ONE THIRD CENTURY OF MOTOR CARRIER SAFETY REGULATION

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After thirty years of Federal safety regulation of interstate commercial transportation, the past four years (1966-70) have witnessed a greatly expanded Federal involvement in highway safety measures—affecting trucks and buses, as well as automobiles, motorcycles—vehicles of all types. The expanded effort stems from two legislative enactments approved September 9, 1966, as well as increased resources for the administration of previously enacted measures. This paper undertakes a review of the several measures providing for Federal regulatory programs and the pace of provisions for their administration.

It is noted that State governments, through Vehicle Codes and through operation of State regulatory commissions, have been active in the same fields. This report will deal with the Federal role only. There has been a continuing trend toward State adoption of the Federal regulations.

FEDERAL SAFETY JURISDICTION IN TRANSPORTATION

The Federal government has exercised, in some measure, safety supervision over transportation agencies for many years. A Federal steamboat inspection service was initiated in the second quarter of the nineteenth century. The number of deaths and injuries to railroad employees, particularly trainmen, resulting from coupling and uncoupling cars, and falling from the top of moving cars, attracted attention throughout the country and resulted in demands for remedial legislation. In 1889, President Harrison urged Congress to act, saying, in part, "It is a reproach to our civilization that any class of American workmen should be subjected to a peril of life and limb as great as that of a soldier in time of War." His recommendations were repeated in 1890 and 1891. The first railroad safety-appliance law became the Act of March 2, 1893, but not until 1900 did the Act become fully effective. Difficulties in enforcement resulted in amendments. Additional legislation related to railroad employees' hours of service, reporting and investigation of accidents, locomotive boiler inspection, and other safety equipment measures, was enacted during the early years of the twentieth century.

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Serious accidents in the transportation of dangerous articles resulted in the passage, in 1908, of the Transportation of Explosives Act, legislation which was revised and, in 1921, substantially strengthened. In its strengthened form, it provided regulatory authority over explosives and dangerous articles other than explosives, with the provisions applying not only to carriers, but also to shippers. The authority conferred by this series of laws, insofar as carriers were concerned, extended only to common carriers, including transportation by land and water.

MOTOR CARRIER SAFETY

Congress in 1935 provided for regulation of motor carriers of passengers and property engaged in interstate or foreign commerce. It did this through enactment of the Motor Carrier Act, now Part II of the Interstate Commerce Act (49 U.S.C.A. 301, et seq.),[1] which charged the Interstate Commerce Commission to exercise the regulatory authority. Common and contract carriers were made subject to economic *and* safety regulation by Section 304(a)(1) and (2). As to safety the duties were specified, as to common and contract carriers, as follows:

> §304(a) "It shall be the duty of the Commission—
> "(1) and (2) To regulate common [contract] carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to . . . . qualifications and maximum hours of service of employes, and safety of operation and equipment."

Section 303(b) excludes from the economic regulatory jurisdiction a number of services provided in vehicles operated by for-hire carriers, but retained jurisdiction over such carrier services as to safety. It does this by providing:

> "§303(b) Nothing in this Chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include—(there are listed seven categories of vehicles and two types of transportation. The vehicles are those used in specialized transportation of specified commodities such as livestock, fish, and agricultural commodities; the two types of transportation are limited as to territorial scope or to casual or

1. In this paper section numbers of the U.S. Code are used, except in quotations from Commission reports, where sections of the Interstate Commerce Act are quoted, with sections numbered 100 numbers lower than the Code.

occasional transportation by persons not engaged in motor vehicle transportation as a regular occupation or business)."

A similar reservation of safety jurisdiction, while excluding direct economic jurisdiction, is contained in section 302(c), relating to motor vehicle transportation, within terminal areas of transfer, collection, or delivery services, when such regulation is achieved through regulation of another carrier or freight forwarder.

Section 304(a)(3) provides for safety jurisdiction as to private carriers of property. This provision is worded differently from the two sections relating to common and contract carriers, and is conditional on a finding of need. It reads:

> "§304(a) It shall be the duty of the Commission (3) To establish for private carriers of property, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment."

Section 304(a)(3a), added in 1956, requires establishment of comfort and safety requirements for the transportation of migrant workers for distances of 75 miles or more, if such transportation crosses a state boundary.

Although the regulation of highway carriers through the Transportation of Explosives Act (18 U.S.C.A. 831-835) reached only common carriers, the dangerous articles regulations were applied to contract carriers and private carriers of property by virtue of the "Safety of operations" provisions of Section 304(a) of Part II. However, a particularly serious explosion, involving the truck of a private carrier, occurred in Roseburg, Oregon, in August, 1959. The detonation of the cargo resulted in the death of 13 persons, injuries to more than 100 others, and property damage estimated to exceed ten million dollars. Following this disastrous event, Congress enacted a revision of 18 U.S.C. 831-835, which was approved September 6, 1960. This placed contract carriers and private carriers of property under an identical statute with common carriers with respect to transportation of explosives and other dangerous articles.

1966 Legislation

Stimulated by a sharp rise in the number of street and highway deaths, and the reversal of the downward fatality rate (deaths per one hundred million miles of vehicle travel), during the early sixties, some members of

Congress became deeply concerned and expressed interest in finding a more effective Federal role in dealing with the alarming trend. One of these was Senator Abraham Ribicoff, Chairman of the Subcommittee on Executive Reorganization of the Committee on Government Operations. He had acquired considerable recognition, as Governor of Connecticut, in his stepped up enforcement drive in highway traffic matters. Later, as Secretary of Health, Education and Welfare, he had oversight of the work of the U.S. Public Health Service. That agency had become active in the field of street and highway safety, in recognition of the significant deaths and injuries resulting from crashes of motor vehicles.

Senator Ribicoff, in a Senate speech on February 18, 1965, emphasized the gravity of the problem and declared his intention to learn what the various Federal agencies were doing to bring about a reduction in the carnage. In March, 1965, he held hearings, explaining he intended "to examine and review from top to bottom those agencies—both public and private—Federal, State, and local—which direct and support the Nation's traffic safety efforts." He said "In the Federal Government alone some 16 separate agencies have some traffic safety responsibility or role." Heads of many agencies, including the Chairman of the Interstate Commerce Commission, testified and were questioned.

Later in 1965, publication of the Ralph Nader book "Unsafe at Any Speed" stimulated further interest in the entire highway safety problem.

Congressional hearings led to enactment of two statutes—the National Traffic and Motor Vehicle Safety Act and the National Highway Safety Act. Both laws were approved September 9, 1966, and were designated Public Laws 89-563 and 89-564.

The National Traffic and Motor Vehicle Safety Act (80 Stat. 718) provided for the promulgation of Federal Motor Vehicle Safety Standards. It also called for labeling of tires to inform purchasers of their safety attributes. Very severe penalties were provided for violations. The law requires manufacturers to meet the standards to be prescribed. Among other things, it provided that states, and the Interstate Commerce Commission, might not adopt, or continue in effect, any vehicle safety standard different from any effective safety standard. Responsibility for administration of the law was assigned to the Secretary of Commerce.

The National Highway Safety Act (80 Stat. 731), directed the Secretary of Commerce to assist the States in improving their highway safety programs and to administer a grant-in-aid program to assist the States in financing such improvement.

About a month later, on October 15, 1966, the President approved Public Law 89-670, which provided for creation of the Department of

Transportation. That Act transferred all safety functions from the Interstate Commerce Commission—railroad, motor carrier, and hazardous materials, to the Secretary of Transportation. One section provides that the Federal Highway Administrator shall exercise the functions, powers, and duties of the Secretary as to the motor carrier safety responsibilities transferred. A Bureau of Motor Carrier Safety was established in the Federal Highway Administration after the new Department was activated on April 1, 1967.

The D.O.T. Act also transferred to the new Department, from the Secretary of Commerce, the duties to administer the National Traffic and Motor Vehicle Safety Act and the National Highway Safety Act. These measures were the responsibility of the National Highway Safety Bureau which also was in the Federal Highway Administration until March, 1970, when it was removed and its Director reported to the Office of the Secretary of Transportation.

The I.C.C. and D.O.T. Role in Motor Carrier Safety

The 1935 charge by Congress to the Interstate Commerce Commission provided for the first direct Federal government safety regulation of motor vehicle operators on the highways. The Bureau of Public Roads, and its predecessor agencies, since their establishment in 1916, had given consideration to safety factors in the design of highways. The Commission had, under the Transportation of Explosives Act, prescribed some regulations related to the preparation of shipments of hazardous materials, for movement by freight and passenger-carrying highway vehicles. But there had been no direct safety regulation governing carriers or their drivers and vehicles by a Federal agency until the Commission made the Motor Carrier Safety Regulations effective, beginning April 1, 1937.

To administer the provisions of the Motor Carrier Act, the Commission in 1935 established the Bureau of Motor Carriers. The Bureau was comprised of a number of Sections, including the Section of (Motor Carrier) Safety. The Section devoted its efforts, during the early years, to formulating the initial safety regulations, to be applicable to common and contract carriers.

Although the initial regulations became effective in 1937, the Commission did not obtain a field office staff specifically assigned to motor carrier safety duties until June 1, 1939. It had the services of field office District Directors, District Supervisors, and some other personnel, with responsibilities in all fields of motor carrier regulation. Their work, however, was mainly concerned with determination of applications for

certificates of public convenience and necessity and contract carrier permits, and related requirements, such as tariffs, insurance and accounting.

In 1939 the first group of Motor Carrier Safety Inspectors was employed—twenty in number. The capability of the Commission to administer and enforce its safety regulations did not grow commensurately with the growth of the safety problem. Although the field safety staff had twenty safety inspectors in 1939, fifteen years later, in 1954, there were only eighteen. This fact was mentioned in the annual report to Congress, principally as a result of the explosion of a number of explosives laden trucks in 1953 (six such explosions occurred in a period of 90 days). These explosions, and other serious truck and bus accidents, focused considerable attention, by members of Congress, Governors, and some mayors, on the question of the adequacy of government regulation of commercial vehicle safety. One result was a substantial increase in staff in 1956 and 1957, the number of inspectors reaching 100 in the latter year. Since then, however, there has been no further growth, despite more than a two-fold increase in the number of motor carriers identified as engaged in interstate operations.

Despite the failure of the Commission's staff and resources for safety to keep pace with the great growth of motor carrier transportation, the agency, in its reports to Congress, emphasized the importance of its function. It maintained that it had not limited its responsibility in the highway safety field to prescribing and enforcing regulations. It said, in its 69th annual report (1955):

> Our function in the prevention of commercial vehicle accidents is of vital importance. It is unique, and it complements but does not duplicate the activities of the states in the attainment of the objective of safety on the highways. We deal with basic accident cause factors peculiar to highway transportation, which only a Federal government agency can effectively control through examination of records and properties of carriers at places located outside the jurisdiction of the States through which they operate. By investigation we determine the causes of accidents occurring throughout the nation, and through such investigations and knowledge gained thereby develop and improve equipment and driver standards.—Our function has to do, for example, with maximum hours of service, driver qualifications, and uniform vehicle design elements, as contrasted with enforcement of traffic regulations by State and local police. We need the cooperation of State agencies, but it is our obligation to extend leadership and to

establish standards in the interstate field. The State agencies look to us for this leadership."

Development of Motor Carrier Safety Regulations

Following establishment of the Section of Safety in the Bureau of Motor Carriers, the Commission, on its own motion, instituted a series of proceedings for the purpose of determining the nature and extent of safety regulations to be adopted for various categories of motor carriers engaged in interstate or foreign commerce.

Public hearings were held at various points throughout the nation with respect to these proceedings. In Ex Parte No. MC-4, reported at 1 M.C.C. 1 and at 14 M.C.C. 669, the Commission found that it had authority to prescribe qualifications for drivers employed by common and contract carriers engaged in interstate commerce and also found the need for and prescribed such qualfication requirements as well as initial requirements related to parts and accessories of vehicles, driving practices of commercial vehicles, reporting of accidents by common and contract carriers and maintenance requirements. In Ex Parte No. MC-2, reported at 11 M.C.C. 203, it found it had authority to prescribe maximum hours of service for employees of common and contract carriers engaged in interstate or foreign commerce and such regulations were prescribed. In Ex Parte No. MC-28, reported at 13 M.C.C. 481, the Commission found that it had authority to prescribe qualifications and maximum hours of service for employees of common, contract, and private carriers of property, but that the authority was limited to those employees whose activities affect the safety of operation. In Ex Parte No. MC-3, reported at 23 M.C.C. 1, the Commission made the finding contemplated in section 304 (a) (3) that a need existed for federal regulation of private carriers of property to promote safety of operation of motor vehicles used by such carriers in the transportation of property in interstate or foreign commerce.

"Private carrier of property by motor vehicle" is a term defined in Section 303(a)(17) of the Interstate Commerce Act as follows:

> The term "Private Carrier of property by motor vehicle" means any person not included in the terms, "Common carrier by motor vehicle" or "Contract carrier by motor vehicle" who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise."

In making its findings that a need for federal regulation of the safety of operation of private carriers existed, the Commission made the following findings, among others:

1. That approximately 3 million motor vehicles were then operated in interstate and intrasate commerce by private carriers of property.
2. That approximately 20% of those vehicles were used in transporting property in interstate or foreign commerce, which, at that time, exceeded the number of motor vehicles operated by common and contract carriers in such transportation.
3. That several states did not impose the same safety regulatory requirements upon the operation of trucks by private carriers of property as they did on trucks operated by common and contract carriers.
4. That 28 states did not then in any way regulate or limit the hours of service of drivers of motor vehicles operated by private carriers of property.
5. That a number of states permitted boys 16 years of age to drive trucks, and many states permitted boys under 21 years of age to do so.

Based upon extensive testimony and after consideration of a number of legal contentions, the Commission determined that a need did exist for federal regulation of private carriers of property to promote safety of operation of the vehicles of such carriers used in interstate or foreign commerce. Its report, dated May 1, 1940, applied to private carriers of property essentially the same regulations which had previously been adopted for application to common and contract carriers. However, the Commission did not require of private carriers the reporting either of accidents or excess hours of service of drivers, both of which were requirements applicable to common and contract carriers. In addition, certain exceptions were made for various selected classes of trucks and drivers. The physical examination requirements were not required with respect to drivers of farm trucks and the minimum age requirement of 18 rather than 21, was permitted with respect to drivers of farm trucks which did not weigh in excess of 10,000 pounds for both vehicle and load. The hours of service requirements were modified with respect to driver-salesmen who spent more than one half of their time in selling and less than one half in performing such duties as driving, loading, and unloading.

Enforcement Procedures

During the early years of administration of the motor carrier safety responsibilities, the Commission normally addressed its efforts toward counseling, teaching, and encouraging motor carriers to become familiar with the regulations and to comply with them. However, as time went on, it was found that some carriers were non-responsive to this approach. With increasing frequency, the Commission resorted to the application of criminal penalties provided in Section 322 of the Act. After a number of years, the Commission instituted a few cases questioning the fitness of applicants for common carrier operating authority. A principal case in which a carrier was found not to be fit to receive added operating authority is *Hughes* 46 M.C.C. 603. The Commission also began the practice of considering the safety and accident experience of applicants for temporary authority and withheld such authority on a number of occasions when it was satisfied that the applicant was not in an adequate degree of compliance with the safety regulations.

Although Section 312 of the Act permitted the Commission, after investigation, to issue cease and desist orders, and, in the event of further non-compliance, to suspend a carrier's operating rights, this procedure was not used until the middle 1950's. Serious accidents resulting from failure to maintain vehicles in adequate condition resulted in a program of intensive investigation and inspection, with inspectors authorized to remove vehicles from service at the point of inspection. In 1957, on a single day, the Commission instituted 6 cease and desist proceedings, five of which resulted in the issuance cease and desist orders.

In only one case has the Commission actually suspended the operating rights of a motor carrier and this was based not only upon safety, but also because of serious violations of other regulatory requirements as well.

Since transfer of the motor carrier responsibilities to the Department of Transportation, in 1967, specific provisions have been published in the Code of Federal Regulations with respect to the administration of a number of compliance procedures.

In title 49, C.F.R., Part 385 contains provisions for the collection and compromise of claims for forfeitures under Section 322 (h) of the Interstate Commerce Act. In that part, the Federal Highway Administrator delegated to the director of the Bureau of Motor Carrier Safety the functions, powers, and duties of the administrator to collect and to compromise claims for civil forfeitures not exceeding 20,000 dollars. This procedure applies only to non-compliance of regulations which are covered by section 322 (h) which relates to failure or refusal to make reports or to keep records in the form and manner prescribed. In

practice, this applies very extensively to failure to make accident reports, or failure of carriers to require drivers to keep drivers' daily logs in proper form as required by the regulations.

Part 386 of title 49, C.F.R. contains the rules of practice for motor carrier safety proceedings under Section 304 (c) of the Interstate Commerce Act. The rules in this part are intended to enable the Federal Highway Administrator, after notice and hearing, to determine whether any motor carrier subject to the jurisdiction of the Administrator under Part 2 of the Interstate Commerce Act or Title 18 U.S. Code, Sections 831-835, has failed to comply with any provision or requirement of these statutes or of the regulations issued under them and, if such a violation is found, to issue an appropriate order to compel compliance with the statute or the regulations. The procedures provide for disposition of such investigation procedures, if a respondent elects not to contest, by means of execution of an appropriate agreement for disposing of the case by consent. Under these circumstances an agreement is filed with the Administrator who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he deems appropriate. If the Administrator accepts the agreement, he enters an order in accordance with the terms of the agreement. Proceedings under this part are commenced by issuance of a notice of investigation. The notice must contain a statement of the legal authority and jurisdiction for the institution of the proceedings, a clear, concise, statement of the facts alleged to constitute a violation, and the relief demanded which normally would be in the form of an order for the Administrator's signature. A reply is required to be filed within 30 days of service of the notice of investigation. In the event a consent order is not agreed upon the matter may be referred to a hearing examiner who will conduct a pre-hearing conference and later hold a hearing on the basis of which the hearing examiner would develop proposed findings of fact, conclusions of laws, and a proposed order. The Administrator may adopt, modify, or set aside the hearing examiner's findings of fact and conclusions of law. The Administrator will issue a final order disposing of the proceedings, the order to be served on the parties.

Part 389 of Title 49, C.F.R. contains the procedures for rulemaking with respect to motor carrier safety regulations. They include publication of a notice of proposed rulemaking, receipt of written comments by interested parties, hearings, if necessary, and adoption of final rules. The Federal Highway Administrator, on June 8, 1970, delegated his authority to adopt and to modify motor carrier safety regulations to the Director of the Bureau of Motor Carrier Safety, effective June 12, 1970.

Other Developments

Over the course of a number of years, the Interstate Commerce Commission from time to time made determinations on the basis of applications for certificates of public convenience and necessity to the effect that certain types of operations were not subject to the Commission's jurisdiction. For example, the Commission years ago held that transportation of the United States mail was not subject to economic regulation. In later years, similar decisions were made by the Commission when it was presented with applications for certificates covering the transportation of debris, rubble, other types of waste, and human corpses. Most of those decisions were couched in language which merely held that such transportation was not subject to the commission's jurisdiction. This was construed, for a number of years, to mean that even the safety jurisdiction did not extend to such operations, particularly was this so in the case of U.S. mail. However, since transfer of the motor carrier safety responsibility from the Commission to the Federal Highway Administration in the Department of Transportation, this policy has been changed and all transportation of property, including the U.S. mail, when performed by a commercial carrier engaged in interstate or foreign commerce, is now considered subject to the safety jurisdiction of the Federal Highway Administrator and to be subject to the provisions of the Motor Carrier Safety Regulations.

Another matter of interest with respect to developments resulting from the 1966 legislation is the apparent conflict between the provisions of section 220 (f) of the Interstate Commerce Act (49 U.S.C. 320) which provides that no report of an accident filed with the agency by a motor carrier pursuant to any regulation, nor any investigation or report of investigation by the agency of any such accident, may be admitted as evidence or used in any other manner in any suit for damages rising out of such accident. This provision, of course, is published under title 49 of the U.S. Code. However, with enactment of the National Highway Safety Act of 1966, Congress adopted Section 106 of that Act which is published under Title 23 of the U.S. Code. The effect of that section is to provide that no information gained in investigation of a highway accident may be withheld from any person who wishes to obtain it, provided only that the names of individuals shall not be disclosed. This Congressional action, although under another title of the code, coupled with the effect of the Freedom of Information Act, resulted in the Federal Highway Administrator, early in 1969, rescinding that provision of the motor carrier safety regulations which provided that accident reports filed by motor carriers shall not be open to public inspection.

Effect of Fair Labor Standards Act Exemptions

The Fair Labor Standards Act, 29 U.S.C. 201 et seq., approved June 25, 1938, established maximum hours of service for certain classes of employees engaged in commerce or in the production of goods for commerce, unless such employees received compensation at a premium rate for the employment in excess of the specified maxima (now, usually, one and one-half times the regular rate for time above forty hours).

Section 13(b) of the Fair Labor Standards Act provides that the provisions of Section 7 (the premium time provision) "shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has the power to establish qualifications and maximum hours of service pursuant—to the provisions of section 204 of the Motor Carrier Act, 1935;—". There is no exemption from the minimum wage requirements of the Fair Labor Standards Act. Further, the premium pay exemption is not applicable to any employee with respect to whom the Commission has power to establish qualifications and maximum hours of service solely by virtue of section 304(a)(3a)—(the migrant worker transportation provisions).

The Commission determined that its power to establish qualifications and maximum hours of service regulations was limited to those employes of carriers whose duties directly affect the safety of operation of motor vehicles in the transportation on the public highways of passengers or property in interstate or foreign commerce. Ex Parte MC-2, 11 M.C.C. 203; Ex Parte MC-28, 13 M.C.C. 481; Ex Parte MC-2 and MC-3, 28 M.C.C. 125. This determination was upheld by the U.S. Supreme Court. *U.S. v. American Trucking Associations,* 310 U.S. 534. The Commission determined that the employees of carriers whose duties affect safety of operation are drivers, drivers' helpers, loaders, and mechanics. Regulations governing qualifications and maximum hours of service were established for drivers. No such regulations have been established for the classes of employees named, other than drivers. As to the Fair Labor Standards Act premium pay exemption, it is not material whether such regulations have been established; the controlling consideration is whether the employee falls within the power of the agency to do so.

Conclusion

The Motor Carrier Safety Regulations, now published in Title 49, Code of Federal Regulations, Subchapter B, Parts 385-398, have served a useful purpose in encouragement of improvement in motor carrier safety.

Although the agencies responsible, both the Interstate Commerce

Commission and the Federal Highway Administration in the Department of Transportation, have been traditionally very limited as to funds and personnel, very encouraging and useful results were realized. This fact is due in considerable measure to the excellent cooperation received by the agency from corresponding State agencies and from the organizations representing the regulated industries. In testimony before the Senate Committee mentioned above, the Chairman of the I.C.C. in 1965 said:

> Mr. Chairman, we are convinced that the Commission has contributed substantially to safe highway performance by the motor carrier industry. To the extent that our work has been productive, it is due, in my opinion, to clear legislative mandates and a well-defined sphere of responsibility. While much has been achieved, we realize that the highway accident problem may become even more acute with the increase of traffic and the trend to heavier and more powerful commercial vehicles. I assure you that the Commission recognizes this challenge and is preparing to meet it.

Most observers would probably concur, although it remains clear that, in 1970, the dimensions of the problem are yet to be met. With the establishment of the Department of Transportation and the creation of the National Transportation Safety Board in that Department, it may be hoped that a greater awareness of the challenge is gaining more meaningful recognition, and with the prospect of more adequate resources with which to meet it, may be nearer than it has been during the past one-third century.