

The Department of Transportation and the Consumer

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The basic purpose of the act creating the Department of Transportation¹ was to establish a Cabinet level department responsible for developing national transportation policies and programs. To this end, the Act gathered together many previously separate federal transportation programs and placed them under the control of the Secretary of Transportation, to whom both the President and the Congress could look for leadership in the development of a coordinated national transportation system.²

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1. The Department of Transportation Act, 49 U.S.C. § 1651 *et seq.* (1966) [hereinafter cited as Dep't of Transportation Act].

2. Section 2(b) (1) of the Dep't of Transportation Act states, in part: "The Congress . . . finds that the establishment of a Department of Transportation is necessary . . . to assure the coordinates, effective administration of the transportation programs of the Federal Government." For references in the legislative history *see, e.g.*, H.R. No. 1701, 89th Cong., 2d Sess. 12, 14, 25 (1966); 112 Cong. Rec. 19516, 25589 (1966). During the Congressional debates on the bill its purpose was stated as follows:

The bill before us will bring together most of the widely dispersed transportation programs . . . under a Cabinet Secretary of Transportation, who will have authority to coordinate and relate these programs to the total transportation needs of the country . . . It will provide for the first time an environment for the development of a coherent and coordinated transportation policy, which relates

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Transportation safety is a prime concern of the Department as it must be with any entity involved in transportation.³ But the Department's commitment to the transportation consumer, while less obvious, is also vital to the welfare of the United States. There are more than 200 million people spread across three and one-half million square miles of land. Every one of them is a transportation user. Trucks, railroads, aircraft, pipelines, ships, and barges move about two trillion ton miles of freight each year to house, feed, clothe, educate, medicate, and employ. Thus, the Department's activities touch the consumer in all aspects. The purpose of this article is to briefly describe some of the newer and more important ones.

The intense interest of the Department in these matters from a safety and consumer viewpoint was recently evidenced by the creation, in the Office of the Secretary, of the Office of the Assistant Secretary for Safety and Consumer Affairs.⁴ Transportation safety cannot be separated from the interests of the consumer, although consumer interests range far broader than safety into such matters as convenience, comfort, economy, responsiveness, and quality. The concerns of the public have focused increasingly on unresolved transportation problems and the Department has given increasingly more attention to the interests of the transportation user. The development of efficient, convenient, safe and low cost transportation to fulfill the needs of the user public is a basic objective of the Department and was a declared purpose of the Congress in establishing the Department.⁵

Transportation users, as consumers, would probably rank safety as their primary concern. To assure that this concern, as well as other consumer interests, is fully reflected in the Department's activities, it is the purpose of the new office to give leadership, coordination, and emphasis, at the Secretarial level, to the development of Department-wide safety and other consumer-oriented pro-

the various modes of transportation to each other and encourage cooperation among the various transportation groups in the country.

112 Cong. Rec. 23431 (1966).

3. In his message to Congress proposing the Department, President Johnson stated, "No function of the Department—nor responsibility of its Secretary—will be more important than safety." H.R. Doc. No. 399, 89th Cong., 2d Sess. 5 (1966).

4. 35 Fed. Reg. 12763 (1970).

5. Dep't of Transportation Act, *supra* note 1, § 2.

grams. It will also provide a conduit for the exchange of ideas and information on these subjects both within the Department and with other government agencies, and the public and transportation industries. Assisting the new Assistant Secretary in the performance of these functions are an Office of Safety Program Coordination and an Office of Consumer Affairs.

The "consumer" upon whom the new office focuses is the individual user or purchaser of transportation—the traveler by common carrier or privately owned vehicle, the purchaser of a private vehicle (such as an auto or boat) or the individual purchaser of transportation (as a shipper of household goods). This is differentiated from corporate or industrial users principally engaged in the shipment of quantities of goods in commerce, whose interests are represented by well-established associations, and whose needs and preferences are carefully considered by other segments of the Department. The establishment of an Assistant Secretary to focus on the problems and interests of the largely unorganized and unrepresented individuals who comprise the general consumer public provides for the giving of equal consideration to the heretofore imperfectly known and insufficiently represented needs and preferences of the individual users and purchasers of transportation. The concept of consumer rights and interests is more than a catchword; it is an accepted fact. It is being absorbed into our legal system and gradually is effecting significant changes in our processes of government. Thus, the establishment of the new office is also a response to a present and growing change in our nation's way of doing business.

Much of consumer input to government policy and decision making is random and unsolicited. In the past, it has been treated largely on an ad hoc basis. This situation can be improved by providing one office to which consumers can communicate their requirements and preferences with assurance that they will be considered by those with the responsibility and authority to implement them. A major function of the office is to assure that the consumer is aware of on-going transportation programs—what is being done and why. A second is to evaluate program issues to determine how they pertain to the consumer. A third is to see that consumer views are sought out with respect to transportation needs in general and Departmental programs in particular. A fourth is to assure that those views are then translated into terms of consumer needs and preferences. In summary, it provides a means of introducing such information regularly, systematically, and at the highest level, into the mainstream of Departmental policy and decision making processes.

In considering the individual traveler, the Department has always emphasized the safety of vehicles and systems. These considerations have been addressed by the operating elements of the Department,⁶ and they will continue to do so. While the new office, in its safety role, assists in the development of more comprehensive, coordinated and cohesive vehicle and system safety programs, it goes beyond this in its consumer affairs role. It brings into focus, equally as sharply as safety concerns, consideration of service to the consumer—the efficiency and convenience of the transportation system to individual users and travelers. This consideration cuts across modal lines and requires an overview and degree of coordination that can best be achieved at the Secretarial level.

An important adjunct of the Office of the Assistant Secretary for Safety and Consumer Affairs is the Departmental Citizens' Advisory Committee on Transportation Quality, established by the Secretary to advise on matters it considers need attention. The Department, in discharging its responsibilities, recognizes the need for citizen involvement. It is therefore the purpose of the Committee to assure citizen representation in the formulation of policy and courses of action. The Committee's studies and recommendations are made from the viewpoint of the private citizen. A principal objective of the Committee is to evaluate and react to the quality of transportation and transportation programs from the citizens' viewpoints and thereby to act as a sounding board and source of input to the Secretary and the Assistant Secretary in formulating policy affecting citizens. It also assists in performing liason with private organizations and associations representing the transportation user community. The Committee consists of 21 members, the majority of which are private citizens whose field of activity is such that they are aware of the views of the various cross-sections of citizens who use the transportation system or are affected by it.

OPERATIVE PROGRAMS

The operating administrations of the Department of Transportation have, by statute, a great many responsibilities directly related

6. The U.S. Coast Guard, the Fed. Aviation Administration, the Fed. Highway Administration, the Fed. Railroad Administration, the National Highway Safety Bureau, the Urban Mass Transportation Administration, and the St. Lawrence Seaway Development Corp.

to the consumer. Of particular relevance to consumer interests are the programs of the National Highway Safety Bureau, the Federal Aviation Administration, the United States Coast Guard, and the Urban Mass Transportation Administration.

National Highway Safety Bureau

In addition to its major safety efforts, one through the development of State highway safety programs and highway safety standards and the other through the issuance of motor vehicle safety standards, which are to the fullest extent consumer safety oriented, the Bureau has established a well defined program of consumer information.⁷ The program, which became effective on January 1, 1970, now lists three categories of automobile performance and requires each automobile manufacturer to provide for his full "line" certified performance in each category. This information—which includes passing ability, braking distance, and tire reserve-load capacity—must be supplied with each vehicle sold and that information for the entire "line" displayed for sale in the showroom must be available at the consumer's request. Periodically, the Bureau publishes a single volume which carries the entire performance listing for all new cars on sale.

It is anticipated that other categories will be added and that the information published will be arranged to give the consumer a clear basis for comparative selection in any of the performance categories he considers important. As the consumer becomes better informed and a more demanding shopper, the manufacturer may find reason to utilize the consumer information publication as a competitive sales tool, carefully and completely reporting and documenting his product's performance in every category possible.

Perhaps the most significant fallout benefits to the consumer from the motor vehicle safety programs are those developing from the gradual transition of the programs from safety standards based on design to standards closely defining the safety performance required. Experience has indicated that no single manufacturer can move far ahead of the others, nor will he risk doing so, with innovative and costly safety features. To do so, historically, has meant economic loss and injury in the form of reduced sales. Yet regulation through gradual upward revision of performance minimums has worked to prevent unfair competition within the framework of a broad performance oriented set of standards. The result produces benefits for the consumer, the same benefits universally cor-

7. 34 Fed. Reg. 8112 (1969).

related with a freely competitive system—while establishing those legal minimums without which the consumer can be victimized by his own technical ignorance.

As a result of a search for a means for giving direct advice to the consumer as a motor vehicle user or purchaser, the Bureau has recently developed the concept of Consumer Protection Bulletins. The bulletins, aimed directly to consumers, are issued whenever the Bureau finds that there are special safety risks the motor vehicle operator should know about.

In the past, the Bureau has been effective in bringing investigations to bear on the shortcomings of the automobile. It has moved the industry to notify their customers and to recall millions of vehicles that were potentially defective. However, many of these actions necessarily require so much time that the consumer can be taking a risk before he is reached by a direct notification program.

There are times when the Bureau may not have sufficient evidence to declare a vehicle flaw to be an outright safety defect. Thus, the bulletins and the news media may be used to keep the consumer completely informed of developing use-risk situations, and to let him know, as accurately as possible, what his risks are and that an investigation is in progress.

A side benefit of the bulletin system is that it can be used to invite current consumer experience, thereby providing further information, for the Bureau's use, on the use-risk situation involved especially in those cases where the total number of known instances comprises a group too small to support long range conclusions. Thus Bureau activity which requires long-term coordination and data collection, such as field investigation and development of the proper legal posture for developing a defect notification, can proceed at an orderly pace.

Federal Aviation Administration

The major benefits provided to the aviation consumer, from both a safety and efficiency standpoint, are the air traffic control services⁸ provided on a 24-hour basis to all segments of aviation. Without them, air travel would be inefficient, chaotic, and unsafe. These

8. Fed. Aviation Act, 49 U.S.C. § 1348 (1958) [hereinafter cited as Fed. Aviation Act].

services are provided not only at the busy airports, but throughout a structured group of air routes in the Nation's airspace.

Other aviation functions, closely related to the consumer, include the certification of flying schools,⁹ airmen¹⁰ and air carriers,¹¹ and the recordation of conveyances that affect title to, and interests in, civil aircraft of the United States.¹² Perhaps even more pertinent to direct consumer protection is the program of certification of civil aircraft. This function is performed by—

(1) Prescribing minimum safety standards governing the design, material, workmanship, construction and performance of aircraft, aircraft engines, and propellers as are required in the interest of safety;¹³

(2) Issuing type certificates for aircraft engines, and propellers, if found to be of proper design, material, specification, construction, and performance for safe operation, and to meet the prescribed minimum safety standards;¹⁴

(3) Issuing production certificates authorizing the production of duplicates of aircraft, aircraft engines, and propellers, if it appears that the applicant can manufacture duplicates in conformity with the appropriate type certificate;¹⁵ and

(4) Issuing an airworthiness certificate for each aircraft, if it is found to conform to the type certificate therefor and is in condition for safe operation.¹⁶

In addition to these protections provided before the purchase or use of an aircraft, continued protection is provided by the means of Airworthiness Directives¹⁷ that are issued under the rule-making authority of the Federal Aviation Act.¹⁸ These directives are issued whenever it is found that an unsafe condition exists in an aircraft, aircraft engine, propeller, or appliance and that the condition is likely to exist or develop in other products of the same type design. They include unsafe conditions that are the result of maintenance, design, defects, or otherwise. As appropriate, they prescribe the inspection, repair, change, or the conditions or limitations, if any, under which the product involved may continue to

9. *Id.* at § 607, 49 U.S.C. § 1427.

10. *Id.* at § 602, 49 U.S.C. § 1422.

11. *Id.* at § 604, 49 U.S.C. § 1424.

12. *Id.* at § 503, 49 U.S.C. § 1403.

13. *Id.* at § 601, 49 U.S.C. § 1421.

14. *Id.* at § 603(a), 49 U.S.C. § 1423(a).

15. *Id.* at § 603(b), 49 U.S.C. § 1423(b).

16. *Id.* at § 603(c), 49 U.S.C. § 1423(c).

17. 14 C.F.R., part. 39.

18. Fed. Aviation Act § 601, 49 U.S.C. § 1421 (1958).

be operated. When immediate action is necessary, they are issued by telegram to the registered owner of each affected aircraft. Finally, in extreme cases there is authority¹⁹ to issue an order for the emergency suspension of the airworthiness certificate of the aircraft involved until appropriate corrective action is developed.

United States Coast Guard

To a large extent, all activities of the Coast Guard in time of peace are related to consumer protection and safety.²⁰ Its search and rescue missions, for example, save thousands of lives and millions of dollars in property each year.²¹ Aids to navigation, which it builds and maintains, keep mariners from dangerous waters.²² More specifically, its functions with the greatest consumer impact are in the fields of boating safety, merchant marine safety, equipment approvals, and efforts at preventing and controlling water pollution incidents.

With some eight million boats and an estimated forty million Americans engaging in this outdoor recreation, the problem of safety is a large one. The duties of the Coast Guard include not only those of enforcement of the laws, but also a broad program of public education to promote safety afloat.

The Coast Guard is a major agency in the fight against water pollution. Not only is it entrusted with responsibilities for preventing spills through its port safety and merchant marine safety activities, but it also conducts aerial surveillance to detect spills and, when necessary, is in charge of clean-up activities.²³

The Coast Guard is responsible for prescribing standards, and enforcing those standards, with respect to the fabrication of life preservers and other maritime lifesaving devices for use on commercial vessels and pleasure craft.²⁴ Specifications for the various

19. *Id.* at § 609, 49 U.S.C. § 1429.

20. *See*, Coast Guard Act, 14 U.S.C. § 2 (1949), which states, in part, that "the Coast Guard shall administer laws and promulgate and enforce regulations for the promotion of safety of life and property on the high seas"

21. *Id.* at § 88.

22. *Id.* at § 81.

23. Water Quality Improvement Act 84 Stat. 91 (1970). *See also*, Exec. Order No. 11548, 35 Fed. Reg. 11677.

24. 46 U.S.C. §§ 481, 526e.

types of lifesaving devices have been established.²⁵ Each manufacturer is required not only to adhere to those specifications but to submit samples of his product periodically for rigorous testing and make his production facility available for frequent inspections.²⁶ To identify Coast Guard approved lifesaving devices each of them is marked with a description of the type of service for which it is approved and an approval number. The Coast Guard also employs a similar specification, testing and approval marking system for certain items of electrical equipment, machinery and vessel construction materials.²⁷

Urban Mass Transportation Administration

For several years, national policy has placed a high priority on efforts to aid cities in solving the increasing problems of urban transportation, much of which was brought about by drastic changes in land use. People have moved to the suburbs but have continued to work in the central city. Rural migrants have concentrated in older, close-in residential neighborhoods, but jobs available to them have moved to outlying areas. However, the forces that increased the need for modernization and expansion of public transportation reduced the traffic and revenues essential to finance improvements. Gradually, the scarcity and costliness of city land needed for highways and the problems of urban congestion reawakened interest in alternative transportation systems, which emphasize the movement of people rather than vehicles and avoid some of the undesirable effects of auto-dominant systems.

The Urban Mass Transportation Administration, through its programs of grants and loans, is giving new emphasis to the evaluation of urban transportation alternatives, to the more effective coordination of different modes of transportation, and to the impact of transportation on city growth and structure. In all of these, the need of the consumer for urban transportation is the paramount consideration.

In October 1970, President Nixon signed the Urban Mass Transportation Assistance Act of 1970,²⁸ the most far-reaching legislation to date in the federal program to aid public transit. The Act states a ten billion dollar intention toward improving urban mass transportation systems over the next twelve years. Among the salient features of the new program are support for advance acquisitions

25. 46 C.F.R., part 160.

26. *E.g.*, 46 C.F.R. §§ 160.002-5, 160.005-5, 160.009-5.

27. 46 C.F.R., part 161-64.

28. 84 Stat. 962 (1970).

of right-of-way, a greater role for State governments, a greater role for private enterprise, and public hearings to assure the acceptability of the program by affected local parties.

Rail Passenger Service

There is probably no more dramatic case of consumer service deterioration than in rail passenger service. This service has declined quantitatively and qualitatively to the point where it can no longer be considered a generally viable mode of intercity travel. The extent of the decline is illustrated by the fact that in 1929 there were 20,000 intercity passenger trains while there are now less than 500.

The 1970 Rail Passenger Service Act²⁹ is an attempt to revive and establish railroad passenger service as a modern and efficient, as well as a necessary, part of a balanced national transportation system. Public convenience and necessity require the continuation and improvement of rail service to provide fast and comfortable transportation between urban areas and other areas of the country. Rail passenger service can help to decrease the congestion on highways and the overcrowding of airways and airports. The traveler should, to the maximum extent feasible, have the freedom to choose the mode of travel most convenient to his needs. These goals are to be achieved, under the Act, by the designation of a basic national rail transportation system and the establishment of a rail passenger corporation to provide the needed service.

On or before May 1, 1971, the Corporation is authorized to contract with each railroad company to relieve it of its intercity passenger service.

A railroad wishing to contract with the Corporation must agree to pay to it each year for three years an amount equal to one-third of fifty percent of its fully distributed passenger service deficit incurred in 1969.

Prior to May 1, 1971, the Corporation will be expected to purchase such new equipment as time permits and to integrate good quality existing equipment which it has taken over from the railroads into its own service system.

29. Pub. L. 91-458, 84 Stat. 971 (1970).

Not later than May 1, 1971, the Corporation will begin service throughout the basic system. It is anticipated the actual movement of trains will be conducted for the Corporation under contract by the railroads.