

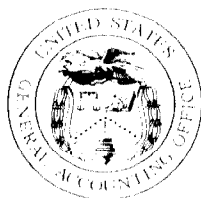
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Briefing Report to the Chair,
Subcommittee on Government
Activities and Transportation,
Committee on Government
Operations, House of Representatives

November 1991

HAZARDOUS MATERIALS

1990 Transportation Uniform Safety Act – Status of DOT Implementing Actions



145254

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Resources, Community, and
Economic Development Division

B-246135

November 5, 1991

The Honorable Barbara Boxer
Chair, Government Activities
and Transportation Subcommittee
Committee on Government Operations
House of Representatives

Dear Madam Chair:

This report responds to your July 17, 1991, letter requesting information on the status of the Department of Transportation's (DOT) implementation of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA).¹ The act was signed into law on November 16, 1990. In July 1991, responsibility for implementing various requirements of the law was delegated to three DOT Administrations--the Research and Special Programs Administration (RSPA), the Federal Railroad Administration (FRA), and the Federal Highway Administration (FHWA).

As agreed with your office, we obtained information from officials of these three agencies concerning actions taken to implement certain parts of the act. We reviewed pertinent documents when available. This report supplements the briefing given to your staff on October 2, 1991.

In summary, we found that action to implement the act is either in process or planned for all sections except one that has been completed. Actions required by most of these sections do not have to be completed until fiscal year 1992 or 1993. In several instances, however, action was required but not taken in fiscal year 1991. Officials said that sufficient funds were not available to implement the act's requirements, particularly those for hiring additional hazardous materials inspectors and conducting various studies. They said that DOT's fiscal year 1991 appropriation was enacted and approved prior to passage of HMTUSA, and those funds were committed to other authorized activities.

¹Public Law No. 101-615, 104 Stat. 3244.

The act imposed many new requirements, some of which were accommodated by reallocating 1991 funds that had been budgeted for other purposes. According to DOT budget officials, the Department did not request a supplemental appropriation in fiscal year 1991 for HMTUSA. Such a request would have had to identify offsetting spending cuts from the 1991 approved budget. Fiscal year 1991 funds could technically have been used for funding all requirements of HMTUSA, but agency officials decided not to do so. Instead, each of the agencies amended its fiscal year 1992 budget request to include funding for the HMTUSA requirements.

Unless otherwise specified, the status of each section represents the information available as of September 30, 1991. The HMTUSA sections you asked us to follow up on are listed below, categorized by the responsible DOT agency.

RESPONSIBILITIES DELEGATED TO RSPA

Section 4: Requires the Secretary to issue regulations for the safe transportation of hazardous materials in interstate, intrastate, and foreign commerce. This section also requires preemption of any state or Indian tribe law that is not substantively the same as the federal law.

Deadline: None specified **Status:** In process

Action: Prior to passage of HMTUSA, RSPA was developing a notice of proposed rulemaking under Docket HM-200 to consider expanding RSPA's regulations for the transportation of hazardous materials in intrastate commerce. Under the 1975 Hazardous Materials Transportation Act, as amended,² the Secretary regulated hazardous materials transported in interstate commerce. In 1980, RSPA expanded its regulations to cover intrastate shipments of hazardous wastes and hazardous substances. The primary regulatory change encompassed by this section of the HMTUSA is to extend RSPA's authority to include regulation of intrastate shipments of petroleum products.

According to the Deputy Associate Administrator for Hazardous Materials Safety, hazardous materials in foreign commerce are automatically regulated when they enter a state

²Public Law No. 93-633, 88 Stat. 2156.

or territory of the United States under the "interstate" and "intrastate" provisions. RSPA's jurisdiction does not extend to commerce entirely outside the United States. In addition, the Deputy Associate Administrator said that, under HMTUSA section 4, all requirements in RSPA's regulations will be binding upon persons engaged in both interstate and intrastate commerce.

RSPA is endeavoring to have the proposed rule published by the end of calendar year 1991. Following publication, RSPA will receive and evaluate written comments and may hold hearings if determined to be appropriate. RSPA officials said they cannot estimate when a final rule will be issued.

RSPA is in the process of implementing the requirement for preemption of state and Indian tribe laws. Section 107.202, added to RSPA's regulations on February 28, 1991, states that any law, regulation, order, or other requirement of a state or Indian tribe that is not substantively the same as the federal law or regulation is preempted. In an August 1, 1991, notice of proposed rulemaking, RSPA proposed a definition of the new standard of "substantively the same."

Section 7: Requires the Secretary to issue regulations for training to be given by hazardous materials employers to their employees.

Deadline: May 1992

Status: In process

Action: On July 26, 1989, prior to enactment of HMTUSA, RSPA issued a notice of proposed rulemaking that outlined training requirements for hazardous materials employers. This proposed rule incorporated many of the requirements set forth in section 7 of the HMTUSA but had not yet proceeded to a final rule. The proposed rule did not contain the HMTUSA requirement that employees be tested on appropriate transportation areas of responsibility.

According to the Associate Administrator for Hazardous Materials Safety, RSPA is now developing a final rule based on the July 1989 proposed rule under Docket HM-126F that will "respond to the legislative requirements" of HMTUSA. RSPA is endeavoring to complete the final rule by the end of calendar year 1991.

Section 8: Requires persons transporting or causing to be transported certain hazardous materials to file

B-246135

a registration statement, in accordance with regulations to be issued by the Secretary.

Deadline: March 1992 **Status:** In process

Action: On October 7, 1991, RSPA approved for publication a notice of proposed rulemaking addressing this requirement. RSPA will hold two hearings: one in Burlingame, California, on October 21, 1991, and one in Des Plaines, Illinois, on October 31, 1991. RSPA is also considering holding one later in Washington, D.C. RSPA officials would not provide a time estimate for publishing the final rule but are working to meet the statutory deadline.

Section 15: Requires the Secretary to study which factors should be considered by shippers and carriers in selecting routes for transportation of high-level radioactive waste and spent nuclear fuel.

Deadline: Initiated by November 1991 **Status:** Planned

Action: According to the Chief, Policy Development and Information Systems Division, the study will be performed as soon as there are sufficient funds to pay for it. RSPA requested \$450,000 to conduct this study in its fiscal year 1992 budget submission.

Section 17 (1): Requires the Secretary to develop and periodically update a curriculum that consists of a list of courses necessary to train public sector emergency response and preparedness teams.

Deadline: November 1992 **Status:** In process

Action: RSPA personnel have conferred with representatives of 10 other agencies through the National Response Team Training Committee, according to RSPA's Chief of Training Resources in the Office of Hazardous Materials Initiatives and Training. This group is currently working on an approach to develop a curriculum and should issue a report by the end of October 1991. RSPA plans to coordinate its efforts under this section of the law with public sector emergency response personnel to ensure that the approach to and development of the curriculum meet users' needs. The training curriculum should be completed before the training grant program gets underway in fiscal year 1993.

B-246135

Section 17 (2): Requires the Secretary to assess and collect an annual fee from each person required to file a hazardous materials registration statement (see section 8).

Deadline: September 1992 **Status:** In process

Action: The October 7, 1991, notice of proposed rulemaking responding to section 8 of HMTUSA also includes a proposed fee structure responding to this section of the act.

Section 17 (3): Requires the Secretary to establish public sector planning and training grant programs. Under the planning grant program, the Secretary shall make grants to states for developing, improving, and implementing emergency plans under the Emergency Planning and Community Right-to-Know Act of 1986 and for determining the need for regional hazardous materials emergency response teams. Under the training grant program, the Secretary shall make grants to states and Indian tribes for training public sector employees to respond to accidents and incidents involving hazardous materials.

Deadline: None specified **Status:** In process

Action: According to RSPA officials, RSPA is developing a regulation to establish both grant programs under a single rulemaking. This effort has involved coordination with six federal agencies that have a significant interest and similar responsibilities under other laws: the Environmental Protection Agency, the Department of Energy, the Federal Emergency Management Agency, the Occupational Safety and Health Administration, the Nuclear Regulatory Commission, and the National Institute for Environmental Health Sciences. A final decision has not yet been made as to how responsibilities will be shared in the programs. Because both grant programs depend on fees collected through the shipper/carrier registration program (see section 17 (1)), which should become operational in fiscal year 1992, RSPA expects to complete the grant rulemaking in fiscal year 1992 as well.

Section 25 (a): Requires the Secretary to initiate a rulemaking to determine methods of improving placarding and for establishing

B-246135

and operating a central reporting system
and computerized telecommunications data
center.

Deadline: Placarding - May 1993 **Status:** In process
Data system - June 1992 Planned

Action: RSPA is preparing an advance notice of proposed rulemaking on improvements to the placarding system that is expected to be published in early calendar year 1992. According to the Chief, Policy Development and Information Systems Division, the rulemaking that will address a central reporting system and computerized telecommunications data center is dependent on the study required by section 25 (b) of HMTUSA and has not yet been initiated.

Section 25 (b): Requires the Secretary to contract with the National Academy of Sciences to study the feasibility and necessity of establishing and operating a central reporting system and telecommunications data center.

Deadline: December 1990 **Status:** Completed

Action: RSPA signed a contract with the National Academy of Sciences for this effort on May 13, 1991. The contract will be completed on October 31, 1992.

Section 26: Requires the Secretary to conduct a rulemaking on the feasibility of requiring carriers to establish continually monitored telephone systems equipped to provide emergency response information.

Deadline: May 1993 **Status:** In process

Action: RSPA plans to address this issue in the same advance notice of proposed rulemaking that will address the placarding system required by section 25 (a).

RESPONSIBILITIES DELEGATED TO FRA

Section 15 (a): Requires the Secretary to undertake a study comparing the safety of using trains operated exclusively for transporting high-level radioactive waste and spent nuclear

B-246135

fuel with the safety of other rail transportation modes.

Deadline: November 1991 **Status:** Planned

Action: FRA did not initiate this study in fiscal year 1991 because no additional funds were appropriated, according to the Chief of the Hazardous Materials Division. In its 1992 budget submission, FRA requested \$315,000 to conduct the study.

Section 15 (b): Requires the Secretary to amend regulations as appropriate to provide for the safe rail transportation of high-level radioactive waste and spent nuclear fuel.

Deadline: November 1992 **Status:** Planned

Action: No action will be taken until the study required in section 15 (a) is completed and FRA has determined where, and if, regulatory changes are needed, according to the Hazardous Materials Division Chief.

Section 21: Requires the Secretary to enter into a contract for a study of railroad tank car design process and design criteria and report the results to the Congress.

Deadline: November 1991 **Status:** Planned

Action: No action has been taken because no additional funds were appropriated in fiscal year 1991. FRA has requested \$263,000 in its 1992 budget to contract for the study.

Section 28: Amends the Federal Railroad Safety Act of 1970 to allow states to participate in rail-related hazardous material investigations and surveillance.

Deadline: None specified **Status:** In process

Action: FRA issued a notice of proposed rulemaking on June 13, 1991, and held a public hearing on August 21, 1991. According to the Hazardous Materials Division Chief, written comments are now being reviewed by FRA's Office of Chief Counsel in considering the need for a final rule.

RESPONSIBILITIES DELEGATED TO FHWA

Section 4: Requires federal standards for states and Indian tribes to use in designating highway routes for the transportation of hazardous materials and to resolve disputes between states over highway routing. Also requires the Secretary to periodically update and publish a list of currently effective highway route designations.

Deadline: May 1992 **Status:** In process

Action: FHWA is developing a notice of proposed rulemaking addressing both requirements and is working to have it published in fiscal year 1992. According to the Chief, Traffic Control Program Team in FHWA's Office of Highway Safety, FHWA personnel are working very hard to meet the May 1992 deadline for publishing the final rule.

Section 22: Requires the Secretary to establish a working group comprised of state and local government officials, including the National Governors' Association, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, and the National Conference of State Legislatures. The working group shall discuss (a) uniform forms and procedures for states that register hazardous materials motor carriers and (b) whether to limit filing of registration forms and collection of fees. A report on the group's findings and conclusions shall be transmitted to the Secretary and two congressional committees.

Deadline: November 1993 **Status:** In process

Action: On September 27, 1991, FHWA awarded a contract to the National Governors' Association that addresses all issues in this section. It will include forming the group called for in the act. The contract is due to be completed by June 27, 1993.

B-246135

Section 27: Requires the Secretary to prepare a report on the safety benefits of a law requiring shippers to share financial responsibility with carriers for the costs of accidental hazardous materials releases.

Deadline: February 1991 **Status:** In process

Action: According to an official in the Office of Chief Counsel, Motor Carrier Law Division, this report is still being drafted.

RESPONSIBILITY FOR HIRING ADDITIONAL
HAZARDOUS MATERIALS INSPECTORS

Section 16: Requires the Secretary to employ and maintain an additional 30 hazardous materials safety inspectors for FRA, FHWA, and RSPA. Of the 30 inspectors, 10 shall focus on radioactive material safety. At least 7 of the 10 shall be allocated as follows: 1 to RSPA, 3 to FRA, and 3 to FHWA.

Deadline: Fiscal year 1991 **Status:** Planned

Action: According to officials in each of the three agencies, no additional hazardous materials inspectors were employed in fiscal year 1991 because sufficient funds were not available. In their 1992 budget submissions, the three agencies requested funding for 30 inspectors. RSPA requested one hazardous materials inspector specializing in radioactive materials safety. FHWA requested funding for 17 inspectors--12 hazardous materials inspectors and 5 radioactive materials safety inspectors.

FRA requested funding for 12 new inspectors. According to the budget justification, since all 5 FRA inspection disciplines contribute to the safe carriage of hazardous materials, the 12 inspectors will be hired by discipline as follows:

- four hazardous materials,
- two motive power and equipment,
- two track,
- two operating practices, and
- two signal and train control.

B-246135

The justification does not state whether any of the 12 inspectors will focus specifically on radioactive material safety, although it discusses the various FRA inspections that are conducted for shipments of spent nuclear fuel in justifying the request. According to the Hazardous Materials Division Director, the four hazardous materials inspectors will have responsibility for both radioactive materials safety and other types of hazardous materials safety.

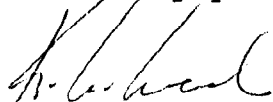
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We conducted our review between September and October 1991 in accordance with generally accepted government auditing standards. We discussed the facts in this report with agency officials and made changes where appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this briefing report until 7 days from the date of this letter. At that time, we will send copies to the Secretary of Transportation; the Administrators of RSPA, FRA, and FHWA; and other interested parties. We will also make copies available to others upon request.

This work was performed under the direction of Ron E. Wood, Assistant Director, Transportation Issues, who may be reached at (202) 401-5955. Major contributors to this briefing report are listed in appendix I.

Sincerely yours,



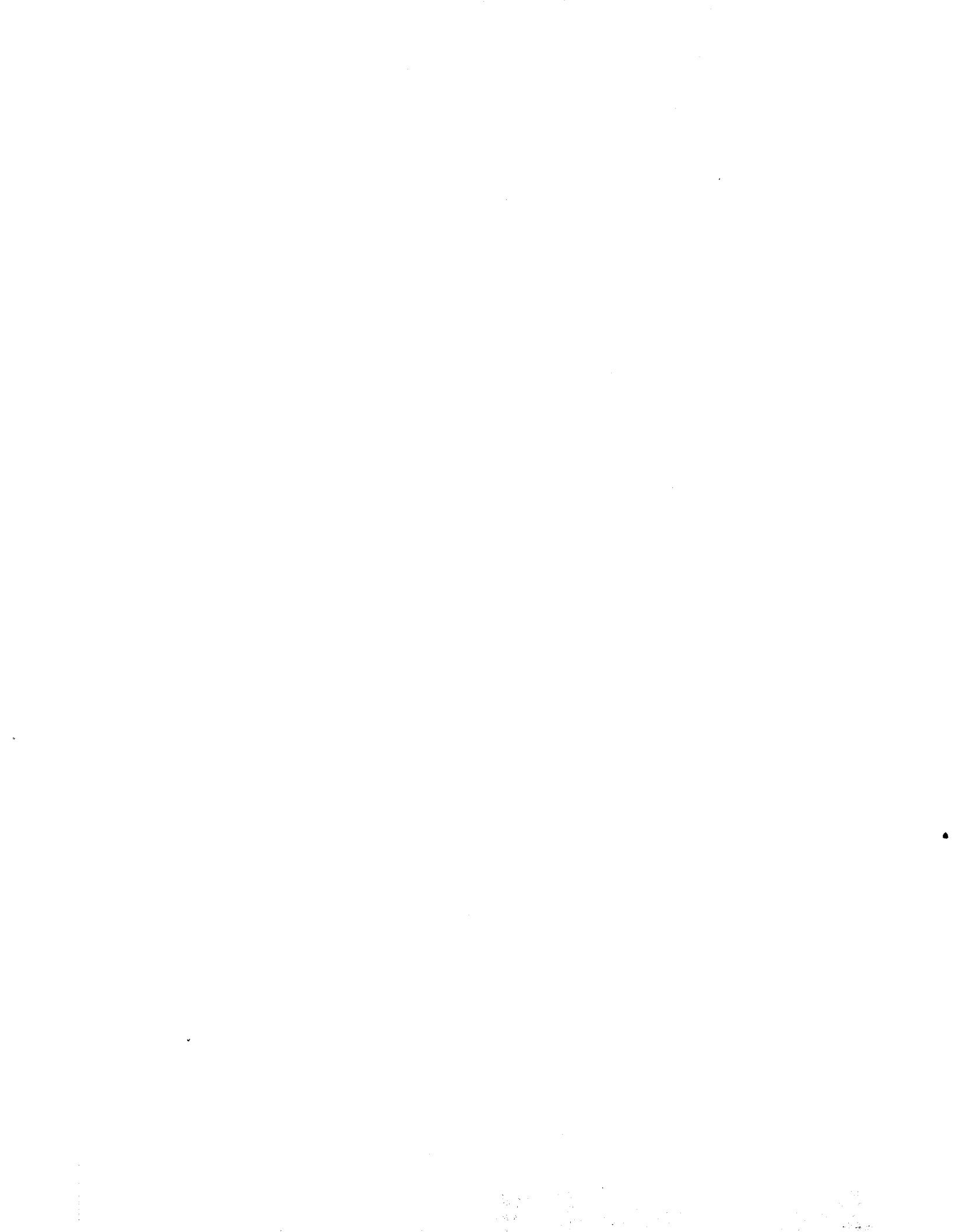
Kenneth M. Mead
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