

STATEMENT OF KENNETH L. PIERSON
DIRECTOR, BUREAU OF MOTOR CARRIER SAFETY
FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND
TRANSPORTATION, COMMITTEE ON GOVERNMENT OPERATIONS

SEPTEMBER 12, 1985

Good morning Madam Chairwoman, and members of the Subcommittee. We have been asked to appear today to discuss the implementation of Section 215 of the Motor Carrier Safety Act of 1984. Section 215 directs the Secretary of Transportation, in consultation with the Interstate Commerce Commission (ICC), to establish a new safety fitness procedure for owners and operators of commercial vehicles operating in interstate or foreign commerce.

The safety fitness rating procedures required by the Act are to include initial and continuing requirements to be met by carriers to prove their safety fitness; a means to determine whether such persons meet the safety fitness requirements; and specific deadlines for action by the Department of Transportation (DOT) and the ICC in making safety fitness determinations.

The Act established a 1-year time frame for the accomplishment of this task, and the submission of a copy of the procedure to Congress. We have been diligently pursuing this objective.

Background

In accordance with section 307(a) of title 49, United States Code, the Department of Transportation must promptly inspect its records regarding the safety compliance of any applicant seeking

operating authority from the ICC and must report its findings to that agency. Pursuant to the original Memorandum of Agreement between DOT and ICC, a system of notification and response was established on April 3, 1967. This system involved tremendous paperwork exchanges, reaching some 18,000 pieces of correspondence by 1980 covering emergency temporary authority, temporary authority, and permanent authority applications.

In 1980, the hard copy system was converted to an automated data processing system with ICC access to our computerized safety rating data bank. Under this system, hard copy records were furnished only on request for some categories of applications, reducing the burden on both agencies.

With the enactment of the Motor Carrier Act of 1980, the number of applications before the ICC requiring safety ratings dramatically increased. Some 17,000 applications were received during the first full year after enactment of the deregulation act. We had no information on new entrants, and no authority to require information from applicants since they were not carriers and not subject to our regulatory authority until granted ICC authority. This resulted in our issuing "insufficient information" safety ratings on thousands of new entrants.

Given the 4,000 or more authorities issued each year by the ICC, our resources to specifically audit each new entrant were inadequate to meet the challenge. Approximately 7,000 audits of motor carriers and approximately 2,500 audits of hazardous materials shippers are conducted each year by DOT. Approximately 45,000 motor carriers and shippers of hazardous materials are

known to the DOT and subject to our hazardous materials regulatory jurisdiction. Motor carriers are selected for audit from among the 216,000 carriers of record in accordance with neutral selection criteria established each year in our annual safety management audit program plan. New entrants are audited to the extent that they meet one or more of these criteria and then are selected for audit. An audit of each new entrant prior to receiving ICC authority would have required a change in the statute, and would have prevented addressing the other 182,000 non-ICC carriers of record.

The Plan

The ICC, as a part of the licensing procedure, will require new applicants to obtain a provisional safety rating from DOT, and carriers already of record will report their safety rating. This mechanism would result in requests from new entrants for provisional safety ratings, which would be made by a multipage submission in the form and manner prescribed by DOT. The process would require new entrants to supply information which will enable us to assess safety fitness and make a provisional rating. Procedural rules, promulgated by each agency, would establish the time frame for handling such requests and for action by DOT and ICC.

The procedural rules will be issued under the provisions of the Administrative Procedures Act, with opportunity for public comment. A draft Notice of Proposed Rulemaking has been developed and coordinated with the ICC. It is currently undergoing internal review by DOT and will then be sent to the Office of Management

and Budget as required by DOT rules and Executive Orders governing rulemaking.

Related Issues

Your Subcommittee has expressed interest in DOT's policies and experiences in intervening with carriers applying for ICC authority and in complaints which seek the revocation or suspension of a carrier's existing operating authority. Unless such action is requested by the ICC, it is DOT's policy to seek to suspend or revoke a carrier's ICC authority only in the most severe cases.

Congress has provided DOT with a number of sanctions ranging from declaring vehicles and drivers out-of-service to civil and criminal prosecution. The level of the civil sanction is based upon consideration of several factors. Unless requested by the Commission in accordance with 49 U.S.C. 307, we seek to intervene in applications or petitions concerning carriers already in business only when we can show a pattern of noncompliance which could not be remedied by other less severe measures.

Consequently, we sometimes find ourselves in the posture of rating a carrier unsatisfactory, but choosing not to pursue an intervention or petition at the ICC. In cases where we have pursued civil or criminal remedies against a carrier for serious patterns of noncompliance, and the carrier pays the penalty, it is not automatically restored to a satisfactory safety rating. The change in rating comes about only when a carrier has taken effective steps to overcome its previous noncompliance and after this fact has been confirmed by an on-site review by our staff.

We will upgrade the carrier's rating when we have written confirmation of the current safety posture of the carrier from our field staff. While this has not always been the practice of the agency, it is now and has been since August 1983.

The issue of carriers granted a safety rating without an audit came about when the automated data system was established in 1980. In order to get the system on line, it was decided to give a "satisfactory" safety rating to any ICC carrier of record on which we had no negative information. Each carrier's hardcopy file was reviewed and a determination made on a carrier-by-carrier basis. This was before we had created the "insufficient information" category of rating terminology. Since that time, many of these carriers have been audited, and their rating reflects the results of those audits.

DOT plans to ensure that carriers maintain their safety rating over time through carrier audits and activities of States under the Motor Carrier Safety Assistance Program (MCSAP). MCSAP is the Federal grant program authorized by the Surface Transportation Assistance Act of 1982, under which funds from the Highway Trust Fund are provided to States to enhance State motor carrier safety inspection programs.

Carriers in need of audit attention are identified based on evidence of noncompliance from roadside checks, accident experience, and indicators such as failure to report accidents over long periods of time. We also select carriers by generic class, such as hazardous waste haulers or bulk hazardous materials

transporters, with or without evidence of noncompliance. We continue to focus on target groups to maximize our effectiveness.

MCSAP will come to be a significant factor in selecting carriers to audit in the future. As States implement the "SAFETYNET" data information system under MCSAP, we will be able to factor State inspection reports into the selection criteria. Therefore, the tens of thousands of State inspections will provide a larger data base on carrier noncompliance than we presently are using. It may then be possible to base safety ratings solely on roadside inspection reports provided there are sufficient numbers of reports to establish patterns of compliance or noncompliance.

Summary

We have had a safety rating program in effect for the last 18 years and improvements have been made over time. We recognize that more needs to be done. Our plans and procedures will result in even more improvements.

This concludes my prepared statement. I would be pleased to respond to your questions or provide additional material for the record to clarify or amplify the steps that we are taking to further improve DOT's motor carrier program.

- - -