



DEPARTMENT OF TRANSPORTATION

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REMARKS BY WILLARD J. SMITH, ASSISTANT SECRETARY FOR SAFETY AND CONSUMER AFFAIRS, DEPARTMENT OF TRANSPORTATION, BEFORE THE 1970 ANNUAL CONVENTION OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, LAS VEGAS, NEVADA, NOVEMBER 17, 1970

"THE DOT MISSION IN SAFETY AND CONSUMER AFFAIRS"

It is indeed an honor for me to speak before your 82nd Annual Convention and I must confess this is a new role for me. Although I have spoken about safety from the other side of the fence, many times in the past as Commandant of the Coast Guard, this is my maiden speech as Assistant Secretary for Safety and Consumer Affairs. And after looking over the list of distinguished speakers and panelists on your program this week, it is obvious that I'm in some pretty authoritative company.

It is customary for Department of Transportation speakers to begin their remarks with a few comments on the mobility problems in the host city. Las Vegas is a little unique in this regard, however. No one ever seems to have any trouble getting here. It's getting home that's so difficult.

And I am happy to note, as I look out over the audience, that after two days everyone still has his shirt.

So I guess it's not too late to talk about safety and consumer affairs. I would like to begin by giving you a bit of background concerning the establishment of my office. Secretary Volpe created the Office of the Assistant Secretary for Safety and Consumer Affairs because he recognized the ever expanding role that safety and, more recently, consumer problems have come to play in all aspects of transportation and because of the fact that he had no single office within the Office of the Secretary whose primary interest covered the complete spectrum of transportation safety and consumer affairs. After assuming this new office, I was immediately faced with basic questions of determining the nature of the roles of my new Office. The existing Offices of Pipeline Safety and Hazardous Materials presented no major problem in this respect as their roles were already fairly well defined. However, the determination of our role in safety and consumer affairs is a difficult task. As you all know, the Department has a wide range of comprehensive safety activities and programs currently being carried out under statutory authority in all transportation modes. The consumer affairs roles in these areas are much less clearly defined.

A primary concern is not to duplicate any of the program efforts of the various operating elements of the Department. It became evident very early that each operating administration's primary concern, and its authority to carry out a program, is limited to its own particular mode. The Secretary, as head of the Department, has the broad interest and ultimate responsibility for transportation safety and consumer-oriented programs in all areas of transportation. It is in this area that I feel my office should function. The Secretary must have an advisor who can evaluate, where necessary coordinate, and advise him regarding the individual performances and programs of the operating agencies. I hope to provide him with this advice.

Now let me say a few things about the consumer affairs function. This is really a tough nut to crack. There is no doubt in anyone's mind that "consumerism" is more than a by-word. From a historical perspective, I think it is fair to say we can now consider consumer rights as a legitimate extension of other basic rights which have evolved in our history. The concept 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, in this area, the establishment of the new office is a response to a present and growing change in our Nation's way of doing business.

The consumer upon whom we will focus will be 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 interest are adequately represented by well-established industry associations whose needs and preferences are already carefully considered by other segments of the Department. Much of consumer input to policy and decision making is random and unsolicited. In the past, it has been treated largely on an ad hoc basis. We think this situation can be improved by providing in the Department a focal point for consumers to communicate their requirements and preferences with assurance that they will be considered by those with the responsibility and authority to implement them.

These new offices, the Office of Safety Program Coordination and the Office of Consumer Affairs, are not as yet staffed. We are requesting staff positions in the FY-1972 budget, however, and I hope we will be successful in obtaining the necessary resources to get these programs functioning.

The two remaining functions in my office are Pipeline Safety and the transportation of Hazardous Materials. I know you are aware of their missions; so I won't dwell on the background associated with the establishment of them.

But I would like to bring you up to date on where we stand and present you with a few thoughts I have concerning their operations which I believe will be of interest to you. On August 12, Secretary Volpe announced the publication of the new comprehensive minimum Federal Safety Standards for Natural Gas Pipelines. These standards became effective November 12. The Office of Pipeline Safety has worked closely with the Technical Pipeline Safety Standards Committee, established by the Pipeline Safety Act, and the State Regulatory Commissions. In addition, through the Notice of Proposed Rulemaking procedure, it has provided an opportunity for all persons to state publicly their views regarding these new standards. Some

568 comments were received and reviewed by the Office of Pipeline Safety, and two hearings were held. These standards were laid before the Technical Pipeline Safety Standards Committee as required by law and were recommended by it. Now that these standards are in effect, I would like to tell you how we plan to administer them.

Our policy is to use these minimum standards as a baseline to determine whether less regulation or increased regulation is required on the whole or in particular areas. One way we will make this determination is by using a comprehensive leak and incident reporting system designed to provide us with a broad range of data. This data will profile the level of safety of the industry and provide a scientific basis by which we can determine which areas require further amendment or modification. To the degree possible, these standards will be performance oriented. The States are playing and will continue to play a major role in carrying out the safety programs under the Natural Gas Pipeline Safety Act of 1968 and in developing and enforcing Federal safety standards at the State and local levels. Their advice and experience regarding the scope and thrust of any new or modified safety standards development will be constantly sought.

I feel that Federal-State cooperation is the key to the success of this program. The Federal government doesn't have the resources to carry out all the aspects of the Act and it was not the intent of the Congress for it to do so. One of my primary concerns is to be sure our grant-in-aid money to the States is not diminished in the current Departmental budget cycle because I regard it as the key to an increased level of state participation.

I have been greatly impressed by your willingness to participate in the program. As of today, 49 States have certified under Section 5(a) and one has filed an agreement under Section 5(b) of the Act. I am hopeful we will be getting some word shortly on how much will be available this fiscal year for grant-in-aid funds. We realize fully that many of you will not be able to participate to the fullest extent without these funds.

As most of you know, we have now completed all of our regional orientation meetings for State agency personnel, owners and operators, and the public. These meetings have proved extremely productive, and we have learned a lot about your operations and problems. I hope we will be able to translate the results of these meetings into positive future programs.

In addition, we have sent special circular letters to all municipally owned and other gas distribution facilities telling them about the meetings, in order to be sure that everyone in the natural gas industry is apprised of the new standards and related activities.

We have also initiated a recent effort to determine the safety status of 20 municipally owned gas distribution systems. This summer the Department contracted for a leak detection survey of 20 of those systems. Specifically, this survey will tell us the condition of the various systems and estimate the cost of upgrading those which require it. This project represents a first step by OPS to ascertain the magnitude of the job required to assure safe operation of the municipal gas distributions systems. I am pleased with the findings to date and hope to keep you informed regarding our future findings. If funds become available, we will initiate a similar survey of privately-owned gas distribution facilities.

In keeping with the requirements of the Act, the standards require all operators to file an inspection and maintenance plan with the OPS and appropriate State agency, not later than February 1, 1971. I feel this will be another major contribution to safety, and look forward to working closely with the States on working out the necessary procedures to insure this information is put to timely and efficient use in order to justify the reporting burden placed on the industry.

Let me close my comments on pipeline safety by saying a few words about the compliance and enforcement aspects of this program. Last week, we opened our first field office in Houston, Texas. It will be a small office (three persons initially). However, it is a pilot operation designed primarily to work out sound relationships and programs on Federal and State compliance and enforcement matters. Many of the specific topics discussed above will be explored by the field staff with the individual States. From these discussions we would expect specific areas of responsibility can be developed. For the future we plan to open four additional offices in Atlanta, Philadelphia, Kansas City and San Francisco. These offices will concentrate on developing those aspects of compliance and enforcement activities which will facilitate increased State participation in our program. Enforcement should not be a major problem if industry's past performance is a guide. If the Federal Safety Standards are administered in good faith, and accepted in good faith, there will be no need for special enforcement actions. Our plans call for

increased cooperation between the Office of Pipeline Safety and the States in meeting this challenge and we ask you to help us in the true spirit of "new federalism" that the President and all the members of his team believe in and want to make a reality.

I might also mention that we are in the process of consolidating the oil-products pipeline safety program, now technically in the Federal Railroad Administration, with the natural gas program. Legislation to accomplish this has been prepared and is now pending before the Congress. We hope for a speedy resolution of this matter.

Now for a few words about the transportation of hazardous materials. In the last year or so the hazardous materials function has received a great deal of public and Congressional attention due to several well-publicized rail accidents and the problems arising from special shipments of toxic materials by the Defense Department. Behind this interest lies, what I consider to be some rather sobering facts. Chemical production in the United States has increased by more than 375 percent over the past 15 years. Tank trucks make nearly 100,000 deliveries of gasoline daily to retail outlets. This high degree of public exposure plus the increasing intermodal nature of their shipment requires an effective program for the regulation of the transportation of hazardous materials.

Sixty-two years have elapsed since the enactment of the first Federal law under which regulations controlling the transportation of hazardous materials were adopted. The Federal statute concerned is commonly referred to as the Transportation of Explosives Act. This statute afforded a standard of protection for many years in an area fraught with inherent and unusual dangers to the public. The first regulations took effect on October 1, 1908.

Since that time, the development of new chemical products have increased at a very fast rate - approximately 25 per day in recent years, and the hazardous materials regulatory process has had to adapt accordingly. In recognition of this increased growth, Title III of the Railway Safety Act was passed on October 16, 1970. This new Act has several immediate impacts on our hazardous materials programs. It creates immediately an increased workload on the Office of Hazardous Materials by requiring the initiation of facilities and staff to evaluate and review all aspects surrounding the movement of hazardous materials. We are required to establish a centralized-all mode-hazardous materials accident reporting system. This system will be in operation by January 1971.

The Office of Hazardous Materials will, if things develop as we hope, concentrate on shipper problems. We have not always been able to do this in the past, but I feel this is where the safety payoff is. We are now in the process of simplifying the shipper regulations by encouraging one set of uniform standards on both the Federal and State level, to replace the current Federal, State and local regulations currently in existence, and by reorienting the regulations toward performance requirements and away from specific design requirements. This approach will eventually result in less regulation rather than increased regulation and ultimately will relieve the shipper of some of his present regulatory burdens.

Within this context, we plan to devote special attention to four major areas: labeling and classification, handling and stowing, placarding and emergency procedures and packaging. These general areas affect all modes of transport and I feel will be areas which will benefit the most. I plan to adopt the same regulatory approach in the area of hazardous materials as I have in pipeline safety. Any standards developed will be baselines from which further decisions regarding more or less regulation will be accomplished.

Our new accident reporting system for all modes of hazardous materials will go into effect in January 1971. It will require reports of hazardous materials incidents in the rail, highway, water and air modes of transport. These reports should provide the comprehensive information needed to determine the effectiveness of current regulations or the need for new ones.

We are also considering the adoption of the United Nations labeling system for domestic as well as international shipments. Intermodal transportation today is a reality and we want to help make the interchange as efficient, economical, and safe as possible.

In conclusion, it must be obvious that in both the pipeline safety and hazardous materials transportation, we are involved with complex problems and in nearly every instance our success depends on the active cooperation and participation of State and local governments and the particular industry involved.

By working together, we can make the highest degree of safety a reality. It is my earnest desire to work closely with the State agencies, because I am convinced it is the best way to do the task. I look forward to working with you in this most important endeavor in carrying out both the pipeline safety and hazardous materials programs.

Thank You.

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STATEMENT OF WILLARD J. SMITH, ASSISTANT SECRETARY OF
TRANSPORTATION FOR SAFETY AND CONSUMER AFFAIRS, BEFORE
THE SUBCOMMITTEE ON AVIATION OF THE SENATE COMMERCE
COMMITTEE REGARDING SAFETY IN AIR CHARTER OPERATIONS,
TUESDAY, MARCH 9, 1971

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you today to discuss
safety in air charter operations.

My Office has recently completed a study of air charter operations
which I believe the Committee will find useful in connection with the conduct
of these hearings. Before I discuss that particular report, however, I
would like briefly to review for you the functions of my Office and its
relationship to other elements of the Department in the field of safety.

When I appeared before the Committee last September for confirmation
I outlined in a general way the type of role my Office was designed to play.
With respect to consumer affairs, my Office serves as a focal point within
the Department where consumer problems associated with the conduct of
programs managed by our operating administrations can be reviewed and
coordinated. In the field of safety, the Office has both an operating, and
what you might call an overview function.

There are two areas of safety regulation which sometime ago the Department found should be administered within the Office of the Secretary. These are the pipeline safety and hazardous materials regulatory programs. Upon the formation of my Office last fall those functions were transferred to my Office from the Office of the Assistant Secretary for Systems Development and Technology. The remainder of our safety function like the consumers affairs function, is one of overview and coordination and to a certain extent involves the Office in all the safety programs administered by our operating administrations.

Some of the statutes administered by the Department assign particular safety functions to our various operating administrations. They, in turn, carry out specific modal safety programs, but their primary concern and authority is limited to their own particular mode. The Secretary, as head of the Department, however, has broad interest and responsibility for transportation safety as a whole. To meet this responsibility, he must be able to evaluate and, where necessary, coordinate the individual performance and programs of the operating agencies. It is the principal function of my Office to advise and assist the Secretary in meeting this responsibility.

It is in conjunction with this function of overview and evaluation, and at the specific direction of the Secretary, that my Office undertook the study of chartered aircraft services. The Secretary announced the conduct of the study shortly after the fatal crash last October of the chartered aircraft which carried members of the Wichita State University football team.

I would like to make clear that this study was in no way an attempt to inject the Office of the Secretary into the role vested by statute in the National Transportation Safety Board of investigating aircraft accidents and determining their probable cause. Instead the purpose of the study was to conduct an in-depth investigation of charter operations utilizing large airplanes in private carriage to determine the true condition of such operations.

The investigation encompassed present Federal regulatory policies and practices, but was not simply an evaluation of FAA activities. It covered the adequacy of the current law under which the FAA and CAB operate, as well as their regulations, and also covered the methods and resources available for enforcement of those laws and regulations. In short, we sought to take a fresh look at private carriage for compensation or hire in air commerce, evaluate the total system, and see what should be done to apply an overall, rather than a piecemeal, answer to the problems in that field.

In carrying out the study, we were assisted by a multi-disciplinary task force consisting of representatives from the Office of the Secretary, the FAA, the Coast Guard, and industry. During the course of the study, contact was made with other Federal agencies and with persons throughout the country involved in the airplane charter market and the aircraft industry.

We found a number of serious problems and deficiencies in the air charter field. To understand those problems, however, some background on the problem is necessary.

Under the Federal Aviation Act of 1958, aircraft charter operations involving large airplanes (those over 12,500 pounds) in private carriage by other than certificated scheduled or supplemental air carriers are not a statutory concern of the Civil Aeronautics Board. The FAA, on the other hand, regulates from the safety standpoint air operations both in common and private carriage. The FAA recognizes that charter operations in private carriage do not differ materially in safety aspects from common carriage and, therefore, has imposed essentially the same high safety standards for operations in both areas.

Persons engaged in common carrier operations must have an FAA air carrier operating certificate, while those engaged only in operations in private carriage "for compensation or hire" must have a commercial operator's certificate. Under circumstances where it is doubtful whether the operations are for compensation or hire, the test used to determine whether a commercial operator's certificate is necessary has been whether the air carriage is merely incidental to the operator's other businesses or is in itself, a major enterprise for profit.

Because of the high safety standards imposed and the expense of certification, many operators use various subterfuges in conducting air charter operations to avoid or evade the stringent FAA regulations applicable to operations for compensation or hire, and attempt to conduct their operations under the less stringent requirements applicable to other operations. As a result, the oftentimes difficult economic determination of whether an operation is for compensation or hire must be made on a case-by-case basis before the FAA can determine whether a particular operation is illegal.

Among the subterfuges used by unscrupulous operators to evade FAA requirements are the establishment of dummy corporations, leasing arrangements which place unsuspecting lessees of large aircraft in the role of an operator under FAA regulations, and the operation of aircraft carrying goods or persons for compensation or hire to and from the United States under foreign registration or ownership to avoid compliance with U. S. requirements.

These subterfuges often signal the existence of some very fundamental safety deficiencies in the charter operations involved. These include the operation of overloaded or unairworthy aircraft, poor flight planning and the use of improperly rated pilots or inadequate airports.

Among the factors complicating the enforcement of violations committed by such operators are:

- The failure of civil penalties to act as a deterrent because of statutory limitations as to their amount. Some "shady"

A follow-up to that recommendation is that the FAA eliminate the requirement for the certification of commercial operators who engage only in private carriage for compensation or hire, if after an appropriate time for evaluation of the above equalization process, such a step proves feasible. This would eliminate the necessity of FAA personnel (essentially safety inspectors and legal personnel) having to make economic determinations regarding compensation or hire before determining which regulations they are to apply. It would also enable them to devote their major activities to purely safety matters.

Looking further into the future, the report recommends an inter-agency study involving DOT elements and the CAB to determine the public interest and economic need for aircraft operations in private carriage, and more definitively clarify the statutory difference between common carriage in air transportation and private carriage in air commerce.

Other recommendations contained in the report are:

- Continue the stepped-up type of FAA surveillance over these air charter operations conducted last November and December.
- Develop and distribute additional materials explaining to the public the potential liabilities and responsibilities involving the charter or leasing of large aircraft.
- Incorporate into or make mandatory as an attachment for each charter or lease of a large airplane a "truth in leasing" clause.

- Require the filing of flight plans for all flights of large airplanes, except those on local, ferry, or test flights.
- Establish procedures to insure that foreign airplanes (other than air carriers) flying in the United States for compensation or hire have the required permit to operate in the United States.

We are pleased to say that the FAA already has taken some steps to implement some of the recommendations contained in the report. We recognize that implementation of some of the other recommendations will require time for implementation. We look forward to working with FAA personnel to implement the report in other respects and hold high hopes for bringing about major safety improvements in this field of air operations.

Mr. Chairman, this concludes my prepared statement. Now I will be pleased to answer any questions you may have.