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**Record Group/Collection:** George H.W. Bush Presidential Records  
**Collection/Office of Origin:** Executive Clerk, White House  
**Series:** Bill Files  
**Subseries:**

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**OA/ID Number:** 03008  
**Folder ID Number:** 03008-014

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**Folder Title:**  
1990-11-16 - [Enrolled Bill S. 2936: Hazardous Materials Transportation Uniform Safety Act of 1990]

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Stack:	Row:	Section:	Shelf:	Position:
<b>G</b>	<b>18</b>	<b>30</b>	<b>1</b>	

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APPROVED  
NOV 16 1990

THE WHITE HOUSE  
WASHINGTON

November 16, 1990

MR. PRESIDENT:

Attached for your signature is S. 2936  
-- Hazardous Materials Transportation  
Uniform Safety Act of 1990.

This Bill has the approval of OMB,  
Transportation, Agriculture, FEMA,  
and the Offices of Cabinet Affairs  
and Policy Development. Counsel has  
no legal objection.

Thank you.

  
James W. Cicconi

LAST DAY FOR ACTION: Wednesday, Nov. 21



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

November 15, 1990

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 2936 - Hazardous Materials  
Transportation Uniform Safety Act of 1990  
Sponsors - Sen. Exon (D) Nebraska and 2 others

Last Day for Action

November 21, 1990 - Wednesday

Purpose

(1) Authorizes appropriations for the enforcement of the Hazardous Materials Transportation Act (HMTA) for FYs 1991-1993; (2) establishes a program of grants for FYs 1993-1998 to train State and local government personnel to respond to hazardous materials transportation accidents; and (3) makes numerous, miscellaneous amendments intended to strengthen enforcement of the HMTA.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
Department of Agriculture	Approval
Federal Emergency Management Agency	Approval
United States Postal Service	No objection
Nuclear Regulatory Commission	No objection (Informally)
Department of Defense	No objection (Informally)
Department of the Interior	No objection (Informally)
Department of Justice	Defers
Department of Labor	No comment (Informally)
Department of Commerce	No comment (Informally)
Department of Health and Human Services	No comment (Informally)
Department of the Treasury	No comment (Informally)
Environmental Protection Agency	No comment (Informally)
Department of Energy	No comment (Informally)

Discussion

The HMTA is the principal Federal law regulating the safe transportation of hazardous and radioactive materials. Under the Act, the Department of Transportation (DOT) is responsible for

regulating shippers and transporters of hazardous materials ("hazmat"). DOT also is responsible for regulating persons who manufacture, fabricate, or retest hazmat containers. The appropriations authorization for HMTA activities expired at the end of FY 1986.

S. 2936, which passed the Senate by unanimous consent and the House by voice vote, would authorize appropriations for HMTA activities and make numerous amendments to the Act. Its most significant provisions are described below. Other provisions are described in an Attachment.

-- Appropriations Authorizations

S. 2936 would authorize total appropriations for the Department of Transportation's enforcement activities under the HMTA of \$20 million for FY 1991, \$22 million for FY 1992, and \$41 million for FY 1993. The enacted FY 1991 appropriation for HMTA programs is \$10.4 million.

-- Registration and Permitting

S. 2936 would require all transporters of specified categories or quantities of hazardous materials to be registered with DOT. (DOT could require the registration of other hazmat transporters.) DOT would have to issue regulations within a year requiring all motor carriers transporting hazardous materials to have valid safety permits issued by the Department. This requirement would take effect two years after enactment. DOT would be authorized, but not required, to impose charges sufficient to recover the costs of the registration program.

-- Grant Programs

By September 30, 1992, DOT would have to issue regulations mandating that all registered hazmat transporters pay an annual fee. This fee would be based on criteria specified in the enrolled bill, but could in no case be lower than \$250 or higher than \$5,000. These fees would be deposited in a special account, and would be available without appropriation in FYs 1993-1998 to support grants as follows:

- \$5 million per year to assist States in developing plans for responding to hazmat transportation emergencies.
- \$7.8 million per year to help States and Indian tribes train public sector employees in responding to hazmat transportation emergencies.
- \$250,000 per year for nonprofit organizations to conduct safety training for employees of hazmat transportation companies.

In addition, \$1 million would be made available during each of FYs 1993-1998 for the development of hazmat training curriculums. (Appropriations of \$1 million from the general fund in each of FYs 1991 and 1992 would also be authorized for this purpose.) Finally, \$2,450,000 would be made available from fee revenues for certain monitoring activities to be performed by several agencies.

-- Additional Inspectors

S. 2936 would require DOT to hire 30 more hazardous materials safety inspectors than the 684 inspectors authorized in FY 1990. The Department would be required to dedicate 10 of these additional inspectors to specified activities involving the transportation of radioactive materials.

-- National Monitoring Center

S. 2936 would require DOT to complete a rulemaking within 19 months of enactment on the feasibility of establishing a center to monitor, on a national basis, all hazmat shipments. DOT would have to contract with the National Academy of Sciences (NAS) to perform a study and provide recommendations on this issue, to be submitted to the Secretary and Congress within 19 months of enactment. (Appropriations of \$350,000 would be authorized to support this study.) Within 25 months of enactment, the Secretary would have to report to Congress his own recommendations regarding such a system. Where the Secretary does not recommend an action recommended by NAS, an explanation would be required.

Earlier this year, DOT opposed a bill (H.R. 2584) which would have required the establishment of such a national monitoring center. According to DOT, such a central monitoring system would be extremely costly and difficult to implement.

-- Routing

S. 2936 would authorize States and Indian tribes to designate specific highway routes over which hazardous materials may and may not be transported. DOT would be required to issue regulations, within 18 months of enactment, prescribing standards and procedures to be followed by States and Indian tribes in making and enforcing such designations. Starting two years after these regulations are issued, States and Indian tribes would be preempted from making any decisions regarding routing which are inconsistent with these regulations. (Routing determinations made before these regulations are issued, however, would be "grandfathered" even if they are inconsistent with the regulations.)

DOT would be required to establish procedures for resolving routing disputes among Indian tribes, States, and Federal agencies. DOT would have to resolve such disputes within one year. Disputants would be permitted to appeal adverse decisions to Federal district courts within 90 days after a decision becomes final.

#### Administration Position To Date

In a March 12, 1990, letter to the House Energy and Commerce Committee, DOT opposed several provisions of a related bill, H.R. 3520. The most important objections were to provisions mandating a registration requirement similar to the one in S. 2936, and a provision requiring DOT to hire 200 additional safety inspectors (compared with the 30 required by the enrolled bill).

#### Conclusion and Recommendations

In its enrolled bill views letter, DOT expresses concerns regarding the mandatory registration requirement. According to DOT, assuring the compliance of all of the "minimum of 100,000 entities" covered by the requirement would "severely restrict our ability to carry out our mandated safety regulatory responsibilities." Moreover, DOT notes that "the bill does not exempt foreign persons from registration fees, and we are very concerned about the potential effect on U.S. trade, because foreign governments may impose comparable fees on U.S. companies." DOT concludes, however, that the enrolled bill "on balance . . . provides needed improvements and is a positive step in ensuring the safe transportation of hazardous materials."

We join the Departments of Transportation and Agriculture and the Federal Emergency Management Agency in recommending approval of S. 2936, which passed the Senate by unanimous consent and the House by voice vote.



Richard Darman  
Director

Enclosures

Miscellaneous Provisions of S. 2936

Regulations and Preemption

The HMTA currently states that DOT "may" issue regulations regarding the transportation of hazardous materials in "commerce." State and local laws which are "inconsistent" with such regulations are preempted, unless exempted from preemption by DOT. According to the House Energy and Commerce Committee report on H.R. 3520, a related bill, DOT has applied HMTA regulations only sparingly to intrastate and foreign commerce, and determinations as to whether State and local laws are "inconsistent" with DOT regulations frequently generate time-consuming administrative and legal proceedings.

S. 2936 would require, rather than permit, DOT to issue regulations implementing the HMTA. It would also require that these regulations cover intrastate and foreign, as well as interstate, commerce. Preemption would apply only to HMTA regulations on specified subjects. State and local laws that are not "substantively the same" as such regulations would be preempted. (This would not apply to laws that State or local governments are specifically authorized to issue by another Federal statute.) The enrolled bill would also establish administrative and judicial procedures for persons adversely affected by State laws they believe to be preempted under the HMTA.

Uniformity of State Regulations

S. 2936 would require the Secretary of Transportation to convene a working group of State and local government officials to develop recommendations for uniform registration procedures for hazardous materials transporters. This group would be required to provide a report to Congress within three years of enactment. Ninety days following adoption of these recommendations by at least 26 States, the Secretary would be required to issue regulations implementing the recommendations. Appropriations of \$400,000 would be authorized for each of FYs 1991-1993 to support the working group.

Transportation of Highly Radioactive Materials

S. 2936 would require the Secretary to conduct a study of the potential safety benefits of requiring that the rail transportation of certain radioactive materials be performed only on dedicated trains. This study would be performed in cooperation with the Department of Energy, the Nuclear Regulatory Commission, potentially affected Indian tribes and States, and

other interested parties. The Secretary would be required to submit a report on this study to Congress within one year of enactment, and to complete a rulemaking on the issue within two years of enactment.

The Secretary would also be required to issue regulations, within one year of enactment, mandating inspection and certification requirements for motor carriers involved in transporting specified highly radioactive materials.

#### Identification and Monitoring of Hazardous Materials

S. 2936 would (1) prohibit misrepresentation of hazardous materials as safe or non-hazardous materials as hazardous; (2) prohibit tampering with containers used to transport hazardous materials or with required warning labels; and (3) mandate specified disclosure requirements for shipments of hazardous materials.

In addition, the Secretary would be required to issue regulations within 30 months of enactment:

- setting forth improved standards for identifying vehicles which carry hazardous materials; and
- establishing a "continually monitored telephone system" to provide emergency response information and assistance.

#### Penalties

S. 2936 would provide that "knowing" civil violations of HMTA are considered to have taken place where persons knew, or should have known if they had taken reasonable care, that violations were occurring. (According to a statement on the Senate floor, this provision responds to a recent Federal district court holding that a "knowing" civil violation of HMTA required "willful negligence" or "reckless disregard".)

In addition, the enrolled bill would:

- increase maximum penalties for civil violations of the Act from \$10,000 to \$25,000;
- establish a \$250 minimum penalty for civil violations; and
- provide that criminal violations of HMTA may be punished by up to five years of imprisonment and/or fines of up to \$250,000 for individuals and \$500,000 for corporations.

### Bonding Requirements

S. 2936 would impose a bonding requirement of \$5 million on transporters of specified categories and quantities of hazardous materials. DOT could reduce this amount by regulation, but not to an amount lower than \$1 million.

### Rail Safety

S. 2936 would amend the Federal Rail Safety Act (FRSA) to specifically include the safe transportation of hazardous materials in State rail safety activities under the Act. The enrolled bill would specify that this change would not modify existing standards regarding preemption of State and local laws under the FRSA.

### Other Provisions

S. 2936 would also:

- Prohibit the transportation of specified hazardous materials in certain railroad tank cars.
- Specify that Federal contractors are required to adhere to the same Federal, State, and local safety requirements as other hazmat transporters.
- Specify that States receiving Federal grants for enforcement of commercial motor vehicle safety laws may enforce such laws with respect to commercial motor vehicles leased to the Federal Government.

The enrolled bill would also require the Secretary of Transportation to issue regulations:

- within 18 months, prescribing requirements for training and certifying specified personnel involved in hazmat transportation; and
- within 19 months, prescribing improved means of identifying hazardous materials.

**WHITE HOUSE STAFFING MEMORANDUM**

DATE: 11/15/90 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 a.m. 11/16

SUBJECT: S. 2936 -- HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER <i>OK (Brad)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input type="checkbox"/>	<input type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS <i>n/c</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
GRAY <i>no legal S</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HOLIDAY <i>n/c</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:  
Please provide any comments/recommendations directly to my office by 10:00 a.m. on 11/16. Thanks.

RESPONSE:

**James W. Cicconi**  
Assistant to the President  
and Deputy to the Chief of Staff  
Ext. 2702

**WHITE HOUSE STAFFING MEMORANDUM**

90 NOV 16 AM 10:06

DATE: 11/15/90

10:00 a.m. 11/16

ACTION/CONCURRENCE/COMMENT DUE BY: \_\_\_\_\_

SUBJECT: S. 2936 -- HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

	ACTION FYI			ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input type="checkbox"/>	<input type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	UNTERMEYER	<input type="checkbox"/>	<input type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide any comments/recommendations directly to my office by 10:00 a.m. on 11/16. Thanks.

RESPONSE:

*No comment. Mrs.  
Nancy Williamson  
11-16-90*

**James W. Cicconi**  
Assistant to the President  
and Deputy to the Chief of Staff  
Ext. 2702

**WHITE HOUSE STAFFING MEMORANDUM**  
 90 NOV 16 PM 1:53

DATE: 11/15/90

10:00 a.m. 11/16

ACTION/CONCURRENCE/COMMENT DUE BY: \_\_\_\_\_

SUBJECT: S. 2936 -- HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<del>MCCLURE</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input type="checkbox"/>	<input type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide any comments/recommendations directly to my office by 10:00 a.m. on 11/16. Thanks.

RESPONSE:

*no comment*

James W. Cicconi  
 Assistant to the President  
 and Deputy to the Chief of Staff  
 Ext. 2702

THE WHITE HOUSE

WASHINGTON

November 16, 1990

90 NOV 16 PM 5:06

MEMORANDUM FOR THE PRESIDENT

FROM: ROGER B. PORTER *RBP*

SUBJECT: Enrolled Bill S. 2936 -- Hazardous Materials  
Transportation Uniform Safety Act of 1990

We concur with the recommendation that you approve S.  
2936.

## WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/15/90 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 a.m. 11/16

SUBJECT: S. 2936 -- HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

	ACTION FYI			ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input type="checkbox"/>	<input type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

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Department of Agriculture	Approval
Federal Emergency Management Agency	Approval
United States Postal Service	No objection
Nuclear Regulatory Commission	No objection (Informally)
Department of Defense	No objection (Informally)
Department of the Interior	No objection (Informally)
Department of Justice	Defers
Department of Labor	No comment (Informally)
Department of Commerce	No comment (Informally)
Department of Health and Human Services	No comment (Informally)
Department of the Treasury	No comment (Informally)
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S. 2936 would also:

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- within 18 months, prescribing requirements for training and certifying specified personnel involved in hazmat transportation; and
- within 19 months, prescribing improved means of identifying hazardous materials.

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/15/90 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 a.m. 11/16

SUBJECT: S. 2936 -- HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

	ACTION FYI			ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input type="checkbox"/>	<input type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
<del>CICCONI</del>	<del><input type="checkbox"/></del>	<del><input checked="" type="checkbox"/></del>	ROGERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:  
Please provide any comments/recommendations directly to my office by 10:00 a.m. on 11/16. Thanks.

RESPONSE:

James W. Cicconi  
Assistant to the President  
and Deputy to the Chief of Staff  
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

November 15, 1990

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 2936 - Hazardous Materials  
Transportation Uniform Safety Act of 1990  
Sponsors - Sen. Exon (D) Nebraska and 2 others

Last Day for Action

November 21, 1990 - Wednesday

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(1) Authorizes appropriations for the enforcement of the Hazardous Materials Transportation Act (HMTA) for FYs 1991-1993; (2) establishes a program of grants for FYs 1993-1998 to train State and local government personnel to respond to hazardous materials transportation accidents; and (3) makes numerous, miscellaneous amendments intended to strengthen enforcement of the HMTA.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
Department of Agriculture	Approval
Federal Emergency Management Agency	Approval
United States Postal Service	No objection
Nuclear Regulatory Commission	No objection (Informally)
Department of Defense	No objection (Informally)
Department of the Interior	No objection (Informally)
Department of Justice	Defers
Department of Labor	No comment (Informally)
Department of Commerce	No comment (Informally)
Department of Health and Human Services	No comment (Informally)
Department of the Treasury	No comment (Informally)
Environmental Protection Agency	No comment (Informally)
Department of Energy	No comment (Informally)

Discussion

The HMTA is the principal Federal law regulating the safe transportation of hazardous and radioactive materials. Under the Act, the Department of Transportation (DOT) is responsible for

regulating shippers and transporters of hazardous materials ("hazmat"). DOT also is responsible for regulating persons who manufacture, fabricate, or retest hazmat containers. The appropriations authorization for HMTA activities expired at the end of FY 1986.

S. 2936, which passed the Senate by unanimous consent and the House by voice vote, would authorize appropriations for HMTA activities and make numerous amendments to the Act. Its most significant provisions are described below. Other provisions are described in an Attachment.

-- Appropriations Authorizations

S. 2936 would authorize total appropriations for the Department of Transportation's enforcement activities under the HMTA of \$20 million for FY 1991, \$22 million for FY 1992, and \$41 million for FY 1993. The enacted FY 1991 appropriation for HMTA programs is \$10.4 million.

-- Registration and Permitting

S. 2936 would require all transporters of specified categories or quantities of hazardous materials to be registered with DOT. (DOT could require the registration of other hazmat transporters.) DOT would have to issue regulations within a year requiring all motor carriers transporting hazardous materials to have valid safety permits issued by the Department. This requirement would take effect two years after enactment. DOT would be authorized, but not required, to impose charges sufficient to recover the costs of the registration program.

-- Grant Programs

By September 30, 1992, DOT would have to issue regulations mandating that all registered hazmat transporters pay an annual fee. This fee would be based on criteria specified in the enrolled bill, but could in no case be lower than \$250 or higher than \$5,000. These fees would be deposited in a special account, and would be available without appropriation in FYs 1993-1998 to support grants as follows:

- \$5 million per year to assist States in developing plans for responding to hazmat transportation emergencies.
- \$7.8 million per year to help States and Indian tribes train public sector employees in responding to hazmat transportation emergencies.
- \$250,000 per year for nonprofit organizations to conduct safety training for employees of hazmat transportation companies.

In addition, \$1 million would be made available during each of FYs 1993-1998 for the development of hazmat training curriculums. (Appropriations of \$1 million from the general fund in each of FYs 1991 and 1992 would also be authorized for this purpose.) Finally, \$2,450,000 would be made available from fee revenues for certain monitoring activities to be performed by several agencies.

-- Additional Inspectors

S. 2936 would require DOT to hire 30 more hazardous materials safety inspectors than the 684 inspectors authorized in FY 1990. The Department would be required to dedicate 10 of these additional inspectors to specified activities involving the transportation of radioactive materials.

-- National Monitoring Center

S. 2936 would require DOT to complete a rulemaking within 19 months of enactment on the feasibility of establishing a center to monitor, on a national basis, all hazmat shipments. DOT would have to contract with the National Academy of Sciences (NAS) to perform a study and provide recommendations on this issue, to be submitted to the Secretary and Congress within 19 months of enactment. (Appropriations of \$350,000 would be authorized to support this study.) Within 25 months of enactment, the Secretary would have to report to Congress his own recommendations regarding such a system. Where the Secretary does not recommend an action recommended by NAS, an explanation would be required.

Earlier this year, DOT opposed a bill (H.R. 2584) which would have required the establishment of such a national monitoring center. According to DOT, such a central monitoring system would be extremely costly and difficult to implement.

-- Routing

S. 2936 would authorize States and Indian tribes to designate specific highway routes over which hazardous materials may and may not be transported. DOT would be required to issue regulations, within 18 months of enactment, prescribing standards and procedures to be followed by States and Indian tribes in making and enforcing such designations. Starting two years after these regulations are issued, States and Indian tribes would be preempted from making any decisions regarding routing which are inconsistent with these regulations. (Routing determinations made before these regulations are issued, however, would be "grandfathered" even if they are inconsistent with the regulations.)

DOT would be required to establish procedures for resolving routing disputes among Indian tribes, States, and Federal agencies. DOT would have to resolve such disputes within one year. Disputants would be permitted to appeal adverse decisions to Federal district courts within 90 days after a decision becomes final.

#### Administration Position To Date

In a March 12, 1990, letter to the House Energy and Commerce Committee, DOT opposed several provisions of a related bill, H.R. 3520. The most important objections were to provisions mandating a registration requirement similar to the one in S. 2936, and a provision requiring DOT to hire 200 additional safety inspectors (compared with the 30 required by the enrolled bill).

#### Conclusion and Recommendations

In its enrolled bill views letter, DOT expresses concerns regarding the mandatory registration requirement. According to DOT, assuring the compliance of all of the "minimum of 100,000 entities" covered by the requirement would "severely restrict our ability to carry out our mandated safety regulatory responsibilities." Moreover, DOT notes that "the bill does not exempt foreign persons from registration fees, and we are very concerned about the potential effect on U.S. trade, because foreign governments may impose comparable fees on U.S. companies." DOT concludes, however, that the enrolled bill "on balance . . . provides needed improvements and is a positive step in ensuring the safe transportation of hazardous materials."

We join the Departments of Transportation and Agriculture and the Federal Emergency Management Agency in recommending approval of S. 2936, which passed the Senate by unanimous consent and the House by voice vote.



Richard Darman  
Director

Enclosures

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S. 2936 would require, rather than permit, DOT to issue regulations implementing the HMTA. It would also require that these regulations cover intrastate and foreign, as well as interstate, commerce. Preemption would apply only to HMTA regulations on specified subjects. State and local laws that are not "substantively the same" as such regulations would be preempted. (This would not apply to laws that State or local governments are specifically authorized to issue by another Federal statute.) The enrolled bill would also establish administrative and judicial procedures for persons adversely affected by State laws they believe to be preempted under the HMTA.

Uniformity of State Regulations

S. 2936 would require the Secretary of Transportation to convene a working group of State and local government officials to develop recommendations for uniform registration procedures for hazardous materials transporters. This group would be required to provide a report to Congress within three years of enactment. Ninety days following adoption of these recommendations by at least 26 States, the Secretary would be required to issue regulations implementing the recommendations. Appropriations of \$400,000 would be authorized for each of FYs 1991-1993 to support the working group.

Transportation of Highly Radioactive Materials

S. 2936 would require the Secretary to conduct a study of the potential safety benefits of requiring that the rail transportation of certain radioactive materials be performed only on dedicated trains. This study would be performed in cooperation with the Department of Energy, the Nuclear Regulatory Commission, potentially affected Indian tribes and States, and

other interested parties. The Secretary would be required to submit a report on this study to Congress within one year of enactment, and to complete a rulemaking on the issue within two years of enactment.

The Secretary would also be required to issue regulations, within one year of enactment, mandating inspection and certification requirements for motor carriers involved in transporting specified highly radioactive materials.

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S. 2936 would (1) prohibit misrepresentation of hazardous materials as safe or non-hazardous materials as hazardous; (2) prohibit tampering with containers used to transport hazardous materials or with required warning labels; and (3) mandate specified disclosure requirements for shipments of hazardous materials.

In addition, the Secretary would be required to issue regulations within 30 months of enactment:

- setting forth improved standards for identifying vehicles which carry hazardous materials; and
- establishing a "continually monitored telephone system" to provide emergency response information and assistance.

#### Penalties

S. 2936 would provide that "knowing" civil violations of HMTA are considered to have taken place where persons knew, or should have known if they had taken reasonable care, that violations were occurring. (According to a statement on the Senate floor, this provision responds to a recent Federal district court holding that a "knowing" civil violation of HMTA required "willful negligence" or "reckless disregard".)

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11/16

Document No. 189877

# WHITE HOUSE STAFFING MEMORANDUM

*JC*

DATE: 11/15/90

10:00 a.m. 11/16

ACTION/CONCURRENCE/COMMENT DUE BY: \_\_\_\_\_

SUBJECT: S. 2936 -- HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

	ACTION FYI			ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input type="checkbox"/>	<input type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

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**RESPONSE:**

**James W. Cicconi**  
Assistant to the President  
and Deputy to the Chief of Staff  
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

November 15, 1990

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

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Sponsors - Sen. Exon (D) Nebraska and 2 others

Last Day for Action

November 21, 1990 - Wednesday

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# WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/15/90 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 a.m. 11/16

SUBJECT: S. 2936 -- HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

	ACTION FYI			ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
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CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:  
Please provide any comments/recommendations directly to my office by 10:00 a.m. on 11/16. Thanks.

RESPONSE:  
*No comments per Ed R*

James W. Cicconi  
Assistant to the President  
and Deputy to the Chief of Staff  
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

November 15, 1990

THE DIRECTOR

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Department of Labor	No comment (Informally)
Department of Commerce	No comment (Informally)
Department of Health and Human Services	No comment (Informally)
Department of the Treasury	No comment (Informally)
Environmental Protection Agency	No comment (Informally)
Department of Energy	No comment (Informally)

Discussion

The HMTA is the principal Federal law regulating the safe transportation of hazardous and radioactive materials. Under the Act, the Department of Transportation (DOT) is responsible for

regulating shippers and transporters of hazardous materials ("hazmat"). DOT also is responsible for regulating persons who manufacture, fabricate, or retest hazmat containers. The appropriations authorization for HMTA activities expired at the end of FY 1986.

S. 2936, which passed the Senate by unanimous consent and the House by voice vote, would authorize appropriations for HMTA activities and make numerous amendments to the Act. Its most significant provisions are described below. Other provisions are described in an Attachment.

-- Appropriations Authorizations

S. 2936 would authorize total appropriations for the Department of Transportation's enforcement activities under the HMTA of \$20 million for FY 1991, \$22 million for FY 1992, and \$41 million for FY 1993. The enacted FY 1991 appropriation for HMTA programs is \$10.4 million.

-- Registration and Permitting

S. 2936 would require all transporters of specified categories or quantities of hazardous materials to be registered with DOT. (DOT could require the registration of other hazmat transporters.) DOT would have to issue regulations within a year requiring all motor carriers transporting hazardous materials to have valid safety permits issued by the Department. This requirement would take effect two years after enactment. DOT would be authorized, but not required, to impose charges sufficient to recover the costs of the registration program.

-- Grant Programs

By September 30, 1992, DOT would have to issue regulations mandating that all registered hazmat transporters pay an annual fee. This fee would be based on criteria specified in the enrolled bill, but could in no case be lower than \$250 or higher than \$5,000. These fees would be deposited in a special account, and would be available without appropriation in FYs 1993-1998 to support grants as follows:

- \$5 million per year to assist States in developing plans for responding to hazmat transportation emergencies.
- \$7.8 million per year to help States and Indian tribes train public sector employees in responding to hazmat transportation emergencies.
- \$250,000 per year for nonprofit organizations to conduct safety training for employees of hazmat transportation companies.

In addition, \$1 million would be made available during each of FYs 1993-1998 for the development of hazmat training curriculums. (Appropriations of \$1 million from the general fund in each of FYs 1991 and 1992 would also be authorized for this purpose.) Finally, \$2,450,000 would be made available from fee revenues for certain monitoring activities to be performed by several agencies.

-- Additional Inspectors

S. 2936 would require DOT to hire 30 more hazardous materials safety inspectors than the 684 inspectors authorized in FY 1990. The Department would be required to dedicate 10 of these additional inspectors to specified activities involving the transportation of radioactive materials.

-- National Monitoring Center

S. 2936 would require DOT to complete a rulemaking within 19 months of enactment on the feasibility of establishing a center to monitor, on a national basis, all hazmat shipments. DOT would have to contract with the National Academy of Sciences (NAS) to perform a study and provide recommendations on this issue, to be submitted to the Secretary and Congress within 19 months of enactment. (Appropriations of \$350,000 would be authorized to support this study.) Within 25 months of enactment, the Secretary would have to report to Congress his own recommendations regarding such a system. Where the Secretary does not recommend an action recommended by NAS, an explanation would be required.

Earlier this year, DOT opposed a bill (H.R. 2584) which would have required the establishment of such a national monitoring center. According to DOT, such a central monitoring system would be extremely costly and difficult to implement.

-- Routing

S. 2936 would authorize States and Indian tribes to designate specific highway routes over which hazardous materials may and may not be transported. DOT would be required to issue regulations, within 18 months of enactment, prescribing standards and procedures to be followed by States and Indian tribes in making and enforcing such designations. Starting two years after these regulations are issued, States and Indian tribes would be preempted from making any decisions regarding routing which are inconsistent with these regulations. (Routing determinations made before these regulations are issued, however, would be "grandfathered" even if they are inconsistent with the regulations.)

DOT would be required to establish procedures for resolving routing disputes among Indian tribes, States, and Federal agencies. DOT would have to resolve such disputes within one year. Disputants would be permitted to appeal adverse decisions to Federal district courts within 90 days after a decision becomes final.

#### Administration Position To Date

In a March 12, 1990, letter to the House Energy and Commerce Committee, DOT opposed several provisions of a related bill, H.R. 3520. The most important objections were to provisions mandating a registration requirement similar to the one in S. 2936, and a provision requiring DOT to hire 200 additional safety inspectors (compared with the 30 required by the enrolled bill).

#### Conclusion and Recommendations

In its enrolled bill views letter, DOT expresses concerns regarding the mandatory registration requirement. According to DOT, assuring the compliance of all of the "minimum of 100,000 entities" covered by the requirement would "severely restrict our ability to carry out our mandated safety regulatory responsibilities." Moreover, DOT notes that "the bill does not exempt foreign persons from registration fees, and we are very concerned about the potential effect on U.S. trade, because foreign governments may impose comparable fees on U.S. companies." DOT concludes, however, that the enrolled bill "on balance . . . provides needed improvements and is a positive step in ensuring the safe transportation of hazardous materials."

We join the Departments of Transportation and Agriculture and the Federal Emergency Management Agency in recommending approval of S. 2936, which passed the Senate by unanimous consent and the House by voice vote.



Richard Darman  
Director

Enclosures

Miscellaneous Provisions of S. 2936

Regulations and Preemption

The HMTA currently states that DOT "may" issue regulations regarding the transportation of hazardous materials in "commerce." State and local laws which are "inconsistent" with such regulations are preempted, unless exempted from preemption by DOT. According to the House Energy and Commerce Committee report on H.R. 3520, a related bill, DOT has applied HMTA regulations only sparingly to intrastate and foreign commerce, and determinations as to whether State and local laws are "inconsistent" with DOT regulations frequently generate time-consuming administrative and legal proceedings.

S. 2936 would require, rather than permit, DOT to issue regulations implementing the HMTA. It would also require that these regulations cover intrastate and foreign, as well as interstate, commerce. Preemption would apply only to HMTA regulations on specified subjects. State and local laws that are not "substantively the same" as such regulations would be preempted. (This would not apply to laws that State or local governments are specifically authorized to issue by another Federal statute.) The enrolled bill would also establish administrative and judicial procedures for persons adversely affected by State laws they believe to be preempted under the HMTA.

Uniformity of State Regulations

S. 2936 would require the Secretary of Transportation to convene a working group of State and local government officials to develop recommendations for uniform registration procedures for hazardous materials transporters. This group would be required to provide a report to Congress within three years of enactment. Ninety days following adoption of these recommendations by at least 26 States, the Secretary would be required to issue regulations implementing the recommendations. Appropriations of \$400,000 would be authorized for each of FYs 1991-1993 to support the working group.

Transportation of Highly Radioactive Materials

S. 2936 would require the Secretary to conduct a study of the potential safety benefits of requiring that the rail transportation of certain radioactive materials be performed only on dedicated trains. This study would be performed in cooperation with the Department of Energy, the Nuclear Regulatory Commission, potentially affected Indian tribes and States, and

other interested parties. The Secretary would be required to submit a report on this study to Congress within one year of enactment, and to complete a rulemaking on the issue within two years of enactment.

The Secretary would also be required to issue regulations, within one year of enactment, mandating inspection and certification requirements for motor carriers involved in transporting specified highly radioactive materials.

#### Identification and Monitoring of Hazardous Materials

S. 2936 would (1) prohibit misrepresentation of hazardous materials as safe or non-hazardous materials as hazardous; (2) prohibit tampering with containers used to transport hazardous materials or with required warning labels; and (3) mandate specified disclosure requirements for shipments of hazardous materials.

In addition, the Secretary would be required to issue regulations within 30 months of enactment:

- setting forth improved standards for identifying vehicles which carry hazardous materials; and
- establishing a "continually monitored telephone system" to provide emergency response information and assistance.

#### Penalties

S. 2936 would provide that "knowing" civil violations of HMTA are considered to have taken place where persons knew, or should have known if they had taken reasonable care, that violations were occurring. (According to a statement on the Senate floor, this provision responds to a recent Federal district court holding that a "knowing" civil violation of HMTA required "willful negligence" or "reckless disregard".)

In addition, the enrolled bill would:

- increase maximum penalties for civil violations of the Act from \$10,000 to \$25,000;
- establish a \$250 minimum penalty for civil violations; and
- provide that criminal violations of HMTA may be punished by up to five years of imprisonment and/or fines of up to \$250,000 for individuals and \$500,000 for corporations.

### Bonding Requirements

S. 2936 would impose a bonding requirement of \$5 million on transporters of specified categories and quantities of hazardous materials. DOT could reduce this amount by regulation, but not to an amount lower than \$1 million.

### Rail Safety

S. 2936 would amend the Federal Rail Safety Act (FRSA) to specifically include the safe transportation of hazardous materials in State rail safety activities under the Act. The enrolled bill would specify that this change would not modify existing standards regarding preemption of State and local laws under the FRSA.

### Other Provisions

S. 2936 would also:

- Prohibit the transportation of specified hazardous materials in certain railroad tank cars.
- Specify that Federal contractors are required to adhere to the same Federal, State, and local safety requirements as other hazmat transporters.
- Specify that States receiving Federal grants for enforcement of commercial motor vehicle safety laws may enforce such laws with respect to commercial motor vehicles leased to the Federal Government.

The enrolled bill would also require the Secretary of Transportation to issue regulations:

- within 18 months, prescribing requirements for training and certifying specified personnel involved in hazmat transportation; and
- within 19 months, prescribing improved means of identifying hazardous materials.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 08 1990

Honorable Richard G. Darman  
Director  
Office of Management and Budget  
Old Executive Office Building  
17th Street & Pennsylvania Ave., N.W.  
Washington, D.C. 20503

Dear Mr. Darman:

In compliance with your request, the Department of Justice has examined a facsimile of the enrolled bill, S. 2936, the Hazardous Materials Transportation Uniform Safety Act of 1990. As we indicated to you by letters dated March 1, 1990, and March 26, 1990, we are concerned about the efficacy of the enforcement provisions of this Act. Although we were not able to obtain improvements in the enforcement provisions in this Congress, we would support such changes in the next legislative session.

Despite these concerns with the enforcement provisions of the bill, however, the Department defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Lee Rawls".

W. Lee Rawls  
Assistant Attorney General



UNITED STATES POSTAL SERVICE  
475 L'ENFANT PLAZA SW  
WASHINGTON DC 20260-1100

LAW DEPARTMENT

November 8, 1990

Mr. Bernard H. Martin  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20505-0001

Dear Mr. Martin:

This responds to your request for Postal Service views on the enrolled bill:

S. 2936, to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1990, 1991, and 1992, and for other purposes.

1. Purpose of Legislation. The bill would amend the Hazardous Materials Transportation Act, directing the Secretary of Transportation to issue regulations for the safe transportation of hazardous materials in domestic and foreign commerce. The legislation also sets forth other requirements regarding such transportation, and it increases civil and criminal penalties for those who commit violations in the transport of hazardous materials.

The Postal Service is specifically excluded from the application of the legislation. Section 3 of the bill defines "person" to exclude the United States Postal Service. Section 13, discussing the legislation's relationship to other laws, makes clear that it shall not apply "...to any matter which is subject to the Federal postal laws or regulations under this title or under title 18 or title 39 of the United States Code."

2. Position of the Postal Service. The Postal Service approves those provisions of the bill which exclude its application to the Postal Service or to mail matter, and takes no position on the remainder of the legislation.

3. Timing of Presidential Action. No recommendation.

4. Cost or Saving. No information.



OFFICIAL OLYMPIC SPONSOR

5. Recommendation for Presidential Action. The Postal Service does not object to approval of the bill by the President.

Sincerely,

*Stanley F. Mires*

Stanley F. Mires  
Assistant General Counsel  
Legislative Division



# Federal Emergency Management Agency

Washington, D.C. 20472

NOV -8 1990

MEMORANDUM FOR: Bernard H. Martin  
Assistant Director for Legislative Reference  
Office of Management and Budget

FROM: George W. Watson  
Acting General Counsel *George W. Watson*

SUBJECT: Enrolled Bill S.2936

This responds to your request for comments from the Federal Emergency Management Agency (FEMA) on Enrolled Bill S.2936, the "Hazardous Materials Transportation Uniform Safety Act of 1990." While FEMA supports the entire Enrolled Bill, our interests are impacted most directly by section 17 of the measure.

Section 17 of Enrolled Bill S. 2936 would amend the Hazardous Materials Transportation Act ("the Act") by adding a new provision to the Act. New section 117A of the Act would be entitled "Public Sector Training and Planning". The new provision would address the need for training public sector employees to respond to hazardous material accidents in a manner which FEMA considers to be reasonable.

New section 117A of the Act would require the Secretary of Transportation to make planning and training grants to States to implement emergency plans developed pursuant to the Emergency Planning and Community Right-To-Know Act of 1986. The training grants would be used to train public sector employees to respond to accidents involving hazardous materials. New section 117A of the Act would authorize FEMA and other Federal agencies to be involved in disbursement of grants made by the Secretary and in the development and updating of public sector emergency response and preparedness training programs funded pursuant to the Act and other Federal grant authorities. The Director of FEMA would also be required by the new provision to disseminate the emergency response and preparedness curriculum developed pursuant to proposed new section 117A, to monitor public sector emergency response training and planning for hazardous materials accidents, and to provide technical assistance in this context.

In summary, FEMA is supportive of section 17 of Enrolled Bill S. 2936 because we believe it addresses serious needs in a reasonable and prudent manner. Therefore, we encourage the President to sign the measure.



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20250

NOV 9 1990

The Honorable Richard G. Darman  
Director, Office of Management and Budget  
Washington, D.C. 20530

Dear Mr. Darman:

This letter is sent in response to the request of your office for the recommendation of this Department with regard to the enrolled bill S. 2936, the "Hazardous Materials Transportation Uniform Safety Act of 1990."

This Department recommends that the President approve the bill.

The bill amends the Hazardous Materials Transportation Act to establish uniform procedures for transporting hazardous materials, and to authorize appropriations therefore.

Agriculture will be affected since many of the pesticides, fertilizers, and other materials used in agricultural production are designated as hazardous materials. Rural areas likewise are affected since hazardous materials are transported through rural areas, and rural communities must respond to accidents occurring within their jurisdictions. S. 2963 supports safe transportation of hazardous materials in rural areas, and ensures rural representation in routing of hazardous materials on public highways through the following provisions.

In accordance with the provisions of S. 2936, Federal law would preempt State and local laws regulating transportation of hazardous materials. Accordingly, uniform procedures would govern such transportation throughout the country. Uniformity of procedures facilitates more efficient and cost-effective movement of hazardous materials. A national registration system would be established, along with a safety permit procedure. Any State registration and permitting forms and procedures would need to conform with Federal requirements, so that the requirements will be uniform across the country.

State and local participation in designating national highway routes for hazardous materials transportation is outlined, a process that ensures rural involvement in establishing routes through rural areas.

The Department of Transportation would participate in international forums publishing or recommending mandatory standards and requirements for the transportation of hazardous materials in international commerce, but is not obliged to issue a standard

The Honorable Richard G. Darman

2

identical with that adopted by the international forum. This provision is especially valuable for agriculture since at times the international forums place a different designation on agricultural materials than that used in the United States.

Federal funds are provided to States for developing emergency plans and for training public sector employees to respond to accidents involving hazardous materials. Given fiscal restraints of local governments in rural areas, provision of funds for training first responders is critical. Adequate training also is essential, and S. 2936 provides for the development of training materials and a delivery system for those materials.

Sincerely,

A handwritten signature in cursive script that reads "Clayton".

Clayton Yeutter  
Secretary



U.S. Department of  
Transportation

General Counsel

400 Seventh St., S.W.  
Washington, D.C. 20590

NOV - 9 1990

The Honorable Richard G. Darman  
Director  
Office of Management and Budget  
Washington, DC 20503

Dear Mr. Darman:

This is in response to your request for the views of the Department of Transportation on S. 2936, the Hazardous Materials Transportation Uniform Safety Act of 1990, an enrolled bill

"To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1990, 1991, and 1992, and for other purposes."

S. 2936 is a comprehensive set of provisions that would make substantive changes to the Hazardous Materials Transportation Act, and affect nearly all aspects of the Department's hazardous materials transportation safety program. Some of the bill resembles the Administration bill, H.R. 3229, particularly in the area of defining the respective roles of all levels of government in controlling the risks inherent in the transportation of hazardous materials. The bill contains a number of other provisions, however, that would not improve safety and would require considerable additional resources.

As does the Administration bill, S. 2936 would delineate specific subject areas where Federal interests are preemptive of tribal, state, and local regulation; add a preemption determination process to the statute; and define the term "knowingly" in regard to civil penalties. The bill would authorize the designation of highway routes by tribal, state, and local governments in accordance with Federal routing standards, and establish a safety permitting program for motor carriers of certain hazardous materials. We fully support those provisions.

Our major concern with the bill is the registration program. The bill requires the Secretary to implement a registration program for certain persons involved in hazardous materials transportation. The Secretary is to assess and collect registration fees from those persons in amounts sufficient

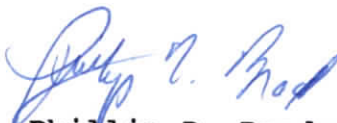
to fund the bill's emergency preparedness program, which totals \$104 million over fiscal years 1991 through 1998. The emergency preparedness program includes Federal technical assistance and a \$76.8 million grant program for states and political subdivisions. The bill does not exempt foreign persons from registration fees, and we are very concerned about the potential effect on U.S. trade, because foreign governments may impose comparable fees on U.S. companies.

Our conservative estimate is that a minimum of 100,000 entities will be required to register with the Department. Administration and enforcement of such a broad fee collection program will severely restrict our ability to carry out our mandated safety regulatory responsibilities. Even assuming a voluntary compliance rate of 80%, we could be faced with taking enforcement action against 20,000 entities for failure to register and pay the fee.

The bill also requires the Secretary to undertake a number of studies and rulemaking proceedings, and hire 30 additional inspectors. The bill authorizes \$19.75 million in fiscal year 1991, \$22.4 million in fiscal year 1992, and \$40.65 million in fiscal year 1993 to carry out these requirements and the remainder of the current hazardous materials program. However, only \$10.419 million has been appropriated in fiscal year 1991 to cover these program requirements.

We understand that industry supports the strong Federal preemption provisions in the bill, and that state and local governments are eager to benefit from the emergency preparedness program. Despite our considerable reservations about certain aspects of the bill, on balance the bill provides needed improvements and is a positive step in ensuring the safe transportation of hazardous materials. The Department of Transportation, therefore, recommends that the President sign the enrolled bill.

Sincerely,



Phillip D. Brady  
General Counsel

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 16, 1990

The President today signed the following legislation:

H.R. 4888, which requires (1) the inspection and reburial of certain offshore pipelines in the Gulf of Mexico, (2) the issuance of related regulations by the Department of Transportation (DOT), and (3) a nationwide program for reporting and responding to navigational hazards posed by offshore pipelines.

H.R. 4009, which (1) authorizes FY 1991 appropriations for the Federal Maritime Commission (FMC), the Transportation Department's Maritime Administration (Marad), and certain Coast Guard programs; (2) makes numerous amendments to programs of those agencies; and (3) provides coastwide trading and other privileges to numerous named vessels.

S. 3084, which provides for the settlement of the water rights claims of the Fallon Paiute Shoshone Indian Tribes, and settles various disputes related to the use of the waters of Lake Tahoe and the Truckee and Carson Rivers in California and Nevada.

H.R. 5140, which amends the Elementary and Secondary Education Act of 1965 to improve secondary school programs for basic skills improvement and dropout prevention, and for other purposes.

H.R. 29, which (1) amends the conditions under which interlocking directorates between corporations are prohibited; (2) increases the maximum criminal fines for antitrust violations; and (3) authorizes the United States to recover treble damages in civil antitrust suits.

✓ S. 2936, which (1) authorizes appropriations for the enforcement of the Hazardous Materials Transportation Act (HMTA) for FYs 1991-1993; (2) establishes a program of grants for FYs 1993-1998 to train State and local government personnel to respond to hazardous materials transportation accidents; and (3) makes numerous, miscellaneous amendments intended to strengthen enforcement of the HMTA.

S.J. Res. 206, which states that the United States should support the negotiation of an international agreement providing environmental protection for Antarctica, including an indefinite ban on commercial minerals development.

S. 2566, which establishes the Smith River National Recreation Area within the Six Rivers National Forest in California and redesignates the Sunset Crater National Monument in Arizona as the Sunset Crater Volcano National Monument.

S. 2857, which establishes (1) a National Foundation for Biomedical Research and (2) a National Center for Medical Rehabilitation Research within the National Institute on Child Health and Human Development.

H.R. 1602, which authorizes a national program to assist States in developing and operating regional systems of trauma care and authorizes appropriations for the George Washington University Hospital.

# # #