commercial vehicle driver's license has been one sad story for the past several years, where we have multiple licenses for multiple states and being revoked in one state and not in another. I hope we're able to get a better handle on that, which is really a national issue, not just the states. The states have to be more cooperative in working with each other, just as my department and the State of California has to be more cooperative working with local government on local issues in this matter here.

CHAIRMAN KATZ: Ms. La Follette has a question.

ASSEMBLY MEMBER LA FOLLETTE: You mentioned the hauling by unlicensed haulers of hazardous materials. Can you give us any estimate about how much that happens?

COMMISSIONER SMITH: If I mentioned it, it must have slipped out. I didn't intend to. It does happen though. We do occasionally find that. I do not have figures on that at the present time, but most certainly I would be glad to see what we do find. I'm not aware, with the exception of the hazardous waste area, where we've had some significant problems with dumping and disposal, and we were participating...

ASSEMBLY MEMBER LA FOLLETTE: It's only when they begin to dump it illegally, then you find out they're also hauling it.

COMMISSIONER SMITH: That's how it's come to light most of the time. We do not know, and I don't know of anyone who knows, how many hazardous materials are being moved and at what time. The question of the placarding that Chief Girod talked about earlier -- we license a carrier, for instance, that may have a fleet of 150 trucks. It may be any one of the trailers, unless it's a cargo tank, that would carry hazardous materials. It's a very difficult thing to control or to ascertain. But we do find it, and we have some numbers of citations issued for transporting it without a license. I could provide that to you, but I do not have it here today.

ASSEMBLY MEMBER LA FOLLETTE: Also you have stressed that you feel that most of the accidents are caused by negligence as far as the driver is concerned. Now, I have heard in other hearings where the drivers will say, "Well, we have to accept the truck as it is given to us; so even though we may know that the brakes might not be quite as good, etc., to be able to provide bread on the table and so forth, we have to accept this." What kind of a response do you have to that argument?

COMMISSIONER SMITH: I've heard that argument. I've been in this business and with the Highway Patrol 30 years, and I can cite you that on a number of occasions I've had truck drivers that would stop me on the road and say, "Officer, the brakes are bad on this truck. I've tried to get my boss to fix them. He won't do it. Would you write me a ticket so we can get them fixed?" This has happened. Fortunately, I think that's in a very minority of the cases, and I can't give you a percentage. It does exist. Most certainly, companies are in business, and cost of maintenance is a cost of doing business. I'm sure it happens, but I don't think it's widespread. The liability factors that we see today, in terms of a firm doing business, are so great that those kinds of things would be, in my opinion, very difficult to be widespread.

ASSEMBLY MEMBER LA FOLLETTE: I just had to make one comment. I'm so delighted that the State Supreme Court decided that the sobriety checkpoints were legal; and I, as one of those who supported that early on, with your assistance, am really delighted at that.

COMMISSIONER SMITH: Well, thank you, Ms. La Follette.

ASSEMBLY MEMBER LA FOLLETTE: I think that could help with some of these accidents we're talking about right now.

COMMISSIONER SMITH: I certainly hope so. I remember about three years ago, or soon-to-be three years ago, at least two members of this committee were out one cold pre-holiday night in Glendale, watching one of our checkpoints. It was cold that night, wasn't it?

CHAIRMAN KATZ: Really cold.

ASSEMBLY MEMBER LA FOLLETTE: Yes. Thank you.

CHAIRMAN KATZ: Thank you, Commissioner.

COMMISSIONER SMITH: Thank you very much, and again let me wish this Task Force the best. It's a very, very difficult subject. There are going to be no easy answers. If there's anything that the Highway Patrol can do to help as you move along, we'll be more than happy to do so.

CHAIRMAN KATZ: I appreciate it and also appreciate the more extensive comments in writing that you submitted, which address a number of things we've been discussing this morning. We'll obviously be back in contact with you.

I'd next like to turn to Mr. George Tenley, who is Chief Counsel, Research and Special Programs Administration, U. S. Department of Transportation.

MR. GEORGE W. TENLEY, JR.: Good morning, Mr. Chairman, members of the Task Force. My name is George Tenley. I'm Chief Counsel of the Research and Special Programs Administration, one of five organizations in the U. S. Department of Transportation that deal with hazardous materials in some fashion or another.

With me is Jim O'Steen, who is the Chief of the Technical Division of the Hazardous Materials Transportation Office, which is responsible primarily for the promulgation of all federal regulations in this area. I've submitted a rather lengthy statement for the record, in which I address the five specific questions that you posed to us.

I know you have many questions to ask of us. I've heard a great deal of testimony before we came on, and I must say that the vast majority of what I heard I'm encouraged by. I support most of what I heard. I would take issue with a few of the specifics, but generally speaking the approach that California's taking -- I would agree with the Commissioner. California is in the vanguard on these issues, along with Illinois. You're probably the two most aggressive states to address these problems.

I would say by way of introduction that many of the issues you've talked about, we are addressing in the Department of Transportation.

For example, we're proposing in legislation in Congress right now to adopt a safety permitting program that would include the materials we're talking about this morning. We think that's a very important step to get control of these operators and to assure that, when these materials move, they move under a regulatory scheme that assures that these drivers and these operators know the regulations, can comply with the regulations, and if they don't, we can pull their authority to operate.

We are also very concerned about an effective role for states and local governments in this issue. Our legislation will suggest a very sharp clarification of federal and state roles with the bulk of all routing to be done by state and local governments. I think that's germane to the issues today.

With that brief introduction to what we're doing, I'll make myself and Mr. O'Steen available for questioning.

CHAIRMAN KATZ: We've been having trouble sorting out the different interpretations between Department of Transportation, Department of Defense, and everybody else in terms of who can regulate what. My understanding was that you come down on the side that says that if it is a contract carrier with the Department of Defense, we do have the ability to regulate them.

MR. TENLEY: If a commercial carrier is involved, we, the Department of Transportation, have jurisdiction over that carrier, and the states as well can assert jurisdiction over that carrier.

CHAIRMAN KATZ: That solves one of the areas that we've been concerned over. I also interpret your comments to say that you generally support the notion -- you created the category at the federal level of toxic inhalants for toxic inhalants -- that to do such at the state level would make sense and then to go the additional step of looking at additional routing.

MR. TENLEY: I would take issue with one thing. I would object to the State of California adopting, on its own motion, a new hazard class. We take the position that the Department of Transportation is solely responsible for establishing hazard classes.

CHAIRMAN KATZ: Well, you have already adopted the hazard class.

MR. TENLEY: Well, it's not called toxic inhalants; that's my point. We have a category of materials called Class A Poisons, of which we've identified a subset of materials that are toxic by inhalation; and things flow from that designation with respect to packaging and operational controls. So with that minor clarification of the point, yes, I would agree that's an area California can begin to apply regulations to.

CHAIRMAN KATZ: You'd mentioned there were some other points that you had, differences as far as what was said earlier this morning. Could you identify those for us.

MR. TENLEY: Minor points -- I think one of the gentlemen, perhaps one of the councilmen from Los Angeles, made the statement that in most of these incidents we have a breach of the containment of hazardous materials. In fact, in the vast, vast majority of accidents involving hazardous materials vehicles and hazardous materials, there is not a breach of the packaging. That's an issue which I consider to be a minor detail.

CHAIRMAN KATZ: That was it?

MR. TENLEY: We heard so many people this morning, I couldn't point them all out to you.

CHAIRMAN KATZ: How would you recommend that we deal in California with the licensing question from the standpoint that, as you point out, our regulations tend to be stricter than other states, yet we do have an interstate commerce problem with our inability to restrict drivers from other states coming into California?

MR. TENLEY: I think the Commercial Motor Vehicle Safety Act of 1986, which provides a broad scheme for assuring both uniform standards of licensing throughout the United States as well as stricter requirements, should be the model for all the states. In fact, in the application of that statute, states will have to comply with the guidelines laid down by the Department of Transportation implementing that act. Such things as we heard about this morning, which would be: you can't just go in and take a multiple-choice test, you can't take a test in a Volkswagen Beetle in Montana and expect to be able to drive in California. Those are all things addressed by this legislation. We would be requiring it as well. In picking up on the hazardous materials side, we'd require compliance with these requirements. We'd require drivers to do more, to be trained better. So I think it goes together; and if I were to say to California what you should do, I would suggest you strongly follow the lead of the requirements of the Commercial Motor Vehicle Safety Act.

CHAIRMAN KATZ: In terms of dealing with the toxic inhalants, you're objecting to the categorization, I believe, not creating a subset that deals with them separately. You're objecting to the characterization...?

MR. TENLEY: Who would do the characterization mainly. As I mentioned, we already addressed these materials in a rulemaking which we passed in the post-Bhopal era.

CHAIRMAN KATZ: Just want to make sure we're all talking about the same thing and not creating new terms. So if we were to call that whatever you guys call it, as opposed to what we're calling it now...

MR. TENLEY: That was the only point I was making. And certainly with respect to the issue of notification that's been brought up today, we strongly suggest, to make notification effective, you should reduce to the greatest amount possible the number of materials covered. So if you're talking about a particularly dangerous class, that's better than the whole world of hazardous materials, as we talked about earlier.

CHAIRMAN KATZ: Sure. One of our concerns was -- we watched as the Mayor's race in Los Angeles went from one individual, working on rocket fuel, to the next individual, suggesting that we ban all hazardous materials on the freeway in an attempt to outdo the other individual without any sense of what that really means or the implications of that.

Looking quickly over some of the materials you've just given us, I understand that you're proposing legislation having to do with highway routing...

MR. TENLEY: Correct.

CHAIRMAN KATZ: ...that says, in part, "No state or political subdivision thereof may designate highway routes for the transportation of hazardous materials, except in accordance with standards adopted under this section." How

does that impact our ability to be more restrictive or to do what we're talking about doing?

MR. TENLEY: I think what we're trying to do here -- the basic statute under which we operate, the Hazardous Materials Transportation Act, was adopted by Congress with a very strong concern about a lack of uniformity of regulation in this country; and one of the strong underlying premises of that act is uniformity in this country. So the idea is for us on the federal level to set the guidelines or standards -- and I would say they're largely procedural -- by which state and local governments would do what they need to do to address concerns in those jurisdictions. Clearly the needs of Los Angeles are different than the needs of Denver, different from the needs of Helena, or different from the needs of Tuscaloosa -- the idea being, though, that if you're going to make routing decisions that are going to effect an industry of billions and billions of dollars, an industry which has a positive balance of payments in this world, you've got to do it in a way that assures safety as well as uniformity. So what we're talking about is setting up standards under which you would do your business, because you know it better than we do, in Los Angeles. And I would say that some of the things I heard this morning, the way you've gone about doing it in California, pick up on some of the key issues we would have: public hearings involving industry, talking to jurisdictions adjacent to other jurisdictions that want to take an axe, so you don't export risk from your back yard to somebody else's back yard. Those are key concerns of ours.

CHAIRMAN KATZ: Notification?

MR. TENLEY: As I mentioned in my statement, the occasions that we've had to look at notification, we've struck down notification requirements we've seen so far. Now, they've been jurisdictional. They haven't been state. Covington, Kentucky, for example, had one that would require notification of every

hazardous material moving through the jurisdiction of Covington. We struck that down. Back in 1981, we funded a very, very important study by the Puget Sound Council of Governments, looking at notification. That study tells us a lot about notification and its value. If you can reduce the purpose -- you don't use it for an inventory; you use it for emergency preparedness. If you can reduce the number of materials involved and if you can reduce the number of elements that receive the notification, you're starting to get a handle on an effective notification scheme. We in the Department have not seen that scheme yet in this country. It hasn't been brought to our attention. It may exist somewhere we don't know about; but certainly by way of guidance we would suggest, if you're going to attack the problem, you attack it with those elements in mind. And some of what I heard today suggests that California is aware of that fact.

CHAIRMAN KATZ: How do you enforce compliance with federal law with 16 inspectors in the State of California?

MR. TENLEY: Oh, there's no way -- and I mention in my statement -- there's no way the federal government, even quadrupling the number of resources available today, could ever show a total compliance in the United States or California. It's not possible. The guts of our policy is to assure that the states are capable of doing as good a job as possible. And I mentioned the MCSAP funding program -- and you have witnesses here who can talk about the impact of MCSAP in the State of California -- but there's no way the federal government can do it on its own.

CHAIRMAN KATZ: You have no plans to increase that number?

MR. TENLEY: Well, the MCSAP program, our primary vehicle, was increased two years ago from \$17 million to \$50 million; and California realized some of the fruits of that effort and still continues to realize them. But I don't think in

the near future, given what's happened in the last two or three weeks, you can expect a huge infusion of money in that area.

CHAIRMAN KATZ: I guess my last question is, last month our Department of Motor Vehicles sent you proposed regulations designed to implement Senate Bill 895. Can you tell me the status of that?

MR. TENLEY: Sure, we received those about two weeks ago. We'll be doing a notice inviting public comment at the end of this month. We'll have a comment period. We have two comment periods: a primary comment period, if you will, and then a rebuttal comment period. Those two comment periods taken together will close the comments in February of 1988, and we expect to issue a ruling on those requirements early in the Spring. I might also add though that, on the regulatory side, we're looking at training ourselves. I'm very pleased to tell you that, regardless of what we might think about the preemptive effect upon your training regulations, there may be some important information for us in adopting a national training regimen. So we appreciate very much having received your materials.

CHAIRMAN KATZ: Anything you do nationally wouldn't preclude us from going further, I assume.

MR. TENLEY: It depends. There's a point at which, if one state is able to do as much as it wants and can do and every other state is able to do as much as it wants to do, it's possible that someone could call that into question. Whether the Department of Transportation would be asked to resolve that question or whether the court would be required, under the commerce clause of the U. S. Constitution, I couldn't tell you. But there's a point at which, if every state goes its own way, it's possible we in the Department of Transportation could have a problem with that. I'm not suggesting California has reached that or is even close, but it's a possibility.

CHAIRMAN KATZ: Where that's of most concern to me is in the licensing. I think national licensing is fine as long as we don't lower it to the common denominator, as opposed to raising it to the safest level possible.

MR. TENLEY: Licensing is certainly a traditional state responsibility, and the Commercial Motor Vehicle Safety Act recognizes that in the regimen it's adopting. Licensing is probably not the best example of a place where I might see us butting heads with California.

We offer the opportunity, of course, to send us written questions in the wake of what we've given you. We'd be pleased to respond to them for the record. I've supplied seven or eight materials that we've developed through our demonstration projects and contracts that I think are relevant to the issues you're talking about, and I would offer them for your attention and your deliberations and your recommendations.

CHAIRMAN KATZ: We appreciate it. Mr. Tenley, thank you for being here this morning. We'll take your documents and review them, and we'd like to stay in close contact as we develop our regulations and watch what you are doing as well.

MR. TENLEY: We appreciate that. We want to work with you as closely as we can.

CHAIRMAN KATZ: Thank you. Next I'd like to call on Ms. Carole Waggoner, who is the Deputy Chief, Program Policy Unit, State Department of Motor Vehicles.

MS. CAROLE WAGGONER: Thank you. I have some handouts that are coming to you. They are a copy -- for all the members who don't have a copy -- of our proposed regulations and also a brief overview of those regulations on how they effect the California driver and employer or an out-of-state driver and employer.

I'll start off with a few comments in response to the questions that you provided to the Department. The Department of Motor Vehicles appreciates the opportunity to provide the committee with information on the certification of drivers involved in the transportation of hazardous materials. I'll begin by addressing the two specific questions directed to the Department. For the benefit of those who may not have the questions, I'll read each one before providing the response.

The first question had two parts. The first part asks us to describe the current status of the hazardous materials/bulk liquid load certificate program. I think you've already heard some of the comments on that. As required by Senate Bill 895, the regulations have been developed to implement this program and were approved by the Office of Administrative Law in September of 1987. As you heard from the Department of Transportation, they do have a copy of our regulations, which we have requested the Department to review for determination of consistency. Due to the fact that these regulations affect drivers involved in interstate commerce, and with the recent passage of the Commercial Motor Vehicle Safety Act of 1986, the Department felt it necessary to determine whether federal preemption would be exercised upon implementation of the program. A federal determination regarding consistency and preemption was sought by the Department before implementation because it's entirely possible that DOT could preempt and/or determine the regulations an unreasonable burden on interstate commerce despite our extreme efforts to minimize this risk. If we were to implement the program and then were preempted, it could waste a considerable amount of public funds spent on the implementation and inflict unnecessary cost to industry members in complying with and/or preparing to comply with the program requirements.

The second part of the question states: "Your Department has shown that it can rapidly implement legislation on certification, most recently with the tour bus driver certification program. Why has implementation of the hazardous material/bulk liquid load certificate taken so long?" The reason the Department was able to quickly implement the tour bus driver certification program was because the program could be administered through the statutes which were enacted and without development and adoption of the regulations. However, one of the major reasons why the hazardous materials, hazardous waste, and bulk liquid load certificate program has taken a longer time to implement was that the adoption of regulations is a very time-consuming process.

In July 1985, the Department adopted emergency regulations intended to implement the program. At the public hearing held in September of 1985, the comments provided by representatives of the various governmental agencies, industry, and other concerned groups indicated that the regulations proposed would not achieve the intent of the statute and were impractical for use by both industry and enforcement. Therefore, in October 1985, the Department requested OAL to repeal the emergency regulations. In December 1985, we formed a team of staff members, various industry, governmental, and concerned groups and began meeting to revise and review the proposed regulations, the driver handbooks, and the written examinations. Additionally, because of the numerous commodities, as you've seen here a slight example -- there are almost 200 pages in the federal regulations of commodities identified as hazardous materials -- the fragmented responsibilities for enforcement of existing regulations and laws, and the complexity of the subject, compilation of the material for this effort was tremendously difficult and time consuming.

Question 2 also has two parts. The first part indicates that last year Congress passed the federal Commercial Motor Vehicle Safety Act. "How will this

act impact our implementation and enforcement of hazardous material driver regulations?" The Act specifically identified drivers of placarded loads as requiring licensing according to federal standards.

I'd like to divert for a minute to a couple of issues that have been mentioned earlier here regarding the Commercial Driver's License, the CDL, project. Obviously the objective of that act is to provide minimum national standards for drivers' licensing. There were 19 states that had unclassified driver systems, that is, Mr. Chairman, as you indicated, that you could go in with a regular passenger vehicle and come out driving a commercial vehicle. That law will do away with that kind of licensing; and in the transportation and the licensing of drivers transporting hazardous materials, obviously the major issue is the basic skills and knowledge that driver possesses in order to operate the vehicle.

CHAIRMAN KATZ: Is that law grandfathering everyone who currently has a license?

MS. WAGGONER: The question of grandfathering we have broached to the federal government. At this point, they have indicated to us that the question of grandfathering will be part of the rulemaking package that will be released in November, probably in the next two weeks. What they are asking for is comments regarding allowing for the grandfathering of drivers. There appears to be a need for some type of grandfathering. However, what criteria will be defined for that grandfathering has not been identified at this time. What will happen is, once that comment has been returned to DOT, they will be issuing their final rules in July of 1988, so we would have some idea of how grandfathering will affect this issue.

As indicated earlier, this is one of the reasons why we submitted our regulations for review -- because of this act. With the passage of this act,

the additional requirements imposed by our regulations could be found to be too stringent and an unreasonable burden on, or interference with, interstate commerce. We in the Department, however, feel as though we are heading toward the intent of the Commercial Motor Vehicle Safety Act and the identification of that, and that we have detailed our requirements; we feel that the objective of both the Act and our regulations are in tune.

The last part of your question asks if we can more stringently regulate drivers than the federal government. As you've heard from representatives from the Department of Transportation, that is the question. Certainly when it comes to California drivers in intrastate commerce, the answer appears to be "yes". However, when it's California drivers or non-California drivers in interstate commerce, that seems to be the question.

In closing we'd like to state that we support and are actively working for certification and licensing programs which would improve the quality of all drivers; and in this specific area, we have provided FHWA, which is responsible for developing the federal regulations for the implementation of the Commercial Motor Vehicle Safety Act, with a copy of our proposed regulations. A copy has also been provided to the federal contractor working with a committee of states, of which California is a member, which is assisting FHWA with developing testing and licensing standards for a commercial driver program.

If our regulations are found to be consistent with, and are not preempted by, federal law and regulation, we will be able to quickly proceed with implementation. Our regulations indicate that within 180 days we would be prepared to implement the program.

In the alternative, if major elements of the proposed program were adopted through the federal rulemaking, we could expeditiously and effectively implement the program proposed.

I must restate something that the Commissioner mentioned earlier. Once again, this state has established itself as a leader in licensing of drivers. What this means is that we do not have any examples to follow in this area that have preceded in this effort. It also means that we are being monitored very closely by the federal government, industry, and other states. As often happens with a program of this type, once it becomes established, many other states will choose to adopt it.

Very quickly I would like to comment on Chief Girod's remarks this morning regarding the testing. It is true -- and there is a contractor working for the federal government -- that we are looking at a multiple-choice question test. We have a broad spectrum of drivers that we have to cover under the category of hazardous materials. We not only have carriers who have safety supervisors and established programs or who contract for safety training programs, but we also have owner-operators, etc., small businesses that do not have that available. So we have to provide some way for them to obtain a certificate. However, we are looking at a testing process that will create a pool of questions and then randomly select those questions and vary the answers so that the incidences where we have somebody going out and getting the copies of all our tests, memorizing all our questions and then memorizing the position of the correct answer is diminished significantly.

Also, I would like to indicate that the certificate that will be provided to the driver and DMV will have a record base created which will contain information identifying whether a carrier certified to the experience of the driver in the knowledge area of hazardous materials or whether DMV tested that driver for that knowledge.

CHAIRMAN KATZ: The DMV test, you just said, is this multiple-choice test.

MS. WAGGONER: Yes, it is.

CHAIRMAN KATZ: Is the goal to get everyone certificates or only certificates to those who are qualified?

MS. WAGGONER: Our goal really is to give them to people who are qualified.

CHAIRMAN KATZ: What you said was that we have owner-operators, we have small businesses, we have big businesses. And we have to get them all certificates.

MS. WAGGONER: Well, we have to provide services so they'll be able to get certificates.

CHAIRMAN KATZ: I understand that, but you also have an obligation to see to it that we're protecting the public and that the people who are driving those loads are qualified, whether it's for a small business or a big business. I don't think the goal is to make sure that everyone can drive a truck. The goal is to make sure that hazardous materials are only being handled by people qualified to do it, if a small business operator and a large business operator have an equal opportunity to have an accident that can result in a tragedy.

MS. WAGGONER: Right. We don't disagree, I don't believe, in what we're saying. What we're doing is looking for a method whereby we can provide the forum for people who have that knowledge to display that knowledge. That's all we're trying to say. The thing is, the knowledge base that we're talking about in hazardous materials is very broad. The problem we had that took the time is to define, out of that area, what a driver should know to be able to demonstrate that he has that knowledge and that he is qualified to handle it. If you'll notice from our proposed regulations, we have a very detailed course content of what we think -- placarding is a major issue, labeling, etc., operation; but operation of the vehicle is also an integral part of what that driver should know in order to safely operate the vehicle.

CHAIRMAN KATZ: How do you test that driver for operations?

MS. WAGGONER: We're going to ask for a pre-trip inspection, and we have defined about an hour and a half drive test, skills test.

CHAIRMAN KATZ: Administered by?

MS. WAGGONER: Department of Motor Vehicles.

CHAIRMAN KATZ: And the pre-trip inspection?

MS. WAGGONER: Department of Motor Vehicles.

CHAIRMAN KATZ: Both of those will be required?

MS. WAGGONER: Yes. You have to have a basic Class I or Class II driver's license in order to qualify.

CHAIRMAN KATZ: You're talking about the same thing you have to do to drive tomatoes on the highway.

MS. WAGGONER: Exactly.

CHAIRMAN KATZ: That doesn't bother you?

MS. WAGGONER: What else could I ask him to do? The basic principle of operating a tanker, whether it has water in it, milk in it, catsup in it, or one of these hazardous -- the principle of operating the vehicle does not change with the commodity in the vessel. Those techniques or skills are the same. What is additionally required is your knowledge of how to respond to an incident: what placarding, what identification do you have to know; what response, who do you have to contact if there's an incident, etc. That's the additional knowledge base that we're looking for.

CHAIRMAN KATZ: Don't you require classroom training for school bus drivers?

MS. WAGGONER: Yes.

CHAIRMAN KATZ: But you're not requiring that -- I mean a school bus driver still has to have your basic Class I license, Class I or Class II, license in order to get the certificate to drive the school bus.

MS. WAGGONER: Yes.

CHAIRMAN KATZ: So they have the same basic skills and training that the potential hazmat driver has. However, the hazmat driver then only has to take a multiple-choice test, whereas the school bus driver has to take a class in order to be qualified.

MS. WAGGONER: Yes, he has to have so many hours of classroom training.

CHAIRMAN KATZ: I guess somewhere along the line I'm getting lost here. You have two trucks: a school bus driver and a guy driving a chemical that killed 2,000 people in Bhopal. Both of them have a Class I license because they both took the same pre-inspection tour and the drive test. Now, the person who's going to drive the kids goes to school for x-number of hours and then takes a test after that to get their certificate. The guy who's driving the chemical that killed 2,000 people only has to take a multiple-choice test.

MS. WAGGONER: Well, I guess what I'm unable to respond to you is, in the classroom training, I'm not sure what all the increments of the classroom training for the school bus driver involves. I'm not sure if that classroom training involves specific vehicle handling techniques or passenger control, special laws effecting...

CHAIRMAN KATZ: It involves both.

MS. WAGGONER: ...loading and unloading of those passengers.

CHAIRMAN KATZ: It involves both.

MS. WAGGONER: Okay.

CHAIRMAN KATZ: So I guess I still don't understand how DMV can say, to transport this chemical, you only have to take the multiple-choice test. I just have a hard time with that.

MS. WAGGONER: You think in addition to the multiple-choice test there should be a requirement for classroom training, is that what I'm understanding?

CHAIRMAN KATZ: I'm trying to say some additional training. Chief Girod came up here earlier, and he has a lot more experience in this than I do certainly. And it bothers him that it's just going to be a multiple-choice test. If he's going to be bothered by it, the odds are I'm going to be bothered by it.

MS. WAGGONER: Well, the only thing I would say -- and I'm not trying to say what we're proposing is right or wrong -- it brings up another interesting aspect. We have had a radioactive certificate program in place since 1984 that has operated under this same principle, and to this point we have not found that has caused any great deal of difficulty. I guess that would be one of my responses. And it isn't as though considering what you're saying is not appropriate.

CHAIRMAN KATZ: I guess my only response would be that we have either been terribly competent since 1984 or terribly lucky, and the whole point of this hearing and what this task force is looking at is to insure that we're not only lucky but that we're competent and that we're not all back here at a hearing -- I don't want to have one of those hearings that you have after Bhopal occurs when everyone says, "My God, why didn't we do this?" That's the whole point of what we're trying to do.

MS. WAGGONER: Agreed.

CHAIRMAN KATZ: I don't think the Department does either.

MS. WAGGONER: No, we've already gone through some of those experiences...

CHAIRMAN KATZ: Right.

MS. WAGGONER: ...and you're right. We don't want to go through trying to answer why we didn't when we could do it at the beginning.

One of the other things that I would bring to your attention is, under the Commercial Motor Vehicle Safety Act, there will be a commercial driver's license

issued to the drivers of these vehicles; and if they have one violation involving DUI or driving under a controlled substance, leaving an accident or commission of a felony, their commercial driver's license, their ability to drive this type of vehicles, will be disqualified for three years. So there is a significant penalty for a first-time offense.

CHAIRMAN KATZ: But you don't participate in the nonresident violators compact?

MS. WAGGONER: No, we participate in the driver's license compact.

CHAIRMAN KATZ: But not the nonresident violators.

MS. WAGGONER: The nonresident violators compact are for those people who do not pay up their fines and their convictions, but we do get records...

CHAIRMAN KATZ: Or who fail to appear.

MS. WAGGONER: And who fail to appear, but we do get the records of convictions.

CHAIRMAN KATZ: But don't you think that failure to appear is significant. We've gone through this in the licensing before. A failure to appear could be just as significant. There's a reason folks don't appear when they're supposed to. If a guy is arrested for DUI, blows 2.7 on the breathalyzer, and then fails to appear, you may not have that conviction that you guys are citing in your records; and you don't have the failure to appear because it occurs out of state. So your records don't reflect that they were busted on a DUI and they failed to appear.

MS. WAGGONER: We have looked at the nonresident violators compact a couple of times and found that in what we call the western region of the United States, there's only now one state that participates in the nonresident violator compact. They are just going in now, and that's Washington. None of our contiguous states, Oregon, Nevada, or Arizona, which is probably where most of

our California-based drivers would be traveling to, are members of the compact either. So they would not be exchanging information with us, and that's where we would consider having most of the traffic on that kind of a situation.

CHAIRMAN KATZ: I think Colorado is going to participate or is participating, and I'm also told that both Oregon and possibly Arizona are considering it, based upon whether or not California gets in.

MS. WAGGONER: Oregon is looking at doing a bilateral agreement with Washington to see if it's worth doing. That was the last thing that we heard, so they're not even sure whether they're going to do it. They're going to try it with Washington to see how it works out. Arizona -- the last I heard, they weren't.

ASSEMBLY MEMBER LA FOLLETTE: I just have one question. Did you say you were considering an hour and a half skills test with the drivers, or did you say...?

MS. WAGGONER: No, we are administering...

CHAIRMAN KATZ: That's part of what every driver goes through before they become a truck driver.

ASSEMBLY MEMBER LA FOLLETTE: And there is no special program during that one and a half hours to determine if this driver is able to react under an emergency condition or understands the hazards of the material he might be hauling?

MS. WAGGONER: At this time, there is not. That's part of the regulation that we're proposing, to make some specific subjects on hazardous material. But no, at this time, there is nothing within our current licensing. It is only vehicle orientated.

CHAIRMAN KATZ: Thank you very much. I'd next like Mr. John Kearns, who is the Chief of the Toxic Substances Control Division, State Department of Health Services, to come forward please.

MR. JOHN J. KEARNS: Thank you for the opportunity to be here. What I'd like to do is briefly tell you the responsibilities and roles that the Toxic Substances Control Division plays in the overall picture that you're assessing here today. Then secondly, with respect to the questions you addressed to us, I would beg your indulgence. I do not have a written response at this time but will provide it to you this week. I am prepared, however, to discuss it with you at this time.

With respect to our responsibilities, if you look at the matrix, it would appear that the Department of Health Services has considerable responsibility, as well as the many, many, many agencies that you see in state government that also play a role in the hazardous materials program. I might add, the Department of Motor Vehicles is absent even from that matrix. Our responsibility, as indicated in the matrix, is basically in the support area. We provide technical expertise if we're called upon by local government. We provide emergency medical services or any vector control, public health impact, if called upon. One role that we play is in the actual clean-up. As an adjunct to the Hazardous Substances Account, an Emergency Reserve Account has been established that provides us with \$1 million per year to provide for the clean-up and disposal of spills that do occur or sites that have been contaminated upon which no effective responsible party can be assessed. The tables I provide you show the numbers of sites that have been cleaned up and spills that have been cleaned up.

As you'll note, the numbers of incidents have increased in the past few years, and I'm told that the statistics for this year also show some measurable increase.

Our responsibility also involves funding for equipment to local governments in their responsibilities with respect to hazardous materials incidents. Early

on, we provided a series of hazardous materials vans to specific counties. Lately, however, the requests are coming in and asking for specific equipment that they will use to augment their own emergency response equipment. This is limited to \$500,000 per year.

Now, with respect to the questions, the first question deals primarily with inadequate training. Our responsibilities are limited in that regard. We have taken some of the funding that we have for this year under our Emergency Reserve Account and have allocated some \$55,000 to provide assistance to local government in their training efforts. However, as the Chief indicated, this obviously is not adequate to provide the type of training and the numbers of participants that are actually needed at the local government level. We hope to use this as a train-the-trainer so that the trainers can in essence be taken to locales like the California Specialized Training Institute, provide training and return to their local agency and transfer this training to their particular jurisdictions.

With respect to the overall training, I can only say that our department has been a participant on the curriculum board, the "cast of thousands" as Mrs. La Follette indicated. But it's our understanding that program is moving very effectively, that the curriculum that was discussed by the Chief -- these are some of the first steps that are underway. The actual hands-on type training is anticipated to be given at CSTI, and at one time they even talked about having a railroad car so that they could have the actual type hands-on training that the Chief described. However, I would wholeheartedly agree with him that the amount of funding that's available to local governments to do this is probably inadequate.

I might also tie into this whole area of training, the program that we had with respect to the transport of hazardous waste.

CHAIRMAN KATZ: I just have one question off the tables that you provided us with. On Table 10, in Riverside you indicate 14 incidents at one site.

MR. KEARNS: No, sir. In Riverside we have 14 incidents, one of which was a clean-up of the site, one of which was a spill in Riverside County, 11 had to do with drug labs; and those are the totals, breaking it down. A site simply means they came across some abandoned drums. There is no responsible party; they contact us.

CHAIRMAN KATZ: Okay, go on.

MR. KEARNS: With respect to the transport of hazardous waste, it starts with the registration of the haulers of hazardous waste. The first part of that deals with the liability requirements. They have to assure us that they have a minimum of \$600,000 insurance coverage. The second aspect is the certification by the California Highway Patrol that their vehicles do meet all of the requirements. And the third part is adequate training. At this point in time, I might add, the requirement for adequate training is intertwined with the Department of Motor Vehicles' development of the regulations, which we will be utilizing as our certification of training. However, the liability -- with respect to the transport of hazardous waste, when we get into the strict liability requirements and the joint and several liability requirements regarding hazardous waste, we believe this is one of the impetuses that cause the owners of these vehicles to insure that their people are in fact adequately trained to handle the materials.

The second thing I might point out is, under the uniform hazardous waste manifest system, we embody many of the things that Supervisor McPeak referenced earlier. In order to transport hazardous waste, the generator must complete a uniform manifest. The first portion is completed by him. He removes his copy. He gives it to the registered hauler. The registered hauler completes the

second portion. The registered hauler then takes it to a treatment, storage or disposal facility, where the third portion is completed. The registered hauler removes his copy. The generator has already sent a copy to the Department of Health Services. When it arrives at its final destination, a copy is removed and mailed to us. We marry these copies to insure that what was actually shipped by the generator has in fact arrived at the facility. So we do insure that we do have a tracking system for the transport of the hazardous waste. This, intertwined, as I say, with the strict liability requirements, imposes an extreme responsibility on the transporter of hazardous waste.

With respect to reporting requirements, we obviously are not in the lead role. The California Highway Patrol and the Office of Emergency Services are the implementers of this program. The Office of Emergency Services was required by statute to develop a hazardous materials plan statewide, as well as a consistent reporting system. They do have a form that they have been testing for the past two years, and it's my understanding that it's going to be mandatory in January of 1988. The information that I have been given indicates that it has been well received by local government. They did participate in the development of the form. The forms are being utilized, and meaningful statistics are now being gathered.

Mr. Chairman, those are my comments regarding the three questions you asked of our department.

CHAIRMAN KATZ: I appreciate that, and you're going to give us the written...?

MR. KEARNS: Yes, sir, we will.

CHAIRMAN KATZ: Thank you very much. Next I'd like to call Ms. Susan Durbin, Deputy Attorney General, Environment Section of the Office of the Attorney General.

MS. SUSAN DURBIN: Good afternoon. We also appreciate the opportunity to appear here today. We also have a written statement; but since it is a legal statement and therefore unutterably dry and boring, we will simply try to summarize it rather than go through it point by point.

CHAIRMAN KATZ: Thank you.

MS. DURBIN: We understand the Task Force is most interested in the question of federal preemption in this area and how much the state can and cannot regulate. Earlier you heard that the CHP consulted three different sources and got the answers of "Yes," "No," and "It'll have to be litigated." Those are precisely our answers also -- "Yes," "No," and "It'll probably have to be litigated."

Under the federal Hazardous Materials Control Act, which is the chief statute at the federal level that governs this, the states are preempted from regulating in a way that is inconsistent with federal regulation. The statute appears to contemplate that the states will regulate and may regulate in areas that are not inconsistent with the federal requirements. When you go through the regulations, it looks like there's considerable leeway. However, the Department of Transportation issues what it calls inconsistency rulings in which it decides whether particular state or local requirements are or are not consistent with the federal requirements. When one reads some of those inconsistency rulings, Transportation seems to regard a great deal of things as preempted by the federal regulations. Such things as prenotification requirements, special reporting requirements of accidents, carrying special kinds of equipment for emergency response on board vehicles -- a wide range of things have been regarded by Transportation as being preempted by the federal regulations. In fact, far more things seem to be preempted than are allowed by the Department of Transportation.

That is at the administrative level, and those rulings by Transportation are advisory in nature. They are not binding on the courts in the way that some other kinds of administrative determinations are. They are not done in an adversary context. They're essentially advisory rulings.

One can also go to court, and it's the courts who are the final arbiter of this. Unfortunately, there is very limited case law under the Hazardous Materials Transportation Act, and all that is significant has been on the east coast and in east coast circuits. There are no significant cases that we have thus far discovered here in the Ninth Circuit that would control what would happen in California law. The case law that's on the east coast is very mixed. There are cases that allow the states very considerable latitude. For example, in a New York case, the City of New York simply banned the shipment of some kinds of hazardous gases through the City of New York at all, despite the fact that there were interstate routes and so forth; and the court upheld that, citing as its guiding purpose safety and preservation of the safety of the public. Other courts have been extremely hostile to local and state regulations and have given the federal government great deference, citing as their guiding principles the national uniformity of regulation and the prevention of delays in the shipment of hazardous materials. There is no guidance now as to which line of cases the Ninth Circuit would follow in our case and what California laws would and would not be upheld.

CHAIRMAN KATZ: Has the Denver law been litigated yet?

MS. DURBIN: Not that we know of. We can give you some general guidance. First, anything which directly conflicts with the federal requirement -- for example, the state says that a material can only be shipped in container A and the feds say it only can be shipped in container B. That would be struck down. Anything where you cannot physically comply with both at the same time will be

struck down. Beyond that, the courts and the Department of Transportation look to the objectives of the act and whether the state regulation acts as a barrier or an obstacle for those objectives. The federal government and the courts seem to have somewhat different conceptions of what acts as an obstacle, with the Department of Transportation viewing many things as obstacles to national uniformity of regulations. I believe you could get that impression from the testimony that the federal government offered this morning.

CHAIRMAN KATZ: For instance, if the federal law says you have to ship it in container B and we want to say you have to use container B but you can only use it from 9:00 a.m. to 4:00 p.m. on alternate Thursdays.

MS. DURBIN: There was one case back in Rhode Island where they tried to put a ban on shipping materials through urban areas during rush hours. The court struck that down as causing unnecessary delay and being inconsistent with federal regulations. Now, how to square that with the New York case that says you can simply ban it totally -- we can't do that. It's going to have to be litigated in this circuit to find out what cases this circuit is going to follow and which of the different purposes of the federal act the courts are going to regard as paramount -- safety or national uniformity.

Once a regulation has been found to be inconsistent, either by the courts or by the Department of Transportation, there is a provision in the federal statute for obtaining a waiver of the federal preemption from the Department of Transportation; and the grounds for obtaining such a waiver of preemption are whether the state requirement provides a greater level of safety and whether there's an inordinate burden on interstate commerce. This is in the statement with the appropriate citations.

However, our computer-assisted search has disclosed no case, at least in this decade, where the Department of Transportation has granted such a waiver.

In the first place, you have to first concede that your requirement is inconsistent and preempted before you can ask for this waiver. So there's no motivation for states and localities to seek such a waiver until they've gone through the whole litigation and made sure that their requirements are indeed inconsistent. That might be why there are none, but so far Transportation has not given out any. That's a summary of the preemption issue.

CHAIRMAN KATZ: One thing I'd like to request is, the federal guys left us a copy of their proposed new statute that I think, at least in a quick reading of it -- and I'm not a lawyer -- basically takes a lot of our discretion away. I'd like to ask you to take a look at that and see if you're reading that with the same sort of view that we're reading it. Obviously we need to know that since it will be under consideration by Congress. If it's as restrictive as it appears, it may be something we want to get the congressional delegation involved in.

MS. DURBIN: We would be happy to look at that immediately and get you an answer this week.

CHAIRMAN KATZ: Great.

MS. DURBIN: We also did some looking at the routing regulations, both under the Hazardous Materials Transportation Act and under the federal Commercial Motor Vehicle Safety Act, and discovered that there are virtually no routing requirements, as I'm sure you've already been told, besides two: one that calls on shipments to avoid congested areas and areas of heavy population and another that calls for them to be shipped without unnecessary delay. There's clear conflict between those two. We also discovered that the routing requirement that hazardous materials shipments avoid populated areas does not appear to be under the same system as most of the other regulations governing hazardous materials transport and that it doesn't seem to be subject to the inconsistency

ruling and the federal preemption waiver provisions. We're looking into that a little bit further.

There is no case law, there are no administrative rulings that we have been able to find that interpret the routing requirement that shipments avoid populated areas. Therefore, we can give the Task Force even less guidance as to what would be upheld and what would be preempted in this area. We can only look to the general principles, the commerce clause law, which say that you cannot have a direct conflict and you cannot have an inordinate burden on interstate commerce. It would appear that the state has some flexibility in this area. Whether the Department of Transportation would agree with that, I would seriously doubt.

The committee also asked for our views on state regulation of Department of Defense shipments. Attached to our statement is a previous Attorney General ruling on that question, and I would simply commend it to your reading if you wish. It says that there are very few things that the state can indeed require of a federal instrumentality, and specifically licensing authority is extremely restrictive. You can require them to obey the same sort of general traffic laws that everyone else does, stopping at the stop lights, obeying the speed limits and so forth; but there are some licensing cases that say that if the federal government has licensed someone, the state cannot then place additional licensing burdens on them without the federal government's consent.

As to the question of state and local ability to enforce federal law, we believe that the California Highway Patrol already does enforce the federal law in this area very extensively in terms of truck qualifications, equipment specifications, and that sort of thing. The requirements in that area are minute. They fill a thousand pages of the Code of Federal Regulations, and the Highway Patrol has adopted most of those into California law and enforces those already.

As to the other requirements about routing and so forth, we believe that under the California Business and Professions Code, the California Attorney General, the city attorneys, and the district attorneys have the authority to enforce any federal law that affects business and that regulates unfair or unlawful business practices, so that the district attorneys, the city attorneys, and our office could bring enforcement actions against people who violate the federal requirements for routing or for other safety measures in the transport of hazardous materials just as we enforce any other state or federal law under the Business and Professions Code.

That completes the general outline of what we had to say. We'd be glad to answer any questions or to do further research for you.

CHAIRMAN KATZ: We'll get you, before the end of today, a copy of what the feds gave us; and I appreciate your help in evaluating what impact that would have and therefore helping us determine the response to it.

MS. DURBIN: Thank you.

CHAIRMAN KATZ: Thank you very much. Next we have Mr. Thomas Tidemanson, who is the Director of Public Works for the County of Los Angeles.

MR. THOMAS A. TIDEMANSON: Good morning, Mr. Chairman and members of the committee. I appreciate the opportunity to be here today. I'm actually here today representing Supervisor Mike Antonovich, who sends his regrets that it was unavoidable that he couldn't make the meeting today. He wanted very much to be here. As you know, the Board and Supervisor Antonovich have a great interest in hazardous waste, particularly as it relates to Los Angeles County.

I don't think at this hour I need to tell you the problems we have in Los Angeles County with transportation and the transportation of hazardous materials over that same highway or freeway system. As you've heard today, there's very little information about how much -- I keep using the term "hazardous waste."

That's probably a misnomer. That's about the only thing we do know about in this county, what's transported in the way of hazardous waste. We do not know what's transported in the way of hazardous materials. Estimates we made about 10 years ago were that some eight million tons of hazardous materials are transported in and around Los Angeles County, but we don't have a real good handle on it.

I might say ironically we've been fortunate, I suppose. Much of what I've heard today is a repeat or a rehash of a report that was done in 1979 by the Board of Supervisors on the problems of transporting hazardous materials, particularly within Los Angeles County. The same issues being raised here today were the same issues we raised in 1979. As to the condition of equipment, it was at that time frightening to us, the conditions of many of the trucks and the trains that were in this system. Driver training was an issue constantly raised. Institutional responsibilities -- how do you dispose of the material once the accident has occurred, the kind of placards that they're using, the very things that this committee today is probably addressing; and I applaud the committee and look forward to your work because maybe you'll have a lot more impact upon this particular problem than we have had over the last 10 years in trying to address it.

Just recently, as late as October 14, Supervisor Antonovich held a similar type of meeting. I don't think he was aware of the fact that you were conducting a hearing on the same issue. As a result of that hearing that he held on October 14, the Board has adopted what I consider four very pertinent points. I'd like to bring those four to your committee today.

One of them was that the Board has directed me to update our 1979 report to see what we have accomplished, what has been accomplished in the state, and whether or not there are additional issues that need to be addressed. We need to emphasize more the legislation we were seeking in that original study.

Unfortunately, or fortunately, we may be the first test case. Ms. Durbin commented that the local agencies cannot restrict the timing in which hazardous materials are transported through the county. Our Board has directed our County Counsel to adopt or develop a proposed ordinance which will do just that. Knowing the Board of Supervisors as I do, they're not averse to taking on the federal or state government if that's necessary in the adoption of certain ordinances.

They've also urged the Legislature to expand the list of reportable materials. As you know, the only material that has to be reported at this time is the atomic or nuclear materials that are transported through the county. And they would also support legislation to require public and private agencies to notify the CHP, with the CHP notifying the local agencies, on the transporting of various materials through the county. They have not defined what those materials would be, better leaving that up to the state legislation. As has been pointed out today, you might have 10,000 items listed; and there would be no way that the CHP could handle that particular aspect of it.

I think the thing that concerns the County most, the thing that we're really leaning on, the thing that you've heard here today is the containerization, what they're hauling it in, how they're hauling it, the fact that that equipment and those containers need to have some kind of inspection, some kind of testing.

We also feel it's necessary for state legislation to create or to improve what we might call bypass routes to the major metropolitan areas. For years the County of Los Angeles has been trying to get Caltrans to upgrade the quality of SR 138, which bypasses downtown Los Angeles through the Antelope Valley, if you will, which could be, under any circumstances and with some improvements, a superior route through Los Angeles County for hazardous materials destined for some place either east or west or north of Los Angeles. However, we have not

been successful in achieving state funding to upgrade that route. Each time we try, we get the comment back, "Why don't you guys spend your money? We're too busy developing other portions of the state highway system, which unfortunately needs a lot of work also."

Probably the most important, from my perspective, and I think from the Board's perspective, is the training of truck drivers. One only needs to drive the system here, as I do daily, or to drive I-5 and find out that truck drivers are becoming -- though I hate to use it in the broadest sense because many truck drivers are undoubtedly expert drivers -- but there's a certain group out there; and I think they've been created or caused since the deregulation of the trucking industry, where there are more trucks out there than there are qualified drivers. For trucks to be doing 75 and 80 miles an hour, tailgating on the freeway, changing lanes is, in and of itself, a tremendous hazardous as far as I'm concerned, regardless of what they're carrying. They cannot stop the truck. There's no way they can stop at the rates they travel on the freeways at this point in time.

As a local public works officer, I would like to point out that so far we've been talking about our major highways, our transportation system, the railroads, which also carry a great bulk of our hazardous materials. But I don't think a week goes by, probably more than once a week, that I don't have a hazardous spill someplace on the county road system. Fortunately, they have currently been minor, minor in the sense that no one's been seriously injured in those spills; but we have shut down large areas of the county at any one time until that material can be identified, until the fire department in this case, together with the health officer, can identify what that hazardous material is and then take the appropriate means to dispose of it.

CHAIRMAN KATZ: Assemblywoman La Follette.

ASSEMBLY MEMBER LA FOLLETTE: I guess actually you were starting to answer my question. I really wanted to know the procedure that is followed immediately upon a spill.

MR. TIDEMANSON: Depending upon who is notified first -- let's take my crews for example. The public works crews are informed only to barricade off the area so that no one can approach it, because they're not trained in identifying hazardous materials. At that point in time, we notify the fire department and the health service department, the health service department because they have a better trained operation to identify what that material happens to be. This is regardless of whether we know the material is hazardous or not. We have no way of knowing that up front. So we barricade off the highway or the street; and if it's something such as a liquid, we block our drainage system so it cannot flow on into the drainage system because, as you know, that ultimately ends up in the ocean. So it's a three-step process. We barricade it off. We notify the fire department, who has hazmat teams, and the health department to come in and identify just what the material is.

Once identified and once knowing how to handle it, if we know who spilled it, they are the ones who are responsible for having it cleaned up; and there are several companies here in Los Angeles County that are qualified and equipped to pick up and dispose of hazardous materials. If we don't know who it is, and that's happening more and more as people dump things just out on the street or in the alleys and so forth, then it has to be picked up; and we work with the State Health...

ASSEMBLY MEMBER LA FOLLETTE: You're talking there about illegal dumping versus spills as a result of an accident.

MR. TIDEMANSON: Right, that's true. But a spill on the highway, which is what we're talking about here, happens -- at least two or three times a month, we have a spill someplace on our highway system.

ASSEMBLY MEMBER LA FOLLETTE: Which is predetermined, planned, you mean?

MR. TIDEMANSON: Well, I don't think it's predetermined.

ASSEMBLY MEMBER LA FOLLETTE: Well, I want to make sure that we're both -- I'm not talking about the illegal dumping.

MR. TIDEMANSON: No, it's not an illegal spill. It's a leak in the equipment. It's the result of an accident. It's falling off the truck because it wasn't properly tied down. It is from an accident that has occurred, where the truck and something else has collided. Hardly a week goes by that I don't have a notification someplace in the county that my crews have responded to a spill on the highways that requires action either by a hazmat team or by our health department.

CHAIRMAN KATZ: Thank you very much. Mr. Dale Fisher, Hazardous Materials Coordinator for the Western Division of Dow Chemical. We appreciate you waiting so long.

MR. DALE E. FISHER: Good afternoon, we're going to be brief. I have a flight in about 45 minutes back up to San Francisco. I brought Jim Floyd along. He's out of our Los Angeles area, and he's going to talk very briefly about some of the things that we're doing in our bulk terminal. Then I'm going to address a couple of issues.

It's kind of funny that I did not hear anyone bring up the word "Chemtrec." Chemtrec was started back in 1971. It's funded by the companies. Dow Chemical is a member of Chemtrec. There are 170-odd companies that are members of Chemtrec. We fund Chemtrec, and basically the purpose of Chemtrec is that it's a 24-hour, seven-day a week emergency response system. Chemtrec will provide immediate information to the first responders. They have in their computer a list of over 140,000 different chemicals by the DOT classification as well as the trade names for all the participating organizations they have. Plus they

notify the shipper as well; that's also a responsibility of Chemtrec. As I said, that's funded by the shippers.

CHAIRMAN KATZ: Chemtrec notifies when there's an incident.

MR. FISHER: That's correct.

CHAIRMAN KATZ: In response to an inquiry?

MR. FISHER: Yes, in response to an emergency response system. I have some information.

CHAIRMAN KATZ: In order for Chemtrec to work you need to know what is involved in the incident.

MR. FISHER: That's correct.

CHAIRMAN KATZ: So Chemtrec can be very helpful in terms of dealing with an incident and responding, but you still have a problem if the placards are wrong on the truck or the placards are not visible for any reason. Chemtrec doesn't help until you've already identified the chemical.

MR. FISHER: That is correct. You would have to identify the chemical in order for the Chemtrec system to be effective. Real briefly, there's one more organization I'd like to talk about, and that's Chemnet. Chemnet provides technical expertise and equipment which makes it unnecessary for medium to small communities to hire personnel and purchase emergency response equipment. Chemnet was founded in 1985. It's also under the CMA as Chemtrec is. The main difference between those organizations is Chemtrec is more information driven and Chemnet is more emergency response driven.

At Dow we're having things called hazardous materials transportation reviews. The goal of those reviews is to develop partnerships between us and the carriers. We're sitting down with them. We're reviewing their pre-trip inspections. We're reviewing their routing procedures. We're talking to their carrier management. We're talking to the drivers, and we're understanding the

flow from when that product leaves our gate to when it gets to the customer. We want to know what's going on with that particular shipment, and we're making it a condition of doing business with the Dow Chemical Company that the carriers participate in that particular program.

CHAIRMAN KATZ: You don't do any shipping yourselves?

MR. FISHER: In private fleet?

CHAIRMAN KATZ: Yes.

MR. FISHER: No, no. We do in our Texas Division, which is in Freeport, Texas where I used to work. But no, here in the Western Division, which is Pittsburg, California; Long Beach, which Jim's going to talk briefly about; Torrance and Walnut Creek, no, we do not have our own private fleet.

ASSEMBLY MEMBER LA FOLLETTE: I want to ask a question about Chemnet. Who can use that program, just those who deal with Dow Chemical...?

MR. FISHER: No.

ASSEMBLY MEMBER LA FOLLETTE: ...or anyone? I heard you say something about small business.

MR. FISHER: Small communities.

ASSEMBLY MEMBER LA FOLLETTE: Oh, small communities.

MR. FISHER: For the small communities or the medium-size communities that may not have the money to go out and get 15 trucks with emergency response equipment, it helps those types of communities because they will just dispatch their own independent contractors, which they have on hire, to react to an incident.

ASSEMBLY MEMBER LA FOLLETTE: They're up and down the state? This equipment is available up and down the state?

MR. FISHER: Yes, it is. It's federally run out of Washington, D. C., but it is, I want to say, readily available. And another thing about Chemnet is

that, being a participant of that, we as a member will respond to someone else's accident; and Dow Chemical has an emergency response system which probably can handle especially the State of California fairly well.

MR. JIM FLOYD: In addition to having the ability to respond to chemical emergencies through our own emergency response system and through Chemtrec, we also are doing some proactive things to prevent safety hazards to the highway, as well as environmental. We have a bulk chemical terminal in Long Beach. That's a group of tanks in which we store chemicals -- some hazardous, some not hazardous. When a carrier arrives at our facility, we first of all make sure his truck is clean, dry, and odor free. That's to enhance the integrity of the product that we put in the truck as well as eliminate any explosion hazard that might occur when loading potentially reactive chemicals together. In addition to insuring that the clean, dry, and odor-free truck is okay, we check the truck for design criteria to make sure that the type of the truck is going to be able to handle the chemical that we're loading in it. For different types of chemicals, there are different types of trucks.

Most of the spills that occur are from the outlet valves on the truck, and I'd like to go into a little bit of detail on that. There are three lines of defense on an outlet valve, the first one being a cap over the valve; the second one being the external valve itself, external meaning outside the truck that has a handle that you can open and close; and the third being the internal valve on the truck, which is actually inside the truck. So there's three lines of defense to prevent a spill.

Every truck that comes into our facility, we run a vacuum test on the external and internal valves to make sure that those valves will not leak. No truck can bypass that test that we do.

Once the truck is loaded, we have vapor recovery systems to insure that no vapors are admitted to the environment. Our facility, incidentally, is heavily computer controlled.

We make sure that we put proper tags and seals on the truck ourselves once it's loaded. We put a name tag and a transportation equipment data sheet on each valve. The transportation equipment data sheet, I would say, is similar to a material safety data sheet, but it's more basic and more direct and more to the point.

We also then give a copy of the bill of lading and a transportation equipment data sheet to the driver, that he keeps in his cab. We put it on the valves as well as give it to the driver so in the event that the driver is killed in an accident, the authorities would have access to it, whether it be in the cab or outside on a valve.

We check placarding to make certain that the truck is placarded properly for the product that it's carrying.

In addition, we have customers; and a customer may arrange his own transportation through a common carrier. In which case, we require the carrier to comply with our guidelines. Some customers have their own trucks. We require that our customers comply with our guidelines also, except that a considerable amount more finesse is required in dealing with customers and telling them that it really makes good dollars and cents to make sure your trucks are roadworthy.

We also inspect the trucks for basic common sense things like, if we see a bald tire on a truck, for example, we don't want it getting on the highway.

I could sit here all day and expound our virtues. I would rather, though, extend an invitation to any or all of you and your staffs to visit our Long Beach facility and learn what the chemical business is like in the 1980's.

CHAIRMAN KATZ: I appreciate it, thank you. Marian.

ASSEMBLY MEMBER LA FOLLETTE: Just briefly, are there any specific recommendations that you think we should consider to provide more safety as far as the transporting of hazardous chemicals?

MR. FLOYD: I would like to think the chemical industry is regulating itself. I know we are.

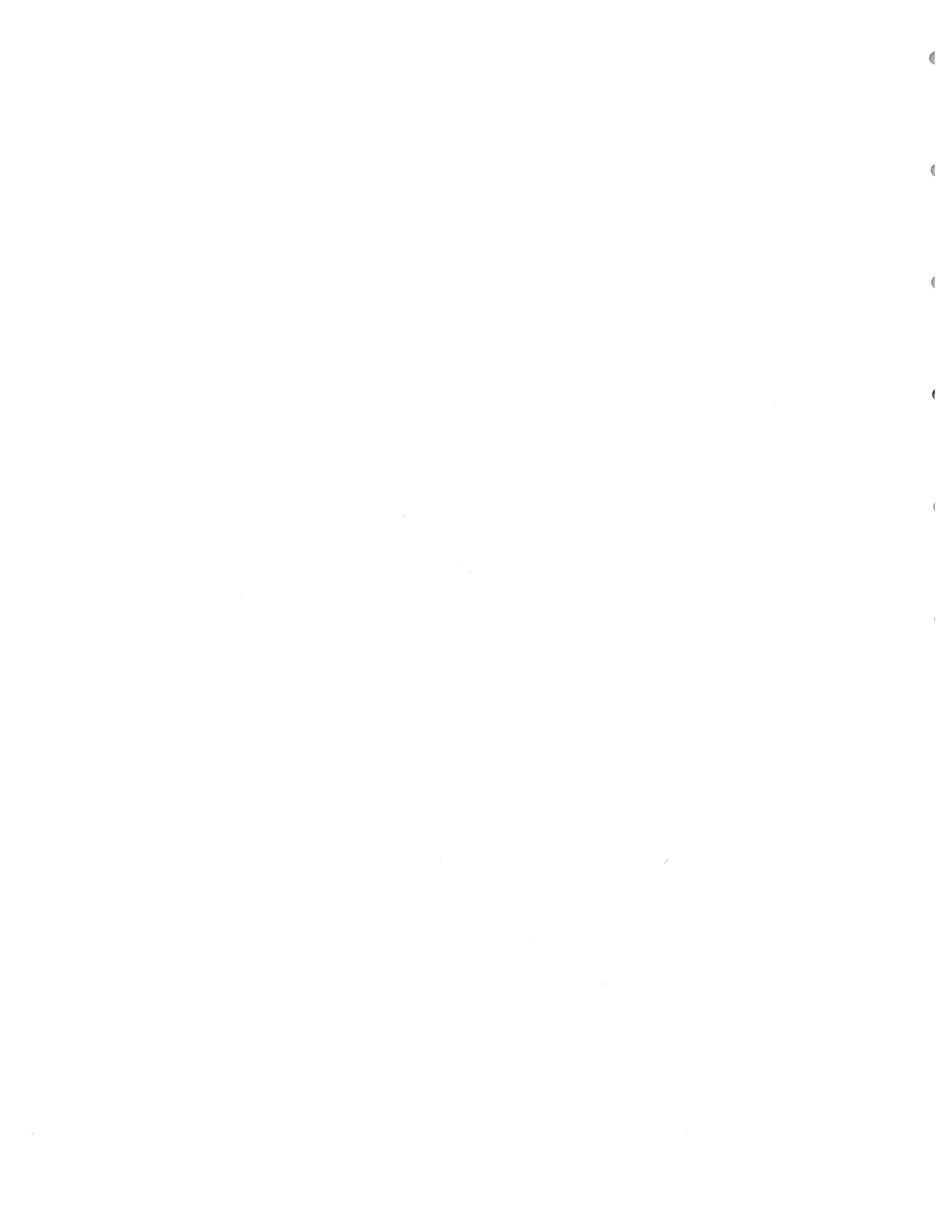
ASSEMBLY MEMBER LA FOLLETTE: You probably are because, I think, you're big enough that you can hire enough people, you're well founded in the law, you understand the question of liabilities and all of that. What about those who don't understand all of this?

MR. FLOYD: I guess I would have to do some research to be able to comment on that question. I'm sorry.

ASSEMBLY MEMBER LA FOLLETTE: Okay.

CHAIRMAN KATZ: Thank you very much. I appreciate you waiting. That concludes the hearing.

APPENDIX



Assembly California Legislature

□ SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-1616

□ TRANSPORTATION COMMITTEE
STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-7278

□ DISTRICT OFFICE
9140 VAN NUYS BLVD., SUITE 109
PANORAMA CITY, CA 91402
(818) 894-3671

COMMITTEES:
Environmental Safety and
Toxic Materials
Finance & Insurance
Policy Research Management

CHAIRMAN
Select Committee on
Small Business

RICHARD KATZ
ASSEMBLYMAN, THIRTY-NINTH DISTRICT
Chairman,
ASSEMBLY TRANSPORTATION COMMITTEE

FACT SHEET

PREPRINT ASSEMBLY BILL 5 TRANSPORTATION OF INHALATION HAZARDS

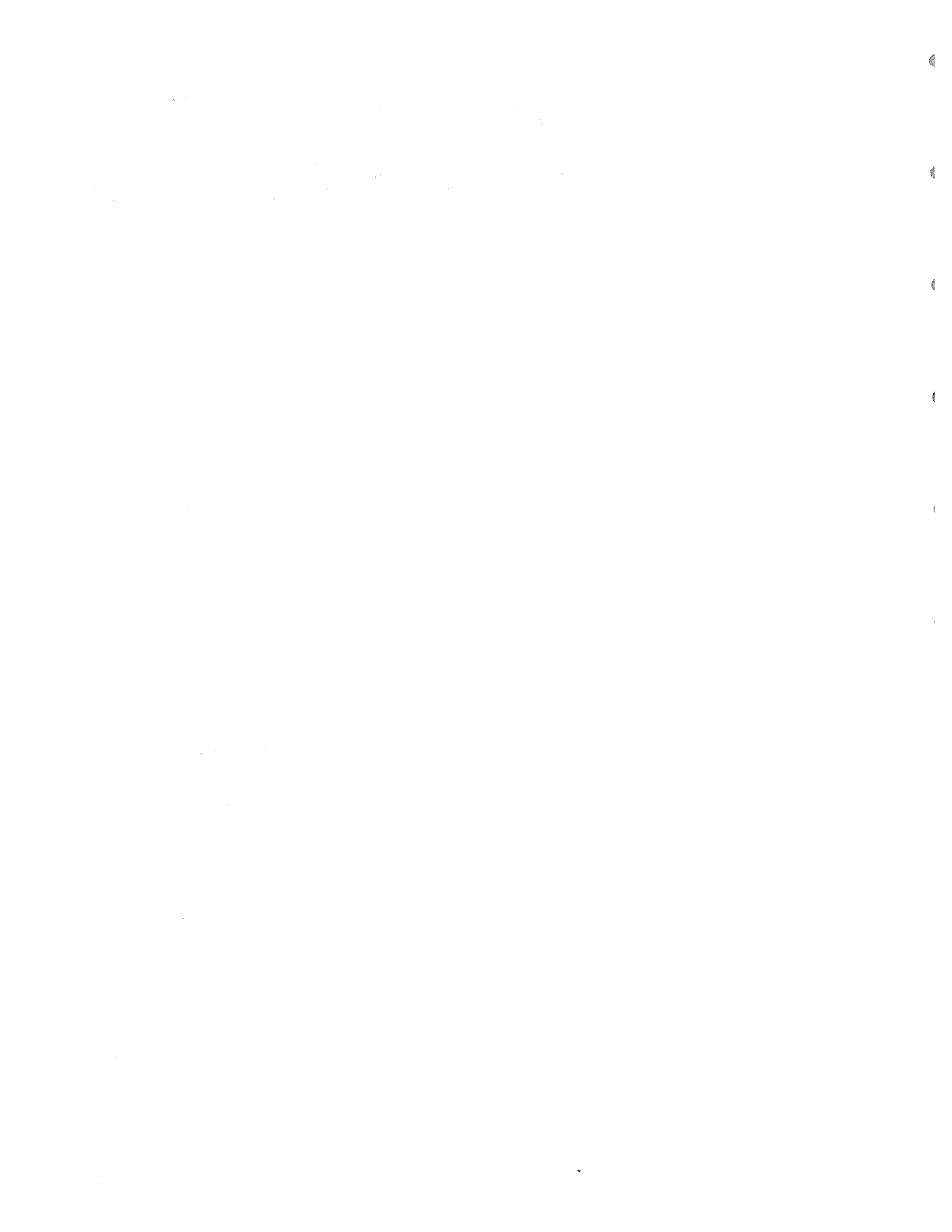
Over 170 million tons of hazardous material are transported annually in California. Between four and five million truckloads move on California highways each year.

Preprint Assembly Bill 5 seeks to make the transportation of the most toxic of these hazardous materials safer. The bill:

- 1) Establishes a new category of hazardous materials for the purpose of regulating transportation.

The category, called "inhalation hazard", includes anhydrous hydrazine, fuming nitric acid, and liquid nitrogen tetroxide, the components of rocket fuel being shipped in California. Inhalation hazards are substances similar to those which caused the Bhopal, India tragedy. They are highly hazardous, and require widespread evacuation in the event of an accident. Also included are certain poisonous gases.

- 2) Restricts trucks carrying inhalation hazards to a limited number of approved highway routes. The route network will be developed through a public hearing process under the direction of the California Highway Patrol. The CHP must consider population density and emergency personnel capability when recommending a route.
- 3) Requires local police and fire chiefs to be notified when inhalation hazards are transported through their jurisdiction.
- 4) Sets stiff penalties for carriers of inhalation hazards who do not follow required procedures.
- 5) Requires vehicles transporting inhalation hazards to have two qualified drivers, breathing apparatus, and emergency communication equipment, and to be accompanied by an escort vehicle.



FIRE PROTECTION DISTRICT

county of venturaWESLEY B. KILCREASE
County Fire Chief

October 29, 1987

Assemblyman Richard Katz
39th District
Chairman, Assembly Transportation Committee
State Capitol
Sacramento, CA 95814

**SUBJECT: Assembly Transportation Committee Hearing
November 2, 1987**

Thank you for an opportunity to attend the task force hearing on the transport of hazardous materials and your concerns for the general public and emergency first responders.

You requested responses in five general subject areas:

1. Concerns regarding the Department of Defense route risk assessment;
2. The safest road is not necessarily the safest route;
3. Additional hazardous materials that should require notification to local officials when transported through their regions;
4. State and federal training to local authorities to ensure adequate emergency response levels; and
5. State law to better protect against catastrophic hazardous material transportation incidents including the following areas:

Hazardous Material Categories
Route Restrictions
Notification
Driver Safety
Vehicle Safety

There are now huge volumes of highly toxic, flammable and reactive hazardous materials being routinely transported on our freeways and into our communities. These chemicals can kill and/or seriously injure many people if an accident caused sudden release, explosion or down-wind vapor spread.

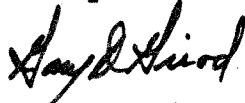
Richard Katz
October 29, 1987
Page 2

The training of emergency first responders and the prevention of accidents where possible are the essential elements necessary to avert the pending disaster on our California highways and railways.

I will try to identify options and suggest methods of preventing accidental releases and other measures to lessen their intensity or impact on surrounding or adjacent communities.

Thank you for your progressive work in dealing with the hazardous material problem and your concerns for first responders who must rescue, evacuate, and mitigate these emergencies.

WESLEY B. KILCREASE, Fire Chief
County of Ventura



Gary D. Girod
Assistant Fire Marshal

WBK:GDG:cc

Recommendation Statement: Transportation of Hazardous Materials

By: Gary Girod, Assistant Fire Marshal
Ventura County, California

CONCERNS REGARDING THE DEPARTMENT OF DEFENSE ROUTING RISK
ASSESSMENT FOR ROCKET PROPELLANTS

The IFC Technology Company of Washington, D.C, under contract, prepared the latest Risk Criteria Document. See the evaluation statement on Page four (Missile Propellants Safety and Transportation Routes) for a detailed evaluation. This government risk assessment covers the established routes of travel and a very condensed evaluation of the hazards associated with Nitrogen Tetroxide and Liquid Cryogenic Flourine.

My primary concerns regarding lack of completeness of this Department of Defense risk assessment document are as follows (see attachment, Page four for details):

- A. Population densities were misleading;
- B. California metropolitan population was not addressed;
- C. DOT emergency response guidebook evacuation distances were inaccurate;
- D. Congested freeways with stop and go traffic were not considered;
- E. Evacuation of trapped motorists adjacent to accidents was not identified as necessary. Populations next to roadways were identified but were only considered for one-half mile. Required evacuations could be one to four miles down wind;
- F. No consideration was given to roadways by type;
- G. No concern was noted for vapor spread and spill flow from elevated freeways; toxic nitrogen tetroxide gases are heavier than air;
- H. No consideration was given to lack of fire suppression water, hydrants on freeways, and congestion restricting emergency vehicles;
- I. No estimates were given comparing death and injury on rural roads as compared to populated freeways;

- J. No estimates were identified for toxic vapor spread and evacuation time allocations based on wind speed; and,
- K. No death or injury counts were estimated for full releases of toxic gases from tank vehicles, and victims in the vapor plume.

SAFEST ROAD IS NOT NECESSARILY THE SAFEST ROUTE

In terms of the catastrophic result of a sudden release of 3,000 gallons of nitrogen tetroxide, a Class A poison, the vapor spread could kill in a zone up to one-half mile wide and 1.8 miles down wind. With a ten-mile-per-hour wind, this vapor cloud of toxic gas will take only 10.5 minutes according to NOAA's the National Oceanic and Atmospheric Association, vapor plume dispersion modeling by computer. Recent tests conducted in the desert by Dr. Ron Koopman of the Lawrence Livermore Laboratories show a required evacuation of up to four miles.

Experts agree that, if driven enough trips, a given vehicle will eventually be involved in an accident. The risk assessment predicts one accident every 48 million hazardous material vehicle miles. In other words, an accident will happen eventually. The roads through metropolitan freeways chosen by the risk assessment may predict fewer accidents overall, but may very well be the cause of many deaths due to exposure to the toxic gas when the accident does occur. Lethal gases will spread into businesses, housing, shopping centers, schools, hospitals, and many other populated locations next to our freeways. There will be no warning and no second chance due to the extreme toxic nature of these Class A poisons. A remote travel route away from densely populated metropolitan cities will isolate any spill or release away from people who could not evacuate quickly enough to save themselves. Firefighters and police officers, where no life is in danger, could make the decision to take no action regarding spills or fires.

ADDITIONAL HAZARDOUS MATERIALS REQUIRING NOTIFICATION TO LOCAL OFFICIALS AND FIRST RESPONDERS

At present, there is no official requirement for the notification to local officials when hazardous materials are being transported. An agreement has been in effect with Vandenberg Air Force Base for notification six hours prior to taking delivery of the rocket propellants, nitrogen tetroxide and hydrazine.

All Class A poison gases in quantities exceeding one ton in transport should be considered for notification to local officials.

Densely populated metropolitan areas where there is no safe haven for ten miles or more (rural areas) should be given special consideration, where the vehicle will be in the community making stops and deliveries. Local officials, upon being contacted, may require designated routes, stopping locations or restricted areas such as tunnels, bridges, freeway interchanges, or specific high accident prone roadways. It also alerts first responders to storage location where these hazards will now exist.

STATE AND FEDERAL TRAINING TO LOCAL AUTHORITIES TO ENSURE AN ADEQUATE EMERGENCY RESPONSE LEVEL

The State Fire Marshal and his staff are doing an outstanding job based on the fiscal restraints and limitations place upon that office. There simply is not enough money allocated to our State Fire Training office to do an adequate job of preparing first responders, Fire and Police to meet the need of hazardous materials emergencies. There is not enough money to deliver the programs now available.

TRAINING NEEDS

1. More instructors permanently assigned and money to pay salaries and expenses.
2. Program administration cost for delivery and coordination.
3. Reimbursement to fire agencies who must keep their fire stations open while firefighters go for training.
4. Three sites (one central site, two southern California sites) for hands-on training, with props for simulated exercises, and money for expendable training materials.
5. Three state training facility sites for classrooms and dormitory facilities to train all first responders, fire, police and health officials.
6. To meet new federal training standards of 24 hours required for first responders, I recommend professionally produced basic video training modules. Each module is to be 15 minutes long with a student workbook. This audio visual program will allow California to meet the initial training needs of all first responders, especially fire, and police. Emergency response teams need 160 hours of initial training.

The state of California has one of the largest fire fighting forces of any state, yet does not have a fire training academy with classrooms, props, and the basic essentials to meet minimum requirements for dealing with hazardous material emergencies involving transportation accidents.

Hazardous incident response teams need specialized technical and hands-on training. The training programs are available, the curriculum is ready, instructors are willing to teach, and firefighters are ready to be trained but there is no money to send them. Likewise, there is no state money to pay the instructors and no specially designated places to conduct the classroom and props for the hands-on simulations necessary for advanced state wide hazardous material training. The Governor and his staff must be made to see the urgency of this need in order to allocate the necessary training funds and prevent or at least reduce the intensity of our next major spill or fire. Technical decisions and effective coordinated scene management will come only through progressive training programs and consistently supported delivery systems. The result of weak, inadequate training will definitely result in greater loss of life and property.

Federal training in hazardous materials is made available through the National Fire Academy (FEMA), although classroom space is very limited. It requires travel to Maryland at a cost of approximately \$1,000 per week.

POSSIBLE ALTERNATIVES TO FUNDING HAZARDOUS MATERIALS TRAINING

Transportation emergencies involving hazardous materials and waste place a direct burden on the local taxpayer who must fund emergency response vehicles, personnel and their training. The need is required in order to protect the community from the disastrous release of toxic gas, fires or explosions adjacent to their homes and businesses. Producers from outside the community and outside the state impact our training needs and our budgets. They require special preparation for emergencies involving their products in transport, when they travel through our cities and communities. This cost should be placed directly on the producer who has the responsibility for the product until it safely arrives at its destination. Every pound or gallon of raw product or waste could be assessed a fee based on its hazard classification, to be allocated to a state emergency first responder training fund. Industry will pass this cost on to the consumer, and the end result will be a safer community able to deal better with transportation-related hazardous materials emergencies and the necessary spill containment rescue or evacuations.

STATE LAWS TO PROTECT AGAINST CATASTROPHIC HAZARDOUS MATERIAL TRANSPORTATION INCIDENTS

California Vehicle Code Section 31303 will meet most route restriction requirements.

Class A poisons as identified in 49 CFR (Code of Federal Regulations) should be considered for specific routes to bypass large metropolitan areas unless deliveries must be made within the cities through which they must travel.

Notification by the shipper to local emergency personnel can help prevent accidents. When bulk deliveries are to be made, prior notification will allow local officials to designate safer delivery routes and better times when there is less traffic to least impact the safety in the delivery area. Standards can then be established for all future deliveries into the same area.

DRIVER SAFETY

State driver standards are in the process of being established now. These new requirements will be contained in Title 13, California Administrative Code. Along with a regular driver's license, a supplemental Department of Motor Vehicles examination will be required sometime in 1988. Drivers hauling hazardous materials, hazardous waste or operating bulk liquid loads in combination must be certified before they can transport these materials. There will be a specific list of training requirements by subject to meet the certification requirements, although there will be no verification of training requirement other than passing of a multiple choice examination at the time of initial license or renewal.

I suggest that more verification of specific quantity and quality of training be required along with taking the Department of Motor Vehicle examination. It is too easy to study the examination with no real depth of knowledge regarding hazardous materials. State-produced, audio-visual programs could be made available at cost to transportation businesses who need to have employees trained and prepared to take the Department of Motor Vehicle examination. Verification of study and minimum training standards should be the obligation of the employer.

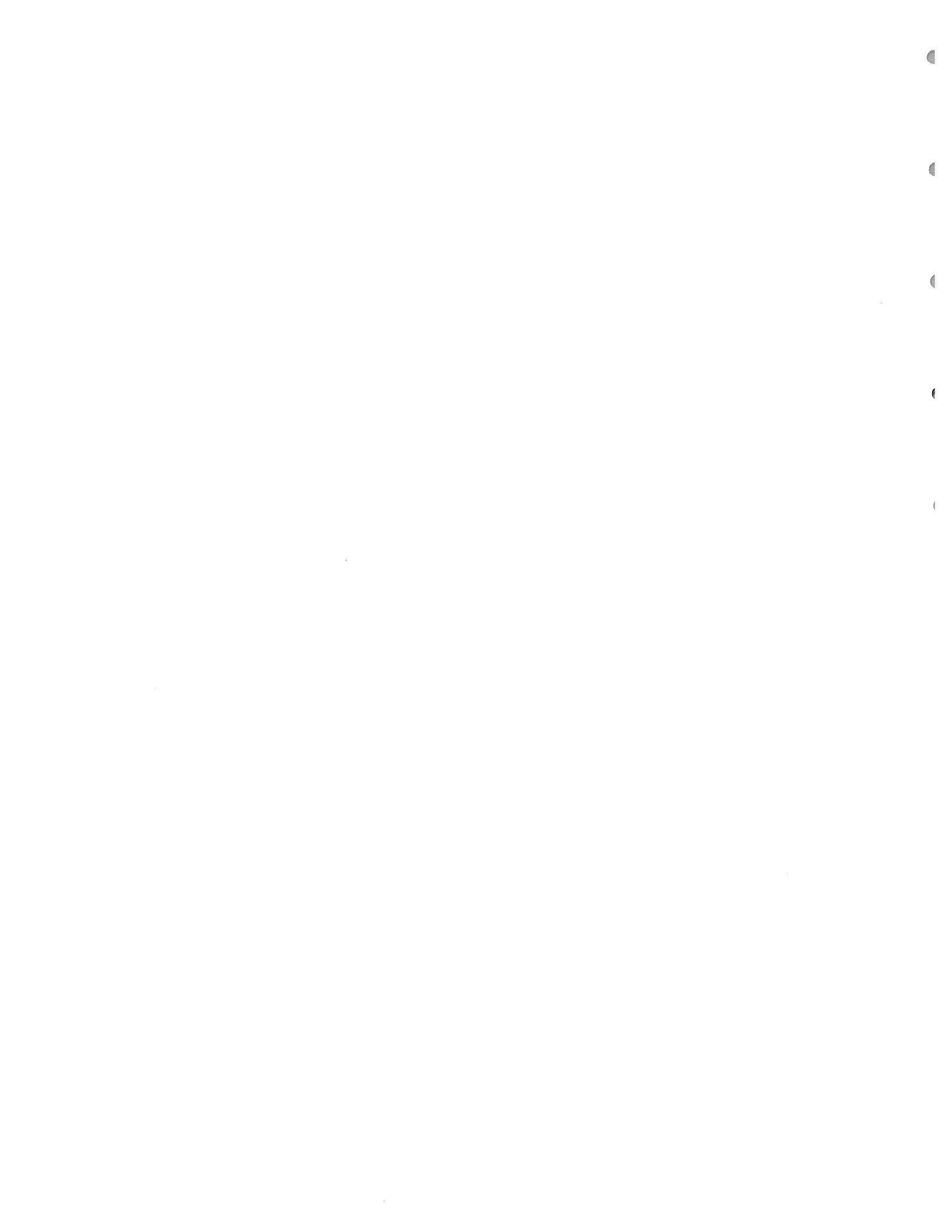
VEHICLE SAFETY

Many roll-over accidents and collisions are due to weak or non-existent vehicle maintenance. The California Highway Patrol inspection stations are able to inspect only 8 to 10 percent of all trucks that come through. It is estimated that one-third of all trucks inspected have some mechanical violation requiring repair or maintenance. The fines for hazardous material violations in Ventura County average \$250 each and approximately \$50 for mechanical violations. These low fines make it worth taking a chance not to get caught.

MATERIAL SAFETY DATA SHEETS (No MSDS are required for any shipments at the present time)

The following materials should have a Material Safety Data Sheet attached to shipping papers:

- Class A Poisons - any quantity
- Class B Poisons - cargo tank or above 1,000 pounds
- Etiologic Agents (live disease causing) - any quantity



TRANSPORTATION OF HAZARDOUS MATERIALS

TASK FORCE

NOVEMBER 2, 1987

J.E. SMITH, COMMISSIONER, CALIFORNIA HIGHWAY PATROL

MR. CHAIRMAN, MEMBERS OF THE TASK FORCE, GOOD MORNING. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR HERE TODAY. THE CALIFORNIA HIGHWAY PATROL SHARES YOUR CONCERNS ABOUT TRANSPORTATION OF HAZARDOUS MATERIALS AND IS READY TO ASSIST THE TASK FORCE.

I HAVE PREPARED RESPONSES TO THE QUESTIONS THAT CHAIRMAN KATZ ASKED THAT I SPECIFICALLY ADDRESS. CHAIRMAN KATZ' ORIGINAL QUESTIONS HAVE BEEN DIVIDED INTO INDIVIDUAL QUESTIONS AND, IN SOME CASES, PARAPHRASED. IN ADDITION, I WILL ATTEMPT TO ANSWER ANY ADDITIONAL QUESTIONS YOU MAY HAVE. HOWEVER, AS THE TASK FORCE IS AWARE THAT HAZARDOUS MATERIALS TRANSPORTATION IS REGULATED BY BOTH FEDERAL AND STATE LAWS AND IS VERY COMPLEX AND HIGHLY TECHNICAL.

QUESTION 1

HOW WERE THE CURRENT EXPLOSIVES ROUTES DEVELOPED?

ROUTING OF EXPLOSIVES VEHICLES BEGAN IN 1957 WITH THE ENACTMENT OF SECTION 729.03 OF THE VEHICLE CODE, WHICH WAS LATER TO BECOME SECTION 31616. THE ROUTES WERE ORIGINALLY DEVELOPED BY THE STATE FIRE MARSHALL, AFTER PUBLIC HEARINGS WITH LOCAL FIRE OFFICIALS, TRANSPORTATION COMPANIES AND THE CHP.

THE STATE FIRE MARSHALL DEVELOPED MAPS WHICH WERE DELIVERED TO THE CHP FOR DISTRIBUTION TO EXPLOSIVES TRANSPORTERS. IN 1971, ROUTING AUTHORITY WAS TRANSFERRED TO THE CHP. CURRENT REGULATIONS REQUIRE THAT DESIGNATED ROUTES BE USED TO TRANSPORT CLASS A AND B EXPLOSIVES. AS THE COMMITTEE IS AWARE EXPLOSIVES ARE DIVIDED INTO THREE CLASSES: A, B, AND C.

IN THE INDUSTRY THESE THREE CLASSES ARE SOMEWHAT LOOSELY REFERRED TO AS BANG, BOOM, AND POP. THE CLASS C EXPLOSIVES FALL INTO THE "POP" CATEGORY AND ARE NOT ROUTE REGULATED. CLASS C EXPLOSIVES ARE ORDINARILY THOSE WHICH ARE PACKAGED IN SMALL QUANTITIES WHICH PRESENT VERY LOW LEVEL HAZARDS.

IT IS THE OPINION OF THE CHP THAT HISTORICALLY THAT THE USE OF FREEWAYS HAS ENHANCED TRANSPORTATION SAFETY DUE TO THE LOWER RISKS OF FREEWAY OPERATION. AS A RESULT, AS HIGHWAYS IMPROVED, AND MORE FREEWAYS WERE CONSTRUCTED, THE TRANSPORTATION OF EXPLOSIVES WAS ROUTED ON FREEWAYS, RATHER THAN ON TWO LANE ROADS.

QUESTION 1A

HOW ARE EXPLOSIVES ROUTES UPDATED?

PURSUANT TO CHP POLICY, EACH CHP AREA IS REQUIRED TO REVIEW THE ROUTES WITHIN ITS BOUNDARIES TWICE A YEAR, IN APRIL AND OCTOBER, AND REPORT ANY RECOMMENDED CHANGES TO CHP HEADQUARTERS. IF A CHANGE IS DEEMED APPROPRIATE, EXISTING REGULATIONS ARE AMENDED IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE ADMINISTRATIVE PROCEDURES ACT IN THE GOVERNMENT CODE. THESE PROCEDURES INCLUDE THE OPPORTUNITY FOR THE PUBLIC TO SUBMIT EITHER WRITTEN OR ORAL COMMENTS.

QUESTION 1B

DO LOCAL ENTITIES HAVE SUFFICIENT INPUT INTO EXPLOSIVES ROUTE DEVELOPMENT?

AS PART OF THE ROUTE DETERMINATION PROCESS, LOCAL FIRE, POLICE, AND PUBLIC WORKS AGENCIES ARE COMMONLY CONSULTED BY LOCAL CHP PERSONNEL FOR RECOMMENDATIONS. IN ADDITION, LOCAL AGENCIES ARE ENCOURAGED TO CONTACT THE CHP. ON SEVERAL OCCASIONS, THEY HAVE PROVIDED VALUABLE INPUT INTO BOTH ROUTE AND STOPPING PLACE SELECTION. WE BELIEVE THAT THE PROCESS AFFORDS AMPLE OPPORTUNITY FOR INPUT.

QUESTION 1C

HAVE THERE EVER BEEN PUBLIC HEARINGS ON THESE ROUTES?

YES. THERE ARE ACTUALLY MULTIPLE OPPORTUNITIES FOR PUBLIC INPUT. FIRST, PUBLIC NOTICE IS GIVEN IN THE PRINTED MEDIA. THEN THERE IS A PERIOD ALLOTTED FOR WRITTEN AND ORAL COMMENTS. FINALLY, PUBLIC HEARINGS ARE SCHEDULED PRIOR TO THE ADOPTION OF ANY NEW EXPLOSIVES ROUTE OR CHANGES TO EXISTING ROUTES. PUBLIC HEARINGS ARE MANDATED BY SECTION 31616 CVC AND THE ADMINISTRATIVE PROCEDURES ACT. HOWEVER, EXISTING ROUTES DO NOT REQUIRE HEARINGS AS PART OF THE SEMI-ANNUAL REVIEW PROCESS.

QUESTION 1D

CAN THIS PROCESS BE IMPROVED?

TO DATE THE ROUTING PROCESS HAS BEEN SATISFACTORY. HOWEVER, AS PART OF OUR EXAMINATION OF THE OVERALL TRANSPORTATION OF HAZARDOUS MATERIALS, ESPECIALLY THOSE COMMODITIES IDENTIFIED AS POISONS AND INHALATION HAZARDS, THE ROUTING PROCESS ITSELF IS BEING STUDIED BY OUR ENFORCEMENT SERVICES DIVISION.

QUESTION 1E

SHOULD OTHER KINDS OF MATERIALS HAVE RIGIDLY RESTRICTED ROUTING?

AS THE TASK FORCE IS AWARE, THERE ARE NUMBER OF COMMODITIES WHICH POSE AN EXTREME DANGER AS INHALATION HAZARDS OR POISONS. THESE PRODUCTS, BY THEIR VERY NATURE, ARE EASILY DISPERSED AND COULD REQUIRE EVACUATIONS IN THE EVENT OF A SPILL OR RELEASE.

CURRENT LEGISLATION ONLY ALLOWS ROUTE RESTRICTION OF RADIOACTIVE MATERIALS, EXPLOSIVES, AND THREE SPECIFIED COMMODITIES: FUMING NITRIC ACID, ANHYDROUS HYDRAZINE, AND NITROGEN TETROXIDE. NITROGEN TETROXIDE, WHICH IS A POISON AND AN OXIDIZER, IS THE COMMODITY WHICH DREW THE PUBLIC'S ATTENTION TO HAZARDOUS MATERIALS TRANSPORTATION AND ROUTING.

CURRENTLY, THERE ARE APPROXIMATELY 100 CHEMICALS SPECIFICALLY LISTED IN TITLE 49 OF THE CODE OF FEDERAL REGULATIONS THAT ARE RECOGNIZED INHALATION HAZARDS. MOST OF THESE COMMODITIES ARE GASEOUS AND BECAUSE OF THEIR HIGHLY TOXIC NATURE, THE LEGISLATURE MAY WISH TO EVALUATE ROUTE REQUIREMENTS. IT SHOULD BE NOTED THAT THERE IS NO CURRENT SOURCE TO IDENTIFY THE EXACT NUMBER OF COMMODITIES SHIPPED, WHEN THEY ARE SHIPPED, OR WHAT ROADWAYS ARE USED. FOR INSTANCE, ALTHOUGH EXTREMELY TOXIC, CHLORINE IS USED BY WATER TREATMENT PLANTS IN LOCATIONS ALL OVER THE STATE.

AS AN ANNEX TO MY PREPARED REMARKS, I HAVE PROVIDED THE TASK FORCE WITH A COPY OF A CHP INFORMATION BULLETIN THAT LISTS SOME OF THE MATERIALS WHICH HAVE BEEN IDENTIFIED AS INHALATION HAZARDS, THAT ARE KNOWN TO BE TRANSPORTED IN CALIFORNIA. ALSO PROVIDED IS A SEPARATE LIST OF COMMODITIES IDENTIFIED AS POISON GASES IN TITLE 49 OF THE CODE OF FEDERAL REGULATIONS.

QUESTION 1E

IS THE PROCESS DEVELOPED IN AB 1861 (CHAPTER 814, STATUTES OF 1985, 31304 VC) SUFFICIENT IN TERMS OF ROUTING?

AS THE TASK FORCE KNOWS, 31304 CVC GIVES THE CHP AND LOCAL JURISDICTIONS THE AUTHORITY TO RESTRICT THE TRANSPORTATION OF HAZARDOUS MATERIALS BY ROUTE. AS ENACTED BY THE LEGISLATURE, AND SIGNED BY THE GOVERNOR, THE BILL HAS SAFEGUARDS AND WAS RESULT OF WORK WITH THE AUTHOR, OTHER MEMBERS OF THE LEGISLATURE, THE CHP, CTA, INDUSTRY, AND CITY AND COUNTY GOVERNMENT REPRESENTATIVES.

I BELIEVE THAT THAT PROCESS IS SUFFICIENT AND NO NEW LEGISLATION IS NEEDED. TO DATE, THE CHP HAS HAD ONLY TWO REQUESTS TO RESTRICT ROUTES. ONE REQUEST WAS IMPLEMENTED AND THE OTHER WAS ULTIMATELY WITHDRAWN. IN THE SECOND CASE, LEGISLATION WAS SOUGHT FOR A SPECIAL ROUTE.

QUESTION 2

WHAT IS THE CHP'S ROLE IN THE NOTIFICATION OF LOCAL OFFICIALS REGARDING THE TRANSPORTATION OF ROCKET FUEL/NITROGEN TETROXIDE?

THERE ARE NO STATUTORY REQUIREMENTS THAT A CARRIER OF NITROGEN TETROXIDE/FUMING NITRIC ACID/ANHYDROUS HYDRAZINE NOTIFY THE CHP OR LOCAL OFFICIALS OF A PENDING SHIPMENT. AS I WILL EXPLAIN LATER, THERE HAVE BEEN INFORMAL NOTIFICATION AGREEMENTS.

THE ONLY STATUTORY NOTIFICATION REQUIREMENTS ARE FOR SHIPMENTS OF COMMERCIALY PRODUCED, SPENT RADIOACTIVE FUELS. PURSUANT TO VEHICLE CODE SECTION 33002 THE CARRIER IS REQUIRED TO NOTIFY THE CHP IN WRITING. THE CHP IS REQUIRED TO NOTIFY FIRE CHIEFS OF FIRE PROTECTION DISTRICTS SERVING POPULATIONS GREATER THAN 15,000 WHO HAVE MADE A WRITTEN REQUEST TO BE NOTIFIED. ALTHOUGH NOT REQUIRED BY LAW, THE CHP NOTIFIES ALL KNOWN FIRE DEPARTMENTS OF SPENT RADIOACTIVE FUEL SHIPMENTS.

THE CHP ALSO NOTIFIES THE POLICE CHIEFS OF EACH CITY WHERE SURFACE TRANSPORTATION WOULD OCCUR.

IT SHOULD BE NOTED THAT, IN SOME RULINGS ISSUED BY THE FEDERAL DEPARTMENT OF TRANSPORTATION, THE VALUE AND PROCESS OF PRE-NOTIFICATION HAS BEEN QUESTIONED. IN ONE SUCH RULING, IT WAS SUGGESTED THAT TO BE EFFECTIVE, NOTIFICATION REQUIREMENTS WOULD HAVE TO BE VERY SPECIFIC AS TO THE WHO, WHEN, AND HOW OF NOTIFICATION. THE RULING ALSO STATED THAT BEFORE REQUIRING NOTIFICATION, MORE DETAILED RISK ANALYSES SHOULD BE CONDUCTED.

QUESTION 2A

DESCRIBE THE BREAKDOWN IN COMMUNICATIONS THAT OCCURRED IN SOUTHERN CALIFORNIA LAST YEAR.

IN LATE 1982, THE DEPARTMENT OF DEFENSE INFORMALLY AGREED TO NOTIFY LOCAL AGENCIES OF SHIPMENTS OF NITROGEN TETROXIDE, ANHYDROUS HYDRAZINE, AND FUMING NITRIC ACID TO VANDENBERG AIR FORCE BASE. THE PROCEDURE WAS AS FOLLOWS:

THE AIR FORCE WOULD NOTIFY THE SANTA BARBARA POLICE AND FIRE COMMUNICATIONS CENTER.

SANTA BARBARA WOULD NOTIFY VENTURA COUNTY FIRE DEPARTMENT AND SANTA BARBARA CHP.

VENTURA COUNTY FIRE WOULD NOTIFY LOCAL VENTURA COUNTY AGENCIES, VENTURA CHP AND LOS ANGELES COUNTY FIRE.

IN DECEMBER 1986, AFTER INSTALLATION OF NEW EQUIPMENT IN THE SANTA BARBARA COMMUNICATIONS CENTER, SOMEHOW NOTIFICATION WAS NOT COMPLETED. BECAUSE THE COMMUNICATION CENTER BELIEVED THAT THERE WAS NO SHIPMENTS IN PROGRESS, NO NOTIFICATIONS WERE MADE.

IT IS MY UNDERSTANDING THAT THE PROBLEMS WHICH CAUSED THIS DIFFICULTY HAVE BEEN OVERCOME AND NOTIFICATIONS ARE NOW BEING RECEIVED. FOR INSTANCE, OUR VENTURA CHP OFFICE WAS RECENTLY NOTIFIED OF A SHIPMENT OF ROCKET MOTORS.

I BELIEVE THAT VENTURA COUNTY ASSISTANT FIRE MARSHALL GIROD IS HERE TODAY. HE MAY BE ABLE TO PROVIDE THE TASK FORCE WITH MORE DETAILS.

QUESTION 2B

SHOULD OTHER KINDS OF MATERIALS REQUIRE ADVANCE LOCAL NOTIFICATION?
DESCRIBE SUCH MATERIALS.

AS I PREVIOUSLY MENTIONED, THERE ARE A NUMBER OF MATERIALS WHICH CONCERN ME. THERE ARE COMMODITIES WHICH HAVE PROPERTIES THAT MAY WARRANT THE NOTIFICATION OF LOCAL AUTHORITIES. MOST OF THESE COMMODITIES ARE EITHER POISONS OR INHALATION HAZARDS.

I MUST AGAIN POINT OUT THAT WE HAVE VERY LITTLE KNOWLEDGE AS TO THE AMOUNTS OF THESE COMMODITIES TRANSPORTED ON CALIFORNIA HIGHWAYS AND THAT A PRE-SHIPMENT NOTIFICATION REQUIREMENT COULD BE PRE-EMPTED BY THE FEDERAL GOVERNMENT.

QUESTION 3

WHAT ARE WAYS THAT WE CAN DEVELOP AN ACCURATE INVENTORY OF THE TRANSPORTATION OF HAZARDOUS MATERIALS?

IN A RECENT CALTRANS/PUC/CHP REPORT TO THE LEGISLATURE (AB 1311), ONE FINDING WAS THE AMOUNT OF INFORMATION ON HAZARDOUS MATERIALS VOLUMES, ROUTING, ACCIDENT STATISTICS, ETC., IS INCOMPLETE FOR PROPER EMERGENCY CONTINGENCY PLANNING OR TRANSPORTATION PLANNING PURPOSES.

THE REPORT ALSO RECOMMENDED DATA COLLECTION TO SHOW THE TYPES AND VOLUMES OF HAZARDOUS MATERIALS TRANSPORTED AS WELL AS THE ROUTES USED. SUCH INFORMATION COULD BE USEFUL FOR PLANNING, TRAINING, AND EMERGENCY RESPONSE. COLLECTION OF DATA OF THIS TYPE WOULD BE DIFFICULT. THE CHP CURRENTLY LICENSES HAZARDOUS MATERIALS CARRIERS, BUT DOES NOT COLLECT INFORMATION AS TO THE TYPE OR AMOUNT OF HAZARDOUS MATERIALS HAULED BY THOSE CARRIERS. THERE IS NO ALTERNATE CENTRAL SOURCE FOR SUCH INFORMATION.

QUESTION 4

CAN THE CHP BE PRE-EMPTED FROM REGULATING DEPARTMENT OF DEFENSE SHIPMENTS?

THERE ARE ACTUALLY TWO SIDES TO THIS QUESTION. IN THE CASE OF A CARRIER HAULING UNDER CONTRACT TO THE AIR FORCE I BELIEVE THAT WE HAVE COMPLETE AUTHORITY TO REGULATE.

HOWEVER, IT IS MY OPINION THAT IF AN AGENCY OF THE FEDERAL GOVERNMENT SUCH AS THE DEPARTMENT OF DEFENSE OR THE DEPARTMENT OF ENERGY USED GOVERNMENTAL VEHICLES AND DRIVERS, SUCH A SHIPMENT MAY NOT BE SUBJECT TO EITHER TITLE 49 OF THE CODE OF FEDERAL REGULATIONS OR TO REGULATIONS CONTAINED IN TITLE 13 OF THE CALIFORNIA ADMINISTRATIVE CODE.

I HAVE BEEN IN CONTACT WITH THE UNITED STATES ATTORNEY GENERAL'S OFFICE TO ATTEMPT TO CLARIFY THIS ISSUE. IN ADDITION, IT IS MY UNDERSTANDING THE MR. GEORGE TINLEY, CHIEF COUNSEL FOR THE RESEARCH AND SPECIAL PROJECTS ADMINISTRATION, IS HERE TODAY TO DISCUSS THIS SAME TOPIC.

QUESTION 4A

WHO CAN ENFORCE STATE AND FEDERAL LAWS AND REGULATIONS REGARDING HAZARDOUS MATERIALS TRANSPORTATION?

WE HAVE ADOPTED BY REFERENCE, MAJOR PORTIONS OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS. IN ADDITION THE CALIFORNIA VEHICLE CODE AND TITLE 13 OF THE CALIFORNIA ADMINISTRATIVE CODE MAY BE ENFORCED BY ANY CALIFORNIA PEACE OFFICER. DUE TO THE COMPLEXITY OF THE LAWS AND REGULATIONS THE CHP HAS MANY OFFICERS AND MOTOR CARRIER SPECIALISTS SPECIFICALLY TRAINED IN THE ENFORCEMENT OF COMMERCIAL STATUTES AND THE TRANSPORTATION OF HAZARDOUS MATERIALS. THESE PERSONNEL CONDUCT BOTH ON AND OFF-HIGHWAY VEHICLE INSPECTIONS AND INSPECT MOTOR CARRIER TERMINALS. IN ADDITION, WE HAVE PROVIDED TRAINING TO SEVERAL HUNDRED LOCAL LAW ENFORCEMENT AGENCY PERSONNEL. IN THE LAST TWO YEARS, THE FEDERAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP), WHICH IS A FEDERALLY FUNDED HIGHWAY SAFETY PROGRAM TO ASSIST THE STATES, HAS ALLOWED US TO EXPAND THIS TRAINING.

QUESTION 5

DESCRIBE THE CURRENT VEHICLE INSPECTION PROGRAM FOR CARRIERS OF HAZARDOUS MATERIALS AND THE DIFFERENCES BETWEEN TREATMENT OF CARGO TANKS AND TRACTORS.

IN ADDITION TO OUR ROAD PATROL OFFICERS, WHO ENFORCE LAWS RELATING TO THE TRANSPORTATION OF HAZARDOUS MATERIALS INCIDENTAL TO THEIR OTHER DUTIES, THE CHP HAS SOME SPECIFIC PROGRAMS.

ON-HIGHWAY PROGRAMS

- O 114 OFFICERS ASSIGNED TO MOBILE ROAD ENFORCEMENT, OF WHICH 12 ARE FUNDED BY MCSAP.
- O 181 UNIFORMED AND 123 CIVILIAN PERSONNEL ASSIGNED TO 51 SCALE AND INSPECTION FACILITIES AT LOCATIONS THROUGHOUT THE STATE.
- O DURING 1987, WE CONDUCTED 30 INSPECTION STRIKE FORCES AT LOCATIONS WHERE THERE ARE EITHER NO SCALE AND INSPECTION FACILITIES OR ON ROUTES TRADITIONALLY USED TO BYPASS FACILITIES.

OFF-HIGHWAY PROGRAMS

- O OUR 134 CIVILIAN MOTOR CARRIER SPECIALISTS CONDUCTED OVER 82,000 INSPECTIONS AT 17,000 TERMINALS THROUGHOUT THE STATE. IN THESE INSPECTIONS, PURSUANT TO DEPARTMENTAL POLICY THE INSPECTION OF HAZARDOUS MATERIALS VEHICLES IS GIVEN A HIGH PRIORITY.

- O CONTAINERS OVER 110 GALLONS USED TO TRANSPORT HAZARDOUS WASTE ARE ANNUALLY INSPECTED BY THE CHP PRIOR TO REGISTRATION WITH THE DEPARTMENT OF HEALTH SERVICES. (CURRENTLY OVER 10,000)

- O CARGO TANKS OVER 120 GALLONS USED TO TRANSPORT FLAMMABLE AND COMBUSTIBLE LIQUIDS ARE INSPECTED ANNUALLY BY THE CHP. (OVER 13,000 IN 1986)

- O THE CHP HAS LICENSED APPROXIMATELY 14,000 CARRIERS OF HAZARDOUS MATERIALS.

QUESTION 5A

ARE THERE ANY REASONS OTHER THAN STAFF SHORTAGES AND TRUCKER INCONVENIENCE NOT TO INSPECT ALL HAZARDOUS MATERIAL VEHICLES?

JUST LOCATING AND IDENTIFYING ALL OF THE VEHICLES USED TO TRANSPORT HAZARDOUS MATERIALS WOULD BE NEARLY IMPOSSIBLE. IN ADDITION, MANY VEHICLES ARE NOT DEDICATED SOLELY TO THE TRANSPORTATION OF HAZARDOUS MATERIALS.

QUESTION 5B

ARE THERE WAYS TO IMPROVE THE SAFETY OF HAZARDOUS MATERIALS TRANSPORTATION CONTAINERS?

THE RECENT CALTRANS/PUC/CHP REPORT TO THE LEGISLATURE (AB 1311) EXPRESSED CONCERN ABOUT TANK DESIGN AND SUGGESTED THAT CONTINUED RESEARCH BE CONDUCTED, PARTICULARLY IN THE AREA OF VEHICLE STABILITY AND CONTAINER INTEGRITY. HOWEVER, IT WAS EMPHASIZED IN THE REPORT THAT THIS AREA WAS PRIMARILY A FEDERAL RESPONSIBILITY.

WE BELIEVE THAT MORE STRINGENT CONTAINER STANDARDS COULD IMPROVE THE SAFETY OF HAZARDOUS MATERIAL TRANSPORTATION BY REDUCING BOTH THE NUMBER OF ACCIDENTS AND THE SEVERITY OF THOSE THAT DO OCCUR. ENSURING THE STRUCTURAL INTEGRITY OF THE CONTAINER TRANSPORTING HAZARDOUS MATERIAL IS ONE WAY TO REDUCE THE SEVERITY OF AN INCIDENT.

WITH CURRENT TECHNOLOGY, IT IS POSSIBLE TO BUILD A HEAVIER, STRONGER CONTAINER. HOWEVER, THE RESULTING CONTAINER WILL TRANSPORT LESS PRODUCT. FOR INSTANCE, GASOLINE, WHICH IS ONE OF THE MOST FREQUENTLY INVOLVED COMMODITIES IN HAZARDOUS MATERIALS INCIDENTS, CAN CURRENTLY BE HAULED IN ALUMINUM CARGO TANKS 154 - 180 THOUSANDTHS OF AN INCH THICK. CONTAINERS OF THIS TYPE RESULT IN AN AVERAGE PAYLOAD OF 8,800 GALLONS. IF WE WERE TO REQUIRE THAT GASOLINE BE HAULED IN THE SAME CONTAINERS AS LIQUIFIED PETROLEUM GAS, THE PAYLOAD WOULD BE REDUCED BY NEARLY 50% AND WOULD EITHER INCREASE THE NUMBER OF SUCH VEHICLES ON THE HIGHWAY OR THE NUMBER OF TRIPS TAKEN.

IT MUST BE REMEMBERED THAT THERE ARE CURRENTLY IN EXCESS OF 13,000 CARGO TANKS OPERATING WITHIN CALIFORNIA. SUCH A REQUIREMENT WOULD HAVE TREMENDOUS IMPACT ON THE INDUSTRY AND ULTIMATELY, THE CONSUMER.

QUESTION 6

ARE THE CURRENT CATEGORIES OF HAZARDOUS MATERIAL TRANSPORT SUFFICIENT?
ARE THERE ALTERNATE CATEGORIES FOR HAZARDOUS MATERIALS WHICH MIGHT OFFER GREATER PROTECTION TO THE PUBLIC?

THE MAGNITUDE OF THE HAZARDOUS MATERIALS PROBLEM CANNOT BE UNDERSTATED. THERE ARE THOUSANDS OF COMMODITIES CURRENTLY IDENTIFIED AS HAZARDOUS AND APPROXIMATELY 1,500 NEW PRODUCTS ARE DEVELOPED EACH YEAR. HOWEVER, DUE TO THE INCREASING NUMBER OF HAZARDOUS MATERIALS WHICH POSE MULTIPLE HAZARDS, THE TASK FORCE WISH TO CONSIDER AN ADDITIONAL HAZARDOUS MATERIALS ROUTING CLASSIFICATION. FOUR POTENTIAL CLASSES FOR SUCH A SYSTEM COULD BE DIVIDED AS FOLLOWS:

CLASS 1 - RADIOACTIVE MATERIALS (AS CURRENTLY REGULATED BY DIVISION 14.5 OF THE VEHICLE CODE).

CLASS 2 - MATERIALS WHICH HAVE BEEN IDENTIFIED AS INHALATION HAZARDS OR POISON GASES. THESE COMMODITIES ARE SHOWN ON THE PREVIOUSLY MENTIONED LISTS PROVIDED TO THE TASK FORCE.

CLASS 3 - EXPLOSIVES (AS CURRENTLY REGULATED BY DIVISION 14 OF THE VEHICLE CODE).

CLASS 4 - ALL HAZARDOUS MATERIALS AND HAZARDOUS WASTE NOT INCLUDED IN CLASS 1,2, OR 3 AND CURRENTLY REGULATED BY DIVISIONS 13 AND 14.1 OF THE VEHICLE CODE.

IT SHOULD BE NOTED THAT OUR RADIOACTIVE MATERIALS AND EXPLOSIVES ROUTES CLOSELY PARALLEL FEDERAL REGULATIONS. HOWEVER, IT IS POSSIBLE THAT ESTABLISHMENT OF ADDITION ROUTE RESTRICTIONS FOR SPECIFIED COMMODITIES COULD RESULT IN PRE-EMPTION BY THE FEDERAL GOVERNMENT.

IN ADDITION TO THE SPECIFIC QUESTIONS POSED BY CHAIRMAN KATZ, THERE SOME OTHER OPTIONS WHICH THE TASK FORCE MAY WISH TO CONSIDER.

OPTION 1

PRE-NOTIFICATION TO LOCAL OFFICIALS

PRO

PRIOR NOTIFICATION OF SHIPMENTS OF SPECIAL HAZARDOUS MATERIALS, SUCH AS THOSE INCLUDED IN "CLASS 2", INHALATION HAZARDS ABOVE, WOULD ASSURE THAT IMPACTED AGENCIES ARE AWARE OF THE SHIPMENTS.

CON

THE SHEER NUMBER OF SHIPMENTS OF INHALATION HAZARDS AND POISON GASES WILL REQUIRE A CONSIDERABLE COMMITMENT OF RESOURCES. TO PROVIDE UNIFORMITY, A CENTRALIZED NOTIFICATION POINT WOULD BE REQUIRED AND ADDITIONAL PERSONNEL NEEDED TO MAKE NOTIFICATION TO LOCAL AGENCIES.

THERE ARE ADDITIONAL QUESTIONS: WHAT WILL NOTIFICATION ACCOMPLISH? DOES ADVANCE NOTIFICATION PROVIDE INCREASED SAFETY? WHEN, IN RELATION TO THE SHIPMENT, WILL NOTIFICATION BE MADE? WILL IT BE VERBAL OR ORAL, OR BOTH? WHO WILL BE NOTIFIED, IF NO CENTRAL NOTIFICATION POINT IS ESTABLISHED? IS MORE THAN ONE NOTIFICATION REQUIRED TO COVER TRAVEL ACROSS MULTIPLE JURISDICTIONS? IS ANY ACTION REQUIRED BY THE LOCAL AGENCY AFTER NOTIFICATION?

COMMENT

THE FEDERAL DEPARTMENT OF TRANSPORTATION HAS ISSUED A RULING THAT STRUCK DOWN A CITY ORDINANCE REQUIRING ADVANCE NOTIFICATION IN COVINGTON, KENTUCKY. THE RULING WAS ISSUED BECAUSE THE REQUIREMENT WAS VAGUE AND BECAUSE OF ITS BURDEN ON COMMERCE.

OPTION 2

ADDITIONAL DRIVER QUALIFICATIONS, SUCH AS EXPERIENCE, AGE, NUMBER OF CITATIONS, ETC.

COMMENTS

WE WILL CONTINUE OUR CLOSE WORKING RELATIONSHIP WITH THE DEPARTMENT OF MOTOR VEHICLES AND ARE ASSISTING THEM AS NECESSARY IN THE DESIGN AND IMPLEMENTATION OF A LICENSING PROGRAM, SUCH AS THE PROGRAM CONTAINED IN THE FEDERAL COMMERCIAL MOTOR VEHICLE SAFETY ACT.

THE COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986 (DANFORTH) WILL ADDRESS SOME OF THESE ISSUES. THIS ACT WILL BE IMPLEMENTED IN FIVE STAGES. AS OF JULY 1987, THE ACT PROHIBITS A DRIVER FROM POSSESSING MORE THAN ONE COMMERCIAL LICENSE. IN ADDITION, A DRIVER IS REQUIRED TO REPORT TO HIS EMPLOYER AND HIS HOME STATE WITHIN 10 DAYS, ANY LICENSE SUSPENSIONS OR CONVICTIONS.

EFFECTIVE IN JULY 1988, THE INFORMATION CONTAINED ON A DRIVER LICENSE AND METHODS OF IDENTIFICATION WILL BE STANDARDIZED.

I UNDERSTAND THAT THE DEPARTMENT OF MOTOR VEHICLES HAS A REPRESENTATIVE HERE TODAY TO DISCUSS THE IMPLEMENTATION OF THESE LICENSING REQUIREMENTS IN CALIFORNIA.

OPTION 3

REQUIRE THAT TRANSPORTERS OF HAZARDOUS MATERIALS UTILIZE ESCORT VEHICLES.

PRO

THE USE OF ESCORT VEHICLES WITH ADEQUATE COMMUNICATIONS CAPABILITIES MAY IMPROVE THE OPERATIONAL SAFETY OF THE VEHICLES AND WOULD ENHANCE EMERGENCY RESPONSE, IF NEEDED.

CON

HEIGHTENED AWARENESS OF SUCH VEHICLES MIGHT MAKE THEM A TARGET FOR TERRORIST ACTS OR DEMONSTRATIONS.

COMMENT

THE USE OF ESCORT VEHICLES FOR EXTRA-LEGAL LOADS, SUCH AS WIDE MOBILE HOMES, IS CURRENTLY BEING STUDIED BY THE OFFICE OF TRAFFIC SAFETY.

OPTION 4

REQUIRE THAT THE ESCORT OR TRANSPORTING VEHICLES CONTAIN PERSONNEL PROPERLY EQUIPPED AND TRAINED FOR MITIGATING AN INCIDENT INVOLVING THE COMMODITY WHICH THEY ARE ESCORTING OR TRANSPORTING.

PRO

THIS OPTION WOULD INCREASE THE CHANCES FOR IMMEDIATE MITIGATION OF AN INCIDENT AND COULD LIMIT THE PUBLIC'S EXPOSURE TO A SPILLED COMMODITY.

CON

SUCH A REQUIREMENT COULD HAVE A TREMENDOUS FISCAL IMPACT IF IT WERE APPLIED TO TRANSPORTATION OF ALL HAZARDOUS MATERIALS. EVEN IF LIMITED TO MATERIALS POSING SPECIAL HAZARDS, THE NUMBER OF SHIPMENTS WOULD BE SIGNIFICANT.

OPTION 5

REQUIRE THAT COMPLETE VEHICLES TRANSPORTING THE PREVIOUSLY DEFINED "CLASS 1,2, OR 3" COMMODITIES BE DISTINCTIVELY MARKED ("CANDY STRIPED"), RATHER THAN REQUIRING ONLY PLACARDS.

PRO

IN THE EVENT OF AN INCIDENT, DISTINCTIVE VEHICLE MARKINGS WOULD ALLOW FIRST RESPONDERS TO IMMEDIATELY RECOGNIZE THE GREATER POTENTIAL DANGER.

CON

THE CURRENT PLACARDING AND SHIPPING PAPER SYSTEMS, WHEN USED PROPERLY, PROVIDE FOR THE UNIFORM IDENTIFICATION OF HAZARDOUS MATERIALS.

CONSPICIOUS MARKINGS WOULD RENDER THE VEHICLE USELESS FOR TRANSPORTING OF ANY OTHER COMMODITY. MANY VEHICLES ARE USED TO TRANSPORT MULTIPLE COMMODITIES DURING THE SAME DAY.

COMMENT

THIS OPTION WAS TRIED IN THE STATE OF NEW YORK AND PRE-EMPTED BY THE FEDERAL GOVERNMENT DUE TO THE BURDEN ON COMMERCE.

IN CLOSING, I WOULD LIKE TO ONCE AGAIN THANK YOU, MR. CHAIRMAN, AND MEMBERS OF THE TASK FORCE FOR PROVIDING ME AN OPPORTUNITY TO BRIEF YOU ON THE DEPARTMENT'S ROLE IN THE TRANSPORTATION OF HAZARDOUS MATERIALS.

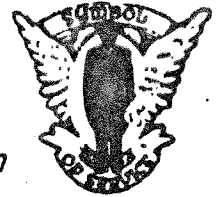
I AM HOPEFUL THAT THE ACTIONS THE CHP HAS TAKEN REGARDING ROUTING, COMBINED WITH THE RECOMMENDATIONS DISCUSSED HERE TODAY BY THE TASK FORCE, WILL PROMOTE HIGHWAY SAFETY FOR GENERATIONS TO COME.

THE CHP PLEDGES ITS TOTAL SUPPORT AND COMMITMENT TOWARDS THIS GOAL.

IF YOU HAVE ANY FURTHER QUESTIONS, I WOULD BE HAPPY TO ANSWER THEM AT THIS TIME.

INFORMATION BULLETIN

September 4, 1987



LIQUID HAZARDOUS MATERIALS IDENTIFIED TO BE TOXIC BY INHALATION

The liquids listed below have been identified by the U. S. Department of Transportation as meeting the inhalation hazard criteria contained in Section 173.3a of Title 49, Code of Federal regulations (49 CFR). Diluted forms of these materials may not meet the criteria. This listing is not all inclusive and is provided primarily for personnel safety.

The assignment of identification numbers corresponding to generic "n.o.s." (not otherwise specified) entries for materials not specifically listed in 49 CFR 172.101 are correct to the best of our knowledge. It should be noted, however, that a manufacturer (shipper) has some latitude in choosing the most appropriate shipping description based on their familiarity with the material's characteristics, particularly where multiple hazard characteristics are present.

	UN 1541	Acetone cyanohydrin
	UN 1092	Acrolein inhibited
*	UN 1992	Aldicarb in dichloromethane
	UN 1098	Allyl alcohol
**	UN 2334	Allylamine
*	NA 2810	Amino dimethyl butyronitrile
**	UN 1560	Arsenic trichloride
	UN 1745	Bromine pentafluoride
	UN 1746	Bromine trifluoride
**	UN 1569	Bromoacetone
*	UN 2810	sec-Butyl chloroformate
	UN 2485	n-Butyl isocyanate
**	UN 2484	tert-Butyl isocyanate
	UN 1749	Chlorine trifluoride (is listed as a gas in Docket No. HM 181)
	UN 1750	Chloroacetic acid, liquid
**	UN 2668	Chloroacetonitrile
	UN 1697	Chloroacetophenone, liquid
	UN 1580	Chloropicrin
*	NA 2810	Chloropivaloyl chloride
	UN 1143	Crotonaldehyde
	UN 1889	Cyanogen bromide
**	UN 2488	Cyclohexyl isocyanate
**	UN 2189	Dichlorosilane

* MA 2810 3,5 Dichloro-2,4,6 trifluoropyridine
 ** UN 2521 Diketene, inhibited
 UN 1163 Dimethylhydrazine, unsymmetrical
 ** UN 2382 Dimethylhydrazine, symmetrical
 ** UN 2841 Di-n-amylamine
 ** UN 2248 Di-(N-butyl) amine
 NA 2922 Dimethylphosphorochloridothioate
 ** UN 1699 Diphenylchloroarsine
 UN 1698 Diphenylaminechloroarsine
 ** UN 2489 Diphenylmethane-4, 4'diisocyanate
 UN 1182 Ethyl chloroformate
 UN 2826 Ethyl chlorothioformate
 ** UN 1892 Ethyl dichloroarsine
 UN 1135 Ethylene chlorohydrin
 UN 1605 Ethylene dibromide
 UN 1184 Ethylene dichloride
 ** UN 1185 Ethyleneimine
 ** UN 2481 Ethyl isocyanate
 UN 2389 Furan
 UN 2646 Hexachlorocyclopentadiene
 ** UN 1051 Hydrogen cyanide anhydrous stabilized
 ** UN 1994 Iron pentacarbonyl
 ** UN 2407 Isopropyl chloroformate
 UN 1992 Isobutyl chloroformate
 * UN 2810 Methane sulfonyl chloride
 ** UN 2605 Methoxymethyl isocyanate
 UN 1062 Methyl bromide, liquid
 UN 1238 Methyl chloroformate
 UN 1239 Methylchloromethyl ether
 NA 1556 Methyl dichloroarsine
 UN 1242 Methyl dichlorosilane
 * UN 1992 Methylene isocyanate
 UN 1244 Methylhydrazine
 UN 2480 Methyl isocyanate
 ** UN 2477 Methyl isothiocyanate
 * NA 1992 Methyl mercaptopropionaldehyde
 ** UN 2606 Methyl orthosilicate
 NA 9206 Methyl phosphonic dichloride
 * UN 2845 Methyl phosphonous dichloride
 UN 1259 Nickel carbonyl
 UN 2032 Nitric acid, fuming
 * UN 1992 tert-Octyl mercaptan
 UN 1380 Pentaborane
 UN 1670 Perchloromethyl mercaptan
 ** UN 1672 Phenylcarbylamine chloride
 ** UN 2487 Phenyl isocyanate
 UN 2337 Phenyl mercaptan
 UN 1804 Phenyltrichlorosilane
 UN 1810 Phosphorus oxychloride

- UN 1809 Phosphorus trichloride
 - ** UN 2740 n-Propyl chloroformate
 - † NA 1992 Tetramethoxy silane
 - UN 1510 Tetranitromethane
 - UN 1836 Thionyl chloride
 - UN 2474 Thiophosgene
 - ** UN 2785 4-Thiapentanal
 - UN 1838 Titanium tetrachloride
 - * NA 2810 Triflouromethylphenylisocyanate
 - UN 1298 Trimethylchlorosilane
 - * UN 1992 Trimethoxy silane
- * Listed in 49 CFR 172.101 by the generic (n.o.s.) entry corresponding to the listed identification number.
- ** Listed in 49 CFR 172.102. Domestic shipments would be shipped using the generic (n.o.s.) 49 CFR 172.101 entry corresponding to the required labels shown in column five of 49 CFR 172.102.
- † Listed in 49 CFR 172.101 as "Flammable liquid, poisonous, n.o.s., UN 1992." Listed in 49 CFR 172.102 as "Poisonous liquids, flammable, n.o.s., UN 2929."

ENFORCEMENT SERVICES DIVISION

OPI: 061

DISTRIBUTION: A E S(Holders of HPM 82.6)

POISON GAS COMMODITIES, Listed per 49CFR 172.101

ARSINE

BROMOACETONE

CHEMICAL AMMUNITION

CHLOROPICRIN and METHYL CHLORIDE MIXTURE

CHLOROPICRIN and NON-FLAMMABLE GAS MIXTURE

GERMANE

GERNADE with POISON GAS

HEXAETHYL TETRAPHOSPHATE and COMPRESSED GAS MIXTURE

HYDROCYANIC ACID SOLUTION or LIQUIFIED

INSECTICIDE, LIQUEFIED GAS with POISON GAS

NITRIC OXIDE

NITROGEN DIOXIDE, or PEROXIDE, or TETROXIDE

ORGANIC PHOSPHATE, COMPOUND or MIXED with COMPRESSED GAS

PAPATHION and COMPRESSED GAS MIXTURE

PHOSGENE

PHOSPHINE

TETRAETHYL PYROPHOSPHATE and COMPRESSED GAS

QUESTIONS FOR CALIFORNIA HIGHWAY PATROL COMMISSIONER JIM SMITH

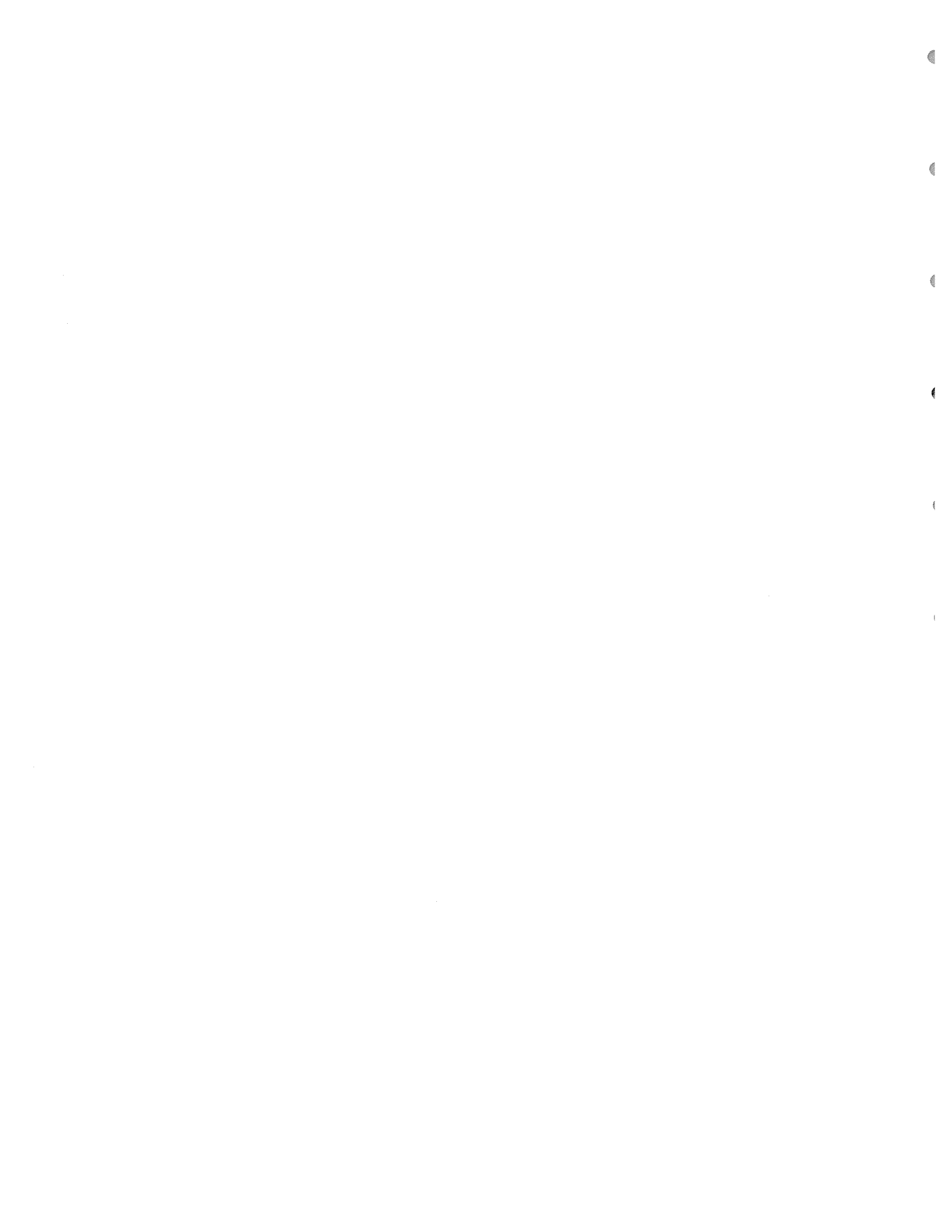
- 1) Please describe for the Task Force how the current explosives transport routes were developed, and how they are updated. Do you think this process can be improved? Do local entities have sufficient input into route development? Have there ever been public hearings on these routes?

Do you think that other kinds of materials need to have rigidly restricted routing? Is the process developed in AB 1861 (Chapter 814, Statutes of 1985) sufficient in terms of routing? Please provide us with an update of the AB 1861 implementation process.

- 2) Please provide the Task Force with a description of your role in notification of local officials regarding the transportation of jet fuel (Nitrogen Tetroxide). It is our understanding that there had been a breakdown in local notification during the last year in Southern California. Please describe, to the best of your understanding, that situation, how it developed, and how it can be avoided.

Do you think that other kinds of material should require advance local notification? Can you provide us with descriptions of such materials?

- 3) It is clear that state and local officials do not have comprehensive and accurate information regarding the volume, frequency, and location of the transportation of hazardous materials. Can you suggest ways that we can develop an accurate inventory of the transportation of hazardous materials?
- 4) We are aware that you have been concerned about the issue of preemption of the state's ability to regulate Department of Defense shipments. Please share with the Task Force your current opinion on this area. Also, comment on the issue of who can enforce state and federal law and regulations regarding hazardous material transportation.
- 5) Describe for the Task Force your current vehicle inspection program for carriers of hazardous material. Please describe the different treatment of cargo tanks and the tractor-trailers which transport them. Aside from the Patrol's staff shortage and avoiding inconveniencing truckers, are there any policy reasons for not inspecting all hazardous material tractor-trailers as well as the tanks they carry? Are there ways that we can improve the safety of hazardous material transportation containers?
- 6) Are the current categories of hazardous material transport sufficient? Can you provide us with alternate categories for hazardous material transportation which might be used to develop additional protections for motorists and other Californians?



STATEMENT OF GEORGE W. TENLEY, JR.

CHIEF COUNSEL, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION
BEFORE THE
CALIFORNIA ASSEMBLY TASK FORCE ON THE
TRANSPORT OF HAZARDOUS MATERIALS

In Los Angeles, California
November 2, 1987

Good morning Mr. Chairman and members of the Task Force. The Research and Special Programs Administration (RSPA), an agency of the U.S. Department of Transportation, is pleased to appear before you today regarding important aspects of our hazardous materials safety regulatory program. My name is George Tenley, and I am the Chief Counsel of RSPA. I am joined by Jim O'Steen, who is the Chief of the Technical Division in RSPA's Office of Hazardous Materials Transportation.

Mr. Chairman, in your letter of invitation to the Administrator and in the follow-up letter presenting us with specific questions you would like addressed by us, and which make up the balance of this statement, you have identified the major issues in hazardous materials transportation confronting policy makers (and their lawyers) at all levels of government. The issues are, by necessity, inextricably linked to each other, such that each must be dealt with, but in the context of a national strategy designed to enhance overall public safety. Clearly, if an effective public policy, and the strategy to implement it, is to be realized all levels of government must be

proceeding toward the same goal - a transportation system that assures, to the maximum extent practicable, the safety of all citizens, while eliminating the impediments to the free flow of commodities indispensable to our economic well-being and standard of living.

Before proceeding to answer the specific questions you have raised, I would like to set out the program under which the Department confronts the issues that are the subject of this hearing. Our program is dynamic and growing, and I hope your consideration of the information we have provided will reassure you of our commitment to provide strong national leadership on issues whose ultimate resolution depends greatly on the execution by state and local governments of well thought out programs. An indication of the Department's leadership can be seen in the regulatory and statutory initiatives we have taken in the last two years.

The Hazardous Materials Transportation Act (HMTA) provides the primary legislative authority for assuring the safe transportation of hazardous materials by all modes of transportation. Generally, the Secretary's authority under the Act has been delegated to RSPA. The only exception is enforcement of the rules, which is shared by the Department's modal administrations and coordinated by RSPA. To meet this responsibility, RSPA conducts a multi-faceted hazardous materials program that consists of six interrelated parts:

1. Issuance of regulations;
2. Enforcement of the regulations;
3. Training of those charged with enforcing the regulations (at the state and Federal level);
4. Research and the collection, analysis, and dissemination of data;
5. Interaction with constituency groups concerned with hazardous materials transportation safety; and
6. Assistance, in cooperation with FEMA and EPA, to those who must respond to hazardous materials transportation accidents.

I address Parts 2, 3, and 6 in my answers to the Task Force's specification questions later in the Statement.

Regulatory Program

The RSPA issues regulations governing all aspects of the shipment of hazardous materials by all modes of transportation (excluding bulk transportation by vessel, standards for which are developed by the U.S. Coast Guard). The Federal regulations cover classification (e.g., flammable, corrosive, poisonous); hazard communication, including preparation of shipping papers, package marking and labeling, and vehicle placarding; packaging and container manufacturing; and loading and handling procedures for shippers and carriers. We also have responsibility for assuring consistency of the regulations within the international community.

The following areas are being examined to improve the regulations pertaining to the transportation of hazardous materials with the objectives of enhancing safety, improving enforcement, simplifying the interpretation and implementation of the regulations, promoting uniformity and consistency, and minimizing the regulatory burden on commerce.

o Performance-Oriented Standards - RSPA issued a Notice of Proposed Rulemaking (NPRM) on May 5, 1987, proposing performance-oriented packaging standards which would significantly reduce the volume of the Hazardous Materials Regulations and substantially conform them to international standards. Performance-oriented standards are expected to promote flexibility and technological advances in packaging, improve safety by relating packaging performance to the transportation environment, and reduce the industry and government burden inherent in the regulatory exemption process. Public hearings on the NPRM are scheduled for November 17 and 18, 1987, and the comment period will close on February 26, 1988.

o Cargo Tank Safety - An NPRM was issued in 1985 concerning the manufacture, operation, maintenance, repair and requalification of Department of Transportation (DOT) specification cargo tanks. During March and April 1987, DOT held a series of public working meetings with industry commentators to clarify their comments and discuss alternative

proposals they had offered. As a result of these meetings, certain revisions to the proposed standards are being developed for consideration by DOT. RSPA expects to complete a draft of the final rule in June 1988.

o Training of Hazardous Materials Handlers and Shippers -

RSPA is developing an Advance Notice of Proposed Rulemaking (ANPRM) which examines additional training requirements for persons involved in the transportation of hazardous materials. Although general requirements presently exist in the Hazardous Materials Regulations, the ANPRM will consider whether we should adopt more detailed requirements. RSPA expects to publish the ANPRM this fall.

o Driver Licensing of Hazardous Materials Drivers - RSPA

has worked with the Federal Highway Administration to develop a rulemaking concerning minimum Federal standards for testing and licensing commercial motor vehicle operators. The primary provision limiting commercial operators to no more than one driver's license became effective on July 1, 1987. The FHWA regulations also cover such areas as violation notification requirements and employer responsibilities. Future regulations will cover testing of operators, including special testing requirements of drivers who will be hauling hazardous materials. Such drivers would be tested concerning regulations under the HMTA and would be required to have a working knowledge of those regulations. The driver must be tested in accordance with all

applicable hazardous materials regulations and have a working knowledge of those regulations. They would also be required to demonstrate knowledge of proper handling of hazardous materials, operation of emergency equipment, and implementation of emergency response procedures. The Secretary will establish the minimum Federal testing standards by July 15, 1988. The FHWA will issue an NPRM with the minimum standards this fall and a final rule in the summer of 1988.

o Emergency Response Information - RSPA published an NPRM in August proposing adoption of new communication standards to improve the information available to an emergency responder at the time of an accident. These new standards would require that vehicles and facilities involved in hazardous materials transportation contain a copy of DOT's Emergency Response Guidebook, that all hazardous material shipping papers contain a 24-hour emergency response telephone number, and that all materials described on shipping papers under "n.o.s." ("not otherwise specified") descriptions of materials also show the technical name of the material in parentheses. We expect to issue a final rule by Spring 1988.

o Application of Federal Rules to Intrastate Motor Carriers - We currently apply the hazardous materials regulations to intrastate motor carrier activities only in the transportation of hazardous wastes, hazardous substances, and flammable cryogenic liquids. An ANPRM was published in June 1987, proposing to

regulate all hazardous materials transportation by motor carriers. The majority of those affected operators are small businesses involved in private motor carrier operations e.g., a small petroleum distributor servicing communities within one state.

Under the delegations of authority from the Secretary, the Federal Highway Administration, the Federal Railroad Administration, the Federal Aviation Administration, and the U.S. Coast Guard, and RSPA share responsibility for enforcement of the hazardous materials regulations. RSPA is specifically responsible for the enforcement of regulations applicable to the multimodal transportation of hazardous materials and the manufacture, reconditioning, and retesting of most DOT specification containers. RSPA is also responsible for coordination with the modal administrations. Within the Department, there is a cadre of over 1,000 full- and part-time inspectors. In 1985, this equated to 273 total work years distributed as follows: the Federal Highway Administration spent 24.4 work years, the Federal Aviation Administration spent 14.6 work years; the Federal Railroad Administration spent 48.5 work years; the U.S. Coast Guard spent 178 work years; and RSPA spent 7.5 work years on hazardous materials enforcement. In addition to the Federal effort, the Department has worked closely with and supported annual funding for state enforcement,

particularly motor carrier enforcement. I have addressed this point specifically in my response to Question 2 later in the Statement.

Data Collection, Analysis, and Information Dissemination

RSPA has responsibility for collecting, analyzing, and disseminating data. This is important to our regulatory and enforcement program as well as useful to state enforcement personnel and state and local emergency response planners.

We are building on four significant projects that were undertaken in FY 1987. One such project is a comprehensive review of our data collection program by RSPA's Transportation Systems Center (TSC). TSC will contact a variety of our constituents, including the states, review our current program, evaluate the current use of the data and make recommendations as to any further information we should be collecting and how we can make better use of existing data.

Second, as noted previously, we are considering applying our Federal regulations to a broader range of intrastate shippers and carriers. This would significantly increase the amount of data we collect.

Third, in FY 1987, RSPA completed an NPRM for a new DOT incident report form. The purpose of the new form is to provide more meaningful and comprehensive data, especially in regard to the causes of incidents and the failures of packaging. In addition, the use of the new form would enable RSPA to process the data faster and more accurately.

Fourth, we are currently considering whether additional information is needed concerning the hazardous materials offered for transportation by major shippers throughout the country. At minimal cost, such information could enable us to improve our understanding of flow patterns, from the relatively small number of entities who account for the greatest volume of traffic.

Constituent Support and Coordination

Another important part of our hazardous materials transportation program is our contact and interaction with other Federal agencies, members of the regulated community, concerned public citizens, and the state and local government officials responsible for implementing related government policy at a regional level.

To carry out our coordination and constituent support responsibilities, RSPA created the Federal/State and Private Sector Initiatives Division to provide communication and coordination between RSPA and other elements of the Department, other Federal agencies, state and local governmental agencies and private sector groups. This group also supports state and local governmental officials in their enforcement and emergency response activities.

We have also improved intermodal coordination in the Department through establishment of a DOT Intermodal Hazardous Materials Coordination Committee made up of representatives from each of the modal administrations, and RSPA, which is the chair.

We meet bimonthly to review rules, research and other issues affecting hazardous materials transportation. Our enforcement attorneys meet during alternate months to coordinate the legal aspects of HMTA enforcement.

We are also working to improve our communication and coordination with other agencies. As an active member of the National Response Team (NRT), RSPA works with the 14 Federal members in all areas of hazardous materials.

We have recently executed a Memorandum of Understanding with FEMA to identify emergency preparedness roles and responsibilities involving the transportation of hazardous materials and to establish joint program efforts in planning, training, and information development, dissemination, and exchange.

RSPA also serves within the DOT as the single point of contact between DOD and DOT in matters involving the transportation of hazardous materials. We have been meeting with DOD on clarification and resolution of issues involving DOT audits of all Military Traffic Management Command (MTMC) carriers, DOD problems with the proposed U.S. adoption of the new U.N. performance-oriented packaging and marking requirements, and emergency response procedures involving shipments of military explosives and radioactive materials. In addition, FHWA works directly with DOD on safety fitness determinations for motor carriers.

Legislative Proposal

To address many of the issues I have discussed and to improve the operation and administration of the HMTA, we have proposed that Congress enact legislation making significant changes to that law. Passage of our major legislative proposal would constitute the first substantive change of the HMTA since it was enacted in 1974. Our bill would significantly enhance safety and improve the regulation and enforcement of hazardous materials transportation by:

- o Requiring motor carries of certain extremely hazardous materials such as the chemicals toxic by inhalation, major explosives, and high-level nuclear spent fuel to be "permitted" by DOT to transport such substances. This is a very limited permitting program which would apply to about 1,000 carriers.

- o Promoting uniformity by clarifying the Federal and state responsibilities for highway routing and other aspects of the regulation of hazardous materials transportation.

- o Requiring those seeking a determination from DOT on preemption (either state or local governments or industry) to complete that proceeding before going to court. Further, the court's review would be limited to whether the Secretary's action was arbitrary, capricious or an abuse of discretion.

- o Requiring DOT to extend its regulations to all intrastate hazardous materials transportation (e.g., gasoline, home heating oil and explosives).

o Assuring that the Department can impose civil enforcement sanctions for the negligent transportation of hazardous materials by removing the requirement that the Department provide that the violative act was performed "knowingly".

Question 1. Can you tell the Task Force your current thinking on what is an appropriate method for route risk assessment? Can you tell us what methods you recommend for choosing between, for example, an interstate through a highly populated area or a state or local highway through a sparsely populated region? Can you explain how you determined the acceptability of the Defense Department's most recently approved exemption application?

Risk Assessment and Control

In the assessment and control of risks, routing can play a key role; however, it is only one element, and it must be viewed in relation to all other elements we consider.

The first step in assessing the risks associated with the transportation of hazardous materials is identification of those materials that represent the greatest inherent risk or public concern in transportation. RSPA has determined that Class A and B explosives, materials designated extremely toxic by inhalation, and highway route controlled quantities of radioactive materials are the materials that meet those criteria.

Once the characteristics of a particular material have been identified, there are many factors that determine the level of risk of that material during transportation, and the controls necessary to make that risk acceptable. Some of the more important factors include the integrity of the packaging used and the quantity of material transported in each package and each shipment.

Routing is effective in reducing risks when it is possible to limit the routing of the materials to avoid areas of high population density. However, hazardous materials are often produced in industrial areas within large urban areas. Similarly, many of the destinations for these materials are in industrial areas within urban areas. As a result, transportation of these materials into or out of urban areas is difficult to avoid.

We consider a routing determination (assessment, selection and designation) to be an effective method in many cases and support its use. General regulations for the highway routing of hazardous materials in 49 CFR 397.9 require a motor vehicle containing hazardous materials to be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, unless there is no practicable alternative. In 1980 the Department developed criteria, and guidelines for applying these criteria, to designate routes for transporting hazardous materials. These guidelines contain a detailed yet simple step-by-step methodology for the assessment of risk and the designation of routes, and provide a systematic process whereby state and local governments can objectively assess the relative risks associated with alternative routes. We have distributed 3000 copies of these guidelines to state and local governments and encourage their use.

However, any similar objective method that takes into account special local conditions and numerically evaluates all contributory conditions may provide an acceptable risk assessment for comparison between routes. The risk could be expressed as the number of people potentially at risk per mile of route. The input factors would be the population (in the zone defined as the dispersion distance to either side of the road) per mile of route, the probability of an accident occurring per mile traveled, the probability of a significant release per accident, the fraction of the population at risk per release and the total miles of route being evaluated.

The Department considers the assessment and designation of routes for hazardous materials transportation to be primarily a state responsibility. Only state and local governments are in a position to know and evaluate the particular local conditions which affect the risks associated with each route. We encourage states and local communities to cooperate with affected adjacent jurisdictions in designating hazardous materials routes based upon local conditions, Federal regulations (e.g., 49 CFR Sections 177.825 and 397.9) and Federal guidelines.

In addition to the routing regulations in 49 CFR 397.9, the Department has a general routing rule for all placarded radioactive materials and a specific routing rule for highwayroute-controlled quantity shipments, such as spent fuel (49 CFR 177.825). These regulations require that highway route-controlled quantity radioactive materials be transported either over Interstate System highways (using Interstate System beltways or bypasses where available), or over a state-designated alternative route. Interstate System highways were selected to reduce time in transit and, based on highway safety accident data, also selected to substantially reduce the probability of accidents. Both the general and specific routing rules for radioactive materials transportation have risk minimization as their basic goal.

To require formal risk assessment and the designation of routes as preconditions of transportation for a large group of hazardous materials would require considerable evaluation of the benefits and costs of such an action. Therefore, the careful selection of criteria used to determine the group of chemicals that would require specific route or route segment control is critical. As an example, the cost of requiring such an assessment for gasoline, which accounts for more fatalities than any other hazardous material, would be enormous because more than 100,000 shipments are made each day. The benefit-to-cost ratio of such an action would likely be very small.

Other important risk assessment factors are the quantity of material shipped per shipment, the quantity of material shipped per package, and the integrity of the packaging during all phases of transportation. Obviously as the quantity gets smaller there is less risk. Similarly, if a given quantity of material is distributed over a large number of small packages, the probability of all the material being released in an accident is substantially reduced. Or, as in the case of radioactive materials requiring Type B packages, if the packaging is designed to survive any likely severe accident the probability of a material being released should be extremely small. Thus, by controlling quantity and packaging, as we do through the hazardous materials regulations, two important and interdependent actions result: (1) the maximum possible adverse effect of an accident is limited by reducing the amount of material, and (2) the likelihood of a release is limited by improving the integrity of the packaging.

To make the greatest impact in reducing risk to the public, our strategy is to implement an integrated program of risk control starting with high integrity packaging, augmented with operational controls and strong Federal and state enforcement. These operational controls include the quantity of material shipped; routing; carrier and driver qualifications; training; hazard identification and communication; and emergency response information and training.

With respect to packaging, we have an ongoing research contract to investigate: (1) suitable performance standards for high integrity packaging for very toxic materials, and (2) criteria to determine the threshold quantity of a very toxic material that would require the increased integrity packaging.

With respect to operational controls, I have mentioned previously that the Department has rulemaking actions under development or published which address such factors as training for persons involved in the transportation of hazardous materials (drivers, handlers, etc.); requirements for emergency response contact information on shipping papers and placement of immediate response information in all facilities involved in the transportation of hazardous materials, including vehicles; and requirements for driver qualifications and licensing.

With respect to the Task Force's specific interest in the exemption issued to the Department of Defense to ship nitrogen tetroxide in containers (cargo tanks) not otherwise permitted in the regulations, it is important to understand that the Department of Transportation has made a concerted effort to upgrade the level of safety required by this exemption. We have strengthened the requirements for the qualifications of drivers, and the integrity of cargo tanks has been upgraded.

Because RSPA shares your concerns with respect to the transportation of nitrogen tetroxide, we require DOD to certify that the route used is the safest practical route. DOD provided a certification to RSPA based on a risk assessment performed by their contractor. This certification was included in the application for renewal of the exemption submitted in April 1987. While the risk assessment did not have a comparative analysis of alternative routes, DOD certified the route as safe based upon the probability of a nitrogen tetroxide accident being 1/100 of the composite national probability for truck accidents. Thus, an accident is 100 times less likely to occur on this route than on an average highway route.

Although the probability of an accident demonstrated by the risk assessment is very low, and DOD's routes comply with state designated routes, RSPA has required DOD to conduct comparative risk analysis of several potential routes. This analysis and the certification of routes must be fulfilled at the time of application for renewal of the exemption in April 1988.

In conclusion, adequate protection of the public through the minimization of risks inherent in the transportation of hazardous materials poses a continuing challenge to those of us charged with responsibilities in this area. We are pursuing a coordinated program of legislative, regulatory and program initiatives to ensure that the excellent overall hazardous materials transportation safety record we have in this country

continues. We have proposed legislation that addresses the routing and permitting issues, and we have rulemaking activities with supporting technical studies underway that will strengthen and consolidate our packaging standards. Our program initiatives focus on working with the states to strengthen their enforcement efforts and to improve their capabilities in emergency response training and preparedness.

QUESTION 2. Please tell the Task Force what your recommendations are in order to increase compliance with the requirements of federal law. We are particularly interested in your opinion on whether local and state enforcement officials can or should be able to cite for federal violations. Also, tell us the current, past, and proposed number of federal enforcement personnel and their locations in the State of California.

The key components of compliance with any law or regulation are: clear legal duties; awareness of those duties by the persons subject to them; and oversight (enforcement) to determine compliance. Clearly, there will never be a sufficient number of Federal enforcement personnel to be able to guarantee total compliance, so the focus should be on maximizing the usefulness of all available resources. In this regard, it is the policy of the Department of Transportation to enhance the level of enforcement of hazardous materials regulations by developing a strong Federal/state partnership which recognizes the fact that states can make the greatest impact on enforcement. The Federal role, beyond the promulgation of regulations (to avoid a patchwork of state and local

requirements which often neither contribute to overall safety nor facilitate the transportation of economically essential commodities), is to support strong and effective enforcement by the states. From the resource standpoint, this support is generated primarily through the Motor Carrier Safety Assistance Program (MCSAP) which has a significant hazardous materials component. Under the aggressive leadership of former Secretary Elizabeth Dole, the MCSAP Program funding has increased from \$17 to \$50 million dollars. In California, the MCSAP program provided \$1.25 million in each of fiscal years 1985, 1986, and 1987. With those resources, California was able to conduct over 5,300 on-road vehicle inspections during that period. In addition, for that same period, California MCSAP personnel devoted approximately 75 percent of off-road inspection time on hazardous materials vehicles, and of the total number of vehicles inspected, approximately 70 percent were hazardous materials vehicles.

In addition to funding support, the Department also seeks to improve the capability of state enforcement personnel by providing training for state enforcement personnel, at our Transportation Safety Institute in Oklahoma City, in regional seminars, and through self-study courses. Through the Department's Cooperative Hazardous Materials Enforcement Development (COHMED) Program, we work closely with state enforcement personnel in regional forums that stress problem

identification and information sharing on regulations, enforcement, and training. The COHMED Program is an important component of the Department's strategy to assure that in the maximization of state enforcement capabilities, there is no diminution in the Department's Congressional mandate to assure, to the maximum extent practicable, a uniform national regulatory system.

On the issue of whether local and state enforcement officials should be able to cite for Federal violations, I have reservations as to whether that approach is necessary or desirable. Even assuming that Congress would provide that authority in statute, in practice, the prospect of hundreds, perhaps thousands, of jurisdictions conducting their own enforcement of Federal regulations would unavoidably lead to inconsistencies -- a situation Congress sought to avoid in adoption of the Hazardous Materials Transportation Act. Perhaps the better approach, and the one we have actively pursued throughout the history of our program, is the adoption by states of the Federal Hazardous Materials Regulations. This results in states enforcing a set of regulations fully consistent with Federal requirements, and allows for enforcement distinctions desirable or necessary in each state. This is an important feature of the MCSAP program.

Finally, you requested information on the number of Federal enforcement personnel, and their location, in the State of California. The Department's highway inspection force in California totals 16: eight based in Sacramento, six in El Monte, and two in San Francisco. At the present time there are no plans to increase this number.

Question 3. Please tell us your current methods for educating state and local officials and industry on both the law and regulations regarding hazardous materials transportation. How are you assisting local emergency response teams in preparing for accidents and incidents?

An important aspect of our policy on safety and uniformity in the transportation of hazardous materials is assuring that Federal and state personnel who enforce the hazardous materials regulations are adequately trained.

RSPA's Transportation Safety Institute (TSI) in Oklahoma City designs and conducts training programs. TSI has developed a self-study course for state enforcement specialists. It is used to prepare students for TSI resident enforcement training thereby reducing the amount of time spent away from duty locations.

We have taken steps to implement recommendations from the COHMED program including development of self-contained training packages for inspection, enforcement, and emergency response awareness. Train-the-Trainer courses will be developed to assist the state trainers in the use of these training packages.

The developments outlined above contribute to an effective national scheme for enforcing the hazardous materials safety regulations. Even so, we cannot eliminate all accidents involving the release of hazardous materials. In the event of such an accident, it is vital that efforts to lessen the hazards be initiated as rapidly as possible.

RSPA is working on a broad range of emergency response training issues with other Federal agencies, including FEMA, OSHA, HHS, and EPA, to: (a) clarify roles and responsibilities regarding emergency response; (b) increase coordination and communication; and (c) assess the emergency response needs of state and local jurisdictions.

There is a national strategy to develop a framework for emergency response training being developed by the National Response Team Training Committee (NRT/TC) for 1988. The strategy is to build upon existing resources. The SARA Title III funding of \$5 million for each of fiscal years 1987-1990 will assist states and local jurisdictions to support improved emergency planning, preparedness, mitigation, response, and recovery capabilities. The following are some of the improvements under consideration for FY 88:

-- Dissemination of hazardous materials response training information through a variety of systems such as the DOT/FEMA Hazardous Materials Information Exchange (HMIX) and the current RSPA program for distribution of hazardous materials information and guidance packages.

- More specific identification of training needs and promotion of uniform training among the states.
- Development of centrally prepared training packages to ensure greater uniformity and quality of training.
- Utilization of more effective training methods, such as simulations (exercises), videotapes, and packaged self-study courses. These methods will be necessary for wide dissemination of basic awareness and planning guidance information.

The goal of these initiatives is the prompt response to hazardous materials incidents and accidents. For this prompt response to be possible, a number of actions must be taken, including: (1) notification of appropriate Federal, state and local government agencies that a hazardous materials incident has occurred; (2) proper identification of the physical or chemical properties of the released material; (3) determination of the most effective way to safeguard life, property, and facilities from the associated hazards; and (4) use of the most effective methods to clean up the spill and to restore normal conditions. State and local jurisdictions have the primary role in responding to transportation emergencies because of the infinite number of possible accident sites, the wide range of materials which may be involved, and the critical need for immediate action. These activities require a Federal, state, local and private sector partnership. No one can do it alone.

RSPA has worked in the last few years to clarify the roles of all levels of government--Federal, state, and local jurisdictions--to increase coordination and communication and to assess the needs for planning, preparedness, and response. RSPA has jointly sponsored workshops with FEMA and EPA on emergency response. We have joined the National Response Team and sought to increase the coordination and attention given to emergency response to hazardous materials transportation incidents.

These are all new initiatives RSPA has undertaken in the last two years to improve the Federal role in hazardous materials transportation emergency response.

In addition, we are continuing a number of other initiatives which have provided valuable assistance to state and local responders. For example, this year we are republishing the Hazardous Materials Emergency Response Guidebook (ERG). The ERG is intended for use by firefighters, police, and other emergency services personnel as a guide for initial actions to be taken to protect themselves and the public when they are called on to handle incidents involving hazardous materials that are transported in the United States. RSPA has distributed more than 1.5 million copies of the Guidebook. It is being updated every 3 years to reflect changing information and technology.

Under a mandatory identification system, four-digit numbers identifying the hazardous materials being transported must be shown on orange display panels or on the placards that are required on tank trucks, rail cars, and portable tanks carried on vehicles. The ERG enables persons who are unfamiliar with chemical names to identify a hazardous material through the use of the four-digit number, and to determine what safety measures should be taken immediately in the event of an accidental release.

Another important RSPA-supported mechanism for assisting government agencies in providing emergency services when hazardous materials incidents occur is the Coast Guard-operated National Response Center (NRC). The NRC, which was established in August 1974, provides a communication network which can notify appropriate state and local officials of a hazardous materials incident.

The NRC is data-linked to CHEMTREC, a service of the Chemical Manufacturers Association, which provides a centralized source of chemical emergency response information and assistance on a round-the-clock basis. CHEMTREC does not operate under a legislative mandate. Rather, it is a chemical industry-supported system for providing assistance to anyone requesting help during an emergency arising from the accidental release of chemicals. CHEMTREC maintains a data base containing specific

information concerning more than 18,000 chemicals. Both the NRC and CHEMTREC response centers provide toll-free, 24-hour service to emergency services personnel who are prepared to respond to hazardous materials incidents.

RSPA has encouraged the industry over the last few years to sponsor more initiatives in this area. The list of industry's accomplishments is impressive. These industry programs can help to reduce the Federal funding necessary if the programs are developed and coordinated with the Federal, state, and local planners and the programs are then made accessible to those in need. Among several successful industry programs are training videos; a toll-free number providing planning information to planners and consumers; the Community Awareness for Emergency Response Program; and publication of a pocket-sized Emergency Response Guidebook, to list just a few. One additional program which holds great promise is a program referred to as CHEMNET, a mutual aid network between chemical shippers and for-hire contractors that will provide advice and assistance at the scene of major chemical distribution incidents.

The effectiveness of our program is evidenced by our good safety record for the transportation of hazardous materials. Of the approximately 250,000 shipments a day in 1986, there were 16 fatalities and 315 injuries. While this is a higher number of fatalities than occurred in the previous year, it is very low when one considers the large number of hazardous materials shipments that take place daily.

Question 4. Federal law currently requires notification to local officials only for transportation of certain radioactive materials. Do you believe this is adequate? Should additional materials be included in the notification process?

The Department recognizes the need of state and local governments to have information on the presence in those jurisdictions of hazardous materials and the carriers who transport them. We are aware that numerous jurisdictions have adopted notification requirements, including: prenotification, per trip reporting, periodic reporting, and route plan filing. Our concerns are that notification systems, if not limited in the number of materials covered, can overwhelm a jurisdiction to the point of making the information collected unusable; and that a large number of differing systems adopted by a large number of jurisdictions can lead to delay in transportation, with potentially adverse consequences on safety, and a breach in the uniformity of regulation.

The Department has addressed the issue of notification through two mechanisms. In 1980, we funded a Puget Sound Council of Governments (PSCOG) demonstration project which studied a variety of hazardous materials issues confronting local governments, including the notification issue. In its "Analysis of Prenotification", issued on May 4, 1981, the PSCOG reported that, while there appeared to be some merit in alerting jurisdictions to the impending shipment of "especially hazardous materials" in order to facilitate emergency response preparedness, the usefulness of the prior notice declined sharply as the number of substances subject to it increased. The report

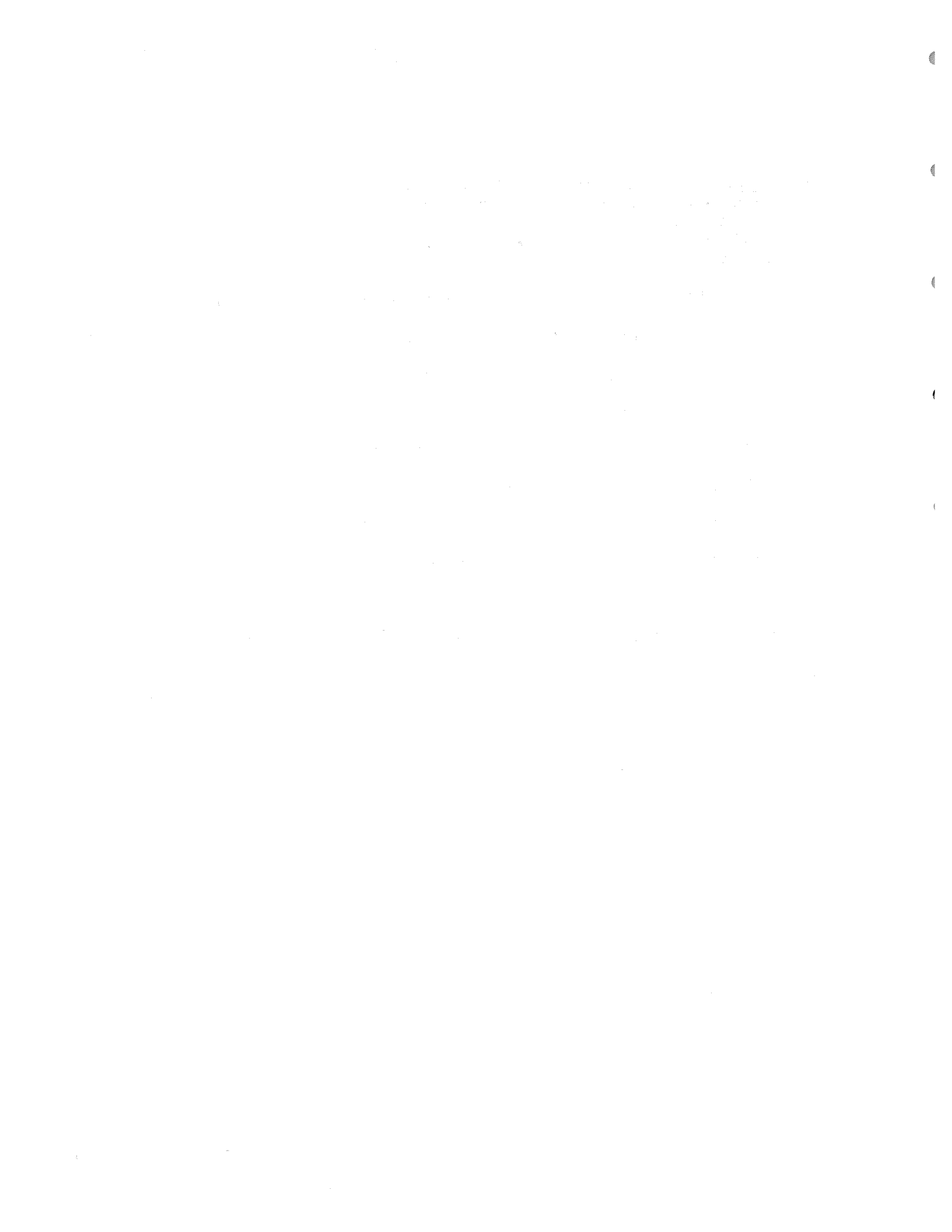
also reveals that in addition to a limitation on the purpose (emergency preparedness, rather than commodity inventory); and the materials covered (high-risk or "especially hazardous"), the effectiveness of a prenotification system may be enhanced and the burden on industry lowered, if notice is given to states, rather than to separate local jurisdictions along routes.

We have also dealt with the prenotification issue through our inconsistency ruling process under which we issue advisory opinions on whether state or local requirements are preempted by Federal law or regulation. In the cases to date in which we have ruled on prenotification systems, we have found them to be preempted because they were not limited in scope and operated to unnecessarily delay transportation - a condition the Department has consistently held to be inimical to safety.

Consequently, although we are not identifying prenotification in our legislative proposals as a subject of exclusive Federal jurisdiction, we do not favor its use and would look closely at any prenotification system that is not limited in scope as noted above. I urge the Task Force to consider the materials on notification I have provided for the record before proceeding to make recommendations on this subject.

Question 5. Last month our Department of Motor Vehicles sent you the proposed regulations to implement SB 895, our hazardous materials and bulk liquid load driver certification program. Can you tell us the current status of the approval process for those regulations?

On October 13, 1987, RSPA received California DMV's October 8, 1987 application for an inconsistency ruling concerning training requirements for operators of vehicles carrying hazardous materials. OHMT will publish a notice and invitation for public comment at the end of November. There will be a 45-day comment period and a 45-day rebuttal comment period expiring in February 1988. Thereafter, OHMT will analyze the California regulations and all of the comments, and prepare an inconsistency ruling. The Director of the Office of Hazardous Materials Transportation will issue the inconsistency ruling during early Spring 1988.





**THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590**

July 29, 1987

**The Honorable George Bush
President of the Senate
Washington, D.C. 20510**

**IDENTICAL LETTER TO:
The Honorable Jim Wright
Speaker of the House of Representatives
Washington, D. C. 20515**

Dear Mr. President:

There is transmitted herewith a proposed bill,

"To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1988 and 1989, and for other purposes."

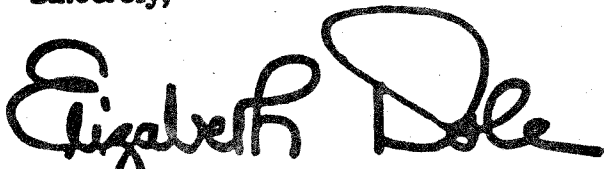
The proposed bill would authorize appropriations for the administration of programs conducted under the Hazardous Materials Transportation Act (HMTA) for fiscal years 1988 and 1989. In addition the proposed bill contains several substantive, clarifying and technical amendments.

The proposed bill includes some important new initiatives. The bill proposes the promulgation of Federal highway routing standards coupled with the statutory recognition of routing authority in State and local governments, and the initiation of a limited safety permitting scheme for motor carriers of hazardous materials which present a high degree of risk in transportation. Both proposals would serve to enhance the Department's hazardous materials transportation program and efforts to improve safety in this area. The bill would also delineate specific subject areas preemptive of State and local regulation, add a preemption determination process to the statute, and delete the term "knowingly" in regard to civil penalties.

Other technical amendments are included that serve to clarify current language, eliminate unnecessary requirements, and enhance the Department's administration of the Act. The proposed legislation will not adversely affect the environment nor will it have an inflationary impact on the economy.

The Office of Management and Budget has advised that there is no objection from the standpoint of the administration's program to the submission of the proposed legislation to the Congress, and that its enactment would be in accord with the President's program.

Sincerely,


Elizabeth Dole

A BILL

To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1988 and 1989, and for other purposes as follows.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802) is amended -

(1) by adding immediately after paragraph (2), the following:

"(3) "imminent hazard" means the existence of a condition presenting some potential that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm;

(4) "person" means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, government, or agency or instrumentality of any government when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but does not include (A) the United States Postal Service, or (B) for the purposes of sections 110 and 111 of this title, any agency or instrumentality of the Federal government;" and,

(2) by redesignating paragraph (3) as paragraph (5) and redesignating paragraphs (4), (5), (6), and (7) as paragraphs (6), (7), (8), and (9) respectively.

SEC. 2. Section 105 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1804) is amended -

(1) by striking subsections (a) and (b),

(2) by designating subsection (c) and all references thereto, as subsection (d),
and;

(3) by inserting the following:

"(a) GENERAL. - (1) The Secretary shall issue, in accordance with the provisions of Section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. (2) Such Federal regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation in commerce of hazardous materials. (3) Such regulations shall govern any aspect of hazardous materials transportation safety which the Secretary deems necessary or appropriate, including, but not limited to, those subjects set forth in paragraph (4) of this subsection. (4) Except as provided in subsection (b) of this section, any State or political subdivision requirement concerning the following subjects is preempted unless otherwise authorized by law:

- (i) the designation, description, and classification of hazardous materials;
- (ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) the preparation, execution, and use of shipping documents;
- (iv) the written notification, recording and reporting of the unintentional release in transportation of hazardous materials;
- (v) highway routing; and,
- (vi) the design, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

(b) ROUTING OF HAZARDOUS MATERIALS. -

(1) HIGHWAY ROUTING. - The Secretary may issue standards for the designation of routes over which hazardous materials shipments may be transported in commerce by motor carriers. Following issuance of such standards, no State or political subdivision thereof may designate highway routes for the transportation of hazardous materials except in accordance with the standards adopted under this section. Such standards shall include, but are not limited to, requirements that: (A) highway route designations enhance overall public safety, including the safety of people in adjacent jurisdictions, (B) each State seeking adoption of a State or political subdivision hazardous materials highway route designation shall consult with any affected adjacent jurisdictions, (C) no State or political subdivision route designation may be executed unless it is agreed to by affected adjacent States, or any dispute over the route designation arising from the failure of an adjacent State to agree to that designation is resolved in favor of the adopting State under paragraph (2) of this subsection; and (D) actions taken by States or political subdivisions thereof under this subsection may not unreasonably burden commerce. States shall be responsible for determining, in accordance with requirements adopted by the Secretary, that the highway route designations of their political subdivisions are in accordance with this section.

(2) DISPUTE RESOLUTION. - (A) If a State, or political subdivision thereof, in adopting highway route designations in accordance with subsection (b)(1) of this section, is unable to obtain the agreement of any adjacent State or States, after attempting to resolve the dispute directly with the adjacent State or States, the State seeking adoption of the designation, on its behalf or on behalf of a political subdivision thereof, may petition the Secretary to resolve the dispute. This section does not apply to disputes between political subdivisions within a State. (B) The Secretary may promulgate regulations for resolving disputes between or among

States. (C) The regulations adopted under paragraph (B) shall provide for a finding in favor of a State seeking adoption of a highway route designation if that designation has been adopted in accordance with all Federal standards and the highway route in dispute will provide the greatest level of highway safety without unreasonably burdening commerce.

(c) JUDICIAL REVIEW. - Any State that is a party to a proceeding under paragraph (2) of subsection (b) of this section that is adversely affected by a decision rendered under that paragraph may, at any time prior to the ninetieth day after that decision becomes final, file a petition for judicial review with the appropriate United States district court.

(d) INTERNATIONAL UNIFORMITY. - The Secretary may consult with interested agencies to assure that, to the extent practicable, regulations adopted by the Secretary pursuant to this section shall be consistent with standards adopted by international bodies applicable to the transportation of hazardous materials. Nothing in this section, however, shall compel the Secretary to adopt a standard promulgated by an international body that the Secretary deems unnecessary or unsafe, nor shall the Secretary be precluded from adopting more stringent safety requirements that the Secretary determines to be necessary in the public interest."

SEC. 3. Section 106 of the Hazardous Materials Transportation Act (49 App.

U.S.C. 1805) is amended by adding the following:

"(d) PERMITTING - (1) GENERAL. - No motor carrier or motor private carrier as defined in the Interstate Commerce Act, 49 U.S.C. 10102, may transport or cause to be transported in commerce, in a quantity established by the Secretary, any Class A or B explosives, or any hazardous material which has been designated by the Secretary as extremely toxic by inhalation, or any highway route controlled

quantity of radioactive materials as defined by the Secretary, unless the carrier obtains and possesses a valid safety permit issued by the Secretary authorizing the carrier to engage in such transportation. Each person who offers for transportation in commerce a hazardous material to which this subsection applies, may only offer that material to a carrier presenting a valid safety permit.

(2) ISSUANCE. - The Secretary shall issue a safety permit to each carrier required by subsection (d)(1) to possess one, if the carrier submits a complete application and meets all other requirements of the regulations adopted by the Secretary under paragraph (4) of this subsection, including a certification that the carrier has identified all hazardous materials regulations of the Secretary applicable to the carrier's operations and is in full compliance therewith.

(3) AMENDMENT, SUSPENSION, AND REVOCATION. - Any safety permit issued under the provisions of this subsection may, after notice and an opportunity for hearing, be amended, suspended, or revoked by the Secretary in accordance with procedures adopted under paragraph (4) of this subsection whenever the Secretary determines that a carrier has failed to comply with a requirement of this title or any regulation issued under this title. In cases of imminent hazard, the Secretary may amend or revoke a safety permit immediately without the opportunity for a hearing.

(4) PROMULGATION OF REGULATIONS. - The Secretary shall, by regulation, establish (A) to which hazardous materials and in what quantities this subsection applies; (B) standards of compliance required to be met for issuance of a safety permit; (C) application procedures, including form, content, and filing fees; (D) standards for determining the duration, terms, conditions or limitations of a

safety permit; (E) procedures for the amendment, suspension, or revocation of a safety permit, and (F) any other procedures the Secretary deems appropriate to implement this subsection."

SEC. 4. Section 107(a) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1806(a)) is amended by striking out the words "or renewal" in the fourth sentence.

SEC. 5. Section 108(b) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1807(b)) is amended -

(1) by striking out everything after "include" and

(2) by inserting in lieu thereof the following:

"any material which the Secretary determines is of such low order of radioactivity that when transported it does not pose a significant hazard to health or safety."

SEC. 6. Section 109(d)(1)(C) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1808(d)(1)(C)) is amended by striking out the word "recommend" and inserting in lieu thereof the word "take".

SEC. 7. Section 110(a) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1809(a)) is amended -

(1) by striking the word "knowingly" wherever it appears;

(2) by striking out the words "or of a" immediately following the word "title" where it first appears in the first sentence of paragraph (1), and adding in lieu thereof the words ", or an order or"; and

(3) by inserting the words "order or" between the words "any" and "regulation" in the second and third sentences of paragraph (1).

SEC. 8. Section 110(b) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1809 (b)) is amended by striking out the word "a" the second place it appears and inserting in lieu thereof the words "an order or".

SEC. 9. Section 111(b) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1810(6)) is amended by striking the second sentence.

SEC. 10. Section 112 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1811) is amended to read as follows:

"Sec. 112(a) GENERAL. - Except as provided in subsection (d) of this section, any requirement of a State or political subdivision thereof is preempted, unless otherwise authorized by law, if —

(1) compliance with both the State or political subdivision requirement and any requirement of this title or a regulation issued under this title

is not possible; or

(2) the State or political subdivision requirement as applied or enforced creates an obstacle to the accomplishment and execution of this title or the regulations issued under this title; or

(3) the State or political subdivision requirement regulates a subject preempted under subsection 105(a)(4) of this Act.

(b) DETERMINATION OF PREEMPTION. - With the exception of those State and local requirements preempted under subsection 105(a)(4) of this title, any person, including a State or political subdivision thereof, affected by any existing requirement of a State or political subdivision, may apply to the Secretary, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by any provision of this title. No person who applies for a preemption determination under this section may seek the same or substantially the same relief in any court until the Secretary has taken final

action on the application or until 180 days after filing of the application, whichever occurs first. The Secretary shall publish notice of the application in the Federal Register. Nothing in this section is intended to prevent a State or political subdivision thereof, or any person affected by any existing requirement of a State or political subdivision thereof, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Secretary under this section.

(c) WAIVER OF PREEMPTION. - With the exception of those State and local requirements preempted under subsection 105(a)(4) of this title, any State or political subdivision may apply to the Secretary for waiver of preemption with respect to any requirement of the State or political subdivision, which has been found to be preempted by a Departmental ruling, judicial determination by a court of competent jurisdiction, or which the State or political subdivision acknowledges to be preempted by any provision of this title or any regulation adopted under this title. The Secretary, in accordance with procedures prescribed by regulation, may waive preemption with respect to such requirement upon a determination that such State or political subdivision requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this title or of regulations issued under this title, and (2) does not unreasonably burden commerce.

(d) JUDICIAL REVIEW.- Any party to a proceeding under subsections (b) or (c) of this section that is adversely affected by a decision of the Secretary thereunder, may, at any time prior to the ninetieth day after the Secretary's decision becomes final, file a petition for a judicial review with the appropriate United States district court."

SEC. 11. Section 112(c) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1811(c)) is amended -

- (1) by deleting the word "or" and inserting a comma in lieu thereof, and;**
- (2) by inserting before the period the words "or to any other matter which is subject to Federal postal laws or regulations in or under this title, title 18, or title 39, United States Code".**

SEC. 12. Section 115 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1812) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out the provisions of this title not to exceed \$8,783,000 for the fiscal year ending September 30, 1988, and such sums as may be necessary for the fiscal year ending September 30, 1989.

(b) The Secretary may credit to any appropriation authorized under this section (1) funds received from States or other public authorities and private entities for expenses incurred by the Secretary in providing training to those States, public authorities, and private entities, and (2) fees received under section 106(c) and (d) of this title. These funds shall be available only in such amounts as are included in appropriation acts."

SECTION-BY-SECTION ANALYSIS

SECTION 1. This section would propose a definition of "person" to clearly establish the jurisdiction of the HMTA over governmental entities when they engage in commercial transportation (offering hazardous materials for transportation in commerce, or transporting hazardous materials in furtherance of a commercial enterprise). Under the HMTA, the Department has considered the terms "commerce" and "commercial" not to include transportation in government-owned and government-operated vehicles. (Note however, that regardless of the ownership or operation of train vehicles, the Department asserts safety jurisdiction over the track and the persons owning the track).

As proposed, the word "person" would formalize in the Act the Department's policy toward governmental operations and would include any government (Federal, State or Indian tribe) agency or instrumentality thereof (for example, a State university), with the following exceptions:

1. The United States Postal Service; and
2. Any Federal agency or instrumentality thereof with respect to section 110 (civil and criminal penalties) and section 111 (specific relief) of the HMTA.

The exception for the U.S. Postal Service recognizes the statutory responsibilities over mail transportation assigned to the Postal Service (18 U.S.C. 1702, 1715, 1716(a) through (e), (g) and (h); 39 U.S.C. 3623(d), 5401; and 49 App. U.S.C. 1375(a)). Section 11 below contains a more detailed discussion on the exception for the Postal Service.

The second exception recognizes both the impracticality and the public policy constraints of one Federal agency asserting sanctions against a sister agency. In all other aspects, the HMTA would apply to Federal agencies and their instrumentalities. Furthermore, it should be noted that employees of such agencies

would continue to be subject to all provisions of the HMTA, including those prescribing sanctions. Consequently, a Federal employee could be subject to sanctions when his or her actions with respect to a commercial hazardous materials shipment for the Federal government (usually involving the use of a for-hire motor carrier), constitute violations of the regulations, e.g., if that employee, in disregard of instructions or procedures, misdescribes, mislabels, or mismarks a package containing hazardous materials.

The definition of "imminent hazard" is currently found in section 111(b) of the Act, pertaining to specific forms of relief for violations of the HMTA or its regulations. Since the imminent hazard criterion is also part of the proposed permitting scheme in Section 3 of this bill, the definition should be relocated to the general definition section of the Act since it is used in more than one section. In addition, the current standard that must be met before the Secretary may directly petition a district court for an order suspending or restricting the transportation of a hazardous material has been lessened. The standard - "a substantial likelihood that serious harm will occur prior to completion of an administrative . . . proceeding" - is so strict that it negates what could be a valuable enforcement tool to control unsafe operations and operators. The proposed substitution of "some potential" in lieu of a "substantial likelihood" will enable the Department to supplement its current administrative sanctions with a judicial sanction that the Department can seek without the delays inherent in processing the case through the Justice Department.

SECTION 2.(a) GENERAL. This subsection would amend section 105(a) of the HMTA by mandating that the Secretary issue regulations for the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. This subsection is an element in the enhancement of Federal primacy in certain critical areas of hazardous materials transportation regulation. A notable exception is in the area of highway routing (subsection (b)(1)), which would be governed concurrently by the Federal government and the States. Under paragraph (a)(3), non-Federal entities would be prohibited (unless otherwise authorized by Federal law) from enacting their own laws or regulations with respect to specifically enumerated subjects (e.g., packaging, labeling, placarding) found in paragraph (a)(4), unless their requirements are identical to the Federal requirements. However, the preemptive language recognizes that States may act in accordance with other Federal law in adopting requirements that would otherwise be preempted. For example, under programs approved by the Environmental Protection Agency in administering the Resource Conservation and Recovery Act, States may require waste haulers to report information on the Federally-required Uniform Hazardous Waste Manifest that is in addition to the Federal information requirements. These State requirements would not be preempted by this bill.

Taken together the proposals in paragraphs(a)(1) - (a)(4) are intended to greatly reduce the potential for a multiplicity of conflicting State and local requirements, with the result being an enhancement of national uniformity. In addition, this change coupled with the proposed creation of concurrent Federal and State jurisdiction in the area of highway routing (with a provision for dispute resolution) discussed under subsection (b), would serve to greatly reduce the number of proceedings needed to determine the preemption of State and local requirements.

Furthermore, the proposal under Section 10 which would amend section 112(a) of the Act to prescribe the standards for preemption gives greater certainty to State and local governments as to the extent of their hazardous materials jurisdiction. At present, the lack of certainty due to the absence in the Act of a definition of inconsistency, has been a principal cause of conflict between Federal and non-Federal requirements.

These provisions would serve as an inducement to State and local governments to adopt and enforce the Federal Hazardous Materials Regulations in full. The subsection also is intended to apply the Federal regulations to intrastate as well as interstate and foreign commerce ("commerce" is defined in section 103(1) of the HMTA). Historically, the Department has asserted its jurisdiction over intrastate commerce only in transportation of hazardous wastes, hazardous substances, and flammable cryogenic liquids. This policy is reflected in the current regulations at 49 CFR 171.1. The major impact of this change would be on the intrastate transportation of petroleum products (such as in the delivery of home heating oil) and explosives.

This subsection essentially would result in three areas of jurisdiction in the regulation of hazardous materials transportation. First, subjects which are specifically listed in the Act or the regulations issued pursuant to it (e.g., packaging, labeling, placarding) would be the exclusive jurisdiction of the Federal Government, except that State or local governments could adopt and enforce identical requirements. Second, requirements not addressing the specific subjects in section 105 identified as exclusively Federal, could be regulated by State and local governments so long as compliance with their regulations does not prevent compliance with Federal regulations and does not present an obstacle to the

achievement of the purposes of the HMTA. Third, the area of highway routing would be an express area for concurrent Federal and State jurisdiction with States and political subdivisions making routing decisions based on Federal standards. These three delineated areas in the Act itself would reduce any existing confusion over the respective jurisdictional responsibilities of Federal and non-Federal regulators.

(b) ROUTING OF HAZARDOUS MATERIALS - Under the current HMTA, the Secretary possesses the authority to regulate the routing of hazardous materials, and has exercised it in the area of the transportation of radioactive materials by highway. This new proposal would clarify the Secretary's right to exercise the existing authority in the area of the transportation of non-radioactive hazardous materials by highway by authorizing the Secretary to propose highway routing standards for the transportation of hazardous materials. Currently, a variety of non-Federal highway routing requirements for hazardous materials exist. Many serve to impede the free flow of commerce without enhancing overall safety. State and local governments have traditionally maintained a high degree of involvement in highway safety issues, but with a decidedly parochial bias. The very nature of highway systems, with many types of roads and alternate routes between points available, makes it an area appropriate for substantial regional input. Therefore, the exercise of concurrent Federal-State jurisdiction proposed in this section is a feasible approach.

These sections would apply only to highway shipments of hazardous materials. The routing of railroad shipments of hazardous materials has been the subject of a number of studies. Based on those studies we have concluded that, absent vast and impractical restructuring of the nation's rail system, efforts to make nationwide

changes in rail routing (e.g., routing hazardous materials away from heavily populated areas) would not improve safety. Given the apparent infeasibility of improving safety by creating a Federal system of routing hazardous materials by rail, the Department has chosen to limit these provisions to highway shipments.

(1) HIGHWAY ROUTING - This subsection would outline the Secretary's current authority to propose highway routing standards concerning the transportation of any hazardous material by motor carriers. National standards are needed to prevent the widespread promulgation of varying regulations by non-Federal governments throughout the country. Following the issuance of Federal standards by the Secretary, States and political subdivisions (including bridge, tunnel, and turnpike authorities) would be prohibited from adopting their own routing designations unless they are adopted in accordance with standards adopted by the Secretary. Any valid State or local highway routing designation (i.e., not inconsistent under current requirements) which affects commerce and which is in existence at the time of enactment of this amendment, or prior to the promulgation of standards by the Secretary, could continue to be enforced by the State or local government. Because States and their political subdivisions have a significant role and stake in the determination of the best routes for the movement of hazardous materials on the highways within their jurisdictions, this proposal addresses an area well-suited to the assertion of joint Federal/State safety jurisdiction. The Federal standards would contain provisions such as requiring State and local jurisdictions to enhance public safety, avoid the exportation of risk to other jurisdictions by requiring agreement from adjacent jurisdictions, consult with industry, avoid bans on transportation, avoid unreasonable burdens on commerce, and other appropriate provisions. Routing decisions at the State level could be made by any agency authorized under State law to do so, and the State

would be required to coordinate and approve the routing activities of its political subdivisions. In addition, each State would be required to (1) ensure that its political subdivisions act in accordance with Federal standards, (2) settle any disputes between its political subdivisions, and (3) seek agreement between its political subdivisions and another State. The provision would ensure a more active role for the States on decisions primarily State-wide or local in nature.

(2) DISPUTE RESOLUTION - This provision would allow the Secretary to establish a process for resolving disputes between or among States over routing actions taken in accordance with subsection (b)(1). The Secretary would promulgate regulations outlining the procedures, record to be submitted, and standards for Departmental findings. If a State complies with the Department's routing standards in adopting a highway route, and the route will provide the greatest level of safety without unreasonably burdening commerce, the Secretary would resolve the dispute in favor of that State.

There is no existing mechanism under the current radioactive materials routing rule for dispute resolution by the Department (with exception of the bifurcated inconsistency - non-preemption proceeding) in cases where two or more States cannot agree on a proposed route. The Department's experience with this situation proves the need for the proposed amendment. The procedure would be limited to disputes between or among States, thus assuring that the Department's resources would not be expended on numerous conflicts among large numbers of political subdivisions. It would require each State to resolve differences within its boundaries.

(c) JUDICIAL REVIEW. This subsection provides for an appeal of a dispute resolution decision to the appropriate United States district court upon the petition of the State adversely affected by the decision.

(d) INTERNATIONAL UNIFORMITY - Currently, nothing in the HMTA addresses the application of Federal regulations in relation to international standards, although the United States is actively involved in the deliberation and standards-setting activities of the United Nations and U.N.-related bodies. The Department, in working closely with these bodies, has been able to help promote international regulatory uniformity. This subsection would elevate this important activity of the Department to the statutory level. The subsection requires the Secretary, whenever practicable and appropriate, to adopt regulations consistent with standards governing the transportation of hazardous materials adopted by international bodies, without precluding the Department from ignoring an international standard or adopting a more stringent one if the international standard were deemed inadequate or adverse to U.S. interests. It should be noted that under title 4 of the Trade Agreements Act of 1979 (19 U.S.C. 1542), Federal agencies are required to adopt regulations consistent with standards adopted by international bodies to the maximum extent consistent with safety. This subsection is in conformity with the mandate of that Act.

SECTION 3. PERMITTING. This amendment would authorize the Department to establish a limited safety permitting program applicable to motor carriers and motor private carriers (as defined in 49 U.S.C. 10102) of hazardous materials which present either a high degree of risk in transportation or are of significant concern to the public. The Secretary would identify, by regulation, a select number and quantity of these hazardous materials, namely those extremely toxic by inhalation, Class A and Class B explosives, and highway route controlled quantities of radioactive materials, for which a Federal safety permit would be required. If the Secretary determines that an imminent hazard (as defined in section 103 of the Act) exists, a carrier's safety permit could be amended or revoked without a

hearing. Carriers would formally apply to the Department for the safety permit and certify that they are in compliance with all applicable regulations governing the transportation of each high-risk hazardous material they transport, including, but not limited to, use of qualified licensed drivers, a training program, and appropriate financial liability coverage. A filing fee would also be required with the application, to offset the administrative costs of the Department incurred in the issuance of the safety permits.

The proposed permitting program applies only to motor carriers and motor private carriers. Rail carriers are not included in the provision, because the Department believes the purposes of a permitting program would not be achieved through its application to rail carriers. The number of rail carriers carrying the hazardous materials covered is limited, known, and static, unlike that of motor carriers. A permitting program applied to rail carriers would not provide an additional incentive for compliance with the Hazardous Materials Regulations. In the past, some rail carriers have attempted to limit their potential civil liability by refusing to transport such high risk commodities. However, the ICC has ruled that they must transport these commodities given their status as common carriers. E.g., In re Radioactive Materials, 357 ICC 458 (1977); U.S. Energy Research and Development Administration v. Akron Canton and Youngstown Railroad Company, 395 ICC 639 (1978), aff'd sub nom, Akron Canton and Youngstown Railroad Co. v. ICC, 611 F.2d 1162 (6th Cir. 1979), cert den., 449 U.S. 830 (1980). Because some rail carriers would prefer not to haul the listed materials, they would not apply for a permit to do so. If they received mandated permits, they would not be motivated by a threat to revoke them. Furthermore, the Federal Railroad Administration has the power to take emergency action which, if necessary, could be (and has been)

used to immediately order a carrier to stop transporting any or all hazardous materials on any or all of its railroads. Federal Railroad Safety Act of 1970, 45 U.S.C. 432. Finally, material-specific compliance is not an existing problem in the rail industry, and this is the focus of the permitting program for motor carriers. For these reasons, the Department's proposal is limited to motor carriers and motor private carriers only.

Regulations would be adopted that: identify those hazardous materials requiring a permit; establish the prerequisites to be met for issuance of a safety permit; prescribe the form and content of the application; set the permit fee; formulate standards for terms, conditions, duration, and limitations of safety permits; establish procedures for alteration, modification, suspension or revocation; and any other appropriate procedures. Regulations would also be issued to insure that shippers of the specified hazardous materials use only carriers which possess a valid safety permit.

This limited permitting program would serve to enhance the Department's hazardous materials transportation program in five significant aspects. First, the Department would have the name and address of any carrier transporting the specific materials. This information would enable the Department and the States to focus inspections and enforcement of the regulations on these carriers. Second, it would ensure that these carriers are familiar with the regulatory obligations required for a permit. Third, since a permit would be a precondition to transporting certain extremely hazardous materials, as well as continuing operational authority, it would support concentrated inspection and enforcement and provide the strongest possible incentive for carriers to operate safely and in compliance with the regulations. Fourth, if a carrier does not operate in

compliance with the regulations, the permit can be pulled and the carrier is then prohibited from transporting these materials. Fifth, since shippers would be required to use only permitted carriers for these shipments, the likelihood that shippers would use "fly by night" carriers, whose selection is based solely on their offer of lower rates, would decrease.

The Department expects that this provision would affect the transportation of approximately 100 materials that are extremely toxic by inhalation, all commercial shipments of highway route controlled quantities of radioactive materials (a significant subset of which includes spent nuclear fuel), and large quantities of Class A and B explosives, including military (e.g., weapons) and commercial (e.g., those used in oil well operations and construction).

This provision would enhance safety and is also practicable and creates a minimal administrative burden. It is also consistent with administration proposals for economic deregulation combined with enhanced safety programs.

SECTION 4. This amendment would delete the requirement that applications for renewal of exemptions be published in the Federal Register. The requirement under the current section is extremely burdensome on the Department's Research and Special Programs Administration, both from the standpoint of time and money. Neither cost is justified in light of any benefit to be gained by the regulated public.

Between January 1, 1977, and December 31, 1985, 6,218 applications for exemption renewal (which under the HMTA, must be applied for every two years) were submitted to the Federal Register for publication in accordance with 49 CFR Part 107. However, for that nine-year period and in response to those 6,218 applications, only 24 comments were received—and none of those resulted in denial of a renewal. In 1985 alone, 701 renewals were issued.

Information and analyses submitted by commenters opposed to the renewal would have to be at least as persuasive as the information and analyses upon which the grant of exemption was based. As noted, this has not occurred once in the nine-year period noted above. The current requirement also has an unjustified adverse impact on exemption holders seeking renewal, since administrative time spent in preparing notices for the Federal Register, as well as the public notice period of 30 days, can lead to an overall delay in renewal of 60 days.

Consequently, actual experience justifies termination of this requirement.

SECTION 5. This section would amend subsection 108(b) of the HMTA to allow the Secretary to determine those radioactive materials which may be moved on passenger-carrying aircraft. Currently, the section grants the Secretary no discretion to make this determination, but merely prohibits the carriage of materials having (1) an estimated specific gravity of 0.002 microcuries, and (2) essentially uniform radiation distribution. This proposal would permit certain products containing minor radioactive components (e.g., smoke alarms) to be moved on passenger-carrying aircraft without the administrative burden of reissuing a statutory exemption from the prohibition biennially, which is the current practice.

SECTION 6. The amendment to section 109(d)(1)(c), although technical in nature, would serve to clarify the powers and responsibilities currently assigned to the Secretary. The current language that the Secretary may "recommend appropriate steps to assure the safe transportation of hazardous materials" rather than "take" those steps, constitutes an apparent inconsistency with the broad statement of powers and duties prescribed in sections 104 through 109. Furthermore, the amendment would remove the confusion that currently exists concerning to whom the Secretary makes "recommendations."

SECTION 7. This amendment would eliminate the word "knowingly" in the section of the HMTA that allows the Secretary to impose a civil penalty if he or she determines that a person knowingly committed an act in violation of the HMTA or the Hazardous Materials Regulations.

The Department has consistently interpreted the term "knowingly" to mean that a person knew or, in the exercise of reasonable care, should have known of the facts constituting the violation. (Knowledge of the statute or regulation violated is, of course, irrelevant.) 49 C.F.R. 107.299.

Thus, under the Department's interpretation of "knowingly," a defendant is chargeable with a violation of the Act or regulations if (1) the defendant actually knew the facts constituting the violation or (2) with the exercise of reasonable care, the defendant would have discovered such facts. In other words, under this interpretation the Department takes enforcement action when it can prove that a defendant through the defendant's negligence has violated the Act or regulations. Most enforcement actions taken by the Department under the HMTA rely on this negligence standard.

For example, the Department often charges a railroad with a violation of the regulations that specify where a tank car of hazardous materials may be placed in a train, even though the Department is unable to prove that the employees who put together the train actually knew that the car contained hazardous materials and actually knew the position of the car in the train. Indeed, these are facts that are ordinarily impossible to prove. The employees may have carelessly failed to notice that the car contained hazardous materials (despite the conspicuous placards, stenciling, and documentation required on such cars) and, if the employees noticed

that the car contained hazardous materials and simply chose to violate the regulation, there will ordinarily be no evidence of their knowledge which they are apt to deny, given their potential individual liability and possible employer sanctions.

Railroads are charged with violating these placement regulations if the Department can prove that the railroad received the car for transportation with the required redundant information indicating that the car contained hazardous materials. These charges are based on the theory that, being on notice that the car contained hazardous materials, the railroad, had it then exercised due care in handling the car, would have properly placed the car in its train.

The United States District Court for the Northern District of Georgia recently held that the Department has incorrectly interpreted the term "knowingly" and must prove "willful negligence" rather than mere negligence. The court defined "willful negligence" as a "reckless disregard for the probable consequences of a voluntary act or omission," a standard that apparently falls somewhere between actual knowledge and negligence, and is often equated with "willfulness," the HMTA's standard for criminal violations. (Southern Railway Company v. Riley, No. C 84-1990A).

The court's decision flies in the face of both the legislative history of the HMTA and a long-standing Department interpretation of a law it is charged with enforcing. Moreover, if the court's interpretation prevails, the consequences for public safety could be disastrous; negligent transportation of hazardous materials would be beyond DOT's power to penalize under the HMTA.

Congress in enacting the HMTA expressly sought to improve the Department's enforcement powers, citing the obstacles to enforcement created by the then-existing criminal statute. See, 120 Cong. Rec. S20143 (daily ed. Dec. 18, 1974). The ruling by the Northern District of Georgia conflicts with this goal by adopting a standard that is ordinarily and most appropriately found in criminal statutes. The HMTA itself allows the imposition of criminal sanctions for "willful" violations of the Act or regulations. Thus the court's decision blurs the distinction between civil and criminal enforcement and threatens to re-create the very obstacles to enforcement that Congress sought to remove by establishing a civil penalty process.

The Department believes the court was wrong as a matter of law and has appealed the court's decision. However, without a prompt change in the language of the statute, the court's interpretation may have a serious impact on public safety in both the long and short term.

In the long term, if the court's interpretation stands, the Department could not seek civil penalties for the negligent transportation of hazardous materials under the HMTA. Given the difficulty involved in proving the standard adopted by the court ("reckless disregard for the probable consequences of a voluntary act or omission") only the most egregious violations could be penalized under this standard. Most existing cases would have to be dropped and future enforcement actions would be severely limited. Thus, the incentive to comply with the Act and regulations that is currently provided by the threat of civil penalties would be largely eliminated.

In the short term, the impact of the Department's enforcement program may be equally dramatic. The Department currently has hundreds of open civil penalty enforcement actions that rely on a negligence standard. If defendants in these

actions rely on the court's decision, the Department will have to litigate these cases (a slow and expensive process) or hold them in abeyance until the issue is resolved in the judicial arena.

Deleting the word "knowingly" will remove this threat to the civil penalty enforcement process. It will also eliminate a great deal of confusion encountered by defendants who are charged for the first time with "knowingly" violating the Act or regulations. Inevitably, such defendants argue that theirs was an unintended (i.e., negligent) violation rather than a knowing violation, as they mistakenly equate "knowing" with "willful." A good deal of Departmental time and resources are expended combating these arguments. Of course, variations in levels of culpability are always considered in assessing penalties, as the statute requires.

Other civil penalty statutes enforced by the Department do not require the Department to prove that the defendant acted knowingly. See e.g., Natural Gas Pipeline Safety Act of 1968, as amended, 49 App. U.S.C. 1671; the Hazardous Liquid Pipeline Safety Act of 1979, as amended, 49 App. U.S.C. 2001; and the Federal Railroad Safety Act of 1970, 45 U.S.C. 438. Given the importance of compliance with the hazardous materials transportation laws, it is appropriate to impose penalties on those entities that violate the Act or regulations without proving the defendant's state of mind. (Nothing in this bill is intended to change the separate HMTA standard applicable to employees.)

In addition, this subsection would provide for the assessment of civil penalties for violations of "orders" issued by the Department. Currently, civil penalties may only be assessed against persons knowingly committing acts in violation of a provision of the title or a regulation issued under the title. While the Secretary is authorized to issue compliance orders under 49 App. U.S.C. 1808, the District Courts of the United States, upon petition by the Attorney General, are the only

avenues available for enforcement of these orders. With this provision, the Department could assess civil penalties for violations of compliance orders issued previously to a person found to have violated the Act or the regulations adopted thereunder. This provision would make the HMTA consistent with both the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979.

SECTION 8. This subsection would add willful violations of "orders" issued by the Department as actions subject to criminal penalties and is a companion to the amendment discussed under Section 7 above. Currently, only persons who willfully violate a provision of the HMTA or a regulation issued thereunder are liable for criminal penalties.

SECTION 9. This subsection would strike the definition of "imminent hazard" as it pertains to specific relief for violations of the Hazardous Materials Regulations. The definition is moved to section 103 of the Act and amended.

SECTION 10. (a) GENERAL. This subsection would mandate preemption of non-Federal requirements, when 1) compliance with both the non-Federal requirement and the Federal requirement is not possible; 2) operation of the non-Federal requirement serves as an impediment to the achievement of the purposes of the HMTA or Federal hazardous material regulations; or 3) the non-Federal requirement covers a subject preempted under subsection 105(a)(4). The provision for a waiver of preemption currently in section 112 would be retained and relocated in a new subsection (c).

The first two standards currently are codified in the Hazardous Materials Regulations under 49 CFR 107.209(c), and originated in Supreme Court decisions.

(See, e.g., Ray v. Atlantic Richfield Co., 435 U.S. 151, 158 (1978); Florida Lime and Avocado Growers Inc. v. Paul, 373 U.S. 132, 143 (1963); Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). In addition, they are documented in the precedents established in previous administrative rulings issued by the Department. The third standard implements the specific provision in Section 2 of this bill. Currently, the HMTA preempts only those State or local requirements that are inconsistent with the Act, providing no statutory definition of "inconsistent" or standards for determination of what requirements are "inconsistent." This fact, coupled with the fact that there are approximately 37,000 State and local jurisdictions in this country raises the increasing likelihood of multiplicity of governmental requirements, the very condition the HMTA was adopted to prevent. Elevating the process to the statute would result in more timely responses to applicants seeking rulings, due to an anticipated reduction in the number of applications, and creation of a more formal body of precedent.

This subsection would essentially replace the current inconsistency process as it exists now; providing that State and local requirements which fail the tests prescribed in subsection (a) are preempted. However, where exceptions are warranted, DOT may issue a non-preemption determination. The term "inconsistent" would no longer be used in the statute. This new subsection would improve the inconsistency process by identifying the standards against which a determination of preemption is made. The current provision for a waiver of preemption has been retained (see discussion of subsection (c) below).

(b) DETERMINATION OF PREEMPTION. This subsection would create a statutory preemption determination to replace the present inconsistency ruling process provided in RSPA's procedural regulations. Any State or political subdivision or a person affected by a non-Federal requirement could petition the

Department for a preemption determination with respect to any State or political subdivision requirement, except those preempted under proposed section 105(a)(4), and those concerning highway routing. The Department would make a decision on the application within 180 days of the date of publication of a notice thereof in the Federal Register. Applicants seeking a determination from the Department would be required to exhaust that administrative remedy, or wait until after 180 days had expired, prior to seeking relief in court. The requirement for the exhaustion of administrative remedies would prevent simultaneous and possibly conflicting agency and court rulings. Any party affected by a non-Federal requirement could seek judicial relief in lieu of a ruling by the Department.

(c) WAIVER OF PREEMPTION. This subsection would outline the relief from preemption of all non-Federal requirements which fail either of the tests in paragraphs (a)(1) and (a)(2). With the exception of those State or local requirements addressed in section 105(a)(4) (and those concerning highway routing), some non-Federal requirements, although otherwise preempted by virtue of a Departmental ruling, judicial determination or self-acknowledgment, may warrant a waiver of preemption. If the non-Federal requirement provides an equal or greater level of protection to the public than a Federal requirement and does not unreasonably burden commerce, the Secretary could grant a waiver of preemption, provided that the applicant could make a threshold showing of exceptional circumstances by a demonstration that a Federal regulation, which provides an adequate level of safety on a nationwide basis, fails to provide an adequate level of safety in a given locale because of emergency conditions which are unique to that locale. Consequently, if accompanied by such demonstration, non-Federal requirements that are more stringent without being unreasonably burdensome to

the free flow of commerce among and between States would not necessarily be preempted. Regulatory procedures for applications for waivers of preemption currently exist.

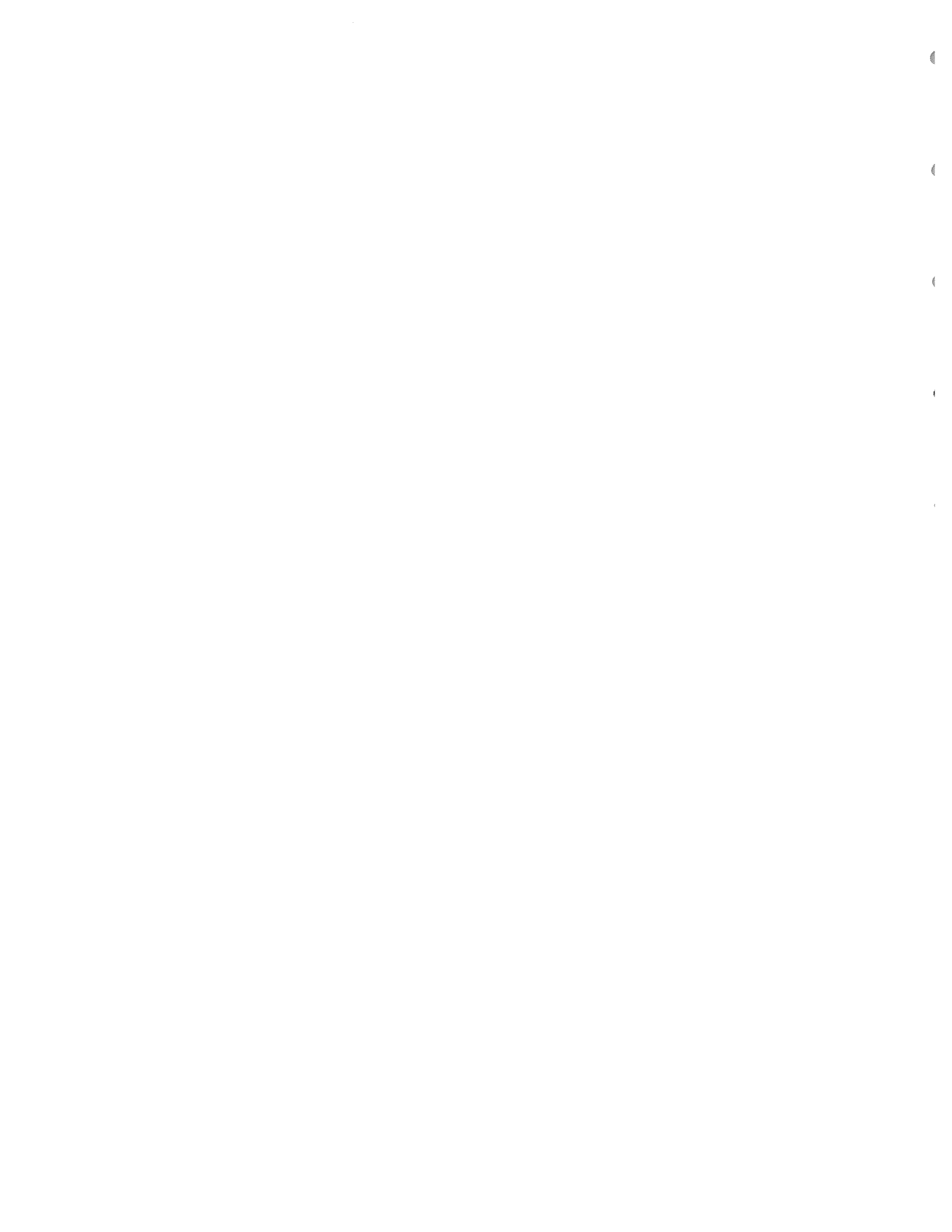
(d) JUDICIAL REVIEW OF PREEMPTION DETERMINATIONS. This subsection would outline the procedures for judicial review of Departmental preemption determinations. Any party to an application for a determination of preemption could appeal a final decision of the Department to the appropriate U.S. District Court. Under traditional precepts, the scope of judicial review would be limited to a review of the administrative record on which the Department's determination was based. Unless the court finds that the Department acted in a manner that was arbitrary, capricious, or an abuse of discretion (the standard criteria for judicial review of administrative decisions), the Department's determination would be upheld. This language would ensure that courts give the Department proper deference in its decision-making authority, recognizing the Department as the entity charged with the interpretation and enforcement of the HMTA and regulations issued thereunder, and thus best able to make the correct determination.

SECTION 11. Section 11 would amend HMTA's provision on the applicability of other Federal laws (49 App. U.S.C. 1811(c)) to state that the provisions of the Act do not apply to any matter covered by Federal postal laws or regulations. Federal postal laws that would be left unaffected by this legislation are codified in titles 18, 39, and 49, United States Code. Rulemaking authority concerning the mailing or mail transportation of hazardous materials has been vested in the Postal Service under provisions of each title (18 U.S.C. 1716(b); 39 U.S.C. 401(2) and 540(b); and 49 App. U.S.C. 1375(a)). While this amendment would confirm that preexisting Federal postal authority would not be changed, the amendment is stated so as to preclude any exemption from being inferred for any person shipping

or transporting goods in interstate commerce, who only incidentally happens to be a postal employee or customer, and who is not actually subject to Federal postal laws or regulations with respect to such shipment or transportation.

SECTION 12. This amendment would authorize an appropriation to the Department of Transportation for fiscal year 1988 of \$8,783,000 and such sums as may be necessary for fiscal year 1989. Significant initiatives are planned for fiscal year 1988, including: (1) expansion of regional meetings, begun in fiscal year 1986 and increased in fiscal year 1987 as forums for discussions between the Federal Government, its State and local government counterparts, and the private sector on hazardous materials transportation issues, particularly enforcement and emergency response; and (2) expansion of the partnership with States, initiated under the State Hazardous Materials Enforcement Development (SHMED) Program and stimulated through creation of a separate Division for Federal, State and Private Sector Initiatives within the recently reorganized Research and Special Programs Administration.

Proposed subsection 115(b) would allow the Department to credit against any hazardous materials appropriation payments made to the Department for training services (including tuition, materials, guidebooks, handouts, etc.) and fees received from the proposed safety permit program, as well as registration statements that may be required in the future under section 106 of the Act. These funds would be available only in the amount provided in appropriation acts. Any adverse economic impacts that might result in charging States for hazardous materials training (primarily enforcement-related) is greatly reduced through State participation in the Motor Carrier Safety Assistance Program (MCSAP) administered by the Department under section 402 of the Surface Transportation Assistance Act, which provides grant-in-aid funds for highway safety-related purposes, including enforcement training.

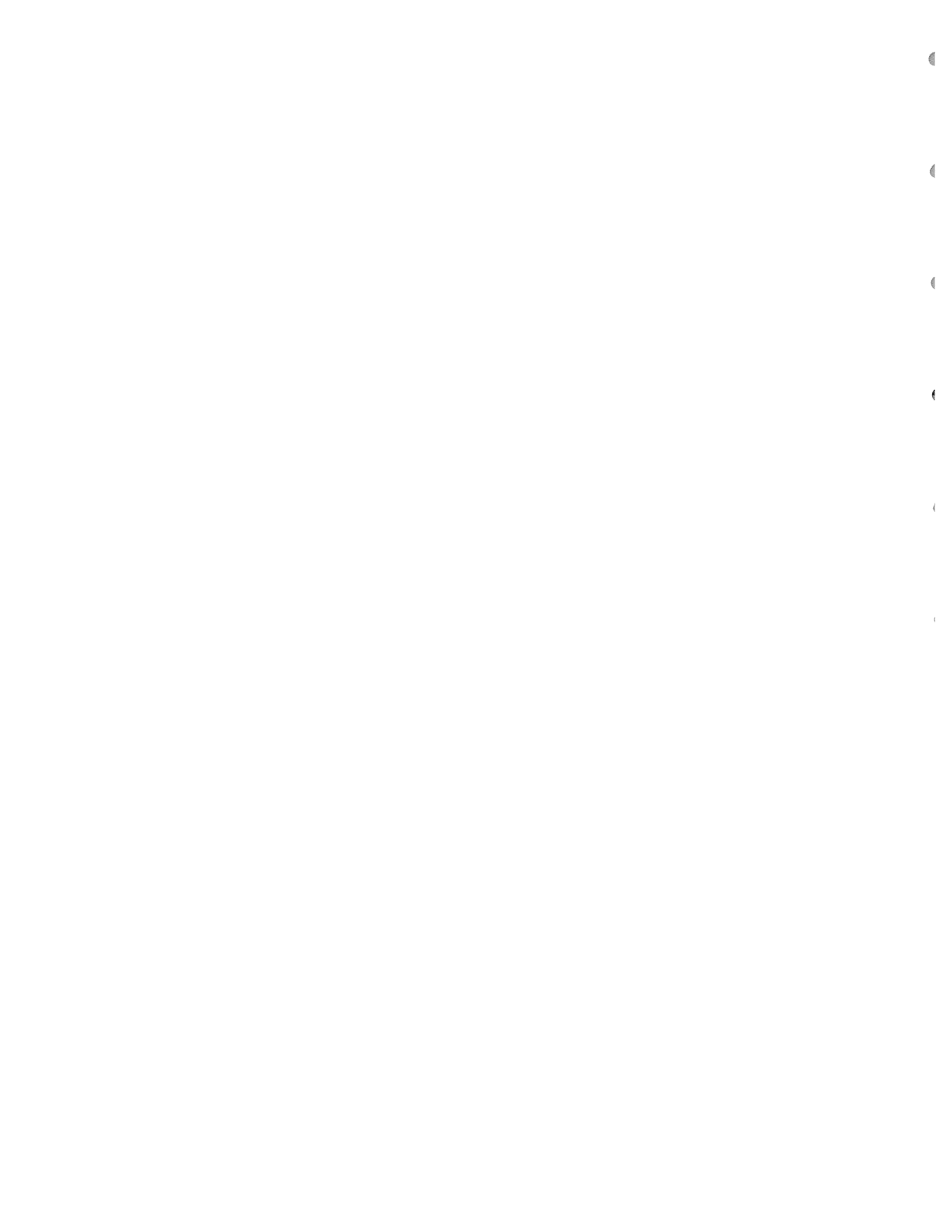


Responses to the Task Force
on the Transportation of Hazardous Materials

November 2, 1987
Los Angeles, California

Assemblyman Richard Katz, Chairman

1. Written Responses to Committee
2. Overview of the Employer and Driver Requirements
as Proposed by Regulations on Certification
3. Proposed Regulations



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The Department of Motor Vehicles appreciates the opportunity to provide the committee with information on the certification of drivers involved in the transportation of hazardous materials.

I will begin by addressing the two specific questions directed to the Department. For the benefit of those who may not have the questions available, I will restate the question before providing the response.

The first question has two parts. The first part asks us to "Describe the current status of the hazardous materials/bulk liquid load certificate program." As required by Senate Bill 895, the regulations have been developed to implement this program and were approved by the California Office of Administrative Law on September 15, 1987. In October, we forwarded a copy of the regulations to the U.S. Department of Transportation's Office of Hazardous Materials Transportation. We have requested that office to review these regulations for a determination of consistency. Due to the fact that these regulations affect drivers involved in interstate commerce, and with the recent passage of the Commercial Motor Vehicle Safety Act of 1986, the Department felt it necessary to determine whether federal preemption would be exercised upon implementation of the program. A federal determination regarding consistency and preemption was sought by the Department before implementation because it's entirely possible that DOT will preempt and/or determine the regulations an unreasonable burden on interstate commerce, despite our extreme efforts to minimize this risk. If we were to implement the program and were then preempted, it would cause a waste of those public funds spent on implementation and inflict unnecessary costs on industry members in complying with and/or preparing to comply with program requirements.

The second part of the question states that "Your Department has shown that it can rapidly implement legislation on certification, most recently with the tour bus driver certification program, why has implementation of the hazardous material/bulk liquid load certificate taken so long?" DMV was able to rapidly implement the Tour Bus Driver Certification Program because the program could be administered through the statutes enacted and without the development and adoption of regulations. However, some of the major reasons why the hazardous materials, hazardous waste and bulk liquid load certificate program has taken a longer time to implement was that the adoption of regulations is a time-consuming process. In July 1985, the Department adopted emergency regulations intended to implement the program. At the public hearing held in September 1985, the comments provided by representatives of various governmental agencies, industry and

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other concerned groups indicated that the regulations proposed would not achieve the intent of the statute and were impractical for use by both industry and enforcement. Therefore, in October 1985, the Department requested OAL to repeal the emergency regulations.

In December 1985, a team of staff members, various industry, governmental agencies and concerned groups began meeting to review and revise the proposed regulations, drivers handbooks and written examinations.

Additionally, because of the numerous commodities and the fragmented responsibilities for the enforcement of existing regulations and laws, and the complexity of the subject, compilation of material for this effort was tremendously difficult and time-consuming.

Question two also has two parts. The first part indicates that "Last year Congress passed the Federal Commercial Motor Vehicle Safety Act. How will this act impact our implementation and enforcement of hazardous material driver regulations?" The act specifically identified drivers of placarded loads as requiring licensing according to federal standards. As indicated earlier, this was one of the reasons why our regulations were submitted for review. With the passage of this law, the additional requirements imposed by our regulations could be found to be too stringent and an unreasonable burden on or interference with interstate commerce.

The last part of the question asks if "We can more stringently regulate drivers than the federal government?" I need to qualify my answer as follows:

Yes - if we are talking about California drivers hauling intrastate only or non-California drivers hauling intrastate (by federal definition this is a very limited occurrence).

It's a pending question - if we are talking about California drivers hauling interstate or non-California drivers hauling interstate into/out of or through California.

In closing, we would like to state that we support and are actively working for certification/licensing programs which improve the quality of all drivers. In this area, we have

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provided the Federal Highway Administration, which is responsible for developing the federal regulations for implementation of the Commercial Motor Vehicle Safety Act, with a copy of our proposed regulations. A copy has also been provided to the federal contractor working with a Committee of States which is assisting FHWA with the development of testing and licensing standards for the commercial driver program.

If our regulations are found to be consistent with and/or not preempted by federal law and regulations, we will also be able to quickly proceed with implementation. In the alternative, if the major elements of our proposed program were adopted through the federal rulemaking process, we could expeditiously and effectively implement the program proposed.

Once again this state has established itself as a leader in licensing of drivers; what this means is that we do not have any examples to follow in this area. It also means that we are being monitored very closely by the federal government, industry and other states. As often happens, once a program like this becomes established, it will likely be picked up by other states.

If you have any questions at this time, I would be happy to respond.

OVERVIEW OF FUTURE DMV CERTIFICATION PROGRAM FOR DRIVERS
WHO TRANSPORT HAZARDOUS MATERIALS, HAZARDOUS WASTE,
OR BULK LIQUID LOADS

California Drivers

This program will affect drivers who operate Class 1 vehicle combinations carrying bulk liquid loads and drivers who transport hazardous waste or hazardous materials in amounts that require a vehicle to be placarded. Affected drivers must comply when their licenses expire. Unless a driver is otherwise exempt under the law, the driver must do the following:

- . Apply for a special certificate at a Department of Motor Vehicles (DMV) office (the certificate can be endorsed for hazardous waste, hazardous materials, or bulk liquid loads. A separate written test is required for each endorsement).
- . Pay a \$12.00 fee per certificate. If all endorsements are obtained at one time, only one \$12.00 fee is required. However, if the endorsements are obtained incrementally, a \$12.00 fee will be charged for each new endorsement.
- . Pass the written test(s) or submit the certificate(s) of training from an employer certified by DMV.
- . Meet the physical qualification requirements set by the U.S. Department of Transportation for operating a commercial motor vehicle.
- . Have a valid driver license and a qualifying driving record (less than 4 negligent operator points in 12 months, 6 in 24 months, or 8 in 36 months).

California Employers

Employers who wish to issue certificates of training to their California drivers can apply for an employer number. To get the number, the employer must do the following:

- . Apply to DMV for an employer number.
- . Pay a fee to be established by the Department of Motor Vehicles.
- . Submit a lesson plan.
- . Keep training records.
- . Conduct training that meets requirements as outlined in the regulations.
- . Give each new driver a behind-the-wheel driving test.

Employers may certify that out-of-state drivers meet California's training requirements by submitting a department form that identifies the driver and the training the driver received. No employer number is needed by any carrier (California-based or not) to certify that out-of-state drivers have received the required training.

Out-of-State Drivers

An out-of-state driver who drives placarded loads or who carries bulk liquids can comply with California requirements by applying for the certificate at a DMV office just like a California driver. An out-of-state driver may also comply by doing one of the following:

- . Carrying a valid Non-Resident Special Driver Certificate (issued to the driver by DMV after DMV receives a training notice from the employer).
- . Carrying a special form (valid for 30 days) issued by the employer. (The employer sends a copy of the form to DMV so DMV can mail the driver a Non-Resident Special Driver Certificate.)
- . Carrying a comparable certificate, license, or endorsement from another state, territory, or country.

Like a California driver, an out-of-state driver must also carry a valid medical card while operating in California.

Out-of-State Employers

An out-of-state carrier who employs California drivers may apply for an employer number if the carrier wishes to issue certificates of training or experience and is willing to meet the following requirements for the employer number.

- . Apply to DMV for an employer number.
- . Pay a fee to be established by DMV.
- . Submit a lesson plan.
- . Keep training records.
- . Conduct training that meets requirements as outlined in the regulations.
- . Give each new driver a driving test.

An out-of-state carrier who employs out-of-state drivers can meet California's special certificate requirements by doing the following:

- . Complying with the driver training requirements outlined in these regulations.
- . Submitting a list of out-of-state drivers who will be hauling hazardous waste/materials or operating Class 1 vehicles carrying bulk liquid loads in California. The list must identify each driver by name, birth date, state where licensed, license number, home address, and mailing address. The employer will certify that the drivers received the training required by these regulations.

An out-of-state carrier's operations will not be hindered or interrupted by the requirement to obtain a certificate for a driver. The employer may issue a driver a notice on a form approved by DMV containing the driver's name, birth date, state where licensed, license number, home address and mailing address. The notice will be valid for 30 days. The employer will certify on the notice

that the driver has received the training required by these regulations. The employer will send a copy of the notice to DMV. The driver will carry a copy while operating in California. DMV will make these notice forms readily available to carriers. The carrier can duplicate additional notice forms whenever necessary.

Department of Motor Vehicles

DMV will create an individual driver record for each out-of-state driver and will issue each driver a certificate. The driver record will show the driver's name, birth date, name of carrier certifying to driver training, and whether the driver can haul hazardous material, hazardous waste, and/or bulk liquid loads. The certificate will be mailed to the driver and will expire 4 years from date of issuance. In the event that an out-of-state employer fails to meet the training requirements outlined in these regulations, DMV will no longer accept that employer's certification that drivers meet California's training requirements.

California drivers must apply for their special certificates at a DMV field office. We will provide them with special handbooks and administer written tests. The tests will be waived for drivers who are "employer certified." Each certificate DMV issues will show the driver's license number, name, birth date, and the name of the carrier providing the certification of training or the words "DMV tested." The certificate will expire with the California license. DMV will update each driver's record to show the type of certificate issued, the carrier's name, or the words "DMV tested."

Through the employer certification program, DMV will issue employer numbers to qualified employers who complete an application, pay the required fee, and submit a lesson plan. DMV will monitor the employer training programs.

DMV will create a carrier file for those carriers issued employer numbers. The file will contain the carrier's name, address, and fleet size (if known). The file will also include the name, date, and license number of drivers certified by the carrier and the type of certification.

DMV will suspend or revoke the certificate privilege of unqualified drivers. DMV will also suspend or revoke the employer number of unqualified employers.

Order To Adopt Regulations Of The Department Of Motor Vehicles
Title 13 California Administrative Code, Chapter 1,

EXPRESS TERMS

Notice is hereby given that the Department of Motor Vehicles, pursuant to the authority vested by Section 3100, Vehicle Code, hereby adopts regulations in Title 13, California Administrative Code, Chapter 1.

The content of this adoption of regulations is set forth in express terms as required by Government Code Section 11346.5(b).

Notice is also given that the provisions of Sections 100.00 through 100.07, 100.09 and the provisions of Section 100.10 pertaining to certificates of driver training shall become operative only as specified in Section 100.11 and after timely notice by the Department of Motor Vehicles.

SPECIAL DRIVER CERTIFICATES

100.00 Federal Standards And Requirements

To the extent that the provisions of this article conflict with Federal statutes or regulations, the Federal standards and requirements shall govern the activities otherwise addressed in this article.

NOTE: Authority cited: Section 3100, California Vehicle Code. Reference: Sections 12804.1 and 12804.3, California Vehicle Code and Title 49, United States Code, Section 1811.

100.01 Definitions

As used in this Article and California Vehicle Code Sections 3100 et seq. and 12804.3, the following definitions shall apply:

(a) Cargo Tank. "Cargo tank" means any tank(s) permanently attached to, or a structural part of, a vehicle; or any bulk liquid or compressed gas packaging that is not permanently attached to a vehicle and by reason of its size, construction, or method of attachment is filled or emptied without removal from the vehicle. The term does not include tanks that furnish fuel for propulsion of the towing vehicle, or auxiliary equipment on which they are installed, or any packaging fabricated to cylinder specifications.

(b) Tank Configuration. A "tank configuration" is any cargo tank having a volumetric capacity of more than 1,000 gallons that can be used for the transportation of liquids. Tank configuration does not include a tank used to carry fuel necessary for the operation of the vehicle or equipment attached to a vehicle.

(c) Combinations of Vehicles With Any Tank Configuration. "Combinations of vehicles with any tank configuration" are any combination of vehicles, when one or more of the vehicles in the combination is designed to transport a liquid in a cargo tank having a volumetric capacity of more than 1,000 gallons.

(d) Bulk Liquid Load. A non-solid, non-gaseous solution, mixture, suspension, or wetted solid in mixture or suspension that is subject to surge during transport within a structure designed to contain such materials having a volumetric capacity of more than 1,000 gallons. Examples of liquids are milk, gaso-

NOTE: Authority Cited: Section 3100, California Vehicle Code. Reference: Section 12804.3, California Vehicle Code, and Title 49, Code of Federal Regulations, Section 171.8.

100.02 Requirements For Out-Of-State Drivers

A driver from another state, territory, or country is authorized to drive in California without the drivers certificate required by Vehicle Code Section 12804.1 or 12804.3 providing the driver meets all of the following requirements:

(a) Has a valid driver's license of the class appropriate for the operation of the vehicle, issued by the state, territory or country in which the driver resides.

(b) Has met the physical qualification standards required of motor vehicle drivers by the Federal Highway Administration of the United States Department of Transportation as set forth in the Title 49, Code of Federal Regulations, Section 391.41, and has in his or her possession a medical certificate approved by the Federal Highway Administration and issued within the last two years.

(c) Has met the training requirements set forth in Section 100.07 of these regulations applicable to the type of load being transported (hazardous materials, hazardous waste) and/or type of vehicle being operated.

(d) Is not disqualified for such a certificate on the basis of his or her driving record or medical condition under the Vehicle Code Sections referenced below.

(e) Has in his or her possession one of the following:

(1) A valid Non-Resident Special Driver Certificate issued by this department to a non-California licensed driver that authorizes the driver to transport the type of load being transported (hazardous materials, hazardous waste) and/or to operate that particular type of vehicle or

(2) Notice from his or her employing motor carrier on a form approved by the department indicating that the driver has met the training requirements specified in (c) above. Such notice must be signed by the driver and the employer under penalty of perjury. The notice will be valid for 30 days from the date it is signed by the employer.

(A) When such notice is issued by an employer, the employer must at the same time send written notice of the issuance to this department. No driver shall be permitted to operate in California a vehicle subject to this Article beyond the 30-day validity period of the notice, unless he/she has obtained from this department the Non-Resident Special Driver Certificate specified in 1 above.

(B) The department, upon receipt of notice specified in Subsection A, above, shall update its records and issue Non-Resident Special Driver Certificates to qualified drivers. Such certificates shall be mailed to the drivers.

NOTE: Authority Cited: Section 3100, California Vehicle Code. Reference: Sections 3100, 12500, 12502, 12804.1, 12804.3, 12805, 12809, 12810, 12810.5, 13205, 13352, 13352.5, 13353, 13355, 13357, 13359, 13361, 13363, 13365, 13552, 13553, 13954, 14252, 15020, 15023, 15024, 23157, 23160, 23161, 23166, California Vehicle Code and Title 49 Code of Federal Regulations Section 391.41.

TESTIMONY - CAROLE WAGGONER

100.03 Renewal Of Certificate

(a) The Non-Resident Special Driver Certificate issued to a non-California licensed driver shall expire 4 years from the date of issuance. Requirements to renew the certificate shall be the same as those to obtain an original certificate.

(b) The certificates issued to California-licensed drivers shall expire with the California license. Except for changes in training requirements noted in Section 100.07, requirements to renew the certificate shall be the same as for an original certificate.

NOTE: Authority Cited: Section 3100, California Vehicle Code. Reference: Sections 12804.1 and 12804.3, California Vehicle Code.

100.04 Exceptions To The Certificate Program

All drivers of vehicles specified in California Vehicle Code Sections 12804.1 or 12804.3 shall obtain special driver certificates, except those persons exempted pursuant to Section 25163 of the Health and Safety Code, persons operating a vehicle in an emergency situation at the direction of a peace officer pursuant to Vehicle Code Section 2800 and persons meeting the requirements for out-of-state drivers set forth in Section 100.02 of this Article.

NOTE: Authority Cited: Section 3100, California Vehicle Code. Reference: Sections 12804.1, 12804.3, California Vehicle Code, Section 25163 Health & Safety Code

100.05 Refusal, Revocation, and Hearing

(a) The department may refuse to issue a certificate to any applicant under this article when the department is satisfied that any of the following exist:

(1) The applicant does not satisfy the requirements of Section 100.02, or California Vehicle Code Sections 12804.1 or 12804.3.

(2) As a result of the applicant's driving record, the applicant would be deemed to be a "Negligent Operator" under the provisions of Vehicle Code Section 12810.5(a).

(3) The applicant previously held a certificate issued under this article which has been revoked or suspended for cause and the cause for such suspension or revocation still exists.

(4) The applicant's driving record would be cause for suspension or revocation of the certificate and/or driving privilege under the provisions of the California Vehicle Code.

(5) The department has grounds for refusing to issue any license to the applicant under California Vehicle Code Sections 12805, 12807, or 12809, or would have cause for such refusal if the driver were otherwise required to be licensed under the provisions of the California Vehicle Code.

(6) The applicant would not currently qualify for a medical certificate approved by the Federal Highway Administration.

(b) The department may suspend or revoke a certificate issued under this article when the operator poses a risk to public health or safety or for any other cause which exists under these regulations, or the laws of California, regardless of when such cause arises which would either permit or require the department to refuse to issue such a certificate.

(c) The department may suspend or revoke the driving privilege of a non-California driver subject to the provisions of California Vehicle Code Section 3100 and these regulations, when the driver does not or no longer meets the requirements set forth in Section 100.02.

(d) The following provisions apply to a driver's right to a hearing:

(1) Whenever the department determines upon investigation or reexamination that the driver does not meet the qualifications for a certificate under this article and proposes to suspend or revoke the certificate privilege, notice and an opportunity to be heard shall be provided to the driver before such action is taken. Notice shall be given in accordance with procedures set forth in Vehicle Code Sections 13950, 13951, and 13952.

(2) The department may suspend or revoke the certificate privilege in accordance with the procedure set forth in Vehicle Code Section 13953 when such action is required for the safety of the driver or other persons upon the highway.

(e) Procedures pertaining to hearing requests and the conduct of hearings shall be governed by the provisions of Division 6, Chapter 3, of the California Vehicle Code.

NOTE: Authority Cited: Section 3100, California Vehicle Code. Reference: 3100(d), 12804, 12804.1, 12804.3, 12805, 12807, 12809, 12810.5, 13950-14112, California Vehicle Code.

100.06 Employer Certification Of Training For Hazardous Waste, Hazardous Materials, Or Bulk Liquid Loads

(a) Certificate Of Driver Training. The department may waive the written test for an applicant for a hazardous waste, hazardous material, or bulk liquid load in combination certificate when the applicant presents a valid certificate of driver training issued by the employer of the applicant, if the employer has been authorized by the department to issue such certificates. Such certificates of driver training shall be signed by the employer or designated representative under penalty of perjury. One or more designated representative(s) may be identified by the employer in the application for employer number, which contains the designated representative(s) name(s), business address(es), and the signature(s) of the designated representative(s).

(b) Qualifications For Employer Number. The department shall issue an employer number to an employer, authorizing the employer to issue training certificates pursuant to this Article when the department is satisfied that the employer has met the qualifications set forth in this Article. The employer number shall remain valid for one year from date of issuance, unless earlier cancelled, suspended, or revoked by the department. The employer number is subject to annual renewal. The department shall require compliance with this section to renew the employer number. In order to qualify for an employer number, the employer must meet all of the following requirements:

(1) Provide for and require that its drivers participate in a driver testing and training program, to include an actual road test for each new driver employed. The road test must include the following: pre-trip safety inspection, placing in operation the vehicles or combination of the class for which the driver is issued the certificate, use of the vehicles' controls and emergency equipment, operating the vehicle or combination in traffic (on public roads and while passing other vehicles), turning the vehicle or combination, braking, slowing the vehicle or combination by means other than braking, and backing (if applicable) and parking the vehicle or combination.

(2) Provide documentation (such as a training schedule or contract with an entity which provides training) with the application for the employer number to show that the employer will provide the driver testing and training required above and in Section 100.07.

(3) Provide a current lesson plan for DMV monitoring purposes with each original application. Renewal applications must include any changes to the lesson plan.

(4) File an application, signed by the employer under penalty of perjury, with the department on forms furnished by the department.

(5) Require drivers, on an on-going basis, to operate vehicles subject to the certificate requirements of 12804.1 and/or 12804.3 applicable to the type of training certificate the employer wishes to issue. In addition, employers who qualify drivers for the bulk liquid load in combination certificate must ensure that the required on-the-road training and testing described above and in Section 100.07 are conducted in a Class 1 combination of tank vehicles used to transport bulk liquid loads.

NOTE: Authority Cited: Section 3100, California Vehicle Code. Reference: 12804, 12804.1, 12804.3, California Vehicle Code

100.07 Training Requirements

(a) Hazardous Waste. Employers who have been authorized by the department to issue certificates of training for drivers hauling hazardous wastes must provide training that meets or exceeds the following minimum requirements before issuing the certificate of training to any driver applying for an original certificate.

(1) Course Content:

(A) Products handled (including proper description(s) and characteristics)

(B) Documentation Requirements

1. Proper national uniform hazardous waste manifest form used.
2. Required entries and signatures.
3. Location during transportation and commerce.

(C) Packaging and Container Requirements

1. Marking

2. Labeling

3. Placarding

(D) Loading/Handling (characteristics and compatibility)

(E) Incident reporting and Emergency procedures

(F) State and Federal regulations applicable to hazardous waste vehicle/container operation

(G) Characteristics and safe operating requirements of hazardous waste vehicles/containers (including routing, driving and parking)

(H) Pre-operation inspection of vehicle/container (and written report when required)

(2) For drivers renewing a hazardous waste certificate, the training required above may be met by on-the-job instruction. However, the employer must keep records of such instruction as outlined in 100.10(a).

(b) Hazardous Materials. Employers who have been authorized by the department to issue certificates of training for drivers transporting hazardous materials must provide training that meets or exceeds the following minimum requirements before issuing the certificate of training to any driver applying for an original certificate.

(1) Course Content

(A) State and Federal regulations governing hazardous materials vehicle/container operation

(B) Pre-trip inspection of vehicle and load

(C) Shipping paper requirements:

1. proper basic description sequence and format
 - a. proper shipping name
 - b. hazard class
 - c. identification number
2. required description and entries
3. location during transportation and commerce

(D) Packaging and container requirements:

1. general packaging condition
2. proper marking and labeling

(E) Loading and unloading:

1. proper handling methods for different containers
2. mixed load compatibility
3. load securement
4. load accessibility

(F) Placarding requirements:

1. proper placards used
2. placards displayed correctly

(G) Driving and parking rules applicable to hazardous material transportation

(H) Incident reporting and emergency procedures

(2) For drivers renewing a hazardous materials certificate, the above required training may be met by on-the-job instruction. However, the employer must keep records of such instruction as outlined in 100.10(a).

(c) When training a driver to meet the requirements for both a hazardous waste and a hazardous materials certificate, training requirements which are identical for the two certificates need not be repeated. The training time required for the second certificate can be shortened as long as the driver receives the required training in the subject outline at least once.

(d) Bulk Liquid Loads in Combination. Employers who have been authorized by the department to issue certificates of training to drivers for the operation of combinations of vehicles with any tank configuration, which are required to be operated by Class 1 drivers and which are transporting bulk liquid loads, must provide training that meets or exceeds the following minimum requirements before issuing the certificate of training to any driver.

(1) Course Content

(A) Pre-trip inspection of vehicle and load

(B) Loading and unloading (operation of associated equipment)

(C) Special vehicle handling characteristics, to include:

1. Vehicle instability
2. High center of gravity
3. Fluid load subject to surge
4. Effect of curves on stability
5. Effect of braking on stability
6. Effect of speed on vehicle control
7. Dangers associated with evasive or sudden maneuvers
8. Danger commonly associated with maneuvering through curves, especially on and off ramps
9. Characteristic stability differences between clean bore, baffled, or multi-compartmented tanks
10. Effects of partial loads on basic vehicle stability

(2) In addition to completing the above training, the driver must demonstrate proficiency in operating the vehicle as required by Section 1229, of Title 13, California Administrative Code.

(3) For drivers renewing a certificate to transport bulk liquid loads in combination, the training requirements above may be met by on-the-job instruction. However, the employer must keep records of such instruction as outlined in 100.10(a)

NOTE: Authority Cited: Section 3100, California Vehicle Code. Reference: 12804, 12804.1, 12804.3, California Vehicle Code, and Title 49 Code of Federal Regulations, Sections 172.200-172.204, 173.24, 177.800(a), 177.823, 177.855-177.861, 397.1-397.3, 397.7(b), 397.9(a), 397.11-397.19

100.08 Certificate of Driving Experience

(a) The department may waive the driving test for a Class 1 or 2 applicant, when the applicant has first qualified for a Class 3 driver license, has met the other examination requirements for the license for which he or she is applying as specified in California Vehicle Code Section 12804, and presents a valid certificate of driving experience issued by the employer of the applicant, if the employer has been authorized by the department department to issue such certificates.

(b) Such certificates of driving experience shall be signed by the employer or designated representative under penalty of perjury. One or more designated representative(s) may be identified by the employer in the application for employer number which states the designated representative(s) name(s), business address(s), and contains the signature(s) of the designated representative(s).

(c) The employer shall be engaged in an activity which includes operation of Class 1 or 2 motor vehicles as defined in Section 12804 of the California Vehicle Code and show proof that a minimum of five (5) such vehicles, of which at least two (2) are power units, are available for the training and testing of drivers as required by Section 100.08(d) of these regulations. Proof may be submitted in the form of license plate numbers of vehicles currently registered and which show the employer's or company's name on the Department of Motor Vehicles registration records as registered owner or lessee or a copy of current lease documents if the employer or company is not shown on the Department of Motor Vehicles registration records. Labor leasing companies may submit as proof a contractual agreement with a client(s) showing that vehicles of the specified classifications(s) are available to the employer for the testing and training of drivers as required by Section 100.08(d) of these regulations.

(d) The employer shall provide for, and require that its drivers participate in, a driver testing and training program which includes a driving test for each new driver employed. The road test shall include the following operations: pre-trip safety inspection, placing the vehicles or combination of the class for which he/she is to be issued the certificate in operation, use of the vehicles' controls and emergency equipment, operating the vehicle or combination in traffic (on public roadways and while passing other vehicles), turning the vehicle or combination, braking, slowing the vehicle or combination by means other than braking; and backing and parking the vehicle or combination.

NOTE: Authority cited: Section 3100, California Vehicle Code. Reference: Section 12804, California Vehicle Code.

100.09 Employers Qualifying For Certification For Class 1 And/Or Class 2 Operation And Special Certificate Approval

Employers who meet all of the qualifications contained in Sections 100.06, 100.07 and 100.08 may file a single application for authorization to certify to the training and testing required for Class 1 and/or 2 driving and the training required for the transport of hazardous waste, hazardous materials, and/or transport of bulk liquid loads in combination. There shall be a single fee for such multiple applications.

NOTE: Authority cited: Section 3100, California Vehicle Code. Reference: Sections 12804, 12804.1 and 12804.3, California Vehicle Code.

100.10 Additional Employer Requirements

All employers authorized to issue Certificates of Training and/or Certificates of Experience shall be subject to the following provisions:

(a) Records. Every employer issued an employer number under this Article shall keep records showing information on the training given each student issued a certificate of training. The employer shall also keep records on the training given each student who is issued a Certificate of Experience based on training. The employer shall keep these records for the length of the driver's employment and a minimum of three years from the date the driver is released from employment and shall make the records open to inspection by the department during normal business hours. Employers based in California shall keep these records at their primary place of business or designated locations specified on their application for employer number. Employers based outside California shall keep these records at California terminals or other designated locations in California. If the employer has no California terminal, these records will be kept at their primary place of business or other designated locations specified on their application for employer number. These records must include the following:

- (1) The full name and address of the person providing instruction.
- (2) The full name, address, and driver license number (including state of issuance) of each driver given instruction.
- (3) The particular type of instruction given (i.e., hazardous waste, hazardous materials, bulk liquid loads in combination, Class 1, or Class 2) and the date or dates of instruction.
- (4) The subjects covered and the total number of hours of instruction.
- (5) The results of any driver testing conducted in conjunction with the training.

(b) Refusal To Issue Employer Number. The department may refuse to issue an employer number to any applicant when the department is satisfied that any of the following conditions exist:

- (1) The applicant previously held an employer number which was revoked or suspended for cause and the cause for such suspension or revocation still exists.
- (2) The applicant does not meet the qualifications set forth in this Article for the type of Certificate of Training or Certificate of Experience authority being requested.

(c) Right to Hearing. Upon refusal of the department to issue an employer number under this chapter, the applicant shall be entitled to a hearing before the Director or the Director's representative, upon written request submitted to the department within 60 days after notice of refusal. The hearing shall be conducted pursuant to Division 6, Chapter 3, Articles 2 and 3, of the California Vehicle Code.

(d) Reapplication. An employer whose employer number has been revoked may reapply for an employer number after a period of not less than one year has

(e) Monitoring Training. Department personnel may monitor any training class without advance notice.

(f) Suspension Or Revocation Of Employer Number. The department, after notice and hearing, may suspend or revoke any employer number issued under the provisions of this Article when any of the following circumstances exist:

(1) The employer no longer meets a requirement that is a prerequisite to obtaining an employer number under this Article.

(2) The employer fails to comply with a requirement of this Article or violates a provision of this Article.

(g) Temporary Suspension. The department may, pending a hearing, temporarily suspend the employer number of an employer for a period of not more than 30 days, if the director finds that the public interest so requires. In that case, a hearing shall be held and a decision thereon issued within 30 days after issuance of the notice of temporary suspension.

(h) The following provisions apply to notices and hearings before suspension or revocation :

(1) Every holder of an employer number is entitled to notice and hearing prior to suspension or revocation of the employer number by the department, except that the department shall immediately suspend the employer number for engaging in fraudulent practices with respect to activity governed by this Article or for engaging in activities within the purview of this article in such a manner that immediate suspension is required for the safety of persons upon the highway.

(2) The notice and hearings provided for in these regulations shall be in accordance with, and governed by Division 6, Chapter 3, Articles 2 and 3 of the California Vehicle Code.

(i) Cancellation Of Employer Number. The department may cancel any employer number issued under the provisions of this Article if the employer number was issued in error or has been voluntarily surrendered to the department for cancellation. Whenever any employer number is cancelled, it shall be without prejudice. However, the department may cancel an employer number and still retain jurisdiction to institute proceedings for suspension or revocation of such number. Any employer whose employer number has been cancelled may immediately apply for an employer number.

NOTE: Authority cited: Section 3100, California Vehicle Code. Reference: Sections 12804, 12804.1, 12804.3, and 13950 through 14112, California Vehicle Code.

100.11 Implementation

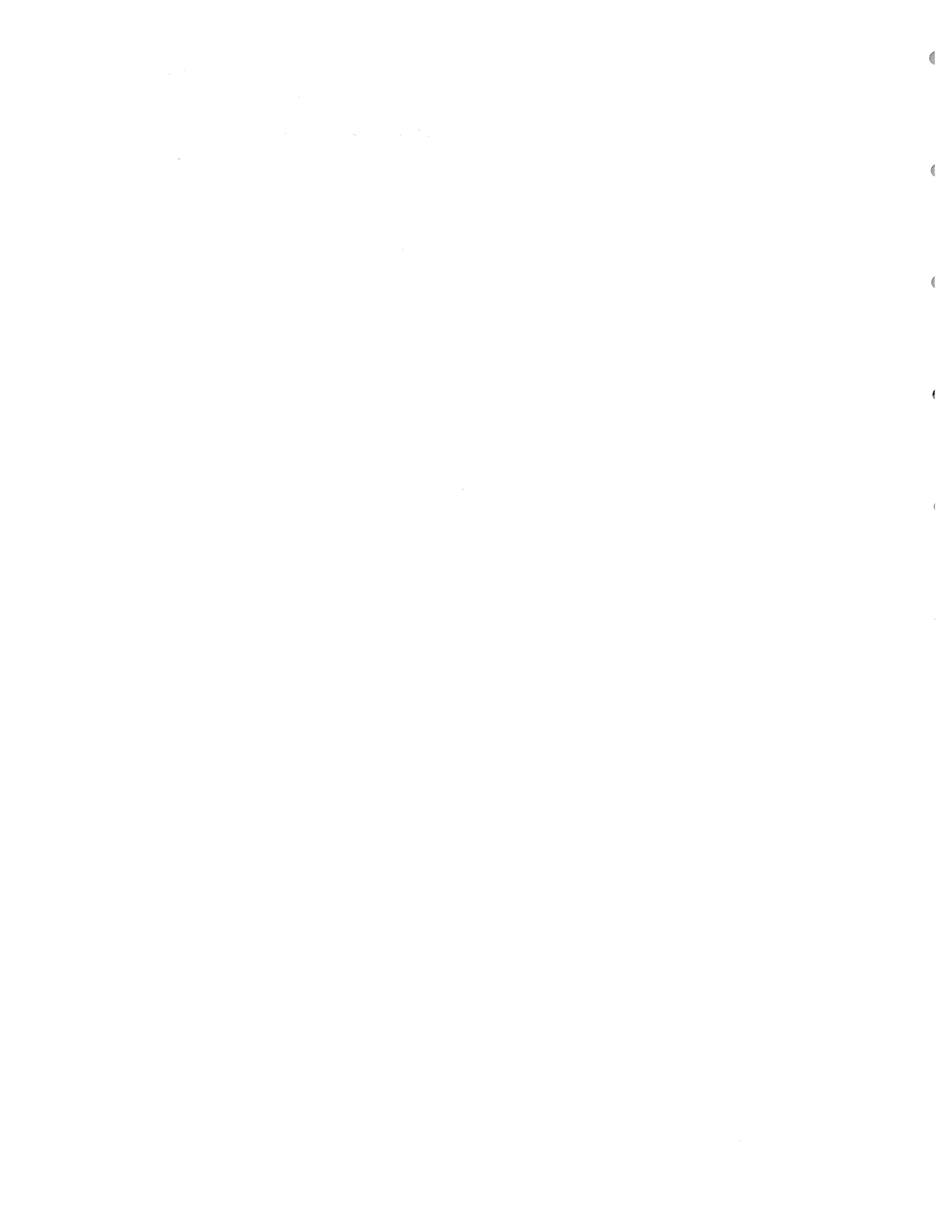
(a) Certificates of Driving Experience. Section 100.08 and those provisions of Sections 100.10 pertaining to certificates of driving experience shall be effective 30 days after the date these regulations are filed with the Secretary of State.

(b) Certificates of Driver Training. Sections 100.00 through 100.07, 100.09, and those provisions of Section 100.10 pertaining to certificates of driver training shall become operative 180 calendar days after determination by the United States Department of Transportation that these regulations are not preempted by federal law and/or federal regulations adopted pursuant thereto.

TESTIMONY - CAROLE WAGGONER

NOTE: Authority cited: Section 3100, California Vehicle Code. Reference: Sections 12804, 12804.1, and 12804.3, California Vehicle Code. Title 49, United States Code, Section 1811 and Title 49, Code of Federal Regulations, Sections 107.201 through 107.221.

OPERATIVE DATE: Upon adoption of these regulations, the Department of Motor Vehicles shall seek administrative review of same, pursuant to the Federal statute and regulations referenced above. The provisions of Sections 100.00 through 100.07, 100.09 and the provisions of Section 100.10 pertaining to certificates of driver training shall become operative only as specified in Section 100.11, above, and after timely notice by the Department of Motor Vehicles.



DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
SACRAMENTO, CA 95814



November 6, 1987

The Honorable Richard Katz
Member of the Assembly
Att: Ms. Kate Riley
State Capitol
Sacramento, CA 95814

Dear Ms. Riley:

Enclosed is my response to the questions posed and discussed at the Assembly Task Force on the "Transport of Extremely Hazardous Materials" hearing in Los Angeles, November 2, 1987.

I appreciated the opportunity to appear before Assemblyman Richard Katz' task force and apologize for not having written responses at the hearing. Nevertheless, I trust the attached material will be helpful in your efforts to insure safety in the transportation of hazardous material and hazardous waste on California's highways.

If you have any questions, please give me a call at 323-2942.

Sincerely,

A handwritten signature in cursive script that reads "J. J. Kearns".

John J. Kearns
Division Chief

Attachment



TESTIMONY AT THE ASSEMBLY TASK FORCE ON THE TRANSPORT OF
EXTREMELY HAZARDOUS MATERIALS IN LOS ANGELES, NOVEMBER 2, 1987A. Role of the DHS in Emergency Response

The DHS is not directly involved in responding to accidents/incidents involving hazardous materials; however, we provide support to other state agencies and local government in the following areas:

1. Cleanup of Hazardous Materials/Waste Spills

The Toxic Substances Control Division (TSCD) pursuant to Chapter 756, Statutes of 1981 established the Emergency Response Unit.

The purpose of the unit is to provide financial and technical assistance to local agencies in responding to hazardous materials incidents. Since 1981, Section 25354 of the Health and Safety Code has allocated one million dollars (\$1,000,000) each fiscal year as a reserve account for emergency cleanups of off highway spills. The TSCD spends monies from the Emergency Reserve Account to remedy or prevent an emergency resulting from a fire; explosion, or human exposure to hazardous substances. Typically, the incidents range in complexity from a simple spill or a single abandoned drum to a facility cleanup that could involve several hundred drums.

Attachments 1 and 2 from "A Biennial Report to the Legislature on Hazardous Waste Management in California, 1984-1986," show the expenditures made from the Emergency Reserve Account during FY 84-85 and 85-86, respectively. Expenditures for 86-87 were approximately \$860,000.

2. Funding for Emergency Response Equipment

The Hazardous Substances Account (HSA) provides annual allocations for the purchase of hazardous substance response equipment. Since the beginning of the equipment program, the Division has distributed over \$2,000,000 for the purchase of emergency response equipment. Thirty (30) local agencies are now involved in the Emergency Preparedness program. Attachment 3 (from the biennial report) lists all local agencies which have received state funds to purchase emergency response equipment during FY 1984-85 and 1985-86. Expenditures for response equipment in 1986-87 was \$500,000 with \$500,000 budgeted for 1987-88.

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3. Technical Support

The Emergency Response Unit interacts with many other state agencies in dealing with hazardous material incidents. The State's Hazardous Materials Incident Contingency Plan sets forth the state's emergency response organization for hazardous materials incidents. In so doing it identifies local, state, and federal responsibilities for emergency response. The plan is designed to minimize damage to human health, natural systems, and property caused by the release of hazardous materials. Attachment 4 (from the biennial report) lists state agencies involved in hazardous materials response and their responsibilities.

B. Response to Specific Questions of the Task Force

Q 1) Some experts in the field of hazardous material transportation believe that most hazardous materials incidents are due to inadequate training, or other "people problems." In your opinion, are local officials adequately trained in the properties of hazardous materials and waste in order to respond successfully to an emergency? If not, how can their knowledge be increased?

A Incident control starts with the driver of the vehicle transporting hazardous waste or materials. The Health and Safety Code now requires certification of such drivers. The Department of Motor Vehicles (DMV) will issue certificates indicating they have training and have passed a written examination. The DMV regulations will be in effect November 14, 1987, and will likely be implemented by late 1988.

Training programs for local agency responders exist, but should be augmented. AB 2702 (LaFollette) was implemented by the Office of Emergency Services (OES) and the California Specialized Training Institute (CSTI). As part of the Bill a curriculum board was established to develop a comprehensive training program particularly for first responders to hazardous material incidents; the Department participates as a member of the Board. The Office of Emergency Services is presently initiating training that involves classroom as well as hands-on-training. This training coupled with sophisticated training provided by various counties through out the State will result in a upgraded capability for first responders. Unfortunately the county training is limited and funding is needed to support local governments sending

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their first responders to the training facility at CSTI. In this years' DHS budget we are providing \$53,000 for training for local hazardous materials personnel. This funding is designed to train-the-trainers, whereby they can return to their jurisdiction and convey and multiply the training they receive at CSTI.

Q 2) We have learned that some counties are concerned that the requirements to report hazardous materials incidents are too narrow. Do you think that the current reporting requirements regarding hazardous materials are sufficient to ensure that all hazardous materials incidents are appropriately reported? If not, how can the State improve these requirements?

A. Two types of reporting requirements exist regarding hazardous materials transportation incidents:

- 1) The transporter is required to report to the National Response Center releases of reportable quantities of hazardous materials listed in Title 49, Code of Federal Regulations and to the EPA and State and local agencies if the amount is a reportable quantity under the National Contingency Plan.
- 2) "Administering Agencies" (Approximately 120 local agencies) are required by Section 2724, Title 19, CAC to report hazardous materials incidents to the Office of Emergency Services. These reports are submitted on a "California Hazardous Materials Incident Report Form" (Attachment 5). This form has been in use since July 1986 and will be mandatory January 1, 1988 in a revised edition.

The report form was developed by a task force comprised of state agencies but mainly local emergency services personnel. It has undergone a comprehensive pilot testing and meaningful data is presently being gathered by the OES. This form will lead to a material upgrading of not just the reporting of the incident but will provide the capability to extract meaningful data from the reports.

Q 3) The Health and Safety Code authorizes your department to enforce the Hazardous Substance Act by examining records and materials of, among others, carriers of hazardous substances. Please provide the Task Force with a description of your activities under these sections during the prior year. Describe how, or whether, you coordinate these activities with the Highway Patrol or local enforcement agencies.

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- A. The Toxic Substances Control Division (TSCD) registers transporters of hazardous waste. Several requirements must be met before registration is granted: 1) evidence of adequate liability insurance must be shown 2) vehicles/containers must be inspected and certified by CHP 3) driver training must be secured. In 1987, TSCD registered 945 transporters of hazardous waste for which the CHP inspected and certified approximately 11,000 vehicles and containers used to transport hazardous waste.

Driver training is tied directly to the Department of Motor Vehicles process presently underway and referenced in Question #1.

The Highway Patrol is charged with the responsibility to inspect vehicles, containers and terminals involved in hazardous waste transportation as well as inspection of vehicles hauling hazardous materials. Presently DHS works with them as a strike force at various truckstops, enforcing the law and regulations and performs periodic random inspection of terminals and records. DHS currently has several Memoranda of Understanding with local health Departments which authorize inspection of generators and transporters of hazardous waste.

Our system of the transport of hazardous waste is tied directly to a Uniform Hazardous Waste Manifest system. This system involves the generator of the hazardous waste completing and returning one copy of the form and sending a copy to our Sacramento Office. The remaining copies are given to the registered haulers who retain a copy and give the remaining copies to the Treatment, Storage and Disposal (TSD) facility designated on the manifest. The TSD returns a copy of the manifest and forwards a copy again to our office in Sacramento. The generator copy and the TSD copy are merged to ensure that the waste was in fact delivered to a regulated facility. If a manifest is unmatched for 30 days action is taken by our staff to follow up and determine final disposition of the waste.

TABLE 10
EMERGENCY RESPONSE EXPENDITURES
FISCAL YEAR 1984-85

COUNTY	NUMBER OF INCIDENTS	COSTS	SITES	RESPONSE TYPE		
				SPILLS	DRUG LABS	ENFORCE- MENT ACTIONS
Alameda	3	\$ 4,957.51	1	1	1	
Calaveras	1	542.92			1	
Fresno	4	9,413.98	3			1
Humboldt	1	600.00	1			
Kern	1	4,611.56			1	
Los Angeles	15	108,230.97	10	2	2	1
Nevada	4	49,575.42			3	1
Riverside	14	262,394.46	1	1	11	
Sacramento	3	2,967.56	2		1	
San Bernardino	4	62,183.71	2	1	1	
San Joaquin	1	2,908.61		1		
San Luis Obispo	1	835.72	1			
San Mateo	1	1,200.00	1			
Santa Clara	5	10,650.81	2	2		
Santa Cruz	3	12,848.59	2			1
Ventura	2	4,918.56	1		1	
TOTAL	63	\$ 538,840.38	27	8	22	4

TABLE 11
EMERGENCY RESPONSE EXPENDITURES
FISCAL YEAR 1985-86

COUNTY	NUMBER OF INCIDENTS	COST	SITES	RESPONSE TYPES		
				SPILLS	DRUG LAB	ENFORCE- MENT ACTIONS
Alameda	3	\$ 5,182.19	2	1		
Calaveras	1	5,250.97	1			
Fresno	6	13,110.05	3	2		1
Humboldt	4	18,332.93	4			
Kern	3	12,419.48	2		1	
Los Angeles	23	110,378.69	16	3	3	1
Napa	4	50,116.09	2		1	1
Orange	5	150,953.77	1	1		3
Riverside	16	41,407.96	7	3	6	
Sacramento	10	23,653.94	5	1	1	3
San Bernardino	5	21,982.17	3		1	1
San Diego	2	1,900.61	1		1	
San Francisco	3	3,286.62	3			
San Joaquin	4	4,541.86	3		1	
San Luis Obispo	1	378.99	1			
San Mateo	1	731.31	1			
Santa Barbara	1	755.55	1			
Solano	3	4,624.77	2		1	
Stanislaus	1	13,412.94		1		
Trinity	1	4,050.95			1	
Tulare	1	4,811.87	1			
Ventura	9	7,527.88	6	2		1
Yolo	1	701.50			1	
Yuba	1	4,439.26		1		
TOTAL	109	\$ 503,952.35	65	15	18	11

TABLE 12
 AGENCIES RECEIVING EQUIPMENT FUNDING
 DURING FISCAL YEARS 1984-85 AND 1985-86

AGENCY	1984-85	1985-86
Orange County		62,000
Contra Costa County		20,000
San Mateo County		55,000
Los Angeles County		
County Fire		62,000
City Fire	60,000	
Env. Health	80,000	
Sonoma County		13,000
Ventura County		62,000
Kern County		23,000
Riverside County		29,000
Alameda County		
County Fire	89,000	
Env. Health		62,000
Fremont Fire	45,000	
Kings County	40,000	
Marin County	40,000	
Sacramento County	40,000	
San Luis Obispo County	40,000	
Stanislaus County	86,000	
Solano County	40,000	
Yolo County	40,000	
Fresno County		46,000
Mendocino County		20,000
Imperial County		<u>46,000</u>
TOTAL	600,000	500,000

TABLE 9

RESPONSIBILITY MATRIX for STATE AGENCIES

STATE AGENCIES	Notification	Identification, Analysis, Technical Assistance	Coordination	Law Enforcement, Traffic Control	Rescue, Suppression, Containment	Cleanup & Disposal	Evacuation, Area Control	Emergency Medical	Public Health & Sanitation	Education & Public Information	Recovery	Training & Exercises	Natural Resources Protection & Damage Assessment	Conducts Criminal & Civil Investigations
Office of Emergency Services	X		X							X	X	X		
California Highway Patrol	X	X	X	X			X			X		X		X
State Water Resources Control Bd.		X	X			X			X	X	X	X	X	X
Department of Fish & Game		X	X	X		X						X	X	X
Department of Conservation (Oil & Gas)		X	X		X	X						X		
State Lands Commission		X	X		X	X						X	X	
Department of Transportation		X				X	X				X	X		
Department of Health Services		X				X	X	X	X	X		X		
Department of Food & Agriculture		X				X			X		X	X		
Department of Industrial Relations		X						X	X		X	X		X
Department of Water Resources		X			X				X			X	X	
Air Resources Board		X							X			X		
Department of Forestry					X	X						X	X	
Department of Parks & Recreation						X	X					X	X	
Military Department				X	X		X	X				X		
Public Utilities Commission		X										X		
Attorney General		X									X		X	
Department of General Services				X			X							
Emergency Medical Service Authority								X						
Department of Social Services			X								X			

CALIFORNIA HAZARDOUS MATERIAL INCIDENT REPORT FORM								change <input type="checkbox"/>	delete <input type="checkbox"/>				
AGENCY NAME		AGENCY ID NO.		AGENCY PHONE NO.		CITY		COUNTY					
INCIDENT NO.		INCIDENT DATE		TIME NOTIFIED		OES CONTROL NO.		TIME COMPLETE					
INCIDENT ADDRESS				STREET NO.		STREET NAME/LOCATION TYPE		SUITE/APT #					
WEATHER		PROPERTY USE											
1 CLEAR 7 FOG 3 RAIN 8 HIGH WIND 4 SNOW 9 OTHER 5 HAIL 0 UNKNOWN 6 ELECTRICAL STORM		100 PUBLIC ASSEMBLY 200 EDUCATIONAL 300 HEALTH CARE 400 RESIDENTIAL 500 MERCANTILE, BUSINESS 600 INDUSTRIAL, UTILITY, AGRIC 661 FOREST				700 MANUFACTURING 762 HAZMAT CHEM MFG 767 PETROLEUM REFINERY 800 STORAGE 831 OPEN LAND 936 VACANT LOT 941 OPEN SEA				942 HARBOR/PORT 946 LAKE/POND/RIVER 950 RAILROAD 961 FREEWAY 962 COUNTY/CITY RD 963 PRIVATE RD 099 OTHER			
EST. TEMP. _____ DEG.F													
RELEASE FACTORS		70 OPERATIONAL DEFICIENCY		TYPE OF EQUIPMENT INVOLVED		MOBILE PROPERTY TYPE							
11 INTENTIONAL ACT 21 SUSPICIOUS ACT 30 MISUSE OF HEAT OF IGNITION 31 ABANDONED 40 MISUSE OF HAZARDOUS MATERIALS 50 MECHANICAL FAILURE 60 DESIGN, CONSTRUCTION, INSTALLATION DEFICIENCY		71 COLLISION/OVERTURN 80 NATURAL CONDITION 90 UNKNOWN 98 NO RELEASE 99 OTHER		10 HEATING SYSTEMS 30 AIR CONDITION/REFRIG. 70 PROCESSING EQ. 90 HAZMAT TRANSFER EQ. 99 OTHER		10 PASSENGER VEH/ROAD 20 FREIGHT VEH/ROAD 30 RAIL TRANSPORT VEH 40 WATER TRANS. VESSEL 50 AIR TRANSPORT VEH 60 HEAVY EQUIP-IND/AGRI 70 SPECIAL MOBILE PROPTY 99 OTHER							
ACTIONS TAKEN		36 TRANSPORT		46 DECON.-PERSON/EQ.		71 INVESTIGATE							
31 RESCUE REMOVE FROM HARM 32 EXTRICATION, DISENTANGLEMENT 33 EMERGENCY MEDICAL SERVICES 34 PROVIDE MANPOWER 35 SEARCH		41 REMOVE HAZARD 42 ID/ANALYSIS OF 43 EVACUATION 44 ESTABLISH SAFE AREA 45 MONITOR		47 DECON.-AREA 61 CROWD CONTROL 62 TRAFFIC CONTROL 63 NOTIFY OTHER AGY. 64 PROVIDE PUBLIC INFO		72 PLACED IN SERVICE 82 SECURE PROPERTY 92 REF. TO PROPER AUTH 98 NO ACTION TAKEN 99 OTHER							
CHEMICAL OR TRADE NAME				DOT ID NO.		DOT HAZARD CLASS NO.		CAS NO.					
PHYSICAL STATE STORED		PHYSICAL STATE RELEASED		EXTENT OF ENVIRONMENTAL CONTAMINATION									
<input type="checkbox"/> SOLID <input type="checkbox"/> LIQUID <input type="checkbox"/> GAS		<input type="checkbox"/> SOLID <input type="checkbox"/> LIQUID <input type="checkbox"/> GAS		1 AIR 3 WATER 7 GROUND 9 OTHER									
CONTAINER MATERIAL		CONTAINER TYPE		CONTAINER CAPACITY		AMOUNT RELEASED		EXTENT OF RELEASE					
				<input type="checkbox"/> lbs. <input type="checkbox"/> gal. <input type="checkbox"/> cu.ft.		<input type="checkbox"/> lbs. <input type="checkbox"/> gal. <input type="checkbox"/> cu.ft.							
CHEMICAL OR TRADE NAME				DOT ID NO.		DOT HAZARD CLASS NO.		CAS NO.					
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CHEMICAL OR TRADE NAME				DOT ID NO.		DOT HAZARD CLASS NO.		CAS NO.					
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HAZ MAT IDENTIFICATION SOURCES				71 DOT MANUAL		HAZMAT CASUALTIES							
19 ON-SITE FIRE SERVICES 29 OFF-SITE FIRE SERVICES 40 ON-SITE NON-FIRE SERVICES 54 CHEMIST 58 TOX CENTER 60 OFF-SITE NON-FIRE SERVICES				73 MSDS 75 PLACARDS/SIGNS 78 SHIPPING PAPERS 86 CONTRACT INFO.SOURCES 87 COMPUTER SOFTWARE 99 OTHER		DECON. INJURIES FATALITIES EMERGENCY PERSONNEL OTHERS							
VEHICLE MAKE		YEAR		STATE		VEHICLE LICENSE NO.		VEH. ID NO.					
SPECIAL STUDIES		1. a b c d		2. a b c d		3. a b c d		4. a b c d					
REPORTING OFFICER-NAME		DATE		MORE THAN 3 SUBSTANCES Y/N									
				(LIST ADDITIONAL INFORMATION ON REVERSE SIDE)									

**UNIFORM HAZARDOUS
 WASTE MANIFEST**

1. Generator's US EPA ID No.		Manifest Document No.		2. Page 1 of		Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address						A. State Manifest Document Number 87000200	
4. Generator's Phone ()						B. State Generator's ID	
5. Transporter 1 Company Name			6. US EPA ID Number			C. State Transporter's ID	
7. Transporter 2 Company Name						D. Transporter's Phone	
7. Transporter 2 Company Name			8. US EPA ID Number			E. State Transporter's ID	
9. Designated Facility Name and Site Address						F. Transporter's Phone	
9. Designated Facility Name and Site Address			10. US EPA ID Number			G. State Facility's ID	
						H. Facility's Phone	
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)				12. Containers		13. Total Quantity	
				No. Type		14. Unit Wt/Vol	
a.						I. Waste No.	
						State	
						EPA/Other	
b.						State	
						EPA/Other	
c.						State	
						EPA/Other	
d.						State	
						EPA/Other	
J. Additional Descriptions for Materials Listed Above						K. Handling Codes for Wastes Listed Above	
						a.	
						b.	
						c.	
						d.	
15. Special Handling Instructions and Additional Information							
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.							
Printed/Typed Name				Signature		Month Day Year	
17. Transporter 1 Acknowledgement of Receipt of Materials							
Printed/Typed Name				Signature		Month Day Year	
18. Transporter 2 Acknowledgement of Receipt of Materials							
Printed/Typed Name				Signature		Month Day Year	
19. Discrepancy Indication Space							
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.							
Printed/Typed Name				Signature		Month Day Year	

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA CALL 1-800-852-7550

GENERATOR

TRANSPORTER

FACILITY

JOHN K. VAN DE KAMP
Attorney General

TESTIMONY -
SUSAN DURBIN
State of California
DEPARTMENT OF JUSTICE



3580 WILSHIRE BOULEVARD, ROOM 800
LOS ANGELES 90010
(213) 736-2304

TESTIMONY OF OFFICE OF THE ATTORNEY GENERAL
BEFORE THE ASSEMBLY TASK FORCE
ON THE TRANSPORT OF HAZARDOUS MATERIALS

November 2, 1987

To Chairman Katz and the Honorable Members of the Task Force:

Our Office appreciates the opportunity to appear before you and to present testimony on this subject, which we believe to be of vital importance to the safety and welfare of all Californians. Your staff has previously discussed with ours some areas in which our expertise and comments might be most useful to the Task Force, and we will try to address those. Of course, we cannot and do not offer a formal opinion here, but we will try to summarize our understanding of the law in several areas relating to the transport of hazardous materials, based on the research we have done for this hearing.

FEDERAL PREEMPTION OF STATE REGULATION

A. General Background

The first area we would like to address is the federal preemption of state legislation or regulation of hazardous materials transport. As you know, when the federal government explicitly or implicitly acts to occupy completely a certain area of regulation, the states are forbidden to act in that area under the theory that federal law has preempted the field and that federal law is supreme. Preemption is not always complete, however. If the federal government has not acted so as to foreclose state action, then states may still regulate in the area to the extent that their laws and regulations do not conflict with federal law. Ray v. Atlantic Richfield Co., 435 U.S. 151, 98 S.Ct. 988 (1978).

In the case of hazardous materials transport, the federal government has passed a number of statutes that regulate, in some cases very fully and even minutely, the area. The main statutes we will be discussing are the Hazardous Materials Transport Act (HMTA) and the Federal Motor Carrier Safety Act¹. In regulations issued under the HMTA, the federal Department of Transportation regulates extensively the transport of literally

1. Found at 49 USC 1801, and 49 USC 3101, respectively.

hundreds of hazardous materials and products^{2/}. These regulations specify such things as type of container in which hazardous materials must be carried, placarding and warning signs, specifications and equipment of trucks that may carry the materials, driver training and qualifications, and many other facets of hazardous materials transport.

The HMTA expressly provides that any state or local requirement that is inconsistent with the HMTA or with regulations issued under it is preempted. 49 USC 1811(a). Congress did not specifically forbid states or localities from regulating in this area, only from imposing requirements inconsistent with the federal ones. This implicitly allows states and localities to impose requirements that are not inconsistent with the HMTA and the Department of Transportation regulations under it. Further, the HMTA provides that, even where a state or local regulation is inconsistent with federal law or regulations, the Department of Transportation may waive the federal preemption by issuing a nonpreemption ruling. 49 USC 1811(b). The standards provided by the HMTA for issuing such a ruling are that the state or local requirement 1) affords an equal or greater level of protection to the public than does federal law, and 2) does not unreasonably burden interstate commerce. Thus, the statute itself contemplates state action that can be more stringent than federal law or regulations.

B. Determining Inconsistency

The crucial questions, of course, are what is inconsistent with the federal law, and who determines inconsistency. The answer is that the HMTA has a rather peculiar assignment of responsibilities in this area, one that makes it difficult to advise the Task Force as to what sorts of state actions will be held valid and which will be overturned. Briefly, both the Department of Transportation and the courts have responsibility for determining inconsistency or consistency of state or local action with federal law in the area of hazardous materials transport.

The Department of Transportation has an administrative mechanism set up to issue what it calls inconsistency rulings. This mechanism can be triggered either by a state that wishes to establish the consistency of its requirements with federal law, or by an affected party, such as a trucking firm, that wants to establish its inconsistency and preemption. In making these rulings, the Department of Transportation applies two major criteria, spelled out in its regulations. The first criteria is whether a regulated entity could physically comply with both the federal and the state or local requirement at the same time. If not, the state or local requirement is clearly inconsistent. An

2. See 49 CFR Parts 171 through 177.

example would be if a state required a certain chemical to be shipped only in drums of a certain size, and federal law required it to be shipped in containers of a different size or type. In these cases, preemption is clear.

The second criterion for inconsistency is whether the state or local regulation acts as an obstacle to the objectives of the federal law and regulations. In its inconsistency rulings to date, the Department of Transportation has shown that it believes most state requirements, except those that adopt federal requirements (such as state performance of inspections using federal standards) or those that are minor and easy to comply with (such as requiring vehicles carrying hazardous materials to drive with their headlights on at all times) do act as obstacles to achieving the objectives of federal law and are preempted. For example, the Department of Transportation has stated in ruling and in advisory regulations that such requirements as prenotification of shipments, special shipping papers, extra placarding or warning signs, filing of routing plans for specific shipments, and accident reporting beyond the federal requirements are preempted.^{3/} The Department's rulings have emphasized uniformity of regulation and minimization of shipment delays due to additional state requirements, believing that these best promote the objectives of the HMTA.

The Department's inconsistency rulings do not have the force of law, but are merely advisory in nature (National Tank Truck Carriers, Inc. v. Burke, 535 F Supp 509 (D.R.I. 1982), affd 698 F2d 559), and different courts have given different degrees of weight to the rulings. It is ultimately the courts that decide whether state or local actions in this area are preempted or not. Unfortunately, there is not a great deal of law in this area, what law there is is very mixed, and none of the significant cases are in the Ninth Circuit, making it difficult to advise the Task Force as to what types of state regulations would probably be upheld and which would probably not be.

All courts considering the preemption question have applied the same standards the Department of Transportation applies, namely the criteria of 1) can both state and federal law be complied with, and 2) does the state action act as an obstacle to the objectives of federal law or regulations. Those few federal cases that exist differ widely in how they apply the latter criterion. For example, in National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982), the federal court upheld a New York City law that prohibited shipment of certain hazardous gases by tank truck within the City of New York against a claim by challenging truckers that the regulation

3. See, for example, Inconsistency Ruling IR-2, 45 Fed Reg 71881, Inconsistency Ruling IR-15, 49 Fed Reg 46632, and 49 CFR Part 177, Appendix A.

was preempted. That court saw the crucial objective of the HMTA as the protection of public safety, which the court thought was advanced by the prohibition of transport of these hazardous materials through one of the most densely populated places on earth. Id., at 274-5.

Other courts have upheld permit fees and requirements that the courts felt were reasonable, and requirements for the carrying of two-way radios and illumination of headlights at all times. New Hampshire Motor Transport Ass'n v. Flynn, 751 F.2d 43 (1st Cir.1984); National Tank Truck Carriers, Inc. v. Burke, 535 F.Supp. 509 (D.R.I. 1982). However, the National Tank Truck court struck down as preempted such state requirements as a ban on shipment through certain urban areas during rush areas, separate permits for individual hazardous materials shipments, and accident reporting requirements beyond the federal ones. Id., at 517-9. Similarly, in Missouri Pacific Railroad Company, et al, v. Railroad Commission of Texas, et al, Civ. No.1 A-86-CA-569 (WD Texas 1987), slip op, the court ruled preempted a set of state regulations requiring that trains carrying certain hazardous materials have cabooses and carry two-way radios, because these requirements went beyond federal rules and would have caused some shipping delays as the appropriate equipment was put on the trains carrying the hazardous materials. Here again, the court agreed with the Department of Transportation that uniformity of regulation and prevention of shipping delays were crucial federal objectives in the preemption analysis.

C. Conclusions

Because of the lack of Ninth Circuit law in this area, we cannot advise you specifically as to what the state may or may not do in this area. We can offer the general advice that actions which would offend normal principles of interstate commerce law would almost certainly be struck down; an example would be an attempt to exclude hazardous materials shipments entirely from California. ^{4/} Similarly, we can advise that any regulations adopted by the state or a locality which directly conflict with federal requirements to the point where both requirements could not be met at the same time would certainly be struck down. However, as to additional safety or routing regulations beyond what the federal government requires, a case-by-case analysis will be required, and the outcome in court cannot be predicted. While we can look to the experience of other states and localities, until there is further law in our circuit, we can make few or no predictions with certainty.

4. See, for example, Jersey Central Power & Light Co. v. Township of Lacey, 772 F.2d 1103 (3d.Cir. 1985), striking down an ordinance that excluded shipment or storage of nuclear waste from a township as both preempted by HMTA and violative of the Commence Clause.

D. Nonpreemption Rulings

In the event that a particular requirement is ruled inconsistent with the HMTA, either by the Department of Transportation or by the courts, the federal regulations provide that the state or local entity may apply to the Department of Transportation for a nonpreemption ruling, which essentially waives the federal preemption on grounds that the state rule provides extra safety and will not unreasonably burden interstate commerce. We would wish to point out to the Task Force that in our research to this point, we are unaware of any case in which Transportation has issued such a nonpreemption ruling, and so can offer no advice at all as to what sorts of state requirements might be so waived. We would also point out that a nonpreemption ruling will only be considered by the Department of Transportation after a state requirement has been ruled to be inconsistent and preempted, either by the Department or by a court, or after the state concedes that the requirement is inconsistent with the HMTA. Obviously, this severely limits the usefulness of this provision of federal law.

E. Routing of Hazardous Waste Shipments

Although it has very detailed requirements for methods and equipment used to ship hazardous materials, the HMTA and regulations under it do not deal in any detail with the routing of such shipments. The HMTA deals with routing only in that it sets up a mechanism for selecting so-called "preferred routes" for the shipment of radioactive materials. 49 CFR 177.825. These are highways and other routes that, once selected, may be used at any time for the shipment of radioactive materials. The interstate highways are automatically designated as preferred routes, and states and localities have a role in designating more local routes. The California Highway Patrol has designated preferred routes in the California Administrative Code, Title 13. This system of preferred routes applies only to shipment of radioactive materials.

In the case of other hazardous materials, there appear to be only two federal regulations that bear on routing regulations or routing decisions. One is 49 CFR 177.853, which requires that shipments be made "without unnecessary delay." This regulation has usually been cited by those courts that have struck down state or local regulations as preempted by the HMTA, citing the delays that state requirements would cause as an obstacle to fulfilling the purposes of the federal law.

The other pertinent regulation is 49 CFR 397.9, which provides that hazardous materials shipments be routed so as to avoid crowded or heavily populated areas. This regulation was adopted pursuant to the Federal Motor Carrier Safety Act, not HMTA, and it does not seem to be covered by the HMTA procedures for

inconsistency and nonpreemption rulings. We have thus far been unable to find any case law, whether at the administrative level or in the courts, that interprets or deals with this regulation, and are therefore unable to give the Task Force any but the most general guidance on possible preemption in this area. The standard Commerce Clause requirements, discussed above, would almost certainly apply to this regulation, forbidding any state action that directly conflicted with it or stood as an obstacle to fulfilling its purposes. Given the very general language of this regulation, and its obvious safety objectives, it would appear that the State might have more latitude to regulate here, providing that it did not cause "unnecessary delays." What degree of delays might be considered necessary for safety purposes would have to be decided by a court. There is, however, the New York case cited earlier, in which a federal court upheld the diversion of shipments of some hazardous gases around New York City for safety purposes.

STATE REGULATION OF DEPARTMENT OF DEFENSE SHIPMENTS

We believe that the Task Force is also interested in knowing to what extent the State can regulate shipments of hazardous materials that are made by the federal Department of Defense in Defense's own vehicles.

It is clear from the Department of Transportation's regulations that the Department of Defense is subject to the HMTA and the regulations under it, at least so far as the packaging of hazardous materials goes. 49 CFR 177.806. It is also clear that Defense is exempt from most HMTA regulations when shipping radioactive materials. Id. We assume that Defense is not subject to any other HMTA requirements, although we are still looking into that question.

We would therefore conclude that, insofar as the State has the authority to enforce the federal regulations, California could take appropriate action against any Defense shipment in Defense-owned trucks that violated the applicable regulations. As to the State imposing further requirements on Defense, the question of State control over federal vehicles was the subject of a past Attorney General opinion⁵, which we attach here for convenience instead of repeating its reasoning. It concludes that federal vehicles cannot be required to comply with licensing, inspection, shipping paper, and other cargo requirements, but that such vehicles can be required to obey the general traffic laws, such as stopping at lights and the like. Even that minimal level of regulation might be forbidden in an emergency or if "necessary"

5. Attorney General Opinion No. 58-144 (1958), 32 Ops. Atty. Gen. 225.

to achieve a federal mission. We will continue to explore this area and advise your staff if we reach further or different conclusions.

LOCAL REGULATION AND STATE PREEMPTION

The degree to which localities can regulate in this area without being subject to federal preemption has already been discussed. Under the federal laws and regulations, localities are subject to basically the same rules of preemption as states, and the discussion above of that subject applies to localities as well as to the State.

The question of State preemption of local regulation in the area of hazardous materials transport was also the subject of a past Attorney General opinion^{6/}, and we attach that opinion also. Briefly, that opinion concluded that as to licensing and inspection of such shipments, the State has preempted the field, and the localities may not regulate. Under very limited circumstances, a locality may limit the roads over which hazardous materials may be shipped, but these circumstances are indeed limited. No interstate or state highway, for example, could be subject to such a ban. Basically, the authority of local governments to regulate here is severely limited under current law.

STATE AND LOCAL ABILITY TO ENFORCE FEDERAL LAW

Federal law in the area of hazardous materials transport is extensive and detailed, at least in such areas as container specifications, placarding, vehicle equipment, and so forth. That the State can enforce these requirements is quite clear, since the California Highway Patrol has adopted most of these requirements in Title 13 of the California Administrative Code and, we believe, enforces them quite actively. It is worth noting that the federal routing regulation at 49 CFR 397.9, which requires that shipments avoid heavily populated or crowded areas, has not been adopted by the Highway Patrol. 13 Cal.Admin.Code §1160.2(d). We therefore presume that the Highway Patrol does not enforce this regulation.

We believe that authority exists for the Attorney General and the District Attorneys and City Attorneys to enforce this and the other federal regulations dealing with hazardous materials transport. Under Business and Professions Code section 17200, et seq, the State may act to restrain any business practice that is forbidden by law, and as you know, our office has been extremely active in carrying out this section. We believe that action could be taken under the Business and Professions Code to

6. Attorney General Opinion No. 83-201 (1983), 67 Ops.Atty.Gen. 1.

enforce the federal regulations in this area, as in any other, against any business that violated the applicable federal law.

SCOPE OF HAZARDOUS MATERIAL REGULATION

We will keep our general observations brief, since the Task Force has had the benefit of so many other agencies' views. We would like to observe that, like many others, we have been surprised and deeply troubled to see the degree of lack of federal control over the shipment of hazardous materials. It is particularly surprising to us to contrast the level of control over hazardous materials shipments with the level of control over shipments of hazardous waste. Despite the similarity of degree and types of danger to the public posed by material when it is a commercially usable hazardous material and when it becomes a hazardous waste, the levels of oversight and control over the two are very different. Under both federal and State law, hazardous wastes are subject to government scrutiny and their generators are accountable for where those wastes are at any given time from cradle to grave. There is no comparable degree of oversight of hazardous materials. Presumably, the value of hazardous materials to their owners and shippers provides the motivation to keep as close track of these materials as the law requires be kept of hazardous waste, but this Task Force should surely consider if that is sufficient.

We have also been troubled by what we perceive as a general attitude of regulating hazardous materials generally as though the danger from these materials were basically the danger posed by explosives--namely, the danger of being injured if one is in the immediate area of the explosion. As this Task Force has heard, however, the danger from many hazardous materials is that they will form toxic clouds that could spread for miles, causing injury to persons far from the accident site. There seems inadequate consideration for how to minimize this risk, and how to ensure that localities are ready to deal with it if it occurs. This is an area where your Task Force will undoubtedly consider whether new legislation is needed.

We again thank you for the opportunity to present this testimony, and to appear before you.

DECEMBER 1958]

ATTORNEY GENERAL'S OPINIONS

225

Opinion No. 58-144—December 5, 1958

SUBJECT: EXPLOSIVES—Application of state regulations concerning transportation of, to vehicles owned or operated by department or agency of United States.

Requested by: COMMISSIONER, CALIFORNIA HIGHWAY PATROL.

Opinion by: EDMUND G. BROWN, Attorney General.
Marcus Vanderlaan, Deputy.

The Honorable Bernard R. Caldwell, Commissioner of the California Highway Patrol, has requested an opinion on the following question:

Are vehicles owned or operated by any department or agency of the United States Government such as military vehicles which are being used for the transportation of explosives on a public highway required to comply with any or all of the provisions of Division 11d of the Vehicle Code governing the transportation of explosives?

The conclusion may be summarized as follows:

Vehicles owned or operated by instrumentalities of the United States Government are not required to comply with the licensing, instruction, inspection, equipment, shipping paper and cargo requirements of sections 729.03-729.14 and 729.15(f) of Division 11d of the Vehicle Code, but may be required to observe the route requirements and general traffic laws in sections 729.03 and 729.15, unless there are conflicting federal statutes or regulations on the same matter, or unless there exist unusual conditions such as a state of war or extreme emergency, which would make the federal mission of paramount importance.

ANALYSIS

That the states may not interfere or in any manner control an operation or function of the federal government was early established (*McCulloch v. Maryland*, 4 Wheat. 316), and recently reaffirmed (*Public Utilities Commission v. United States*, U.S. (1958), 2 L. Ed. 470, 78 S. Ct.).

On the other hand

"[i]t very well may be that, when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the [federal] employment. . . . (*Johnson v. Maryland*, 254 U.S. 51, 56 (1920)).

However, the line between state highway regulations which impede, interfere or control federal activities and those which merely incidentally affect the mode of carrying them out has not been clearly defined (15 S.C.L.R. 247).

The leading case in this field is *Johnson v. Maryland*, *supra*. There the United States Supreme Court reversed the conviction of the driver of a U.S. mail truck under a Maryland law for driving the truck, in the course of his employment,

without having obtained a license from the state. The significant language of the court is found on page 57 of the report (254 U.S.):

"It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications *in addition* to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed." (Italics added.)

In contrast, the courts have required federal employees, while on federal business, to comply with state and local traffic laws respecting stopping at traffic lights (*Neu v. McCarthy* (Mass. 1941), 33 N.E. 2d 570), driving on the right hand side of the road and passing at intersections (*Commonwealth v. Closson* (Mass. 1918), 118 N.E. 653), and speed limits (*Hall v. Commonwealth* (Va. 1921), 105 S.E. 551). See also *U. S. v. Kirby*, 7 Wall 482 (1868) and *U. S. v. Hart* (Fed. cases 15316, Pet. C.C. 390, 3 Wheeler Crim. Cases 304).

In *Neu v. McCarthy*, *supra*, at page 572, the court in holding that the driver of an army truck carrying baggage was required to stop at traffic signals even though his commanding officer had ordered him to drive through, observed the general principle upon which state regulation of federal use of state highways is based:

"The State, as the original and general sovereign, establishes and maintains the public ways and regulates their use. The Federal government may use them for all purposes necessary or reasonably incidental to the carrying out of the powers delegated to it and is not to be thwarted or hampered in the execution of those powers by State regulation. On the other hand the general control remains in the State and may be exercised by it to secure safe and orderly use of the ways for the benefit of all persons and agencies in so far as such control can be exercised without substantial interference with any function of the Federal government." (See also *Commonwealth v. Closson*, *supra*, at page 653.)

In requiring the driver of a U.S. mail truck to observe the state speed limit, the court in *Hall v. Commonwealth*, *supra*, after noting that there appeared to be no conflict between federal statutes and regulations and local law, continued at page 552:

"That is to say, the record in this case does not show that the speed limit provisions of the state statute are at all in conflict with the afore-said direction of the Postmaster General [establishing post roads and time schedules], or that they at all interfere with the performance by the

accused of his duties as an employee of the federal government." (Italics added.)

On pages 552-553 the court concluded:

"The mere fact that the provisions of the state statute in question affect a federal employee or instrumentality is immaterial; and certainly where the statute does not attempt to control and does not in its operation even incidentally interfere in any way with the performance of duty of the federal employee, it is valid."

These cases must be distinguished from those in which a state or local vehicle law conflicts with a valid federal statute or regulation covering the same matter. In such cases, familiar constitutional law principles compel the reconciling of such conflict in favor of the federal statute or regulation. Therefore, in *Ex parte Willman* (D.C., S.D. Ohio, 1921), 277 Fed. 819, it was held that the driver of a U.S. mail truck was not subject to a state statutory requirement respecting the lights on his truck since the lights were in conformity with the regulations of the federal postal department.

Likewise, state and local traffic laws cannot prevail when, because of unusual conditions, an otherwise permissible regulation becomes a burden or actual interference with a federal function. The court, in *New v. McCarthy, supra*, at page 572, discussed this possibility:

"The army is an instrumentality of the United States. Its use of highways within the boundaries of a State would seem to be governed by the same general principles as govern their use by other instrumentalities of the United States, although in the application of those principles proper allowance must of course be made for the special and peculiar necessities and urgencies which at times, but not always, confront a military force in the performance of its duties."

As to the applicability of these principles to Division 11d of the Vehicle Code, it will be noted that the provisions of this statute are broad enough to include vehicles transporting explosives operated by any agency or department of the federal government (sec. 729.02).

Section 729.03 of Division 11d makes it a misdemeanor to transport explosives (as per secs. 729.01-729.02) without a permit issued by the Department of the California Highway Patrol (sec. 729.04). And sections 729.05 and 729.07 allow the department to suspend, revoke or refuse to issue these permits. Section 729.13 prohibits acceptance of explosives for transportation without shipping papers showing certain information and requires that such papers be displayed on demand of certain authorized persons. Section 729.08 through 729.11 require that the motor vehicle used in the transporting of explosives be inspected as provided and that an inspection record be kept and displayed on demand of certain authorized persons. In addition, section 729.15(f) prohibits transportation of explosives except in vehicles with closed bodies or covered with flame retardant tarpaulin.

These provisions of Division 11d are similar to the state license requirement in the *Johnson* case. In each case the actual transportation in which the federal agency is engaging must be held up until state requirements are met: (1) The state must issue a permit to operate which may be refused, revoked or suspended; (2) the state equipment standards must be met; (3) shipping papers showing state required information must be issued; and (4) the vehicles must stop and display documents to state employees. For this reason, these provisions of Division 11d fall within the class of requirements, described in the *Johnson* case (254 U.S. 51 at 57), as requiring federal instruments to "desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of [their duties] and pay a fee for permission to go on." Such requirements do not merely regulate the "mode" of operation or merely "touch the Government servants remotely by a general rule of conduct." They in fact directly interfere with the activities of the federal instrumentalities, and this is forbidden. Hence, motor vehicles owned or operated by the federal government are not subject to the licensing, inspection, equipment or shipping paper requirements of sections 729.03-729.11, 729.15(f) and 729.13.

Likewise, the provisions of section 729.14 prohibiting the transporting of certain cargoes cannot be enforced to prevent a federal instrumentality from performing its functions. Such an application of state law would not only burden the activity of the federal instrumentality, but would directly operate to prevent the performance of the federal function.

Because of the inapplicability of the above provisions, section 729.12 providing for instructions to drivers of motor vehicles transporting explosives concerning the requirements of the division is also inapplicable where federal instrumentalities are transporting explosives.

It should be noted that the California requirements respecting inspection of vehicles transporting explosives and instructions to drivers of such vehicles conflicts with specific regulations promulgated by the Department of Defense. These regulations, found in Parts 204 and 207, 32 C.F.R., provide for special inspection and instructions (see DD Forms 626 and 836) involving all military and commercial motor vehicles tendered to transport ammunition or explosives, Class A or B, over public highways. This conflict provides an additional basis for invalidity of the state requirements (*Ex parte Willman, supra*).

Those provisions of section 729.15 (other than subdivision (f)) setting forth traffic laws applicable to transportation of explosives must be observed by vehicles transporting explosives for federal instrumentalities. These provisions are: (1) maximum speed limit of 45 miles per hour; (2) that established routes be followed in congested areas; (3) where no established routes, drivers are to avoid, where feasible, certain congested areas; (4) when loading or unloading explosives the motor must not be running, the parking brake must be set and all reasonable precautions observed to prevent vehicle from moving; (5) explosives contained entirely within body of vehicle and tailgate closed; (6) no operation of vehicle near any burning unless it can be done safely; (7) vehicles not to be left unat-

tended except where designated by State Fire Marshal; (8) no smoking or flames near any such vehicle. The above provisions are reasonable safety measures and do not have the direct burdening or prohibitory effect as the above discussed licensing, inspection, equipment and cargo provisions. The mere fact that a federal function can be carried out faster or more conveniently without state restraint does not invalidate the state regulation (*Hall v. Commonwealth, supra*). For these reasons provisions of section 729.15 fall within the principle of *Neu v. McCarthy, supra*. The provisions of section 729.15(f), however, do not fall within this classification because they are in the nature of equipment requirements (*supra*).

Likewise, the requirement of section 729.03 that explosives (as per secs. 729.01 and 729.02) be transported only over routes laid out by the State Fire Marshal must be observed by federal instrumentalities. This is a highway safety measure. It is obvious that the state could not so arrange its routes to prevent reasonable means of access to terminal and dispatch points. However, the terms of the California statute are sufficiently broad to preclude such a contingency.

But as noted above, this route requirement, just as the traffic measures in section 729.15, is subject to any conflicting federal statutes or regulations on the same matter and any unusual conditions such as a state of war or extreme emergency which would make the federal mission of paramount importance.

Opinion No. 57-158—December 8, 1958

SUBJECT: PENSION AND WELFARE FUNDS—Trustees of, established by employers, labor unions, or both, to provide pensions, injury or sickness benefits to employees or union members, may pay benefits directly from fund to beneficiaries without necessity of insuring; regulation by state officials also discussed.

Requested by: SENATOR, 14th DISTRICT.

Opinion by: EDMUND G. BROWN, Attorney General.
Harold B. Haas, Deputy.

The Honorable Robert I. McCarthy, State Senator from the Fourteenth District, has requested the opinion of this office on the following questions:

May trustees of a fund established by employers, labor unions, or employers together with a labor union or unions, to provide pension, injury or sickness benefits to employees of the employers or members of the unions, pay such benefits directly out of the trust fund to the beneficiaries, or are these trustees required to do so by and through insurance companies or medical or hospital service organizations? In such case, will the operation of the funds be under supervision or regulation of any state officer and if so, what officer?



OPINIONS
OF THE
ATTORNEY GENERAL
OF CALIFORNIA

Opinion No. 83-201—January 4, 1984

SUBJECT: LICENSING OR INSPECTION PROGRAM BY A CITY OR COUNTY REGULATING TRANSPORTATION OF HAZARDOUS MATERIAL WITHIN ITS JURISDICTION—A city or county does not have the authority to establish a licensing or inspection program regulating the transportation of hazardous material over roadways within its jurisdiction; a city or county has limited authority to restrict the roadways on which hazardous material is transported within its jurisdiction.

Requested by: COMMISSIONER, DEPARTMENT OF THE CALIFORNIA HIGHWAY PATROL

Opinion by: JOHN K. VAN DE KAMP, Attorney General
Rodney O. Lilyquist, Deputy

The Honorable James E. Smith, Commissioner, Department of the California Highway Patrol, has requested an opinion on the following questions:

1. Does a city or county have the authority to establish a licensing or inspection program regulating the transportation of hazardous material over roadways within its jurisdiction?
2. Does a city or county have the authority to restrict the roadways on which hazardous material is transported within its jurisdiction?

CONCLUSIONS

1. A city or county does not have the authority to establish a licensing or inspection program regulating the transportation of hazardous material over roadways within its jurisdiction.
2. A city or county has limited authority to restrict the roadways on which hazardous material is transported within its jurisdiction.

ANALYSIS

The questions presented for analysis concern the authority of cities and counties to enact ordinances regulating the transportation of "hazardous material" over roadways

within their jurisdictions. The first question deals with a licensing or inspection program, and the second concerns restricting the roads on which such material may be transported.

Applying the applicable provisions of the Vehicle Code,¹ we conclude that cities and counties may not establish their own licensing or inspection programs regulating the transportation of hazardous material over roadways within their jurisdictions but may to a limited degree restrict the roadways on which the material is transported within their jurisdictions.

1. Local Licensing and Inspection Programs

The first question to be resolved is whether a city or county may exercise its general "police powers" authority to establish a licensing or inspection program. Section 7 of article XI of the Constitution states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

The "general law" relevant here is Vehicle Code section 21.² It provides:

"Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein."

A licensing and inspection program regulating the transportation of hazardous material is a matter covered by the Vehicle Code. The Department of the California Highway Patrol ("CHP") is responsible for both licensing (§ 32000.5) and inspecting (§ 32001) motor carriers transporting hazardous material. Section 32000.5 states:

"(a) Every motor carrier who directs the transportation of an explosive and, on and after July 1, 1982, any motor carrier who directs the transportation of a hazardous material, who is required to display placards pursuant to Section 27903, and every motor carrier who transports for a fee in excess of 500 pounds of hazardous materials of the type requiring placards pursuant to Section 27903, shall be licensed in accordance with the provisions of this code, unless specifically exempted by this code or regulations adopted pursuant to this code. This license shall be available for examination and shall be displayed in accordance with the regulations adopted by the commissioner.

"(b) This division shall not apply to any person hauling only hazardous waste, as defined in Section 25115 or 25117 of the Health and Safety Code, and who is registered pursuant to subdivision (a) of Section 25163 of Health

¹Federal law on the general subject matter is outside the scope of this opinion. (See 49 U.S.C. §§ 1801-1812; 49 C.F.R. 171-179 (1982); 62 Ops. Cal. Atty. Gen. 448, 457-459 (1979).)

²All references hereafter to the Vehicle Code are by section number only.

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and Safety Code or who is exempt from that registration pursuant to subdivision (b) of that section.

"(c) This division shall not apply to implements of husbandry, as defined in Section 36000."

Section 27903 in turn provides:

"Subject to the provisions of Section 25611 of the Health and Safety Code, any vehicle transporting any explosive, blasting agent, flammable liquid, flammable solid, oxidizing material, corrosive, compressed gas, poison, radioactive material, or other hazardous materials, of such type and in such quantities as to require the display of placards or markings on the vehicle exterior by the United States Department of Transportation regulations (49 C.F.R., Parts 172, 173, and 177), shall display such placards and markings in the manner and under conditions prescribed by such regulations of the United States Department of Transportation.

"This section does not apply if the vehicles are transporting not more than 20 pounds of smokeless powder or not more than five pounds of black sporting powder or any combination thereof."³

Section 32001 not only authorizes vehicle inspections but also establishes the prerequisites for the transportation of hazardous materials:

"(a) Any authorized employee of the department may inspect any sealed or unsealed vehicle, container, or shipment subject to this division in maintenance facilities, terminals, or other public or private property to ascertain the quantity and kind of hazardous material and to ensure compliance with the provisions of this code and regulations adopted pursuant to this code. If a seal is opened for inspection, the department shall reseal any vehicle, container, or shipment prior to further transportation.

"(b) Unless specifically stated, nothing contained in this division shall be deemed to exempt any vehicle transporting a hazardous material subject to this division or the operator or any other person from other provisions of this code.

"(c) No motor carrier shall direct the transportation of any shipment of a hazardous material in any vehicle unless all of the following are complied with:

"(1) The vehicle is equipped as required by this code and applicable regulations adopted pursuant to law.

³Section 25611 of the Health and Safety Code states:

"Any regulations relating to radioactive material cargo, including, but not limited to, packing, marking, loading, handling, and transportation, shall be reviewed and made compatible with the federal regulations adopted pursuant to the federal Department of Transportation Docket No. HM-164, Notice No. 80-1, within 60 days of the date such federal regulations become effective."

"(2) The shipment complies with laws and regulations pertaining to the shipment or transportation of hazardous material.

"(3) The motor carrier holds a valid license for the transportation of hazardous materials."

Because of these elaborate provisions for the licensing and inspecting of vehicles transporting hazardous material, the first issue may be reduced to whether the Legislature has "expressly authorized" a licensing or inspection program on the local level. If not, a local program would be in conflict with section 21 and the constitutional grant of police powers authority. (See *Rumford v. City of Berkeley*, *supra*, 31 Cal. 3d 545, 553; *Pipoly v. Benson*, *supra*, 20 Cal. 2d 366, 370; *Aguilar v. Municipal Court* (1982) 130 Cal. App. 3d 34, 37; *City of Lafayette v. County of Contra Costa*, *supra*, 91 Cal. App. 3d 749, 754; *People v. Moore*, *supra*, 229 Cal. App. 2d 221, 228-229.)

The Legislature's delegation to local authorities of power to make vehicular traffic rules and regulations "will be strictly construed, such authority must be 'expressly (not impliedly) declared by the Legislature.'" (*People v. Moore* (1964) 229 Cal. App. 2d 221, 228.) "Expressly" means "in an express manner; in direct or unmistakable terms; explicitly; definitely; directly." (*City of Lafayette v. County of Contra Costa*, *supra*, 91 Cal. App. 3d 749, 756, fn. 3.)

We have found no provision of the Vehicle Code that expressly authorizes cities and counties to have their own licensing and inspection programs regulating the transportation of hazardous material. The statewide program administered by the CHP is the only statutorily authorized program we have found.

Consequently, a city or county may not enact ordinances under its constitutional police powers authority to regulate the transportation of hazardous material.

One other possibility exists that would give cities and counties the authority to enact the ordinances in question. Under a "home rule" charter provision, local ordinances supersede general state laws with respect to "municipal affairs." (Cal. Const., art., XI, §§ 3, 5; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal. 3d 296, 315-316; *Rivera v. City of Fresno* (1971) 6 Cal. 3d 132, 135.) The "municipal affairs" doctrine, however, is inapplicable here since regulating the use of the public roads and highways by whatever means is outside its scope. (See *Rumford v. City of Berkeley*, *supra*, 31 Cal. 3d 545, 550, fn. 3; *County of Los Angeles v. City of Alhambra* (1980) 27 Cal. 3d 184, 192-193; *Pipoly v. Benson*, *supra*, 20 Cal. 2d 366, 369; *Ex Parte Daniels* (1920) 183 Cal. 636, 639; *Aguilar v. Municipal Court*, *supra*, 130 Cal. App. 3d 34, 37; *City of Lafayette v. County of Contra Costa*, *supra*, 91 Cal. App. 3d 749, 753.)

In answer to the first question, therefore, we conclude that cities and counties do not have the authority to establish local licensing or inspection programs regulating the transportation of hazardous material over roads within their jurisdictions.

2. Restriction of Roads

The above described rules and analysis are also applicable to the question of whether cities and counties have the authority to restrict the roads on which hazardous material may be transported within their jurisdictions.

Hence, we are again faced with whether the proposed roadway restrictions by cities and counties are "expressly authorized" by the Legislature so as not to be in conflict with the provisions of section 21. (See *Rumford v. City of Berkeley*, *supra*, 31 Cal. 3d 545, 553; *City of Lafayette v. County of Contra Costa*, *supra*, 91 Cal. App. 3d 749, 754.)

Unlike the statutory scheme with respect to the licensing and inspection programs, the Legislature has expressly authorized cities and counties to prohibit the uses of particular roads by certain vehicles within their jurisdictions under limited conditions.

The primary statute governing local control over highway uses is section 21101. It states:

"Local authorities may adopt rules and regulations by ordinance or resolution on the following matters:

.....

"(c) *Prohibiting the use of particular highways by certain vehicles*, except as otherwise provided by the Public Utilities Commission pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code. No ordinance which is adopted pursuant to this subdivision after November 10, 1969, shall apply to any state highway which is included in the National System of Interstate and Defense Highways, except an ordinance which has been approved by the California Transportation Commission by a four-fifths vote.

....." (Emphasis added.)⁴

In *City of Lafayette v. County of Contra Costa*, *supra*, 91 Cal. App. 3d 749, 756, fn. 2, the Court of Appeal stated that section 21101, subdivision (c), "covers 'certain classes of vehicles' such as trucks, or tractors, or oversize or 'excessively noisy' vehicles, or those lacking air-inflated tires. (See 55 Ops. Cal. Atty. Gen. 178, 182-183.)"

While it may be argued that the statute does not authorize local restrictions based on the *cargoes* of the "certain vehicles," we do not read the statute so restrictively. In a prior opinion, we were concerned with the tranquility of neighborhoods being jeopardized by "excessively noisy" vehicles. (55 Ops. Cal. Atty. Gen. 178, 183 (1972).) We determined that under subdivision (c) of section 21101, "a city or county may prohibit the use of particular highways by certain classes of vehicles determined to be excessively noisy." (*Id.*) Similarly, here, we believe that the statute may be used to protect localities from the possible release of hazardous material by prohibiting the use of certain highways in transporting such material.

⁴A "highway" is defined as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel" and "includes street." (§ 360.)

A number of qualifications, however, must be stated with regard to the granting of authority under section 21101, subdivision (c). First, besides the limitations contained in the subdivision itself, such as relating to a state highway, various exemptions and conditions attach to the grant of authority (see §§ 21103–21105), and we note that special rules apply to privately owned and maintained roads (see §§ 21107–21108).

Second, as we pointed out in our prior opinion, a city or county may not use its delegated authority under section 21101 to thwart the application of other state laws. (55 Ops. Cal. Atty. Gen. 178, *supra*, 183.) Here, a city or county would be precluded from using its authority under the statute to circumvent the Legislature's statewide program of licensing and inspection by the CHP of those transporting hazardous material.

Third, as in all cases regarding the exercise of police powers, the legislation must not be "arbitrary, unreasonable, or confiscatory." (*Skyline Materials, Inc. v. City of Belmont* (1961) 198 Cal. App. 2d 449, 454; see *Neary v. Town of Los Altos Hills* (1959) 172 Cal. App. 2d 721, 726–728.)

Finally, we note that with regard to certain types of "hazardous material," the Legislature has delegated to the CHP the responsibility of choosing transportation routes throughout the state. For example, section 33000 states:

"Subject to the provisions of Section 25611 of the Health and Safety Code, the Department of the California Highway Patrol, after consulting with the State Department of Health Services, shall adopt regulations specifying the time at which shipments may occur and the routes which are to be used in the transportation of cargoes of hazardous radioactive materials, as such materials are defined in regulations of the State Department of Health Services."

Although the CHP has not adopted the routing regulations of section 33000 as yet, such regulations will govern over any conflicting local ordinances enacted under section 21101. (See *Governing Board v. Mann* (1977) 18 Cal. 3d 819, 828; *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal. 3d 392, 420.)

Similarly, section 31616 provides with respect to explosives:

"The Department of the California Highway Patrol, after public hearings with the officials having the responsibility for the prevention and suppression of fire in communities through which routes for the transporting of explosives pass, representatives of transportation companies concerned, explosives manufacturers, and the State Fire Marshal shall, by regulation, designate the routes in this state which are to be used for the transportation of explosives. The Department of the California Highway Patrol shall prepare for distribution to persons engaged in the transportation of explosives, maps which clearly indicate the routes, as established by the public hearings, which are to be used for the transportation of explosives. The Department of the California Highway Patrol shall prepare for distribution to persons engaged in the transportation of explosives a list of locations of required inspection

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stops, safe parking places, and safe stopping places and shall revise the list to keep it current." (Emphases added.)

The CHP has issued detailed routing regulations under the provisions of section 31616. (See Cal. Admin. Code, Title 13, §§ 1150-1154.) Where the regulations of the CHP do not cover a particular area, however, section 31614, subdivision (a), provides:

"When transporting explosives through or into a city or any other congested area for which a route has not been designated by the Department of the California Highway Patrol, drivers shall follow such routes as may be prescribed or established by local authorities."⁹

Here, then, is express authority given to cities and counties to establish transportation routes for explosives where the CHP has not done so. We regard section 31614 as supportive of and consistent with our interpretation of the general language of section 21101.

In answer to the second question, therefore, we conclude that a city or county has limited authority to restrict the roadways on which hazardous material is transported within its jurisdiction.

Opinion No. 83-814—January 4, 1984

SUBJECT: MEMBER OF STATE ATHLETIC COMMISSION AS PROFESSIONAL BOXING REFEREE—The State Athletic Commission may license one of its members as a professional boxing referee; the State Athletic Commission does not have the authority to license a person as a professional boxing referee with a provision that the license is not valid in California.

Requested by: MEMBER, CALIFORNIA STATE SENATE

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Anthony S. Da Vigo, Deputy

The Honorable Joseph B. Montoya, Member of the California State Senate, has requested an opinion on the following questions:

1. May the State Athletic Commission license one of its members as a professional boxing referee?

2. Does the State Athletic Commission have authority to license a person as a professional boxing referee with a provision that the license is not valid within California?

⁹The transportation of "anhydrous hydrazine, fuming nitric acid, and liquid nitrogen tetroxide, when transported in cargo tanks" is also subject to the routing regulations for explosives adopted by the CHP or routing ordinances of cities and counties as the case may be. (§ 31302.)



CICC

CHEMICAL INDUSTRY COUNCIL OF CALIFORNIA

Executive Director:
Richard L. Davis

October 28, 1987

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Honorable Richard Katz
Chairman
Assembly Task Force on the Transportation
of Extremely Hazardous Materials
State Capitol
Sacramento, CA 95814

Dear Assemblyman Katz:

Thank you very much for inviting the Chemical Industry Council of California to testify before the Assembly Task Force on Transportation of Extremely Hazardous Materials on November 2. I regret that I will be unable to appear due to a prior commitment. Up to this time, I am still attempting to locate an industry spokesman who is both qualified and available to be in Los Angeles on November 2. I will keep your staff informed of my progress.

While time precludes providing specific written answers to the questions you posed, we would like to offer some general comments solely from the chemical industry's perspective. It must be kept in mind that the "chemical industry" is defined by Standard Industrial Code 28. In California that encompasses something more than 1,000 companies of which approximately 80% employ less than five people. There are literally thousands of chemical-user companies spanning the full range of SICs. Our comments cannot speak for those industries.

1. Arsene Gas

The number of companies which supply arsene gas in California is quite limited (probably less than 10). Transportation of arsene gas is specifically regulated by the U. S. Department of Transportation. It can be shipped only in specified high pressure, seamless cylinders not exceeding a volume of 125 pounds water capacity. The cylinders have a minimum rating of 1800 psig and are roughly ten times stronger than cylinders used to ship most other gases. The top valve is designed with double protection including a seal which prevents venting in the event of valve damage. Further, the top valve is guarded from physical damage by a secure cap. All cylinders are

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clearly marked as containing arsene and identified as poison as are the trucks which carry the cylinders. Shipping papers specifically identify arsene (not categorized as with most gases).

Rarely is pure arsene gas shipped at all, and never to a customer. Customers specify the blend of arsene with carrier gases (nitrogen, hydrogen, etc.). Commercial concentrations do not exceed 10%. The amount of pure arsene in a single cylinder is extremely small. While a carrier vehicle will carry a number of cylinders (perhaps 10), the probability of even a single cylinder rupturing in the event of an accident is extremely low. The probability of a significant release of arsene gas as a result of a vehicle accident is de minimus. Accidents involving arsene are reportable by both federal and state law. While there have been highway accidents involving cylinders of arsene gas there is no record of an arsene gas release as a result of those accidents.

Most arsene gas cylinders are shipped by contract carrier as opposed to common carrier. Generally, suppliers train the contract drivers in the same manner they train their own employees. All training is to the standards of the federal and state workers communications and training laws.

Routing of arsene gas carriers is governed by federal DOT regulations and local ordinance. In light of the congested highway conditions of Silicon Valley, that may be of little consolation, though simple liability dictates extreme care in routing carriers in congested areas. It is unlikely that legislation in that area can provide additional guidance.

Members of the Task Force might be interested in one final observation. A single cylinder of arsene gas will produce literally millions of dollars of computer chips. However, not a single chip can be produced without it. The importance of this product to California's economy cannot be overstated.

Please understand that these comments are general in nature but we believe they present a fair assessment of conditions in the industry.

2. SARA Emergency Response Plans

Plant emergency response plans (nee; business plans) are required under both SARA and AB 2185. Under both laws, implementation is mandated to local government. In California, 120+ local government agencies have assumed jurisdiction. The manner in which emergency response plans (business plans) are being collected varies widely. In one county, the local agency has tied submission to its business licensing schedule. It may take up to five years to collect plans from all businesses. Though I have no first hand knowledge of this instance, I am told that in one county, the Health Department collected mountains of emergency response plans (at considerable cost to government and the business community). When it attempted to hand those over to the fire agency, that agency refused to accept them. It stated that the liability for holding such information was unbearable.

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Some of our members have attempted to deliver business plans to local government only to have acceptance refused. Some companies are concerned that they are in violation of the law requiring submission. CICC's only advice is to act according to local government instruction. In effect, many sincere citizens are being forced into the position of law violator by local government refusing to implement the law.

Last month, I was invited to attend the annual meeting of the California Directors of Environmental Health Association. Fifty-six of California's 58 counties were represented. Almost to a person, Directors told me they found it impossible to implement the vast number of "toxics" laws enacted in the last three years. The enclosed matrix, prepared by the Public/Private Partnership, illustrates that point.

Most Directors stressed that public health and safety protection has been diminished by this flood of legislation because they must divert limited resources to enforcing mandated trivial activities while neglecting more meaningful ones. It appears that we have lost sight of our health and safety goals by mandating overly-simplistic but apparently popular activities which offer little or no benefit to public health or the environment. Industry is ready and willing to comply with the law but government appears to be overwhelmed. So far as I have been able to determine, all members of CICC have either filed, or attempted to file, the required plans.

In most major communities in California, CICC members have joined with local emergency response agencies to implement the chemical industry's voluntary COMMUNITY AWARENESS AND EMERGENCY RESPONSE (CAER) program. This activity voluntarily brings together public and private entities to integrate local emergency response plans, provide for shared resources, and distribute information demanded by citizens.

Specific to transportation matters, the Task Force should be aware that the chemical industry has long operated CHEMTREK, a nationwide, computerized center for responding to transportation accidents involving chemicals. Many California emergency agencies are now equipped to access CHEMTREK from the accident scene. Some even have on-board computers which can interface with the CHEMTREK computer. That system not only provides immediate response guidance to the scene commander, but brings a qualified expert to the scene in minimum time.

3. Small Quantities

Few companies in SIC 28 typically deal in "small quantities" of hazardous materials. Simple economics dictate standardized handling procedures irrespective of the quantity involved. It is my impression that, if a problem exists from "small quantities", that is a problem for industries outside SIC 28. We are not competent to speak to that issue.

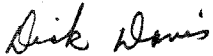
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We hope these comments will be useful to the Task Force and regret that such an important subject is not receiving the detailed examination it deserves. Transportation accidents which release hazardous amounts of chemicals are extremely rare. An examination of the statistics demonstrates that hazardous substances other than chemicals are generally involved.

Further, I am told by many emergency response officials that the public inconvenience caused by a highway incident involving chemicals is due primarily to the concern over legal liability. Evacuations are generally "liability driven" rather than by an actual fear for public health and safety. It is rare to hear an official express that fact publicly, but many of them do so privately.

We commend the Assembly for the establishment of your Task Force and stand ready to be of whatever assistance you might require to assure the people of California that their health and safety is being properly guarded by industry and public agencies. Please do not hesitate to call on us when we can be of help.

Cordially,



Richard L. Davis
Executive Director

RLD:bb

Staff Report

Meeting of
ASSEMBLY TASK FORCE ON THE TRANSPORTATION OF EXTREMELY HAZARDOUS MATERIALSNovember 2, 1987
Los Angeles, CaliforniaTHE HIGHWAY TRANSPORTATION OF HIGHLY
HAZARDOUS MATERIALS: ARE CURRENT PROTECTIONS
SUFFICIENT?

I. INTRODUCTION

Many Californians were surprised to learn last month that the federal Department of Defense periodically ships highly hazardous rocket fuel on crowded urban freeways. The fuel includes nitrogen tetroxide (N_2O_4) and hydrazine and is shipped from its manufacturing site in the Southern United States to several sites in California, including Vandenberg Air Force Base in Santa Barbara County and Aerojet General in Sacramento County. Other extremely hazardous materials are also routinely shipped on urban highways and freeways -- including fluorine gas, which is shipped through densely populated areas of Orange County to the TRW plant in San Clemente.

The Department of Defense has cooperated with state and local officials in Los Angeles by suspending through-shipment of rocket fuel via Highway 101 (the Ventura Freeway) in the San Fernando Valley and by making other adjustments to shipping procedures. There is still a question, however, about how safe Californians should feel about the transportation of chemicals on the streets and highways around them.

Conclusive data on hazardous material transportation is virtually nonexistent; there is no inventory. One recent report estimates about 170 million tons of hazardous material are transported annually through the state. Between four and five million trips per year are by highway, and 72,000 carloads per year are by rail.¹ The vast majority of these trips occur without incident. California Highway Patrol data, summarized in Table 1, show a relatively small number of spills given the large number of trips. However, there is doubtless considerable reducible risk.

This paper outlines current federal and state statutes and regulations regarding hazardous material transportation, and describes policy areas worthy of further consideration.

II. REVIEW OF FEDERAL/STATE STATUTE

Federal Regulation

Federal regulation of hazardous material transportation is imposed by the Hazardous Materials Transportation Act of 1975 (HMTA). The regulatory code to carry out HMTA is contained in Title 49 of the Code of Federal Regulations (49 CFR). "More than 30,000 hazardous materials are subject

¹California Department of Transportation, "Transportation of Hazardous Materials in California by Highway and Rail," September 1, 1986, p. 2.

to these regulations.... However,...DOT...has chosen to exclude intrastate highway transport specifically from regulatory coverage under 49 CFR."²

Federal regulations, generally adopted by reference in the state code and regulations:

- Require placarding for specified amounts and types of material.
- Require shipping documents that identify loads.
- Set certain limited driver and traffic rules.
- Require notification of local jurisdictions in very limited instances, such as for the shipment of certain nuclear materials.
- Establish basic guidelines for route control for general hazardous materials. The general routing principle is to avoid congested areas (49 CFR Section 397.9).

The federal Department of Defense (DOD) is exempt from control by the federal Department of Transportation (DOT) because HMTA covers only transportation "for commerce" (Section 102, HMTA). Is DOD exempt from DOT or state regulation when its materials are being shipped by private carriers? The strict answer to this question has been avoided because the military and its contractors generally choose to cooperate with state and local authorities. A 1958 Attorney General's opinion is vague on this issue.³

²U.S. Congress, Office of Technology Assessment, "Transportation of Hazardous Materials," OTA-SET-304, July 1986, p. 10.

³State Attorney General, Opinion No. 58-144, 32 ops. Atty. Gen. 225, December 5, 1958.

State Regulation

State regulation is based on the nature of the hazardous material or waste being transported. There are, in the Vehicle Code, four basic categories of hazardous materials, each with a different set of requirements regarding, for example, routing, notification, and other elements (see Table 2):

Hazardous Materials

- Require placarding as under federal law.
- Allow some route control.
- Require drivers of placarded loads to have special certificates.

Explosives (including hydrazine, fuming nitric acid, and nitrogen tetroxide)

- Require use of CHP-approved routes. (Most freeways are approved explosives routes.)
- Require annual motor carrier safety inspections.

Radioactive Materials

- Allow CHP to establish times and routes for shipments.
- Require spent radioactive fuel movements to be preceded by notice to local authorities.

Flammable and Combustible Materials

- Require annual registration, fee, and inspection of cargo tanks.
- Restrict travel in tunnels.

III. ISSUES

Routing

The explosives routes in California were established many years ago. Virtually all freeways are included in the explosives network. During

the last year, only two incidents involving explosives have occurred on state highways, according to the CHP. Both involved single rounds of ammunition found at the side of a highway by Caltrans clean-up personnel. The routes designated for rocket fuel are identical to those for explosives (California Vehicle Code Section 31302). The Legislature may wish to consider whether different routes should be developed for non-explosive highly hazardous materials.

Notification

State and federal law require notification of local officials only for shipments of spent nuclear fuel. Southern California officials were notified of the transportation of rocket fuel only because of an oral agreement with Vandenberg Air Force Base. While it is likely that notification of local officials is not warranted every time a small shipment of, for example, granulated pool chlorine is shipped through their jurisdiction, the Legislature may wish to consider whether shipment of other, more dangerous materials should require notification. In some instances, the Legislature may wish to consider requiring an escort vehicle or two drivers with shipments of particularly hazardous materials.

Driver Certification

In 1984, the Legislature passed SB 895 (Chapter 667, Statutes of 1984), which required the Department of Motor Vehicles to establish a special certification program for drivers of vehicles transporting hazardous materials and bulk liquid loads. In September of 1987, 33 months after the operative date of SB 895, the regulations implementing that act were

finally approved by the Secretary of State. During the intervening period, all vehicles transporting hazardous materials and bulk liquid loads have been driven by truck drivers without certificates (Class 1 or Class 2 drivers' licenses). Currently, the regulations are being reviewed for conformity with federal law by the federal Department of Transportation, and are still not implemented in this state.

Vehicle Inspections

Table 3 shows the frequency of CHP hazardous material and hazardous waste vehicle inspections under current law. It should be noted that CHP is required to annually inspect hazardous material cargo tanks, but is not required to inspect the truck tractors which haul them. However, CHP does inspect the vehicle and the trailer when a vehicle is pulled over for a roadside inspection. The Legislature may wish to consider a requirement for truck tractor inspections, in addition to trailer inspections.

Small Quantities

Both federal and state law ignore the shipment of small amounts of certain hazardous materials. For example, flammable gases and liquids, combustible liquids, and certain other materials may go un placarded if under 1,000 lbs. or other amounts as specified (49 CFR 172.505). If a load of hazardous material is not placarded, the vehicle transporting it does not have to be driven by a certificated driver. The Legislature may wish to consider whether or not additional regulation for small quantity shipments is appropriate.

IV. POLICY QUESTIONS

In considering the adequacy of existing state regulation, certain questions emerge:

- Does the State need a better understanding of the volume, timing, and methods of hazardous material transportation?
- Are existing categories of hazardous materials sufficient?
- Are route restrictions sufficient?
- Should local officials be notified of the shipment of substances other than nuclear materials?
- Are drivers adequately trained and certified to handle their sensitive cargo?
- Are vehicles and containers as safe as possible?
- Is nitrogen tetroxide, a rapidly spreading, highly toxic substance, similar in character to gunpowder and other explosives in terms of how they would react in an accident?
- Are existing categories in state law sufficient for regulating hazardous material transportation? If not, then the Legislature may wish to consider different regulations for transporting those kinds of materials which are rapidly spreading and highly toxic but not explosive.

TABLE 1

HAZARDOUS MATERIALS AND WASTE TRANSPORTATION INCIDENTS

<u>Year</u>	<u>Accidents Resulting in Spills or Releases</u>	<u>Total Incidents on State Highways</u>
1986	95	223
1985	76	166
1984	92	216
1983	77	216

Source: California Highway Patrol

TABLE 2

EXISTING CATEGORIES IN THE CALIFORNIA VEHICLE CODE
FOR HAZARDOUS MATERIALS TRANSPORTATION

- 1) Hazardous Materials (Div. 13, Art. 1, Sec. 31303, et seq.)
 - a) Require placarding as under federal law.
 - b) Allow some route control:
 - Should avoid congested areas.
 - Limited CHP and local control.
 - c) Require drivers of placarded loads to have special certificates.
 - d) Some other operational controls.

- 2) Explosives (Div. 14, Sec. 31600, et seq.)
 - a) Require use of CHP-approved routes. (Most freeways are approved explosives routes.)
 - b) Require annual motor carrier safety inspections.
 - c) Includes hydrazine, fuming nitric acid, and nitrogen tetroxide, although not explosives.

- 3) Radioactive Materials (Div. 14.5, Sec. 33000, et seq.)
 - a) Allow CHP to establish times and routes for shipments.
 - b) Require spent radioactive fuel movements to be preceded by notice to local authorities.

- 4) Flammable and Combustible Materials (Div. 14.7, Sec. 34000, et seq.)
 - a) Require annual registration, fee, and inspection of cargo trucks.
 - b) Restrict travel in tunnels.

TABLE 3

HAZARDOUS MATERIALS AND HAZARDOUS WASTE
CALIFORNIA HIGHWAY PATROL VEHICLE INSPECTIONS AND VIOLATIONS¹

Year	Hazardous Materials		Hazardous Waste	
	Inspections	Violations	Inspections	Violations
1986	20,971	13,933	2,427	706
1985	15,328	11,142	2,869	849
1984	2,180 ²	8,596 ³	296 ²	103 ²
1983	No data	7,459 ³	No data	No data

Source: California Highway Patrol

¹Includes on- and off-highway and terminal vehicle inspections.

²Partial year -- CHP began gathering on-highway data in the middle of the year.

³Full year.

REFERENCES

California Department of Transportation, "Transportation of Hazardous Materials in California by Highway and Rail," September 1, 1986.

U.S. Congress, Office of Technology Assessment, "Transportation of Hazardous Materials: Summary," OTA-SET-304, Washington, D.C.: U.S. Government Printing Office, July 1986.

Public Law 93-633, H.R. 15233: Hazardous Material Transportation Act.

Attorney General of California, Opinion No. 58-144, 32 ops. Atty. Gen. 225, December 5, 1958.

