

TESTIMONY OF LINDA HELLER KAMM, ACTING DEPUTY SECRETARY, DEPARTMENT OF TRANSPORTATION, BEFORE THE SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, COMMITTEE ON GOVERNMENTAL AFFAIRS, OCTOBER 10, 1979

Mr. Chairman and members of the Committee: Neil Eisner, Assistant General Counsel for Regulation and Enforcement, and I are pleased to be here today to discuss the Department of Transportation's initiatives in improving government regulations. Secretary Goldschmidt shares my commitment to improve the regulatory process by ensuring that regulatory impacts are considered and that the public has more opportunity to influence decisionmaking. We are encouraged by the fact that OMB has named us a leader in carrying out the Executive Order. We are also encouraged by our own successful experiences with it. For example, we are reducing burdens imposed by existing regulations.

- The Coast Guard lowered the annual paperwork burden and inspection requirements for one regulation alone by 7,000 person-days for the industry and 5,000 person-days for the agency.
- The Federal Railroad Administration (FRA) estimates its current review of safety regulations will save the financially hard-pressed railroad industry some \$500 million annually while maintaining safety standards.
- Finally, the Research and Special Programs Administration's (RSPA) efforts to revise inspection requirements for gas pipelines should save the industry some \$1.1 million annually without compromising safety.

We are also encouraged by the fact that our Regulatory Analyses and effective public participation have enabled us to reduce burdens and costs in several recent rulemakings. For instance:

- We were able to reduce the cost of the Department's proposed regulation for the handicapped by \$800 million in the final rule.
- The Federal Aviation Administration (FAA) pared \$19 million from its final rule on air taxi and commercial operators. That review also reduced the industry's reporting requirements by two-thirds: from 300,000 person-hours to 96,000 person-hours.

As you know, Mr. Chairman, the Department is a major regulatory agency. We are responsible primarily for promoting safety in all transportation modes. To give you an idea of the scope of our activities, the Department currently has 450 pending regulations, 70 of which are classified as significant generally because they are costly, controversial or involve substantial public interest. The Department also intervenes in proceedings before independent transportation regulatory agencies; one of our major objectives in these proceedings is to improve their regulations.

This morning I am going to discuss how we have implemented the Executive Order I will also briefly comment on the pending legislation on regulatory reform, S. 755 and S. 262. I understand that you are particularly interested in public participation, Regulatory Analyses and reviews of existing regulations, which I will turn to now.

IMPLEMENTATION OF THE EXECUTIVE ORDER

PUBLIC PARTICIPATION

Mr. Chairman, the Department is proud of its long-standing record for encouraging public participation in its rulemaking decisions. We, for example, pioneered the concept of providing financial assistance to individuals and groups that ordinarily couldn't afford to participate in the rulemaking process.

For the past two and one-half years, DOT has conducted a demonstration program in the National Highway Traffic Safety Administration (NHTSA), which has funded participants for specific proceedings. The Department also funded participants on a more limited basis in recent hearings on the proposed rule prohibiting discrimination in transportation on the basis of handicap.

NHTSA's demonstration program improved its rulemaking by giving decisionmakers a chance to secure a wider range of views from diverse interests. This enabled NHTSA to assess opposing arguments more fairly and thoroughly -- without delaying the rulemaking process or creating administrative headaches. Consequently, the agency was able to develop regulations that were more responsive to the various needs and interests of the affected public.

In the case of regulations for the handicapped, the Department provided funding for the expenses of certain groups or individuals who represented the views of handicapped people. Testimony of handicapped persons about their personal experiences and problems with transportation was particularly meaningful and led to a better regulation.

Mr. Chairman, based on our experience in this area, we oppose the provision in S. 262 which gives the Administrative Conference of the United States total authority to fund participants. We are convinced that the agency conducting a proceeding must have considerable say in the selection of those participants to be funded. Only that agency is knowledgeable enough about the subject matter of its rulemaking to determine whether a participant can effectively present a particular viewpoint. We much prefer the provision in S. 755, which leaves the management of the funding program to the individual agencies. If that is not done, the bill should be revised to require the Conference to consider the views of the various agencies in making funding decisions. Finally, the legislative history of any such legislation should make it clear that existing implied agency authority permits funding of participants.

Advance Notices of Proposed Rulemaking

Another technique we use to increase public participation is the Advance Notice of Proposed Rulemaking. I'd like to note, Mr. Chairman, that the Federal Aviation Administration (FAA) was one of the first agencies to use the ANPRM to gather public opinion early in the rulemaking process. We have explicitly encouraged all of our operating administrations to use ANPRMs in response to the Executive Order. Generally, we have found this technique particularly valuable for exploring new ideas, and we expect to use it even more frequently in the future because of our new legislative mandates in areas that we have not previously regulated.

In promoting the use of ANPRMs, we must recognize, however, that some people think they are both too vague and request information that agencies should be developing internally. ANPRMs should only be used where the circumstances are appropriate.

Semi-Annual Regulations Agenda and Review List

Let me turn now to our Regulations Agendas. We think they are one of the most valuable tools for public involvement because they generally alert the public to a regulatory action early in the process and give a comprehensive overview of our rulemaking activity. Our Agenda exceeds the provisions of the Executive Order by giving more information than is required and by summarizing all proposed regulations, significant and nonsignificant. Recognizing the limitations of the Federal Register for providing notice, we are encouraging people to get on mailing lists for

the Agendas and for specific regulations. (We have attached a copy of our latest Agenda for your reference; the Appendix to the Agenda describes our mailing list procedures.)

I'd like to point out that even before the Department began publishing Agendas, NHTSA, on its own initiative, published a five-year plan of its proposed rulemaking activities and requested public comment on the plan and its priorities.

Informal Public Hearings

Another technique we have used successfully is informal public hearings for certain rulemakings. Generally, we hold these hearings when a regulation has a potentially broad impact on the industry or the public -- such as the regulations for the handicapped, the SST noise rules, fuel economy standards or the regulations governing hours of service for truck drivers.

We have used various methods to publicize these hearings, including newspaper advertisements, and we are experimenting with night-time hearings to give more people a chance to attend. We are also exploring other ways to attract participants and stimulate dialogue to justify the expense and time that hearings require.

Other Techniques

We are using other techniques to inform the public directly and elicit participation, including mailing lists, press releases and newsletters. DOT's consumer newsletter, for example, is sent bi-monthly to some 5,000

consumer groups and individuals. It includes summaries of current rulemakings that will affect consumers and tells people how to get additional information.

Consultative Process for Legislation

Recognizing the importance of involving the public at the very earliest stages, you may be interested, Mr. Chairman, in the steps we have been taking to increase participation in the development of our legislative proposals, legislation that could eventually require implementation by regulations. Before the Administration's major trucking bill was submitted to the Congress last June, the Department notified consumer and public interest groups; affected labor, business and industry interests; state and local governments; and other Federal agencies of our interest in exploring the trucking issue. We held numerous meetings with interested groups to help develop our proposed legislation. After we drafted the bill, it was widely circulated to the affected groups for their comments. We believe we made a conscientious and, for the most part, successful effort to permit every relevant group to present its views. Similar procedures were successfully used in the development of the airline deregulation bill.

This gives you a brief idea of some of the techniques we have been using. In appraising our overall program, it is difficult to say which is best. Any one of them can be effective if used properly for the appropriate

rulemaking, and we are still exploring new ways to encourage public participation. We do believe that there has been an expansion in the diversity of individuals and groups commenting on the rulemakings. And that bodes well for all of us, Mr. Chairman, because the involvement of knowledgeable outsiders at early stages of the decisionmaking process will lead to a better, more acceptable end product.

REGULATORY ANALYSIS

Let me move on to comment about our Regulatory Analyses. Our experience with the Executive Order, has shown that these Analyses are critical to rational decisionmaking on major regulations, and we support the provisions in the pending legislation that require them.

We are currently developing or have completed 20 rulemakings that require (or required) Regulatory Analyses under the Executive Order. We prepare these Analyses and make them available to the public at the earliest stage of rulemaking, including the advance notice stage. This is to ensure that the weighing of alternatives, a requirement of the Regulatory Analysis, is done as early as possible, and to involve the public in the process at an early stage.

The Department requires economic evaluations for all of its regulations not requiring Regulatory Analyses. These evaluations contain an analysis of the economic consequences of the proposed or final regulation including both costs and benefits. The evaluations vary in scope according to the importance of the regulatory proposal. If the regulation is quite costly or controversial, the evaluation can be almost as detailed as a Regulatory Analysis. (We have attached copies of two Regulatory Analyses and one evaluation for your reference.)

Our Regulatory Analyses have been a valuable management tool for ensuring that regulatory choices are as rational and cost-effective as possible. The Analyses have been an important aid in reviews by high level decision-makers since they analyze alternatives and provide a basis for evaluating the preferred alternative. In fact, Regulatory Analyses are becoming key decision documents since they require evaluating not only the economic impacts of the regulation but also other relevant consequences.

I would note, however, that we are concerned by the potential proliferation of rulemaking documents through some pending legislation. No purpose will be served by requiring agencies to pile impact analysis upon impact analysis covering each area of concern separately. The Regulatory Analysis should be a comprehensive document that considers all relevant consequences of a regulation.

The Analyses and Evaluations are helping us to reduce regulatory burdens while still achieving our objective. Our results are encouraging. For example, the Federal Highway Administration (FHWA) recently issued a rule to reduce accidents caused by vehicle defects in trucks. After considering public comments on the NPRM and developing a final Regulatory Analysis, FHWA revised its proposal and reduced the cost of its final rule on inspection and maintenance procedures by approximately \$4 to \$6.5 million annually. As I noted earlier, the FAA recently revised its regulations pertaining to air taxi and commercial operators. Based on public comment and the Regulatory Analysis, the agency pared \$19 million from the cost of the final rule. These savings were possible without any reduction in safety.

The Department has found that, to be truly effective, a Regulatory Analysis must be developed early enough in the rulemaking process to provide the

basis for decisionmaking, not the rationale for it. It must evaluate all reasonable alternatives, including taking no action. We have also found that Analyses are more useful when the statute permits broad discretion in considering a range of alternatives than when it is fairly specific about the regulatory program to be established.

The problems we have met in preparing Regulatory Analyses and Evaluations generally are related to quantifying the costs and benefits of a regulation or to insufficient data. For instance, it is difficult to place a dollar value on human life or to isolate and evaluate the effect of various safety factors on accident, injury and death rates. Another problem involves risk analysis. For example, because of the small number of actual reported accidents and years of operating experience with liquefied natural gas, it is hard to predict the probable risk of future accidents. We also have had problems because of an insufficient data base. FHWA, for instance, has been hampered by the fact that states' accident statistics do not distinguish between trucks engaged in inter- and intrastate commerce; this makes it difficult for the agency to calculate accident rates for the industry it regulates.

In other cases, it has been hard to identify reasonable alternatives. For example, in preparing a rule to prevent grade crossing accidents, the Federal Railroad Administration (FRA) found that most alternatives involved unrealistically high costs.

Finally, we have been analyzing our efforts in this area and we recognize that we can improve our Regulatory Analyses; we are presently exploring ways to accomplish this.

SUNSET REVIEWS OF EXISTING REGULATIONS

I'd now like to discuss a third major goal of the Executive Order -- sunset review of existing regulations. Some of the most telling complaints about government regulations have been aimed at those time-encrusted regulations which are now outdated. Recognizing the need for change, the Department has been reviewing its existing regulations; we have expanded our efforts in response to the Executive Order.

Each operating administration is going over its old regulations to determine whether they need to be reworked or eliminated. We are emphasizing the need to reduce the burdens imposed by our regulations, particularly with respect to paperwork and "red tape". As a result of this effort, we are currently revising some 200 regulations (nearly half of the regulations listed on our agenda) to make them more effective and, when possible, less burdensome.

Our reviews vary in scope and, in some cases, include whole regulatory programs. The FRA, for example, has initiated a general safety inquiry to evaluate and improve its railroad safety regulations. FRA is emphasizing the need to eliminate or modify costly requirements such as reporting and recordkeeping that contribute to inflation but are not essential to maintaining safety standards. Although it is too early to place a precise

dollar amount on the savings to be realized, FRA believes its review effort could result in annual savings of up to \$500 million for the financially hard-pressed railroad industry without adversely affecting safety. FHWA has reviewed all of its regulations to minimize "red tape." About 25 of some 200 directives in the Federal-aid highway program have been cancelled or will be. In addition, more than 100 directives are being revised.

The Urban Mass Transportation Administration (UMTA) has revised its procedures for providing operating and capital assistance to transit operators. This has resulted in up to a 75 percent reduction in paperwork after the first application for a grant has been accepted.

DOT's Actions Related to Independent Regulatory Commissions

In addition to these efforts in our own regulatory program, we have been actively involved in the regulatory proceedings of the independent transportation regulatory agencies. Our involvement has included efforts to improve the regulations of those agencies both substantively and procedurally. We have supported numerous rulemakings initiated by the Civil Aeronautics Board (CAB) and the Interstate Commerce Commission (ICC) designed to reduce economic inefficiencies due to pervasive regulatory control and to expedite the administrative process. For example, we supported a CAB rulemaking to expedite new entry into markets by using simplified application procedures for new or modified route authority. We also have supported various ICC initiatives to increase reliance on

competitive market forces in both the rail and truck areas. Our efforts in the truck area have been generally consistent with the regulatory reform measures set forth in the Administration's proposed Trucking Competition and Safety Act of 1979. In the rail area, we suggested the exemption of rail carriers from economic regulation in all markets where competition is sufficient to protect shippers. In our view, freedom from regulatory constraints will enable railroads to compete more effectively with other modes by offering services that closely correspond to the costs rail carriers incur in providing that service. In addition, the exemption of rail carriers from ICC regulation will permit shippers and rail carriers to negotiate mutually beneficial rate and service contracts. If unnecessary regulation is maintained, carriers will continue to incur additional costs and inefficiencies in their operations that will be reflected in rates charged and service levels offered to the public.

To sum it up, we believe that we are doing a good job reducing regulatory burdens and conducting sunset reviews. We support the provision in the Administration's bill for continuing periodic reviews as a rational, effective method for ensuring the weeding out of old rules.

Mr. Chairman, that concludes my comments on our efforts to increase public participation, do better analysis and review old regulations. In addition, we are actively working to achieve the two other goals of the Executive Order -- effective policy oversight and the use of plain English. I would like to review these areas briefly.

POLICY OVERSIGHT

We have established a special procedure in the Department to ensure review of significant regulations by the top officials in the operating administrations and the Secretary's office, prior to submission to the Secretary. This review process encourages discussion of regulatory policy issues in the Department and permits us to resolve them.

An important component of our effective policy oversight activity is the Department's Regulations Council. The Council, composed of the top Departmental officials, reviews some of the most controversial and sensitive regulations and oversees DOT's compliance with the new procedures. In the past year, the Council has been particularly effective in considering basic policy disagreements within the Department over specific regulations. Based on our experience over the past 18 months, we believe that policy oversight in the Department is sophisticated, extensive and systematic.

PLAIN ENGLISH

To implement the goal of the Executive Order, calling for regulations written in plain English, DOT has launched a Departmentwide effort to ensure that the language in its regulations is clear and comprehensible. This is especially important because many of our regulations are highly

technical and use specialized language. We are emphasizing the elimination of terms of art that are understandable to members of the engineering community, the regulated industry and many of the regulators, but are incomprehensible to the public.

IMPACT OF EXECUTIVE ORDER ON DEPARTMENTAL REGULATIONS

Based on our experience, we believe that the Executive Order has had a positive effect on our rulemaking activities. It has enabled us to address issues more effectively and to manage the process more successfully while improving opportunities for public involvement in decisionmaking. The end result, we think, will be increased compliance with regulations that are based on rational analysis, are carefully drafted to meet the problem and are easy to understand. As we eliminate, consolidate and revise old regulations or rethink the newer ones, we become more responsive to the public we serve.

PENDING LEGISLATION

My comments have addressed various aspects of the pending legislation, but I'd like to close this morning with some overall observations.

The Administration bill strengthens the reforms introduced by the Executive Order, makes them permanent and, most important from our standpoint, applies them to the independent regulatory agencies. We strongly endorse this bill.

Although the Department supports the general thrust of S. 262, we have some problems in the way it is to be executed. We explained our position in a letter to Senator Ribicoff which we have provided to this Subcommittee, so I will cover only the main points.

As we see it, S. 262 adds several new and unnecessarily burdensome paperwork requirements, including an annual report which would require a detailed analysis of the oldest 10 percent of an agency's pending proceedings. This could divert resources from the work of analyzing and improving regulations. We are also concerned about requirements that may be necessary for some agencies but penalize those that are doing a better job.

We also object to the provision that makes an agency's failure to meet the agency's own rulemaking deadline subject to judicial review. Since the length and complexity of the rulemaking process is largely dependent on the degree of public participation, the deadlines are, at best, estimates involving many variables. Judicial review would unduly burden the process. The threat of such review may cause delays since deadlines may be set generously to avoid judicial action.

This concludes my remarks, Mr. Chairman, I would be pleased to answer any questions you or the other Committee members may have.