

Y 4
. P 96/11
94-46

1024

94-46
P96/11
4/4

HAZARDOUS MATERIALS TRANSPORTATION ACT EXTENSION

GOVERNMENT

Storage

DOCUMENTS

L 14 1976

(94-46)

THE LIBRARY
KANSAS STATE



JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

AND THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON

PUBLIC WORKS AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 13124

TO AMEND THE HAZARDOUS MATERIALS TRANSPORTATION
ACT TO AUTHORIZE APPROPRIATIONS, AND FOR OTHER
PURPOSES

MAY 10, 1976

Printed for the use of the
Committee on Public Works and Transportation



U.S. GOVERNMENT PRINTING OFFICE

71-903

WASHINGTON : 1976

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

ROBERT E. JONES, Alabama, *Chairman*

JIM WRIGHT, Texas
HAROLD T. JOHNSON, California
DAVID N. HENDERSON, North Carolina
RAY ROBERTS, Texas
JAMES J. HOWARD, New Jersey
GLENN M. ANDERSON, California
ROBERT A. ROE, New Jersey
TENO RONCALIO, Wyoming
MIKE MCCORMACK, Washington
JAMES V. STANTON, Ohio
BELLA S. ABZUG, New York
JOHN B. BREAU, Louisiana
BO GINN, Georgia
DALE MILFORD, Texas
NORMAN Y. MINETA, California
KENNETH L. HOLLAND, South Carolina
ALLAN T. HOWE, Utah
ELLIOTT H. LEVITAS, Georgia
JAMES L. OBERSTAR, Minnesota
JEROME A. AMBRO, New York
HENRY J. NOWAK, New York
ROBERT W. EDGAR, Pennsylvania
MARILYN LLOYD, Tennessee
JOHN G. FARY, Illinois
TED RISENHOOVER, Oklahoma
W. G. (BILL) HEFNER, North Carolina

WILLIAM H. HARSHA, Ohio
JAMES C. CLEVELAND, New Hampshire
DON H. CLAUSEN, California
GENE SNYDER, Kentucky
JOHN PAUL HAMMERSCHMIDT, Arkansas
BUD SHUSTER, Pennsylvania
WILLIAM F. WALSH, New York
THAD COCHRAN, Mississippi
JAMES D. ABDNOR, South Dakota
GENE TAYLOR, Missouri
BARRY M. GOLDWATER, Jr., California
TOM HAGEDORN, Minnesota
GARY A. MYERS, Pennsylvania

SUBCOMMITTEE ON SURFACE TRANSPORTATION

JAMES J. HOWARD, New Jersey, *Chairman*

JIM WRIGHT, Texas
HAROLD T. JOHNSON, California
GLENN M. ANDERSON, California
ROBERT A. ROE, New Jersey
MIKE MCCORMACK, Washington
JAMES V. STANTON, Ohio
BELLA S. ABZUG, New York
JOHN B. BREAU, Louisiana
BO GINN, Georgia
NORMAN Y. MINETA, California
ELLIOTT H. LEVITAS, Georgia
JEROME A. AMBRO, New York
HENRY J. NOWAK, New York
ROBERT W. EDGAR, Pennsylvania
W. G. (BILL) HEFNER, North Carolina

BUD SHUSTER, Pennsylvania
JAMES C. CLEVELAND, New Hampshire
DON H. CLAUSEN, California
WILLIAM F. WALSH, New York
THAD COCHRAN, Mississippi
TOM HAGEDORN, Minnesota
GARY A. MYERS, Pennsylvania

SUBCOMMITTEE ON AVIATION

GLENN M. ANDERSON, California, *Chairman*

DAVID N. HENDERSON, North Carolina
TENO RONCALIO, Wyoming
JAMES V. STANTON, Ohio
DALE MILFORD, Texas
NORMAN Y. MINETA, California
ALLAN T. HOWE, Utah
ELLIOTT H. LEVITAS, Georgia
JIM WRIGHT, Texas
HAROLD T. JOHNSON, California
BO GINN, Georgia
MARILYN LLOYD, Tennessee
JOHN G. FARY, Illinois
W. G. (BILL) HEFNER, North Carolina

GENE SNYDER, Kentucky
JOHN PAUL HAMMERSCHMIDT, Arkansas
THAD COCHRAN, Mississippi
JAMES D. ABDNOR, South Dakota
GENE TAYLOR, Missouri
BARRY M. GOLDWATER, Jr., California

CONTENTS

H.R. 13124: To amend the Hazardous Materials Transportation Act to authorize appropriations, and for other purposes.....	Page 1
--	-----------

TESTIMONY

Curtis, James T., Jr., Director, Materials Transportation Bureau, Department of Transportation; accompanied by Alan I. Roberts, Director, Office of Hazardous Materials Operations; and Leon D. Santman, Assistant General Counsel, Materials Transportation, Law.....	3
--	---

(III)

94TH CONGRESS
2D SESSION

H. R. 13124

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 1976

Mr. JONES of Alabama (for himself, Mr. HARSHBARGER, Mr. STAGGERS, and Mr. DEVINE) (by request) introduced the following bill; which was referred jointly to the Committees on Interstate and Foreign Commerce and Public Works and Transportation

A BILL

To amend the Hazardous Materials Transportation Act to authorize appropriations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Hazardous Materials
4 Transportation Act Amendments of 1976".

5 SEC. 2. Section 106(c) of the Hazardous Materials
6 Transportation Act (49 U.S.C. 1805(c)) is amended by
7 striking out "extremely" each time it appears.

8 SEC. 3. Section 107(a) of the Hazardous Materials
9 Transportation Act (49 U.S.C. 1806(a)) is amended by
10 striking out the phrase "transports or causes to be transported

1 or shipped hazardous materials in a manner so as to achieve"
 2 and insert in lieu thereof "will provide for".

3 SEC. 4. The text of section 115 of the Hazardous Mate-
 4 rials Transportation Act (49 U.S.C. 1812) is amended to
 5 read as follows: "There are authorized to be appropriated for
 6 the Materials Transportation Bureau, United States Depart-
 7 ment of Transportation, to carry out programs relating to the
 8 transportation of hazardous materials and for the Secretary
 9 for other activities carried out pursuant to this Act not to
 10 exceed \$7,000,000 for the fiscal year ending September 30,
 11 1977, and not exceed \$7,000,000 for the fiscal year end-
 12 ing September 30, 1978."

HAZARDOUS MATERIALS TRANSPORTATION ACT

MONDAY, MAY 10, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND
SUBCOMMITTEE ON AVIATION
OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, D.C.

The subcommittees met at 2:10 p.m., in room 2167 Rayburn House Office Building, Hon. James J. Howard (chairman of the Subcommittee on Surface Transportation), presiding.

Mr. HOWARD. The Subcommittees on Aviation and Surface Transportation of the Committee on Public Works and Transportation will please come to order.

Today, the Subcommittees on Surface Transportation and Aviation are meeting jointly for the purpose of receiving testimony on H.R. 13124, a bill to amend the Hazardous Materials Transportation Act, to authorize appropriations, and for ther purposes.

This bill was introduced at the request of the Department of Transportation.

Do any of the members wish to be recognized for a statement at this time?

[No requests.]

Mr. HOWARD. If not, the witness to testify on this bill will be Mr. James T. Curtis, Jr., Director of the Materials Transportation Bureau.

Mr. Curtis, please come to the witness stand. I wish to thank you very much for your appearance today.

If you will just introduce for the record the persons accompanying you, and then please proceed as you wish.

TESTIMONY OF JAMES T. CURTIS, JR., DIRECTOR, MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY ALAN I. ROBERTS, DIRECTOR, OFFICE OF HAZARDOUS MATERIALS OPERATIONS; AND LEON D. SANTMAN, ASSISTANT GENERAL COUNSEL, MATERIALS TRANSPORTATION, LAW

Mr. CURTIS. Thank you, Mr. Chairman. I am accompanied by Alan I. Roberts, Director of Office of Hazardous Materials Operations; and Leon D. Santman, Assistant General Counsel, Department of Transportation, Materials Transportation, Law.

Mr. Chairman and members of the subcommittees, I am pleased to be before your subcommittees to discuss the Department of Transportation's hazardous materials program, particularly as it relates to activities since January 3, 1975, the date the Hazardous Materials Transportation Act was signed into law.

Prior to the Hazardous Materials Transportation Act, the organizational structure within the Department for the handling of hazardous materials functions can best be described as "decentralized." This structure, providing each modal administrator with separate hazardous materials responsibility for his administration, was mandated by the legislation that established the Department of Transportation. However, the Department recognized that a shipment of hazardous materials may move through all or several of the modes of transportation over which the heads of the operating administrations have cognizance.

It was therefore essential that shippers and carriers be able to refer to a cohesive set of authoritative regulations upon which they may rely in preparing, shipping, and transporting hazardous materials, regardless of the mode of transportation.

Recognizing this, the Department established the Hazardous Materials Regulations Board, which consisted of representatives of each modal administration and appropriate representatives from the Office of the Secretary.

The Board was responsible for:

1. Developing the format of hazardous materials regulations;
2. Developing procedures for handling proposed additions or changes to the regulations; and
3. Reviewing proposals for new regulations or revisions to existing regulations, and recommending the adoption and issuance of those found to be satisfactory.

The establishment of the Board was an attempt to centralize the Department's hazardous materials functions. However, the effectiveness of this attempt was limited. The existence of the Board did not affect the authority of any operating administration to adopt and publish hazardous materials regulations or to carry out any other function relating to the safe transportation of hazardous materials.

In fact, the decentralized responsibility for hazardous materials functions mandated by statute, by its very nature, frustrated the development of any uniform approach to carrying out these functions. This situation was recognized in the enactment of the Hazardous Materials Transportation Act.

The declared policy of Congress in passing that act was to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials.

Certain of the provisions of the act reflect that policy by accomplishing the following:

The removal of statutory restrictions on the Secretary's authority to centralize Department of Transportation regulatory activities relating to the safe transportation of hazardous materials by various modes.

The extension of the Secretary's authority to impose civil penalties to violations committed in the rail and highway modes.

A significant increase in the criminal sanctions for violations of hazardous materials regulations.

Provision of various forms of specific relief as additional enforcement tools.

A broadening of the definition of "commerce" to include transportation which affects interstate transportation.

A broadening of the application of hazardous materials regulations in certain geographical locations.

Federal preemption of inconsistent State and local regulations and law.

An extension of the Secretary's regulatory authority to the manufacturers of packages and containers used in the transportation of hazardous materials.

Authorization for the Secretary to require shippers and carriers of hazardous materials, and manufacturers of hazardous materials containers, to register with the Department of Transportation.

To effectively exercise the powers and perform the duties vested in the Secretary of Transportation by the act, as well as those vested in him by earlier laws dealing with hazardous materials, the establishment of a line organizational element within the Department, reporting to the Secretary, was considered necessary.

On July 1, 1975, the Materials Transportation Bureau was formed to answer that need. The Bureau became operational on July 7, 1975, and is responsible for exercising the authority vested in the Secretary with respect to intermodal hazardous materials functions and the issuance of all hazardous materials regulations and exemptions except for those regulations and exemptions governing bulk shipment of hazardous materials by water.

The organization of the Materials Transportation Bureau necessitated a series of redelegations within the Department to define the interface of responsibilities between the MTB and the operating modes.

Although a substantial part of the Secretary's hazardous materials authority was delegated to the MTB, the individual modes retain responsibilities, primarily in the area of inspection, compliance, and enforcement. There were several considerations that led to this result.

First, it is necessary to adequate inspection that hazardous materials inspectors have a working knowledge of the mode by which a shipment is being carried.

Second, the modes maintain existing field forces that have had considerable experience with inspection of hazardous materials shipments and it seemed prudent to use this experience.

In practice, this continued modal responsibility appears to be justified. In carrying out their responsibilities for monitoring and enforcing the regulations governing the actual transportation of hazardous materials by motor vehicle, railroad, vessel and aircraft, the operating administrations are continuing to place increasing emphasis on inspections to detect and correct violations by shippers and carriers.

For example, during 1975, the number of hazardous materials inspections performed by the Federal Aviation Administration

increased more than 50 percent over those performed during the previous year. Likewise, hazardous materials inspections by Federal Railroad Administration personnel in 1975 increased more than 50 percent over those in 1974.

In the case of the highway transportation of hazardous materials, the Federal Highway Administration's Bureau of Motor Carrier Safety in 1975 more than doubled the volume of their 1974 inspections. On the waterfront and onboard vessels, the Coast Guard inspection activities continued at their previously established high level.

More importantly, the overall increase of inspection activity in 1975 was accompanied by marked improvement in compliance with the hazardous materials regulations.

The various indicators by which compliance can be measured—violations detected and enforcement actions taken—showed a general downward trend in 1975. Particularly significant were the figures for aviation where detected violations were down 21 percent. This overall reduction in violations during a year when there was an increase in the amount of hazardous materials being transported and a 20-percent increase in inspections is, in our view, attributable in large measure to the educational efforts of the last few years—see attachments 1 and 2.

Mr. CURTIS. Training and educational activities of the MTB and the Department's modal administrations have been directed at adding to the knowledge and improving the skills of our own inspectors. In addition, the Department has devoted considerable effort to better informing the regulated industries—particularly shippers of hazardous materials and their employees who are the day-to-day packagers and handlers of the shipment of hazardous materials.

Of equal significance have been the self-education activities of the regulated industries. Trade associations, shipper groups and carrier organizations have conducted public seminars and training sessions on various aspects of the transportation of hazardous materials. As evidenced by the requests we have received for assistance and guidance in conducting these sessions, they have been held with increasing frequency and at a range of locations.

With passage of the act, the Department faced the task of dealing with the ongoing and increasing stream of hazardous materials in commerce as well as implementing the new authority given to the Secretary under the act.

ATTACHMENT 1 HAZARDOUS MATERIALS INSPECTIONS

Operating administration	1974	1975	Change	Percent change
USCG:				
Port facilities ¹	10, 247	9, 980	-267	-3
Vessels ¹	32, 857	33, 586	+729	+2
FAA	9, 052	13, 724	+4, 671	+52
FHWA (BMCS)	2, 886	6, 248	+3, 362	+116
FRA	2, 514	3, 832	+1, 318	+52
Total	57, 557	67, 370	+9, 813	+17

¹ Performed as multimission port safety, law enforcement and pollution prevention inspections.

ATTACHMENT 2

HAZARDOUS MATERIALS REGULATIONS VIOLATIONS AND ENFORCEMENT ACTIONS

Operating administration and activity/action	1974	1975	Change	Percent change
USCG:				
Port facilities:				
Total violations detected	2,871	1,932	-939	-33
Corrected on spot	1,605	668	-937	-58
Advisory warnings issued	1,626	1,264	-2	0
Vessels:				
Civil penalties initiated	1,155	866	-289	-25
Civil penalties collected	1,080	900	-180	-17
Total collected	\$139,990	\$84,500	-\$55,490	-40
Average penalty	\$130	\$94	-\$36	-28
FAA:				
Total enforcement actions	244	192	-52	-21
Administrative actions	106	88	-18	-17
Civil penalties	138	104	-34	-25
Total assessed	\$178,150	\$202,900	+\$24,750	+14
Average penalty assessed	1,291	1,951	+660	+51
Total collected	\$104,400	78,150	-26,250	-25
FHWA (BMCS):				
Total enforcement actions	269	205	-64	-24
Criminal cases initiated	79	159	+80	+101
Criminal cases closed	103	64	-39	-38
Fines adjudged	\$67,200	\$24,865	-\$42,335	-63
Average fine	\$652	\$389	-\$263	-40
FRA:				
Administrative corrective action cases	1,200	2,100	+900	+75
Criminal counts initiated	19	36	+17	+89
Criminal counts closed	32	17	-15	-47
Fines adjudged	\$15,850	\$7,100	-\$8,750	-55
Average fine/count	\$495	\$418	-\$77	-16
Civil claims ¹	0	7		
Total collected	0	\$11,000		
Average penalty/claim		-\$1,570		

¹ Under Federal Railroad Safety Act of 1970 for violations of FRA Emergency Order No. 5 prohibiting the free rolling switching of certain tank cars filled with high pressure compressed gas.

Even before the Materials Transportation Bureau was organized, the FAA moved to implement section 108 of the act, in a notice of proposed rulemaking that was published in early February 1975. Section 108 required the Secretary to issue regulations within 120 days of enactment prohibiting the transportation of radioactive materials aboard passenger aircraft unless those materials are intended for use in, or incident to, research, or medical diagnosis or treatment, and unless they do not pose an unreasonable hazard to health or safety.

This regulation was published in final form in April and became effective on the 3rd of May, 1975, 120 days after the act became law.

After the MTB was established, one of the first matters that it considered was the existing rulemaking under docket HM-112. This rulemaking, which was published in final form last month, and which is scheduled to become effective on July 1 of this year, is essentially a consolidation of existing regulations that, like the Secretary's hazardous materials authority, were scattered through the regulatory provisions of the various modes.

Provisions regarding air shipments appear in title 14 of the Code of Federal Regulations, water transport appears in title 46, while rail and highway appear in title 49.

Consolidation, in addition to encouraging shipper compliance with the regulations, will aid the Department's surveillance and enforcement efforts.

HM-112 also will result in clearer identification of hazardous materials to further lessen the chance of improper introduction of these materials into commerce. The rulemaking, moreover, provides for uniform placarding and labeling requirements to eliminate another source of difficulties with intermodal shipments.

Finally, HM-112 also includes general editorial amendments improving clarity, removing references and requirements no longer necessary, and reflecting updated information.

The value of a uniform, consolidated set of hazardous materials regulations was recognized at the time the Department itself was organized, but it was not until 1971 that the Department was able to undertake a sustained effort to achieve that goal, given the extensive material involved—as a matter of interest, the final rule was about 700 typewritten pages.

In January 1974, a notice of proposed rulemaking opened docket HM-112, and the consolidation effort was still underway when the MTB came into existence last July. Given the effects of this rulemaking and the very substantial resources already devoted to it, we felt that completion of the rulemaking was imperative and gave it priority treatment.

Another matter which the MTB had to face immediately involved the exemption procedures of the act. The Department had interpreted the act's exemption procedures, which require Federal Register publication of all nonemergency applications for exemptions, to be ineffective until implementing regulations had been published as part of our overall implementation of the act.

Implementing regulations are required by the act to be published as soon as practicable but, in any event, within 2 years.

Several years before, a consumer group had commenced litigation over the exemption procedures employed by the FAA. Shortly after the MTB became operational, this litigation resulted in a Federal district court decision that the exemption procedures of the Hazardous Materials Transportation Act became effective at the same time the act itself became law. In addition to jeopardizing FAA approvals of regulatory deviations granted since January 3, 1975, the effect of this decision was applicable to all the modes.

As a result, the Department moved to immediately develop and promulgate implementing regulations for the act's exemption procedures.

Mr. HOWARD. Excuse me, Mr. Curtis.

There is a vote on the House floor on the rule for the consideration of the bill, H.R. 12934, the Federal Reserve Reform Act.

The subcommittees will recess for approximately 10 minutes so the members may go to the floor to vote.

[Short recess.]

Mr. HOWARD. The subcommittees will come to order.

Thank you very much for waiting, Mr. Curtis. Please proceed.

Mr. CURTIS. The various authorities to grant administrative relief from the hazardous materials regulations exercised by the four modal administrations under the laws predating the Hazardous Materials

Transportation Act were consolidated and transferred to the MTB on July 7, 1975, together with the exemption responsibility under section 107 of the new act.

An immediate rulemaking, HM-127, was initiated to establish a single set of procedures which would fully implement section 107 and replace the various means by which the FAA, Coast Guard, BMCS, and FRA, separately and collectively, have previously issued special permits, exemptions, authorizations to deviate and waivers. In less than 3 weeks, the new procedures were finalized, issued and placed in effect.

In addition to providing for public notice and comment opportunities in all but emergency cases, the new procedures provide for Federal Register publication of the action taken by the MTB on all applications, including those involving emergencies. They also specify the criteria used by the MTB in deciding whether to grant emergency exemptions, criteria, and procedures for the suspension or revocation of exemptions, and procedures for seeking protection of trade secrets from disclosure.

The district court's order implementing its decision was ultimately vacated as a consequence of appellate court action, largely because we succeeded in establishing exemption procedures under the act.

Implementation of this consolidated and centralized system, however, has not been without operational difficulties. A major problem at the outset was how to handle the special situation in Alaska where the lack of other means of transportation was creating a need for over 100 grants of administrative relief per month for air shipments of hazardous materials. Nearly all of these situations were being handled by local FAA district offices in Alaska. In nearly every case there was a compelling reason for quickly granting the relief.

However, few would qualify as emergencies within the section 107 concept of that term.

Analysis of several hundred of the waivers that had been granted during the first 6 months in 1975 showed that with few exceptions they were for the same four or five basic purposes, such as air transportation of explosives for blasting, gasoline, and other flammable liquids for vehicles and heating, and propane for construction work.

Based on the experience gained under those waivers, the MTB and the FAA proceeded to develop specific rules applicable to each group whereby the hazardous material could be safely transported. The regulations were then quickly amended to authorize the identified groups of hazardous materials to be transported by air, subject to the rules, in Alaska and to other remote areas not having other means of transportation, HM-128.

In addition to providing a sizable reduction in the reliance on the exemption process, this use of experience gained under the exemption process as the basis for permanent regulations of general application demonstrates a valid technique which we anticipate putting to more frequent use in the future.

Having put the exemption procedures behind us, and with completion of the effort to consolidate the hazardous materials regulations, we published, on March 3, a notice of proposed rulemaking, HM-134, which addresses the subject of reissuance of the existing regulations under the new authority of the Hazardous Materials Transportation Act.

The effect of reissuance will be to place the Department's hazardous materials regulations which, at present, are based on various laws that predate the act, under the authority of the act itself. Reissuance will have several important effects on our efforts to implement the act which I would like to outline for you.

One very significant effect of reissuance will be to bring into play the new enforcement provisions of the act: civil penalty authority, increased criminal sanctions, preemption of conflicting State law, and the assistance of Federal district courts in halting violations and in dealing with situations involving the threat of imminent hazards where ordinary proceedings would be too time consuming to be effective.

Violations of hazardous materials regulations for all modes have, in the past, been punishable by criminal penalties, therefore the increased criminal penalties provided in the act fit readily into the existing enforcement framework.

To some extent, imposition of the civil penalties authorized by the act will require new procedures for full implementation. Although the Coast Guard and the FAA have authority to impose civil penalties that predates the act, their existing civil penalty procedures may require some adjustment to meet the procedural requirements of the act.

Although the FRA and the Bureau of Motor Carrier Safety have been exercising civil penalty authority for other safety violations, in the past they have lacked the authority to impose civil penalties for hazardous materials violations. Consequently, additional procedures will have to be added to the existing ones for those two modes.

At the present time, draft procedures that will implement the preemption and enforcement provisions of the act are being reviewed by all the modal administrations of the Department with a view to publishing final procedures some time between the middle and end of this summer.

Another significant effect of reissuance will be extension of the geographic coverage of the Department's existing hazardous materials regulations to Puerto Rico, the Virgin Islands, American Samoa, and Guam, in addition to all of the States to which they now apply.

Finally, reissuance will make the specifications for hazardous materials containers enforceable against the manufacturers of those containers.

At present, the Department is able to enforce container specifications against shippers and carriers only. Following reissuance, we will be able to take the impact of enforcement authority directly to the sources of containers used to ship hazardous materials.

In an evaluation of shipper and container manufacturer compliance with the hazardous materials regulations that was completed February 10, 1976, we found indications that container manufacturers have not been very well informed, in some cases, on the specifications applicable to the containers that they manufacture which are used to ship hazardous materials.

In one instance, we found a manufacturer of fiberboard cartons which were used to ship hazardous materials who has constructed those cartons to specifications provided by a customer without reference to the regulatory specifications.

Quite probably out of an awareness that the Department is moving to exercise direct regulatory authority over the manufacture of packaging and containers under the new act, a group of hazardous materials packaging manufacturers recently joined the growing list of organizations conducting seminars and training sessions.

Independent of reissuance, the MTB continues to review the field of hazardous materials transportation for improvements in our method of operation and in the overall safety level that has been achieved.

We have been examining the use of performance standards for certain classes of hazardous materials for possible replacement of some of the existing design standards now applicable to containers and packages. Performance standards are standards that are keyed to the actual performance of the package in question rather than the details of exactly how it is constructed.

One advantage to the use of performance standards is that packaging innovations and changes in packaging technology can proceed without the necessity of recurrent changes in the applicable regulations or the interim use of exemption procedures.

Another very important area of continuing evaluation is the hazardous materials incident reporting system. Carriers are required to provide reports on incidents occurring in transportation that involve release of hazardous materials. Immediate notification is required of incidents resulting in death, injury, \$50,000 in property damage, or spillage of radioactive or etiological materials.

For several years now, these incident reports have been fed into a computer system to provide a data bank from which a statistical overview of such incidents can be compiled. Computer retrieval allows a wide-ranging examination of particular aspects of hazardous materials incidents for repeated patterns, which is useful in spotting developing problem areas at an early stage, flagging possible changes in our regulations, as well as noting possible violations and unsafe practices by shipper or carrier.

In 1975, approximately 11,000 such reports were filed—see attachments 3 to 5. The materials most frequently named in those reports were paint and its related compounds, gasoline, and batteries and battery fluid—about 47 percent.

ATTACHMENT 3

TABLE 1C.—HAZARDOUS MATERIALS INCIDENT REPORTS RECEIVED, BY MODE OF TRANSPORT

	Reporting carriers					Reports submitted				
	1971	1972	1973	1974	1975 ¹	1971	1972	1973	1974	1975 ¹
Air carriers.....	3	11	15	32	41	5	32	48	155	200
For-hire highway carriers.....	233	323	353	380	450	1,633	3,613	5,092	7,254	9,000
Private highway carriers.....	54	58	73	82	100	258	352	450	361	900
Rail carriers.....	28	35	35	40	49	346	337	412	617	650
Water carriers.....	10	8	7	17	20	13	10	12	26	50
Total.....	328	435	483	551	660	2,255	4,344	6,014	8,413	10,800

¹ Estimated.

Note: Not included in the above 1974 and 1975 tabulation are about 40 reports submitted by freight forwarders, stevedoring firms, and other miscellaneous interested organizations.

ATTACHMENT 4

TABLE 2C.—COMMODITIES MOST FREQUENTLY NAMED IN 1975 HAZARDOUS MATERIALS INCIDENT REPORTS

	Number ¹	Percent of total
Paint and paint-related compounds.....	2, 378	22. 0
Gasoline.....	1, 385	12. 8
Batteries and electrolyte battery fluid.....	1, 332	12. 3
Cleaning compounds.....	857	7. 9
Sulfuric acid.....	333	3. 1
Flammable liquids, (not otherwise specified).....	307	2. 8
Cement, liquid, (not otherwise specified).....	299	2. 7
Hydrochloric acid.....	286	2. 6
Corrosive liquids, (not otherwise specified).....	266	2. 4
Insecticides, liquid.....	194	1. 8
Alcohol, (not otherwise specified).....	130	1. 2
Liquefied petroleum gas.....	111	1. 0
Acid, liquid (not otherwise specified).....	103	1. 0
Ink.....	102	1. 0

¹ Estimated

ATTACHMENT 5

HAZARDOUS MATERIALS INCIDENTS (ACCIDENTS) INVOLVING DEATH OR INJURY

	1974			1975		
	Deaths	Injuries ¹	Number of reports	Deaths	Injuries ¹	Number of reports
Air.....	4	5	3	0	4	4
Water.....	0	21	2	0	2	2
Rail.....	10	593	68	0	95	74
Highway.....	18	276	170	27	489	193
Freight forwarder.....	0	4	1	0	15	2
Other.....	0	1	1	0	51	1
Total.....	32	900	245	27	656	276

¹ Includes injuries to individuals who were admitted to hospital on out-patient basis, treated, and released.² Incident involved tank car of chlorine which was unloading at consignee's plant. Report submitted by consignee. FRA notified OHMO that incident was not considered to be in transportation.

Mr. CURTIS. In addition to the efforts being made to finalize preemption and enforcement procedures that I previously mentioned, there are other areas of the act for which we are developing implementation programs.

One such area is the authority provided in section 106(b) of the act under which the Secretary may require shippers and carriers of hazardous materials, as well as hazardous materials container manufacturers, to register with the Department. At the present time, we do not think that an across-the-board requirement that all such persons register with the Department would be prudent.

Since the registration provision is directed at the problem of identifying such persons, we believe that registration should be considered on a case-by-case basis. For example, a requirement that all rail carriers handling hazardous materials register with the Department does not appear necessary since virtually every rail carrier handles some hazardous materials and rail carriers are relatively easy to identify.

On the other hand, it may be appropriate to require carriers and shippers of, or container manufacturers for, a particular hazardous commodity to register where their identities are unclear and the hazard involved is sufficiently great to warrant exact identification.

Another provision of the act which I would like to mention is section 109(d)(2), which requires the Department to establish and maintain a central reporting system and data center to provide law enforcement and firefighting personnel and other interested persons advice on meeting hazardous materials transportation emergencies.

The Manufacturing Chemists Association, since 1971, has been operating the Chemical Transportation Emergency Center, or Chemtrec.

Chemtrec provides response information for chemical transportation emergencies from data on chemicals provided by the chemical producers themselves. This service is available by phone at any time, 24 hours a day.

After providing advice on how to deal with a particular chemical transportation emergency, the system also immediately notifies the shipper by phone, as well as other entities that may have resources that could be brought to bear on the problem—the Nuclear Regulatory Commission, for example.

The second information system is known as the chemical hazard response information system, or CHRIS, which is partially operational at present. It is being developed under contract by the Coast Guard, and is directed primarily at emergencies involving the bulk water transport of hazardous chemicals.

The CHRIS system will also provide, in addition to emergency information, certain basic nonemergency information to improve the level of safety in bulk shipment by water of hazardous chemicals. CHRIS will include a hazard assessment computer system and a series of reference manuals dealing with emergency responses as well as general and specific considerations regarding water carriage of hazardous chemicals.

The MTB, in addition to maintaining liaison with Chemtrec, also answers inquiries regarding the proper classification of hazardous materials, as well as distributing a substantial number of publications to insure wide familiarity with requirements applicable to the packaging and shipment of hazardous materials.

Finally, in response to section 109(d)(1) of the act, during fiscal year 1977, we expect to attempt to select a qualified laboratory to perform classification testing of hazardous materials. We have in the past relied on the Bureau of Explosives for such testing, but intend, according to the mandate of the act, to develop that capability ourselves.

I now have a few remarks on the subject of H.R. 13124, the administration's proposed hazardous materials authorization bill, which was introduced in the House on April 8 of this year.

The administration's budget for fiscal year 1976, submitted to the Congress shortly after the Hazardous Materials Transportation Act was signed into law, included staffing and resource increases for meeting the Department's new responsibilities under the act.

Additional positions for this purpose were funded as part of the Department of Transportation Appropriation Act for fiscal year 1976, Public Law 94-134, which became law on November 22, 1975.

Recruiting and selecting persons having the requisite qualifications have been tailored to the Materials Transportation Bureau's newly assigned responsibilities under the Hazardous Materials Transporta-

tion Act, particularly those concerning regulatory authority over manufacturers of packages and containers for shipping hazardous materials and the revised exemptions programs. We have already been fortunate in attracting several persons with outstanding qualifications.

H.R. 13124 would amend section 115 of the act to authorize appropriations of \$7 million for each of fiscal years 1977 and 1978. In the past, the Department has proposed that authorizations for this program be provided on a basis that would allow appropriations to be made in such amounts as required to carry out our responsibilities under the act.

However, in view of the desire of congressional committees that specific annual amounts be authorized, the administration bill, H.R. 13124, proposes that authorizations for hazardous materials activities be extended for 2 years at the level of \$7 million, which is the amount Congress authorized for fiscal year 1976.

While the proposed levels in H.R. 13124 exceed the amount recommended in the President's budget for fiscal year 1977, we believe those levels are appropriate and will provide sufficient latitude to meet foreseeable program needs.

The bill also proposes two clarifying amendments to the Hazardous Materials Transportation Act.

An amendment to section 106 is proposed that will strike the word "extremely" from subsection 106(c). Section 106, as it was passed by the Senate, limited the requirement of registering with the Department of Transportation to shippers and carriers of, and manufacturers of containers for, "extremely" hazardous materials.

The conference committee rejected this limitation and deleted the word "extremely" at certain places in section 106, but apparently overlooked subsection 106(c), leaving an internal inconsistency.

A second amendment will adjust subsection 107(a) of the act to make it clear that the Secretary's authority to grant exemptions extends to manufacturers of hazardous materials containers, as well as to shippers and carriers. This change is consistent with the rest of the act, which makes all three—shippers, carriers, and container manufacturers—subject to the Secretary's safety authority.

That completes my statement, Mr. Chairman. I would be happy to answer any questions the subcommittees may have, and you may have.

Mr. HOWARD. Thank you very much, Mr. Curtis, for your testimony.

The subcommittee does have some questions for you which we will take up immediately following the return of the subcommittee from the vote which is occurring on the House floor.

Mr. GOLDWATER. Mr. Chairman.

Mr. HOWARD. The gentleman from California.

Mr. GOLDWATER. What is the intention of the committee, to mark this bill up today?

Mr. HOWARD. The intention of the committee had been to complete the testimony with questions and answers and, if possible, to be able to mark this bill up this afternoon.

There is a deadline, I believe, of May 15 to report this bill out because of the funds involved. That is the intent.

We do not know whether we will be able to follow through on it.

The subcommittees stand in recess.

[Short recess.]

Mr. HOWARD. The subcommittees will come to order please.

Mr. CURTIS, in section 4 of the bill you request an authorization for appropriations in the amount of \$7 million for fiscal year 1977 and an identical amount for fiscal 1978. Will all of this money be utilized only by the Office of Hazardous Materials?

Mr. CURTIS. They will all be used by the Material Transportation Bureau in the Office of Hazardous Materials Operations as one of those particular elements. Yes, sir, it will be used by the Bureau for the carrying out of title I of Public Law 93-633, sir.

Mr. HOWARD. How does this amount, this \$7 million, compare with the amount that was appropriated for the Office in 1976 and the amount requested in the President's budget for fiscal 1977?

Mr. CURTIS. In total for 1976, and let me give you a couple of sets of numbers if I might, sir. We had about \$2.6 million for the entire Materials Transportation Bureau. Of that, a little over \$2 million was for the Office of Hazardous Materials Operations, sir. I can submit the exact number. It is just over \$2 million.

Mr. HOWARD. How many employees are now in the Office of Hazardous Materials and how many would be there if the \$7 million were to be authorized and appropriated?

Mr. CURTIS. There are now 64 employees in the Office of Hazardous Materials Operations. The \$7 million authorization number was a number that was worked on prior to working up final budget estimations by the Department or OMB. And at that particular time the Office of Hazardous Materials Operations were looking for approximately 144 people. Now, in filling out the \$7 million, that would come to approximately 230 personnel for the Office of Hazardous Materials Operations, sir.

Mr. HOWARD. Will you furnish the committee with a list of employees by function that are now employed and also how many would be by function under \$7 million?

Mr. CURTIS. Yes, sir.

Mr. HOWARD. Without objection, that will be made a part of the record when received.

[The information received follows:]

STAFFING SPACES BY PROGRAM FUNCTIONS—HAZARDOUS MATERIALS

Program functions	1976	1977 ¹	1977 ²
1. Program direction, planning, budget and support.....	7	7	8
2. Regulation development and interpretation, public dockets, exemptions, State programs, environmental and inflationary impact, and international standards.....	23	26	39
3. Compliance and enforcement, accident analysis, reports and training.....	15	15	22
4. Technology related to transportation of hazardous materials.....	13	13	19
5. Region Office (compliance and enforcement) (50 positions);			
(a) New York.....	0	0	15
(b) Chicago.....	0	0	15
(c) San Francisco.....	0	0	9
(d) Dallas.....	0	0	6
(e) Atlanta.....	0	0	5
6. Hazardous materials support ³	6	6	6
Total.....	64	67	144

¹ As presented in the President's budget, an increase of three spaces in 1977.

² Based on an increase of 80 positions in 1977.

³ These are positions in support of hazardous materials that are assigned to MTB but not to OHMO proper.

STAFFING SPACES AND GRADES—HAZARDOUS MATERIALS

	1976 ¹	1977 ¹
Grade:		
15	5	5
14	14	14
13	9	10
12	6	8
11	5	5
9	4	4
8	1	1
7	6	6
6	10	10
5	4	4
Total	64	67

¹ In the 1977 budget under the Office of the Director, MTB, there are 4 spaces for each of fiscal years 1976 and 1977. These spaces are at grades 18, 15, 10, and 7. $\frac{3}{4}$ of their cost is charged to hazardous materials. These are in the spaces and grades used in deriving figures for the 1976 and 1977 columns to the 1977 budget.

STAFFING BY GRADES FOR 1977¹—HAZARDOUS MATERIALS

	Washington	Regions	Totals
Grade:			
15	11	5	16
14	15	2	17
13	14	6	20
12	11	0	9
11	12	14	26
9	5	13	18
8	2	0	2
7	4	0	2
6	13	10	23
5	4	0	4
4	3	0	3
Total	94	50	144

¹ Based on an increase of 80 spaces over 1976 staffing (\$7,000,000 authorization).

Mr. HOWARD. Would any of the existing programs be curtailed or terminated if the \$7 million request is not met; and specify, please.

Mr. CURTIS. Existing programs, no. In other words, we are now funded at the level to maintain the present program situation. We would not move in fiscal year 1977 on some of the programs that were part of the act, 93-633. We would defer the establishment of field offices. We would defer the establishment of very strict programs for the regulation of container manufacturers and shippers until fiscal year 1978.

Mr. HOWARD. Would those programs be instituted if the \$7 million were to become available?

Mr. CURTIS. Yes, sir.

Mr. HOWARD. And if so, any others?

Mr. CURTIS. Yes, sir, we would also move to take back as mandated by the statute or establishment in the Government, mandated by statute, a laboratory operation to determine the hazardous materials criteria. In other words, to determine hazardous materials and how it is so constituted. That is currently done by the Bureau of Explosives under a delegation.

Mr. HOWARD. Briefly and generally, how would you be able to do a better job if the \$7 million is authorized?

Mr. CURTIS. How would we be able to?

Mr. HOWARD. In what ways?

Mr. CURTIS. We could move, as I said, sir, in the field of container manufacturers and shippers, and our theory is that if we shut off the establishment in the stream of commerce, these products before they ever get there, then we will have a lower potential accident rate. Now we rely on the various modes of transportation and their inspectors to inspect and have compliance enforcement at the modal level, sir.

Mr. HOWARD. You state:

The Bureau is responsible for issuing hazardous regulations and exemptions except for those bulk shipments and hazardous shipments by water.

Who is responsible for issuing regulations and exemptions for water carriers?

Mr. CURTIS. Let me divide the thing into two parts, if I may, sir.

The Coast Guard is responsible for issuing regulations and carrying on compliance enforcement for bulk commodity shipments by water, sir. The Bureau is responsible for a regulatory program, for package materials, and the Coast Guard is on the compliance enforcement for package materials, sir.

Mr. HOWARD. The Coast Guard's responsibility and your responsibilities apply both to inland waters and the high seas?

Mr. CURTIS. That is correct, sir.

Mr. HOWARD. At the port who is responsible?

Mr. CURTIS. The Coast Guard would be, sir.

Mr. HOWARD. That is under the Department of Transportation in peacetime?

Mr. CURTIS. That is correct.

Mr. HOWARD. In your statement you briefly discuss the amendments proposed in sections 2 and 3 of H.R. 13124.

With respect to section 2, you indicate that the retention of the word "extremely" in section 106(c) of the act results in an internal inconsistency.

Will you please explain what that is?

Mr. CURTIS. Yes, sir.

In going through that piece of legislation the word "extremely" was in several parts of the act, as it was initially proposed. It was in conference struck from all parts, except 106(c). We believe it was the intention of the Congress since they struck it from several other parts in the legislative history so this indicates it was the intention to strike it there as well, sir.

Mr. HOWARD. By striking this word "extremely" you do not feel that this would result in any exemption of authority of the Department of Transportation?

Mr. CURTIS. No, sir, I do not.

Mr. HOWARD. In section 3 you indicate the amendment to section 107(a) would clarify the Secretary's authority to grant exemption to manufacturers of hazardous materials containers. Is this simply a clarifying amendment or would it extend the Secretary's authority?

Mr. CURTIS. No, sir, it is strictly a clarifying amendment. Container manufacturers are mentioned in various and sundry and other sections, to interpret as it now is you have the authority to regulate but you do not have the authority to exempt. When in fact our regulations scheme at the present time encompasses the thought that we do have that authority and this would be strictly a clarifying situation, because in order to regulate them we think we should also be allowed to exempt them as we do all other classes under this act.

Mr. HOWARD. You indicate that MTB regulation has been amended to authorize the identified groups of hazardous materials to be transported by air, subject to the rules, in Alaska and to other remote areas not having other means of transportation.

Is that to Alaska or merely in Alaska, within Alaska?

Mr. CURTIS. That specific action we are talking about which was taken was within Alaska, sir. It was designed to handle transportation within remote areas or having places where we need access to remote areas.

Mr. HOWARD. They do follow regulations in bringing them to Alaska?

Mr. CURTIS. Yes, sir.

Mr. HOWARD. That is by water I imagine?

Mr. CURTIS. They come by water, by Alaskan highway, but mainly by some other mode.

Mr. HOWARD. This is to carry them by air to other places in Alaska?

Mr. CURTIS. Yes, sir.

Mr. HOWARD. Does this bother you at all?

Mr. CURTIS. No, sir.

Mr. HOWARD. But you have no alternative to this because apparently you were saying, well, this is not what we would normally permit but we do not have any other way out. Are you working on a way out? Would you explain that? I can understand what you mean. Right now there is no other way to get it around?

Mr. CURTIS. There is no other way. In just a moment I would like Mr. Roberts to comment on that for a couple of moments because he did establish the program in Alaska for us. I think there are certain special conditions, and this has to do with remote location. I do not view this as a situation that would exist only in Alaska. I think it would exist in any remote territory where we did not have access for some other method of transportation, and the particular commodities could be safely transported that were vital to those things such as I mentioned.

Mr. HOWARD. Who would be in danger there? Would it be specifically the pilot and crew who know what is there? Are there other passengers that might be considered, passengers having nothing to do with that material who might be endangered by that?

Mr. CURTIS. No. There would not be passengers. Mr. Roberts, would you like to go into that in some detail?

Mr. HOWARD. I think it would be good to get that on the record.

Mr. ROBERTS. As mentioned in the statement, Mr. Howard, there were numerous exemptions granted in the State of Alaska, and the main thrust of the rulemaking was addressed to the problem in Alaska. With so many exemptions being granted, it made it necessary for us to examine the regulatory system and ascertain that some adjustment should be made to make provision for what was becoming more or less a general rule by exemption.

In doing that we also examined the exemptions being granted elsewhere, and we found that exemptions were being granted for avalanche control out in the Rocky Mountain areas, to transport explosives into remote mining locations for oil exploration.

So the rule, and I believe Mr. Curtis might possibly have misunderstood your statement, the rule was basically designed and carried out, and you might say were motivated to eliminate the problem in Alaska. But the rule does not make reference to Alaska. It makes reference to the fact that other means of transportation were not available or are impracticable. Of course we have to come down hard on the term "impracticable." But it is designed with quite a number of very strict criteria.

Considerable amount of surveillance imposed through the rule-making requirement by FAA field personnel in terms of air route approval, the method of loading aircraft, and so forth. This covers blasting materials, gasoline, fuel oils, and other blasting supplies that are used in these remote locations and so far as we have been able to tell it has worked rather well.

Mr. CURTIS. I might add, Mr. Chairman, that since a number of these things have been handled previously on waivers, there was some safety history data available so therefore we were able to ascertain the level of safety that had been carried on before in the transportation of these particular commodities. That was taken into account, sir.

Mr. ROBERTS. If I may add, since I failed to answer the other part of your question, this particular regulation pertains only to cargo on the aircraft, no passengers involved. Really when you come down to it, in many cases in terms of risk, it is probably from what we are able to ascertain the safest way to move these materials, quite often the case. It eliminates the necessity to move through highly congested port areas, and we find that this quite often could be the most satisfactory means of moving the material if all the prescribed criteria and conditions set down to the operator are strictly adhered to.

Mr. HOWARD. Thank you.

In attachment No. 1, you indicate total number of hazardous material inspections has been 67,370 in 1975. If all hazardous materials transported were inspected, what would the figure be? Do you have a guess?

Mr. CURTIS. It would be in the millions, and I would prefer not to guess, sir. The amount of hazardous cargo that is moving in the country is something that we do not have a total fix on. It is something that the Department has spent considerable sums on trying to locate this particular data to get a total fix on it. But I would prefer not to speculate.

Mr. HOWARD. If you get \$7 million authorized and appropriated, I presume that figure of inspections conducted would go up, which would give your percent of knowledge and accomplishment and ability to do your job—

Mr. CURTIS. I would hope we would spend the money wisely enough to find out a better dimensional quality of what is moving, sir.

Mr. HOWARD. In attachment 2 you indicate that in 1975 the average penalty was \$94 by the U.S. Coast Guard for vessels, \$1,951 by the FAA, \$389 by the FHWA's Bureau of Motor Carrier Safety, and \$418 by the Federal Railroad Administration. Do you believe the penalties in that amount are adequate to serve as a deterrent?

Mr. CURTIS. I think that the penalty structure is adequate, sir. We would have to examine at least a statistical sample of those cases in which a penalty was assessed to give a final answer to that, but I do

believe that the review process within a department was sufficient, that those numbers were adequate at that particular time, sir.

Mr. GOLDWATER. Would the gentleman yield?

Mr. HOWARD. Yes.

Mr. GOLDWATER. In that regard, if there is an accident, who is liable? The carrier or the packaging manufacturer?

Mr. CURTIS. Mr. Santman, general counsel of the bureau, would you like to comment on that?

Mr. SANTMAN. In terms of penalty, imposition of a penalty?

Mr. GOLDWATER. Yes.

Mr. SANTMAN. It could be either or both.

Mr. GOLDWATER. There was some airline violation, and I believe it was \$10,000?

Mr. SANTMAN. I do not recall the figures but I believe you are probably talking about the Logan Airport crash that involved nitric acid that had been improperly packaged. In that case penalties were imposed against both the carrier and the shipper.

Mr. GOLDWATER. You do not recall how much for each, do you?

Mr. SANTMAN. No, I do not.

Mr. GOLDWATER. Thank you, Mr. Chairman.

Mr. HOWARD. In your attachment No. 5 regarding hazardous materials incidents involving death or injury, the 1975 figure for injuries under the "Other" indicates a question as to whether the unloading of a hazardous material is part of its transport and, therefore, subject to your requirement of a report in the event of death or injury. Does an accident at the time of unloading or loading come within your purview, and in the event of a need to file a report to you, is it a shipper, carrier, or someone else who has the responsibility to make the report?

Mr. ROBERTS. It depends on who performed the unloading, Mr. Howard. If the carrier and its personnel performed that unloading or participated in it, then it would be a reportable incident.

However, if a transport vehicle were turned over to the consignee, and the consignee handled it in his own time and on own facility, then we would not receive a report on that. It is considered out of transportation, and we would not have reports on that.

Mr. HOWARD. I wonder whether that report would then be required by some other agency?

Mr. CURTIS. It should have been OSHA. If it is out—

Mr. HOWARD. You would not have a very steady, reliable figure on the loading or unloading, because only as you say, sometimes it would be your reporting and you would know of it, sometimes it would be someone else's. That is probably something we ought to look at to see if we can get something a little more stable in the reporting on that.

Mr. CURTIS. Your point is well taken, Mr. Chairman.

Mr. HOWARD. You indicate that docket HM-112 would result in clearer identification of hazardous material to further lessen the chance of improper introduction of these materials into commerce.

Would you spell out how clearer identification would be effected and how such clearer identification would lessen the chance of improper introduction as, you say, of those materials in commerce?

Mr. CURTIS. Yes, sir, as I believe I indicated in the statement, HM-112 was designed to bring together stipulations that were in three different titles and in three different volumes. To bring them together brought some degree of editorial consistency across the board. They were brought together in a manner that a shipper could logically follow the regulations more easily depending, regardless of the mode of transportation that he intended to introduce the commodity into, and therefore, I would say they were somewhat more clearer, sir.

Mr. HOWARD. You also indicate that HM-112 would provide for uniform placarding and labeling requirements to eliminate another source of difficulties with intermodal shipments.

Would you give us some example of what would constitute uniform placarding and labeling requirements?

Mr. CURTIS. Mr. Roberts, do you want to go into the size and dimension of those placards?

Mr. ROBERTS. At the present time there are two principal placarding principles for transport vehicles, one utilizing railroad mode and one in the highway, completely different presentations. Under the new system, all placarding will be in the same format.

Mr. HOWARD. You mean the same format, the same kind of format to reflect the same kind of hazard and communicate the same method regardless of the mode of transportation?

Mr. ROBERTS. In the labeling area, the main uniformity there was already accomplished, although now we do have additional labeling requirements that reflect requirements in the international area, imposed by the Intergovernmental Maritime Consultative Organization. This is reflected in the highway area, authorizing that labeling so that the same label may appear on the package from the point of origin at inland points in the United States to their ultimate destination, say, in Europe.

Mr. HOWARD. We received the other day a report from the National Transportation Safety Board on the collision of a motor home with a bridge column near Monroe, Mich. In that collision a fire ensued which was fed by two 40 pound propane tanks. Seven of the vehicle's occupants died as a result of asphyxiation, and flame inhalation. Do you know whether your data bank contains statistics that would indicate the number of accidents in which propane in motor homes was a factor, and if it so indicates, and you are convinced that specific action had to be taken in order to lessen probability of such accidents, what action can you take?

Mr. ROBERTS. Our data bank would contain information concerning propane, but not on incidents involving privately operated motor homes, because that vehicle was not operated in commerce, and therefore, would not be within the purview of the Materials Transportation Bureau. We do set the standards for propane cylinders and their utilization for all purposes in the United States, and quite often information does come to our attention concerning the use and adverse experience involving those cylinders even in cases where commerce is not involved.

We would have the information concerning those materials in commerce that involved incidents involving propane.

Mr. HOWARD. I wonder if Mr. Rivard could tell us whether the States would set up requirements for things like that that are not in commerce or motor homes?

[Discussion off the record.]

Mr. ROBERTS. Mr. Howard, may I comment on that, sir? There are two agencies that would be concerned with propane at the Federal level besides our Bureau in this case. One is the National Highway Traffic Safety Administration. If this involves an installed fuel system aboard recreational equipment, I am not fully acquainted with what standards or how far or extensively they have dealt with those standards at this time.

However, another agency is the Consumer Products Safety Commission, that also holds authority and has been involved in certain propane incidents involving small disposable-type propane cylinders.

Mr. HOWARD. Thank you.

I have no further questions; I am sure some of the other members do.

We will continue as soon as we return from this vote, which is on a rule to the Higher Education Act.

The subcommittee stands in recess.

[Brief recess.]

Mr. HOWARD. The subcommittee will come to order.

The Chair recognizes the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman.

I am very much concerned about the whole issue of overregulation. We are in the posture we are in today in the country as far as overregulation is concerned largely because there are many, many good programs which come before the Congress, and the Congress looks at them and says that is a good idea and funds them and they grow the way things naturally grow in Washington, and ultimately we find ourselves with increased budgets and increased bureaucracy.

Yet very persuasive cases can be made on an individual basis. But I do want to explore this avenue here to see if in my own mind I can justify your request, starting with the position that your agency should not exist, and proceeding from there. Please do not take it personally, but I think it is the proper way to proceed.

Let me start by asking you the question: What was the President's request for the budget?

Mr. CURTIS. The President's request, sir, was about \$3.5 million, \$3.5 million or \$3.6 million.

Mr. SHUSTER. I have a very difficult time with the notion that we go from \$3.5 million to \$7 million. Did I understand you previously to say your budget last year was \$2 million?

Mr. CURTIS. A little over \$2 million, yes, sir.

Mr. SHUSTER. You spent \$2 million?

Mr. CURTIS. Yes, sir.

Mr. SHUSTER. Justify for me how you can go, first, from \$2 million to \$3.5 million, which is what the President asked for, and if we can get past that, how do we go from \$3.5 million to \$7 million?

Mr. CURTIS. All right, sir. If I might go through it, let us start out by saying I agree with your theory of zero budgeting, sir. I think each particular program, and this one especially, should be looked at from that particular standpoint. You look at where we are in fiscal 1976, and

you realize that certain new legislation was proposed and some new resources were added in fiscal year 1976. In 1977 the plans were to fully implement the act as passed by the Congress, which provided for regulation, direct regulation of some persons, some categories or people that were not formerly regulated.

Mr. SHUSTER. That would be in the President's budget presumably, \$3.5 million, or whatever it is?

Mr. CURTIS. That is correct, sir.

Mr. SHUSTER. Take it from 64 to 144?

Mr. CURTIS. Yes.

Mr. SHUSTER. I have difficulty with the idea, from a management point of view, of an organization growing, doubling and tripling in size in a given year. That is just an enormous burden on an agency, and it is extremely difficult to assimilate that kind of rapid growth. It is difficult to perceive growth which is that rapid being orderly. I have real trouble with the numbers.

But beyond the numbers, getting into the substance of what you do, as I understood it, there were how many fatalities as a result of the hazardous substances? 38, 25? The numbers are in here somewhere.

Mr. CURTIS. Twenty-seven deaths and 657 injuries, sir, directly attributable.

Mr. SHUSTER. How do you decide what is a hazardous substance?

Mr. CURTIS. We have some very specific criteria.

Mr. SHUSTER. You are the ones that make that decision?

Mr. CURTIS. That is correct. That determination is made——

Mr. SHUSTER. I know that there are more investigations into paint than anything else.

Mr. CURTIS. More reported incidents of that. The question is whether everything is being reported that should be, sir.

Mr. SHUSTER. What makes paint a hazardous substance?

Mr. ROBERTS. This is only those paints that are cast as flammable liquids. That is not the paints that would be like latex-base house paint.

Mr. SHUSTER. Back to my previous question, how do you determine what is hazardous?

Mr. ROBERTS. The Department's regulations specify by quantitative criteria what is a flammable liquid.

Mr. SHUSTER. Something which is flammable is hazardous in movement, is that what you are saying?

Mr. ROBERTS. Yes, sir, that would include gasoline, paints, and different chemicals, probably in excess of 100,000 materials.

Mr. EDGAR. Would the gentleman yield?

Mr. SHUSTER. Yes.

Mr. EDGAR. Now, what method determining combustibility or flammability does your Department use? Do you use the open cup or closed cup?

Mr. ROBERTS. As of this January 1, the Department of Transportation recognizes the closed cup test.

Mr. EDGAR. Thank you.

Mr. SHUSTER. I have great difficulty with going from \$2 million to \$7 million, and unless I am persuaded otherwise between now and the time of markup, I will offer an amendment to strike from \$7 million, at least back to the President's budget, \$3.5 million, or whatever it is.

That is all the questions I have, Mr. Chairman.

Mr. HOWARD. Ms. Abzug?

Ms. ABZUG. I am not fully clear about the purposes of these amendments. Primarily, section 3, in which it is proposed that section 107(a) of the Hazardous Materials Transportation Act be amended by striking out the phrase "transports or causes to be transported or shipped hazardous materials in a manner so as to achieve," and substitute therein "will provide for."

Now, what is the intent? I assume that that would not cover people who are manufacturing, is that correct?

Mr. ROBERTS. That is correct.

Ms. ABZUG. Is it not our objective to narrow the possibilities of exemption, rather than to broaden them, and does this not broaden them?

Mr. CURTIS. It does not necessarily broaden them, but once you have been given the power to regulate, and given the section within the law that provides for exemption, it would appear consistent to—if you are going to regulate an exemption group, that you exempt all groups, or be allowed to exempt all groups.

Ms. ABZUG. I have no particular interests in being consistent.

What I am interested in is whether or not an exemption is going to be strictly interpreted, so that the exemptions are narrowed, and not made broader.

Now, I just want to get this very clear in my head, because we are dealing here with the kinds of materials which—which are hazardous and therefore we want to have regulations apply very strictly. For example, if we are dealing with nuclear materials, we would not want—we would want the balance to be mandated toward as many proportions as possible, rather than granting exemptions.

If you put in manufacturers, all you do is widen the possibility of exemptions in the hazardous situation, and I would oppose it. I think many people would.

You have to have another reason, and it is a little unfair to me.

Mr. CURTIS. I would agree with you—

Ms. ABZUG. What is the specific reason for your having come before us and asking for this piece of legislation, what is the particular hardship that the manufacturer or that the Agency is undergoing that has caused you to bring in this piece of legislation? At least this section of the legislation?

Mr. ROBERTS. We wanted to be able to deal directly with the container manufacturer, rather than indirectly with shippers.

If a packaging deviation is requested, it would be much more appropriate for us to deal with the manufacturer of that packaging, place the onus of the regulatory requirements directly on him, and should he breach those requirements, we could deal directly with him, rather than dealing with several hundred users of this packaging.

It seems more appropriate to deal that way with these people, since they are responsible for how they fabricate and construct these packages.

Ms. ABZUG. Well, let me ask you a question.

If this is granted, or if the legislation is amended in the way that you propose, would it cover manufacturers of nuclear waste materials?

Mr. CURTIS. Possibly the packaging manufacturers of nuclear waste materials. The manufacturers of the nuclear waste, or the people who generate the nuclear waste would be the people who package the material.

Mr. ABZUG. Your explanation has a few problems in it for me.

If you want to deal directly with the manufacturer, why do we exempt the section that you are intending to expand? There is a new logic to your position.

Mr. CURTIS. The other people are——

Ms. ABZUG. I mean it is, if you are talking about including the manufacturers in the area, in the section of the statute that provides exemptions, not that you really want to deal with them so much, it is that you want to give them exemptions, and I am not for that.

Mr. CURTIS. Your particular position, as I understand it, I believe, is that we should deal differently with different classes of people regulated under the statute.

Our particular position has been that we should deal the same way with all classes.

In other words, shippers, containers, manufacturers, carriers.

Ms. ABZUG. Well, what particular thing has come up to make you realize that this factor has to be so amended? What has happened? Give me an example.

Do you mean some lawyers sat around and said we should have this?

Mr. CURTIS. This—Nothing specific has come up in the general review of the statute. This is a technical amendment.

If I might speak further toward the situation, that I believe causes you concern, and causes the Department concern, that in the past there appeared, at least public, and on the surface, that there was a great deal of regulation of this particular type of commodity by exemption.

We do not intend to do that in the future. That is the reason for reducing, and supporting the more strict exemption program.

Ms. ABZUG. If you do not intend to do it, why expand the exemption? You have not explained that to me.

Mr. ROBERTS. It is to make it consistent with section 105.

Ms. ABZUG. There is no particular value in being consistent.

Mr. CURTIS. That is our——

Ms. ABZUG. If indeed you want to make sure that you do not expand the exemptions, then you do not include another class in the exemption provision. You do the reverse. You tighten up, and you amend the section to provide less opportunity for exemption.

So why do you not tell me the real reason?

Mr. CURTIS. Our reason for asking that is the real reason.

Ms. ABZUG. Let me explain something to you.

I think it is important that as far as hazardous materials are concerned, that you apply jurisdiction over all the classes.

So we enacted, as I recall it, a ban on plutonium ash shipments, in a much stronger container. Those are the kinds of things.

We are very much concerned about a shipment of radioactive material in the large centers. You know, in New York we had an experience in which a radium shipment fell off a truck. It was only covered by chance. There are incidences in other places, Connecticut, and so on.

What we are trying to do is to make sure that the Federal Government is not going to utilize this action to prevent some efforts being made to ban, for example, transportation of nonmetal radioactive materials to populated areas. The Federal Government has not always understood this.

As a matter of fact, I think there were various court challenges on this.

What I am trying to figure out is whether or not the involvement of the manufacturer, and the manufacturer of containers, and so on, in this exemption provision is necessary.

If we want to have strict instruction, strict interpretations—then this is not the kind of legislation I think we need.

Now, I may very well propose an amendment later on as to what I think we do need, which is, essentially, to investigate, to have a report of Congress on the steps of the hazardous transportation of shipments which can result in untold casualties.

But I do not understand why you want this particular section of the statute amended, and I just do not believe that you would have brought this bill here just for the sake of consistency.

Mr. CURTIS. Let me assure you that is our sole reason for bringing it.

Mr. HOWARD. The gentleman from California, Mr. Mineta.

Mr. MINETA. Thank you, Mr. Chairman.

To follow up on what the gentlewoman from New York is saying, under the present regulations, when we deal with adequacy, is that the adequacy of the regulations, or the adequacy of the enforcement powers?

Mr. CURTIS. The adequacy of the enforcement powers.

Mr. MINETA. Are you trying to attack that adequacy as to whether or not you have necessary enforcement powers?

Mr. CURTIS. Let me come back for a moment.

We are looking, first of all, at an adequate regulatory program, followed up by an adequate enforcement program. We are trying to achieve both.

We are ready to go with the situation, that it is a safety program, and we are trying to do it in such a manner that we are not regulating for the sake of regulating, but we are regulating to achieve the major safety, and carrying on adequate compliance with the enforcement program to see that that safety factor is spelled out in the regulatory concept, and is indeed being met by those who introduce these commodities in the flow of commerce.

Mr. MINETA. But to include this as a further exemption; is that not an exemption?

Mr. CURTIS. I believe that the act so implies that we should deal, that we have the authority to handle exemptions at this particular time. This was just—this would just specifically make it a part of the law.

We deal with these situations on the basis of consistency among classes of those that we regulate, and I do not think that we can deal inconsistently.

Now, by the same token, if we have no exemption, that would not trouble the Department of Transportation, sir. We are not here advocating further extension of that part of the act.

Mr. MINETA. Thank you, Mr. Curtis.

Thank you, Mr. Chairman.

Mr. HOWARD. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. No.

Mr. HOWARD. The gentleman from Missouri.

Mr. TAYLOR. Thank you, Mr. Chairman.

In this increase in the budget, from the \$2½ million to the \$3 million, \$3½ million to the \$7 million; how many more people are going to be employed in your Agency?

Mr. CURTIS. How many more people?

Mr. TAYLOR. Is this a personnel increase?

Mr. CURTIS. Part of it might be. In order to get this number more properly reflected, sir, it is—it is approximately \$3.7 million that is being requested in the total budget situation.

Yes; there would be some increased numbers. Do you have those, Mr. Roberts?

Mr. TAYLOR. How many people are employed at the present time? How many persons?

Mr. CURTIS. In the hazardous material area, sir, there are 64. Sixty-four in the hazardous material area.

Mr. TAYLOR. I see. And are these personnel distributed throughout the United States, or do you have agencies—

Mr. CURTIS. They are all in Washington, sir.

Mr. TAYLOR. All in Washington?

Mr. CURTIS. Yes, sir.

Mr. TAYLOR. With the increase in budget, you would estimate that there would be a substantial increase in personnel, and the increase in these budgets is \$2½ million, \$7 million—how much of that in relation to people?

Mr. CURTIS. Do you want a dollar number that relates to increase in personnel?

Mr. TAYLOR. There is certainly some correlation on what we are going to have the Secretary give \$4½ million for. I am wondering where it is going. Whether it is personnel.

Mr. CURTIS. Well, a portion of it would be for personnel.

We would have approximately, under the \$7 million authorization estimate, we would be talking about 230 people.

Mr. SHUSTER. Would the gentleman yield?

Mr. TAYLOR. Yes.

Mr. SHUSTER. My understanding in previous questioning, and I may be incorrect, was that you are at 64, the present budget would take you to 144, and the \$7 million would take you to 230.

Mr. CURTIS. That is correct.

Mr. TAYLOR. Now, in the event that this legislation is enacted, looking at your figures for 1974 and 1975, do you have any projections to how much these figures might be included as a result of this extra—

Mr. CURTIS. I make it a practice never to forecast that.

Mr. TAYLOR. Am I correct in what you are dealing with here primarily are packaging containers for these substances to be released?

Mr. CURTIS. That is correct.

Mr. TAYLOR. That is the main thrust of what you are going to be dealing with, packaging of containers of hazardous substances?

Mr. CURTIS. That is correct.

Mr. TAYLOR. That is all.

Mr. SHUSTER. Mr. Chairman, can I just develop one other line of questioning in respect to this?

I realize that you cannot equate human lives to dollars. Nevertheless, if we look at the number of people that you have, the dollars

proposed to be spent, it would appear that you are—taking the present budget level—at \$100,000 in budget expenditures per fatality that occurs.

I do not even know that that is a sensible way to look at it. But it is one way to look at it.

Over in the highway program, there are various highway safety programs—are you suggesting that buying \$7 million would make it five times more cost effective?

Are you suggesting that if your budget is increased, is doubled from 2.1 to 4.2 that you are going to reduce the fatalities in half?

It is admittedly not a fair question, yet there is a certain logic that if you are not going to reduce the fatalities substantially, then we should not increase the budget.

Mr. CURTIS. What we are going to reduce, sir, I believe, is the public exposure to improperly packaged commodities in commerce.

Mr. SHUSTER. Which must ultimately, over the long run, translate into lives saved, and if it does not, then it is not money well spent.

Mr. CURTIS. If you reduce the exposure, then there is logically, it follows that you are going to reduce the loss in lives.

Mr. SHUSTER. I welcome some rebuttal to my statement here, that based on the fact that the present budget is \$2 million, and the President's request is \$2.1 million, why should not I offer an amendment to reduce this from \$7 million down to at least the President's budget, which I intend to do, unless somebody persuades me otherwise.

Mr. CURTIS. As I previously testified, sir, under the recommended budget, the President's budget, I support that, and we will do—

Mr. SHUSTER. You will take as much over that as you possibly can get?

Mr. CURTIS. We will do some work over these areas if that work is met.

Mr. SHUSTER. Thank you very much.

Mr. HOWARD. The gentleman from Pennsylvania, Mr. Edgar.

Mr. EDGAR. Thank you, Mr. Chairman.

I think that many of my concerns about this bill were raised in previous questions, but I find it very curious to see the 64 person figure for your staff in 1976, and you are projecting a different level for 1977.

Mr. CURTIS. In the budget of 67.

Mr. EDGAR. In the hazardous materials section?

Mr. CURTIS. Sixty-seven budget.

Mr. EDGAR. How many people in the 1977 budget?

Mr. CURTIS. Sixty-seven, sir.

Mr. EDGAR. And for that you are going to increase from \$2.9 million, which you requested, to the \$7 million?

Mr. CURTIS. No, sir.

Mr. EDGAR. I do not understand that.

Mr. CURTIS. Well, the President's budget is designed to accommodate the additional three people, from 64 to 67.

Mr. EDGAR. That is Office of Budget, the testimony which you presented here today?

Mr. CURTIS. Yes, sir, they have—

Mr. EDGAR. Have they approved it?

Mr. CURTIS. Yes, sir, they have.

Mr. EDGAR. I am curious about your statement where you indicate your views on that \$7 million, which is the amount Congress authorized for fiscal year 1976.

You say:

While the proposed levels in H.R. 13124 exceed the amount recommended in the President's budget for fiscal year 1977, we believe those levels are appropriate, and will provide sufficient latitude to meet foreseeable program needs.

I have a great deal of difficulty with that, because as one Member of Congress, we get blamed for padding the budget that the President brings before us on February 1, a budget that looks like 390.4 billion. Then you, as an agency, come before us, asking that your budget be increased from 2.987 million to \$7 million.

Mr. CURTIS. I did not ask for a budget increase.

Under discussion was an authorization bill for this particular amount which I do not consider a budget—

Mr. EDGAR. Can you give me any idea as to who wrote the bill that we have before us?

Mr. CURTIS. This particular bill?

Mr. EDGAR. Yes.

Mr. CURTIS. It was written in General Counsel's Office in the Department of Transportation.

Mr. EDGAR. I am still very much confused, because you are here testifying for this bill, but you would be willing to accept the \$2.987 million figure, and make that the figure that you are willing to live by?

Mr. CURTIS. Yes.

Mr. EDGAR. Let me ask you another question.

I have been very interested in the Federal Hazardous Substances Act amendment, and the work of the Consumer Products Safety Commission in Federal hazardous substances.

What kind of coordination is there between your agency and the Consumer Products Safety Commission?

Mr. ROBERTS. My office does have some contact with the Consumer Products Safety Commission. We do have contacts with certain staff personnel on certain matters that do involve both agencies.

Mr. EDGAR. How much duplication is there in your writing of regulations for containers and the transportation of hazardous substances with that same rule and regulation that has to be provided in the Federal Hazardous Substances Act?

Mr. ROBERTS. Up to the present time there has been very little. I have been very interested in this subject, because we have common interests in things like aerosol cans. We are the only agency that provides standards for an aerosol can, about 3½ to 4 billion a year.

We have been managing this program ever since the inception of aerosol cans.

Obviously, the agency has the authority, and should take a look at the quality and the integrity of aerosol container systems, from the standpoint of consumers.

We look at it from the standpoint of transportation. There are other areas picked off their reporting system, such as fire extinguishers, matches, fireworks, and we have talked with them about various of these standards.

I think they have moved in areas where we do not.

Mr. EDGAR. Is there not a way where we get all of the regulators under one umbrella who are regulating hazardous substances, so that the jurisdictions are not spread, as I see them spread?

Mr. CURTIS. Yes, sir, I would think that there probably is that kind of a vehicle.

Mr. ROBERTS. If you add the word safety to that statement, I would agree with you, Mr. Edgar.

But, for example, security interests of the Treasury Department might not drive to the safety interests of the Department of Transportation in terms of transportation of explosives, for example.

Mr. EDGAR. There ought to be some way that you could get together and discuss the different aspects of containerization. Because not only is an aerosol can transported, but it is used in a particular point in time. It seems to me that we are tempted to duplicate the regulatory process.

Mr. ROBERTS. Also, you mentioned one item earlier, I think that it probably comes from your interest in CPSC, about flash points.

Several years ago we sat down with all the agencies, Federal and other agencies, such as the New York Port Authority, and examined all the different definitions being employed for flammability and combustibility.

There were about eight present standards. At the present time there are only two. Those of OSHA, the New York Fire Authority stands alone by themselves as a consumer product, with its statutory composed definitions.

Mr. EDGAR. I have an amendment to the Hazardous Substances Act, which deals with flammability and flash points, which would give to the Consumer Product Safety Commission the flexibility to go along with your definition of flammability.

I am not an expert in it, but someone in my congressional district has spent a lifetime trying to develop a safe way of determining flash point flammability. He provided me with some extensive testimony on the subject, and I was impressed with the fact that you changed your standards as of January, and have, I think, a better way of accounting for materials.

Mr. Chairman, I think that is all the questions that I have at this point. I appreciate your consideration of giving me the time.

Mr. HOWARD. The gentleman from Illinois, Mr. Fary.

Mr. FARY. No questions, Mr. Chairman.

Mr. HOWARD. The gentleman from Minnesota.

Mr. HAGEDORN. No.

Mr. HOWARD. The chief counsel to the committee has some questions.

Mr. SULLIVAN. In your opinion, does this amendment to section 107(a) increase or decrease your exemption authority? Yes or no.

Mr. CURTIS. No.

Mr. SULLIVAN. Why do you say that?

Mr. CURTIS. Because we determine the fact that we are now acting in the manner that the amendment would indicate very specifically which we should.

Mr. SULLIVAN. You have a rulemaking procedure right now that allows you to do this?

Mr. CURTIS. That is right, sir.

Mr. SULLIVAN. What is the purpose of the amendment?

Mr. CURTIS. I am sorry, I do not think that we have anything specific.

Mr. SULLIVAN. Well, what is confusing, at least to me, as 107(a) reads now, "the Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this title, an exemption from the provisions of this title, and from regulations issued under section 105 of this title"—which, of course, is the regulations governing hazardous materials—if such comes under the limitation which limits, I believe the general language that appears in the beginning of section 107(a)—"if such person transports, or causes to be transported, or shipped hazardous materials in a manner so as to achieve a level of safety"; (1), (2), et cetera.

The amendment proposed would strike out the language "transport or causes to be transported or shipped, hazardous materials in a manner so as to achieve a level of safety," and would then read that such person "will provide one," et cetera.

Now, I do not fully understand from a legal viewpoint what is intended by striking out the language I read, and what is intended by adding the words, "will provide for."

Mr. CURTIS. Mr. Santman?

Mr. SANTMAN. The words that would be struck out by the amendment mention shippers and carriers. It mentions shippers and carriers. It does not mention manufacturers, processors, et cetera.

It mentions A and B, but it does not mention C. By striking those words, and putting "in the raw material, will provide," it would cover, A, B, and C. It would cover the shippers, the carriers, and container manufacturers.

Mr. SULLIVAN. Right now, then, if you will excuse me, under existing law, the manufacturers of containers do not have an exemption, is that correct?

Mr. SANTMAN. That is not the way we construed it.

When we established exemption procedures to implement section 107 of the act, we made our exemption procedures broad enough to cover shippers, carriers, and the manufacturers of containers, and in the final rulemaking, the preamble in the final rulemaking in which we did that, we recognized what we believed to have been a clerical error, a clerical omission in section 107.

Mr. SULLIVAN. What do you mean by clerical omission?

Mr. SANTMAN. I think the drafters just dropped it.

Mr. SULLIVAN. When this act was originally drafted and out together?

Mr. SANTMAN. Yes, sir.

Mr. SULLIVAN. The container manufacturers were excluded?

Mr. SANTMAN. The container manufacturers are mentioned in section 105 as one of the three kinds of people who are subject to regulations promulgated by the Secretary.

They are mentioned again in section 106(b) as one of the groups of people who could be subject to legislation.

Mr. SULLIVAN. 105(a), it says, "manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container," right?

Mr. SANTMAN. Yes, sir.

Mr. SULLIVAN. It says also in 106(b), and quite direct. Does that necessarily follow, because they mention in 105 that the drafters of this legislation should be excluded under 107.

Mr. SANTMAN. They also mention in section 109(c) for inspection, and again in section 110(a) under civil penalties. Both groups, the ship carrier group and the manufacturers group.

Mr. SULLIVAN. Fine, but—I would agree that would mean it would bring it within the framework of the regulations to establish under the law. The control of that operation. It would not necessarily follow that also you could read into this that the order might be except them.

I do not know what the people who drafted this legislation intended originally.

Mr. ROBERTS. If I may comment on that.

The end result is the same. It is an administrative burden, and also a matter of appropriateness involved. We have 160 container specifications.

Now, if a bag manufacturer wishes to make a four-ply paperboard with a certain liner in a fashion he feels is better than what is specified in our regulations, and there is a regulatory lag until we catch up, then he seeks an exemption.

If we do not have the authority to give the bag manufacturer, then we have to handle, say, 500 shippers, using his bag, or desiring to use his bag until we caught up with the regulatory program, we would rather deal with the bag manufacturer. He is the man responsible to ascertain that he has made that bag in accordance with the exemption we would grant, and all of its conditions.

Mr. SULLIVAN. What you are saying is a matter of expediency of the program, that the exemption is needed, is that what you are saying?

Mr. ROBERTS. Yes, sir. It is rather important to us, and it is also the better way to handle it.

Mr. HOWARD. Mr. Curtis, we note there has been some confusion concerning the amount of money in this bill.

H.R. 13124 was introduced, as the bill says itself, by request. We have been informed that it was introduced at the request of the Department of Transportation, which we believe to mean under the direction of the Secretary of Transportation.

The bill represents authorization of \$7 million. We find that the President's budget would request something like \$3.5 million, so that not only is there now then a difference in the request by the President in his budget from the request by the Secretary of Transportation, but also we are told that the Director of the Office of Management and Budget, who we thought was the one that helped put together the President's budget, agrees with this \$7 million figure.

So we wonder whether he now disagrees with the figure that he agreed to in putting up the President's budget.

Mr. SHUSTER. Would the gentleman yield?

Mr. HOWARD. Yes.

Mr. SHUSTER. I am just now informed by my staff that the real budget requested by the President, confirmed by the Fiscal Office of the Department of Transportation, is \$2.1 million.

Mr. HOWARD. Before we pass a bill that would be open to a veto at the request of the Office of Management and Budget, we ought to find

out whether he supports the figure that he gave to the President in making up his budget, or what he agreed to through the request of the Secretary of Transportation.

Since there are no further questions, the subcommittees will adjourn, pending the call of the Chair.

[Whereupon, at 4:27 p.m., the subcommittees adjourned, subject to the call of the Chair.]



and whether he supports the fight that we gave to the President in
 making his budget or what he has to do through the request of the
 Secretary of the Treasury.
 I am not sure whether the Subcommittee will adjourn
 during the call of the Chairman.
 [The Chairman adjourned.] The Subcommittee adjourned, subject to
 the call of the Chairman.



