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THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

March 28, 1975

Mr. James M. Cannon  
Assistant to the President for Domestic Affairs  
The White House  
Washington, D. C.

Dear Jim:

Enclosed is our Department's response to the questions of the Domestic Council regarding the Consumer Advocate Bill, S. 200.

I think you will find the Department of Transportation has a creditable record of achievement in the area of consumer involvement.

We stand by to provide more information as required.

Sincerely,

Robert Henri Binder  
Acting Secretary

Enclosure



DEPARTMENT OF TRANSPORTATION

1. What specific problems does the bill present to your department?

The answer depends most heavily on how aggressively the Act is administered. The powers conferred by the Act are very sweeping and if exercised to their limit could be a serious impediment to the effective and timely administration of many of our programs, particularly in the regulatory area. At the other end of the spectrum, if the Act is administered with wisdom and restraint, the new agency's activities could provide constructive and different points of view in our decision making process.

Specifically, the bill risks imposing administrative burdens that ultimately may harm, rather than benefit the consumer. The potential for massive expenditures required of the government and the private sector may have serious consequences. Advisory committees might proliferate (Sec. 4(b)(3)); additional burdens would be placed upon agencies by requiring them to make already scarce resources available to the new agency (Sec. 4(c)(5)); and each agency would be required to respond specifically to every complaint forwarded to it by the ACA and to keep it informed of agency action on the complaint (Sec. 7(a)). All businesses and other commercial establishments would be required to supply massive amounts of information through interrogatories (Sec. 10(a)(1)), and face potential severe hardship as a result of the public complaint file to be maintained by the ACA (Sec. 7(c)). Complaints would be included in the public file regardless of their merit, and even anonymous submissions would be included. Agency sponsorship of the file at least implies the complaints are meritorious.

Resolution of competing issues would be made more cumbersome and costly in many respects. Today's informal proceedings could become formalized if in a cautious effort to develop an "ironclad" record the agency should decide the interest propounded by the ACA is not, on balance, in the public interest. Additionally, resources of the DOT would, to some extent, be diverted from its primary, ever-expanding mission in order to assist the ACA.

To the extent the government will be forced to expend these sums, consumers in their taxpayer roles will suffer. To the extent businesses face increased expenses, the consumer will pay higher prices. Yet this is the very consumer whose interests are to be protected.

Further, the bill risks impeding the implementation of other laws. The Freedom of Information Act (5 U.S.C. 522), for example, recently was amended (P.L.93-502) to ensure greater access by the public to information possessed by agencies. The bill would effectively vitiate the provisions of that Act in which the Congress recognized certain specified classes of information should not be required to be released. The bill would provide the Administrator access to some of this information (Sec. 10(b)), especially that permitted to be withheld from the public under 5 U.S.C. 552(b)(4) unless it falls within the more narrow definition in Sec 10(b)(7) of the bill. The Administrator then could release this information to the public if he determined it is necessary to protect health or safety (Sec. 11(a)(1)).

It might also be noted that much of the consumer type criticism leveled at the Department concerns DOT funded public works projects -- highways, airports, and so on. The new Act does not address this question, and we believe that the opportunities given consumers to participate in the environmental impact statement process fully protect their interests.

With respect to safety regulatory activities, all of which affect consumers particularly in the automobile and aviation field, we do not believe that the Act would have a serious effect, although it may introduce some further delay in the issuance of final rules.



2. What specific effort is the Department making to represent the consumer in its decisions and activities?

The Department of Transportation has within the Office of the Secretary an Office of Consumer Affairs which serves as a focal point for consumer advocacy in the Department. A major function of this office is to provide DOT policy leaders with an accurate picture of the needs and concerns of the individual transportation consumer as this office has determined them through various techniques.

The Office of Consumer Affairs has conducted 54 consumer public hearings in 21 states in the 10 regions of the country to listen first hand to the consumer's transportation problems, needs and suggestions. A detailed report is now being transmitted to the Secretary and to all Secretarial Offices and Administrations of the Department for consideration in policy decisions and activities. The report indicates that consumer concerns range from those of a policy nature such as the need for transit operating subsidies, more mass transit facilities and greater consumer involvement in comprehensive transportation planning to such modal concerns as automobile repair problems, stricter enforcement of traffic laws and baggage problems in air travel. In addition, the special transportation needs of the elderly and handicapped were voiced loud and strong.

The Office of Consumer Affairs, after an intensive study of the DOT rulemaking process which included a sponsorship of a workshop attended by consumers outside of the Department as well as DOT representatives,

submitted a report to the Secretary with five specific recommendations for greater citizen involvement in the rulemaking of the DOT administrations. These recommendations, which have been adopted by the Secretary and are being implemented, are:

- (a) That DOT administrations utilize the Notice and Comment rulemaking procedures in substantive rules relating to public property, loans, grants, benefits or contracts.
- (b) That the DOT administrations made the fullest use of the Advance Notice of Proposed Rulemaking.
- (c) That within DOT the normal minimum length of time for public comment on a notice of proposed rulemaking be 45 days.
- (d) That DOT administrations and Secretarial offices submit to the General Counsel and the Office of Consumer Affairs its policy and precedures for consumer involvement in rulemaking and that by September 30 of each year a brief report be submitted to the Office of Consumer Affairs highlighting successful activities and techniques employed during the year to involve consumers in the rulemaking process.
- (e) That each Administrator and Secretarial Office designate a member of his staff to work in a liaison capacity with the DOT Office of Consumer Affairs on rulemaking matters which have a substantial public interest.

The Department has conducted a number of studies to determine the problems, needs and preferences of the consumer regarding transportation. Among these are studies entitled "Traveler Service Problems," "Journey to Work Patterns of the Transportation Disadvantaged," and "Consumer Problems of the Transportation Disadvantaged." The Department is also conducting studies and demonstration programs to determine the transportation needs and best methods for solving the transportation needs of the elderly and handicapped.

The Office of Consumer Affairs serves as sponsor of the Department's 21 member Citizens' Advisory Committee on Transportation Quality.

The purpose of the Committee is to provide the citizens' point of view to the Secretary in order to assist the Department in developing policy initiatives for consumer related transportation affairs. The Committee has recently submitted recommendations on improving the adequacy and quality of public transportation. It has made recommendations pertaining to the federal role in abandoned automobiles on the highways, and on ways to compensate consumers for impacts of transportation facilities on their environment.

Two of the seven administrations of the Department have consumer affairs programs. These are the Office of Public Affairs and Consumer Services in the National Highway Traffic Safety Administration (NHTSA), and the Community and Consumer Liaison Division in the Federal Aviation Administration (FAA). Six of the seven administrations of the Department



administer laws and programs that benefit consumers directly. The seventh administration, the St. Lawrence Seaway Development Corporation, benefits the consumer indirectly by facilitating the movement of goods.

Finally, it should be noted that the Department makes extensive use of the Federal Register to invite consumer comment on proposed actions. This applies not only to rulemaking procedures where advanced notice of the opportunity for comment are required, but in informal proceedings as well. For example, the Department published in the Federal register on March 6, 1975, a Request for Public Participation in connection with an international aviation policy review conducted by the Department, *and other agencies.*



3. What additional efforts could you take to better represent the consumer in your department's decisions and activities.

Adequate machinery exists in the department to project the consumers' concerns into the Department's decisions and activities, as demonstrated above. What is needed is a continued determination to make that machinery work effectively. As was pointed out in the DOT Workshop on Consumer Involvement in DOT Rulemaking (copy of proceedings attached), "success depends much more on the state of mind of the regulatory agency than it does on following any checklist of things to be done although a checklist may be useful."

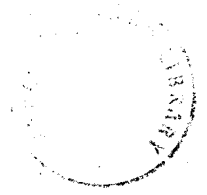
4. What regulatory reforms would you suggest to assist the consumer?

Much of government economic regulation of transportation has produced results detrimental to consumers which far outweigh its social benefits.

Much Federal regulation, originally imposed to prevent monopoly abuses and encourage the development and expansion of the nation, has long outlived its original purposes. Indeed, this Federal regulation, which is administered by the Interstate Commerce Commission and the Civil Aeronautics Board, has grown so cumbersome that consumers are denied prompt realization of technological innovations, and pricing adjustments that reflect changes in competitive conditions, and have to suffer unnecessary inefficiency. As a result, consumers get poorer service and have to pay higher prices. The Administration is committed to reform of economic regulation of all phases of intercity transportation: rail, truck, air and water, and expects to submit legislation to Congress for the rail mode within two weeks with legislation to follow in the other areas <sup>in four to six weeks.</sup> ~~within two months.~~ The need for these regulatory reforms and the benefits to consumers have been recognized by a wide-ranging group of consumer advocates.

We also suggest the President issue an Executive Order directing all Federal agencies to immediately review their regulatory procedures for the purpose of determining how they can encourage and facilitate public participation in appropriate phases of the regulatory process. This would be an internal measure to require stronger management attention to consumer affairs and stop "tokenism" treatment, if any, of this subject. A report of the review with new actions taken or of

proposed actions should be submitted to the President and Congress within six months of date of the order. The report then should identify actions which have been taken and proposals for new activities which are designed to bring the consumer into closer contact with the decision-making process.



# CONSUMER INVOLVEMENT IN RULEMAKING

Report of a Study and Recommendations  
to the Secretary of Transportation  
for Consumer Involvement in Rulemaking.



June 1974

U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
OFFICE OF CONSUMER AFFAIRS  
WASHINGTON, D.C. 20590

CONSUMER INVOLVEMENT

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RULEMAKING

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in Rulemaking.

June 1974

Office of Consumer Affairs  
Office of the Assistant Secretary for Environment, Safety, and  
Consumer Affairs  
Office of the Secretary  
Department of Transportation  
Washington, D. C. 20590

Report of a Study and Recommendations to the Secretary of  
Transportation for Consumer Involvement in Rulemaking

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- Appendix 4 - An Examination of Consumer Expression in the Development of Federal Rules and Regulations



LIST OF RECOMMENDATIONS TO THE SECRETARY  
REGARDING  
CONSUMER INVOLVEMENT IN RULEMAKING - DOT

Recommendation A

THAT THE DOT OPERATING ADMINISTRATIONS UTILIZE THE NOTICE AND COMMENT RULEMAKING PROCEDURES OF THE ADMINISTRATIVE PROCEDURE ACT IN PROCEDURAL AND SUBSTANTIVE RULES OF GENERAL APPLICABILITY "RELATING TO PUBLIC PROPERTY, LOANS, GRANTS, BENEFITS, OR CONTRACTS" WHICH HAVE BEEN DETERMINED BY THEM TO HAVE A SUBSTANTIAL PUBLIC INTEREST EVEN THOUGH SUCH RULES MAY NOW BE EXEMPT FROM NOTICE AND COMMENT PROCEDURES.

Recommendation B

THAT THE OPERATING ADMINISTRATIONS WITHIN DOT SHALL MAKE THE FULLEST PRACTICAL USE OF THE ADVANCE NOTICE OF PROPOSED RULEMAKING (ANPRM).

Recommendation C

THAT, WITHIN THE DEPARTMENT, THE NORMAL MINIMUM LENGTH OF TIME FOR PUBLIC COMMENT ON A NOTICE OF PROPOSED RULEMAKING FOLLOWING PUBLICATION IN THE FEDERAL REGISTER SHALL BE FORTY-FIVE DAYS.

Recommendation D

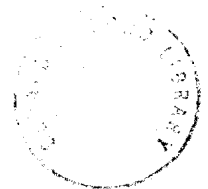
THAT EACH DOT ADMINISTRATION AND APPROPRIATE SECRETARIAL OFFICE SUBMIT TO THE GENERAL COUNSEL AND THE OFFICE OF CONSUMER AFFAIRS



ITS POLICY AND PROCEDURES FOR CONSUMER INVOLVEMENT IN RULE-  
MAKING WITHIN 60 DAYS FROM RECEIPT OF THE SECRETARY'S  
MEMORANDUM; THAT THEREAFTER A COPY OF ANY SIGNIFICANT CHANGES  
IN SAID POLICY AND/OR PROCEDURES BE PROVIDED TO THE GENERAL  
COUNSEL AND THE OFFICE OF CONSUMER AFFAIRS; THAT BY SEPTEMBER  
30 OF EACH YEAR, A BRIEF REPORT BE SUBMITTED TO THE OFFICE OF  
CONSUMER AFFAIRS HIGHLIGHTING SUCCESSFUL ACTIVITIES AND  
TECHNIQUES EMPLOYED DURING THE COURSE OF THE YEAR BY THE  
ADMINISTRATION OR SECRETARIAL OFFICE TO INVOLVE CONSUMERS IN  
THE RULEMAKING PROCESS; THAT PERIODICALLY THE OFFICE OF CONSUMER  
AFFAIRS SHALL COMPILE A REPORT OF CHANGES IN POLICIES AND/OR  
PROCEDURES AND SPECIAL ACTIVITIES AND TECHNIQUES FOR CONSUMER  
INVOLVEMENT IN RULEMAKING; AND THAT AFTER SAID REPORT HAS  
BEEN REVIEWED AND APPROVED BY THE APPROPRIATE OFFICES, THE  
OFFICE OF CONSUMER AFFAIRS SHALL DISTRIBUTE THE REPORT  
THROUGH CHANNELS OF COMMUNICATION ACCESSIBLE TO CONSUMERS.

Recommendation E

THAT EACH ADMINISTRATOR AND APPROPRIATE SECRETARIAL  
OFFICER DESIGNATE A MEMBER OF HIS STAFF KNOWLEDGEABLE IN  
THAT ADMINISTRATION'S OR OFFICE'S RULEMAKING PROCEDURES  
TO WORK IN A LIAISON CAPACITY WITH THE OFFICE OF CONSUMER  
AFFAIRS IN ITS WORK WITH CITIZEN/CONSUMER LEADERS AND GROUPS  
CONCERNED WITH CONSUMER PARTICIPATION IN RULEMAKING MATTERS  
WHICH HAVE A SUBSTANTIAL PUBLIC INTEREST.



REPORT OF A STUDY AND RECOMMENDATIONS TO THE SECRETARY OF  
TRANSPORTATION FOR CONSUMER INVOLVEMENT IN RULEMAKING

I. BACKGROUND OF THE STUDY

Communications Between White House and Secretary Volpe

In December 1971, Virginia Knauer, Special Assistant to the President for Consumer Affairs, expressed her general concern about the lack of adequate citizen participation in Federal rulemaking. In a letter to Secretary of Transportation, John Volpe, she said she wasn't sure "that individual agency procedures were able to fully reflect public sentiment in the framing of formal regulations."

Her concern was based on a study which her office had conducted. It revealed that "there is little formal surveying, prior to drafting rules and regulations, of consumer opinion which could insure that agencies recognize public views. Rather, current policy tends to presume a knowledge of public sentiment." It also revealed that "consumers are interested and they can make positive suggestions if the opportunities to do so are readily available and the issues are well defined."<sup>1</sup>

Directive by the Secretary to DOT Office of Consumer Affairs

The Secretary then directed the Department's Office of Consumer Affairs to conduct a "thorough examination...of our present methods of giving consumers opportunities to express their views in the rulemaking process" and to "make recommendations for the implementation of any

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<sup>1</sup> Executive Office of Consumer Affairs, Division of Program Analysis: "An Examination of Consumer Expression in the Development of Federal Rules and Regulations." November 19, 1971. (See Appendix 4 for excerpts from this report.)

necessary changes in our rulemaking process to make it as 'consumer responsive' as possible."<sup>2</sup>

### Study of Current DOT Practices

In the Spring and Summer of 1972, the Office of Consumer Affairs conducted a study throughout the Department called "Consumer Involvement in the Development of Rules, Regulations and Procedures Within DOT." There was considerable interest in the subject within each of the operating administrations and the DOT Consumer Affairs Coordinating Committee. In September 1972, a preliminary report of current practices was issued which summarized the philosophy and activity of the various offices and administrations within the Department of Transportation in the development of rules, regulations and procedures. This preliminary fact-finding on the in-house state of the art revealed considerable variations throughout the Department in both attitudes and practices.

### Workshop

The Office of Consumer Affairs then planned a workshop on the subject of consumer involvement in rulemaking in order to help raise the level of responsiveness in this matter throughout the Department. Other objectives included an exchange of knowledge and experience as to the practical steps that can be taken for meaningful consumer involvement in rulemaking and the development of suggestions from which a set of recommendations could be made for Departmental consideration.

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<sup>2</sup> Letter from the Secretary of Transportation to the Special Assistant to the President for Consumer Affairs, December 29, 1971.

The workshop, held on December 4 and 5, 1972, brought together all of the operating administrations, the secretarial offices, and outside professionals who were knowledgeable and skilled in the implementation of consumer involvement in rulemaking, for a thorough consideration of the subject. (See Appendix 1.) In addition, there were representatives from the trade associations, academia, the public at large, the DOT Consumer Affairs Coordinating Committee and members of the Department's Citizens' Advisory Committee on Transportation Quality. Thus, professional outside expertise and citizen-consumers were drawn together with Department officials for meaningful dialogue and work sessions. In all, 98 persons attended. A list of the chairmen of the six workshop task force groups appears in Appendix 2.

The last plenary session of the workshop consisted of reports from each of the task force groups, responses to these presentations by members present and a general discussion of key ideas that emerged from the various groups. A transcript was made of this final session and sent to all attendees.<sup>3</sup>

#### Development of Report

The last step in the process has been the preparation of this report. Drafts have been reviewed by the Consumer Affairs Coordinating Committee of the Department, the Citizens' Advisory Committee on Transportation Quality, the heads of the operating administrations, Secretarial Offices, and those who attended the workshop. The final decisions regarding the

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<sup>3</sup> DOT Office of Consumer Affairs, Workshop on Consumer Involvement in the Development of Rules, Regulations and Procedures, Department of Transportation, Transcript of the Final Session, December 5, 1973. (Copies of Transcript available from Office of Consumer Affairs.)

recommendations which are transmitted to the Secretary through this report are those of the Office of Consumer Affairs, Office of the Assistant Secretary for Environment, Safety, and Consumer Affairs. Every effort has been made to incorporate the thinking of all who have been part of the study process.

## II. SOME DEFINITIONS

### Rule

For the purpose of this study, the definition of "rule" is taken from the Administrative Procedure Act.<sup>4</sup> "Rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."

This definition, as interpreted for this study, is intended to include the development of "regulations" and "procedures" which have a substantial effect on the public. Similar or related terms, such as "guidelines" or "notices," which substantially affect agency structure or programs, are also included in this definition.

### Rulemaking

"Rulemaking" means the agency process for formulating, amending, or repealing a rule.

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<sup>4</sup> Administrative Procedure Act, 5 USC § 551(4) and (5).

### Notice and Comment Rulemaking Process

The rules adopted in the "informal" process of the Administrative Procedure Act (5 USC § 553) are also known as "notice-and-comment" rulemaking. This contrasts with the formal rulemaking procedures which require a formal hearing, the taking of evidence and decisions made strictly "on the record" as in a court case. The key element of informal rulemaking is the notice of proposed rulemaking. Under the Administrative Procedure Act, this is required to contain "either the terms of substance of the proposed rule or a description of the subjects and issues involved." In practice, this means that the agency drafts and publishes the rule that it proposes to issue in as close to final form as it can.<sup>5</sup> There are two main purposes for this. First, it gives the concerned public, both the persons to be regulated and those who presumably would benefit from it, advance notice that the regulation is being developed. Thus, they are not likely to be taken by surprise when the rule takes effect. Second, it provides the concerned public an opportunity to express their opinions on the precise proposal of the agency, both generally and with respect to changes that should be made in the draft before the rule is finally issued.

An important aspect of a notice is the preamble which must include a discussion of the salient features of the notice--what is being proposed, the problems or issues that it deals with, prior related notices and the main points made by persons commenting to date. The preamble also provides the expected or approximate date for the rule to take

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<sup>5</sup> Under recommendation B of this report there is a discussion of the importance of citizen-consumer input to the rule formulation before it is issued in "as close to final form" as possible. The use of the Advance Notice of Proposed Rulemaking (ANPRM) and other methods of early involvement are discussed.

effect. It invites comment from the public, states the docket number and the address for sending comments, and provides the date by which comments should be received. The "docket," a permanent file on a subject matter, is kept in a public file room where the public can come in and examine all comments that have been made at any time to any docket.

After the comment period closes, the agency analyzes the comments, engages in additional fact-finding, if needed, considers any information that it may have received from other sources, makes its final decision and issues the rule if that is the decision. The rule is then published in the Federal Register with a description of comments. Within 30 days following the publication of a rule, a person may file a "petition for reconsideration" asking that it be revoked or changed. If this occurs, the agency again analyzes the petition and makes its decision either to deny the petition or to reopen the record. The final disposition of the matter is eventually published in the Federal Register.<sup>6</sup>

The above procedure for informal rulemaking, outlined in chart form by DOT's Office of General Counsel for use by the workshop participants, can be found in Appendix 3.

### III. THE NEED FOR CONSUMER INVOLVEMENT IN RULEMAKING

#### Increased Consumer Awareness and Concern

As modern government has become more and more centralized at both the Federal and state levels, and as the agencies of government have

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<sup>6</sup> Administrative Procedure Act, 5 USC, § 553 (b) - (e).

grown both in number and in power, it has become inevitable that decisions are made and rules, regulations and procedures are determined with less and less involvement of the citizen/consumer for whom the rules are established. In the past, the consumer has been more willing than he is now to go along with what the officials of government, business, the universities and industry have spelled out for him. Today, the consumer is more sophisticated, better educated, more exposed to the learning effects of a vast mass media and has more leisure for involvement. He is more aware of the need for change and he believes more strongly that his voice should and can be heard in the development of laws, rules, and policies that affect human needs, his own included.

In addition, in a rapidly changing society where new values and institutional arrangements are vying with the old, the consumer is looking for new meaning and purpose within the institutions of society. Consequently, he is more prone to examine old assumptions and to participate in public affairs in order to effect change.

#### Development of Consumer Movement

The consumer realizes that something must be done to close the gap between the agencies of government and their ultimate constituents, including himself. He has observed that representative democracy has its limitations and that it is difficult for elected officials to keep tuned in to what people at the "grass roots" are thinking, feeling and needing. To close the gap, a consumer movement has been growing in the



United States. This and the growing desire of citizens to participate in decision-making have become a necessary counterpart to the extensive lobbying of business and industry whose traditional strength and capacity to represent private interests have far outdistanced any similar consumer effort.

#### Growth of Consumer Organizations

Not only are there increased personal interest and a willingness to be involved in the processes of governmental decision-making, but there is a growing number of consumer organizations at both the local and the national level that are becoming effective spokesmen for consumer interests. Contrary to the past situation in which an administrative agency was only exposed, in most cases, to the views of its staff and of private persons with their own interests in the proceeding, today's consumer groups are keeping abreast of those issues before an administrative agency which affect consumer interests. They stand willing to assist the agency in highlighting the people-interests that deserve protection and in producing relevant evidence and argument which suggest appropriate action. Furthermore, the more consumers become involved, the more they realize that their participation must be far upstream in the decision-making process if their needs are going to be met most effectively.

#### Opportunity for the Department of Transportation

Officials of government and industry are increasingly aware that their decisions cannot be made in a vacuum of unawareness about consumer

feelings, insights and convictions, or with only an educated guess as to what is best for the consumer. The rising tide of consumer determination to be included in the planning process provides the decision-makers with a better opportunity to evaluate consumer viewpoints and interest.

It is useful to recall that a generation ago there was little belief that it was necessary for governmental agencies to seek the views of the consumer as a third party to the relationship between the regulator and those industries and businesses in the private sector that were being regulated. It was simply presumed that the major role of the government regulatory agency was to protect the interests of the general public which would obviously include consumer interests no matter what definition was used. However, this theory has too often not worked out in practice and the public's awareness of this fact has increased significantly as a result of the encroachments on the human and ecological environments which America's technology has often created.

Since the transportation consumer, in the broadest sense, is either the victim or the beneficiary of policies and decisions reached by the Department of Transportation, the Department must find means of filling the gap between the rulemaking process in Washington and the citizen. The consumer must somehow understand and be involved in the process or else he will consider regulatory decisions to be an "intrusion of authority" into his life and will find the means to subvert, thwart or resist them.

Agency intent is not enough. Sensitive and practical rules for guiding consumer participation within reasonable channels must be

developed by DOT agencies. It is precisely this need that has motivated the current effort to further develop consumer involvement in rulemaking in the Department. This study has revealed that attitudes must be changed, new points of view must be taken and new resources must be found to create a vital process of participation. Earnest pursuit of these goals may not be easy but the rewards of avoiding costly mistakes, of ending up with transportation systems that do reflect the general will of the public, and of decreasing the sense of alienation between the consumer in our society and his government, can far outweigh all the frustration which the Federal, state and local agencies may encounter as they implant a new consumer methodology into their day-to-day planning. In short, the Office of Consumer Affairs believes that the Department, as a whole, must make a firm commitment that there will be no rulemaking on matters of substantive public interest without adequate provision for citizen-consumer participation in the rulemaking process.

#### IV. SPECIFIC RECOMMENDATIONS FOR CONSUMER INVOLVEMENT IN DOT RULEMAKING

##### Recommendation A

THAT THE DOT OPERATING ADMINISTRATIONS<sup>7</sup> UTILIZE THE NOTICE AND COMMENT RULEMAKING PROCEDURES OF THE ADMINISTRATIVE PROCEDURE ACT IN PROCEDURAL AND SUBSTANTIVE RULES OF GENERAL APPLICABILITY "RELATING TO PUBLIC PROPERTY, LOANS, GRANTS, BENEFITS, OR CONTRACTS" WHICH HAVE BEEN DETERMINED BY THEM TO HAVE A SUBSTANTIAL

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<sup>7</sup> The Offices of the General Counsel, Assistant Secretary for Administration, Pipeline Safety and Hazardous Materials are considered to be "Operating Administrations" for the purpose of this report because of their regulatory and/or operating responsibilities.

PUBLIC INTEREST EVEN THOUGH SUCH RULES MAY NOW BE EXEMPT  
FROM NOTICE AND COMMENT PROCEDURES.

The Administrative Procedure Act exempts from its notice-and-comment rulemaking provisions those rules "relating to public property, loans, grants, benefits or contracts."<sup>8</sup> The Office of Consumer Affairs concurs with the Administrative Conference of the United States and the American Bar Association that this is an unfortunate blanket exemption. As a matter of fact, the general public does have a vital concern in the promulgation and content of general regulations governing such matters as the terms on which others contract with the Federal Government and their eligibility for grants and benefits.

The fact that the public interest can be as much affected by an agency's exemption program, and by other *exparte* rulemaking, as by an agency's rulemaking policies has led the Administrative Conference to state:

"The general principle is clear - rulemaking which is of vital interest to a large number of people should be accompanied by the notice-and-comment procedures of 5 USC §553, unless, in accordance with that section, the agency finds that 'Notice and public procedures are impracticable, unnecessary, or contrary to the public interest.' The opportunity for the public to participate in rulemaking actions is likely to improve the quality of the rules as well as to increase their public acceptability."<sup>9</sup>

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<sup>8</sup> The Administrative Procedure Act, 5 USC, § 553 (a)(2)

<sup>9</sup> Recommendation #16, 1971-72 Report, Administrative Conference of the United States, July 1972.

There is no intention to suggest that every contract and every grant in the "exempted" operating administrations be subject to "notice and comment" procedures. Rather, reference is to those rules which are followed by the Federal agency that involve the application of Federal requirements and which have a substantial public impact, for example, rulemaking concerning acquisition of U. S. land for public transportation facilities or for awarding transportation facility funding or planning grants.

The rationale for this recommendation is further summed up in the following statement of the Committee on Rulemaking of the Administrative Conference of the United States:

"Public participation in rulemaking helps to assure wiser policy formulation than would otherwise be the case, and provides a means by which private parties can defend their interests against governmental rules they deem undesirable. The most important reason why such public participation is worthwhile is that it helps elicit the information, facts, and probabilities which are necessary to fair and intelligent action by those responsible for promulgating administrative rules. Involvement of the people in the formulation of rules is, therefore, an important goal which ought to be pursued as far as possible."<sup>10</sup>

This office strongly recommends that the Secretary of Transportation direct all DOT operating administrations to use notice-and-comment proceedings in the promulgation of rules where the public is substantially affected.

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<sup>10</sup> Consultant's Report in Support of Recommendations of the Committee on Rulemaking, Administrative Conference of the U. S. by Arthur Earl Bonfield, September 1969.

Recommendation B

THAT THE OPERATING ADMINISTRATIONS WITHIN DOT SHALL MAKE  
THE FULLEST PRACTICAL USE OF THE ADVANCE NOTICE OF PROPOSED  
RULEMAKING (ANPRM).

Though it has not been used uniformly, the use of the Advance Notice of Proposed Rulemaking (ANPRM) is a practice which enables the consumer to become involved in the rulemaking process at the earliest stages. It has been an effective tool over the years in the Department of Transportation. The Federal Aviation Administration pioneered the use of the ANPRM and the National Highway Traffic Safety Administration has effectively applied it.

The Advance Notice of Proposed Rulemaking is placed in the Federal Register and is a tentative description of the situation or problem to be dealt with. The Advance Notice states the nature and background of the problem, including the history of attempted solutions from the past, the issues surrounding the problem, those areas needing enlightenment or guidance, and in general the kinds of objectives which are sought. The public is then asked to further define the problem, to comment on possible solutions, and to present factual information which will help the agency to draft an appropriate proposed rule.

Thus, consumer involvement in thinking through the problem and looking at possible alternative solutions before a draft proposal is drawn up, enables the public to assist the agency in defining what the



problem is and getting a practical grip on it. The public's insights regarding goals and objectives and practical ways of meeting the need from a consumer point of view are thus encouraged and utilized from the very beginning.

Throughout the Workshop, it was suggested that there be greater use of "Advance Notice of Proposed Rulemaking" (ANPRM). Most Workshop participants indicated that the conscientious and appropriate use of the ANPRM went to the heart of much of the consumer complaint. Without it, citizen-consumers are left out of the rulemaking process at a point in the development of a rule where their understanding of the problem and contributions would be most useful. Citizens point out that once an agency has considered the problem on its own, conceived a solution, put its best position in writing and published it in the Federal Register, the public is prone to feel that the "die is cast" should it wish to bring forth for consideration other ideas for dealing with the problem. Without the ANPRM, consumers and consumer organizations are forced into a position in which they must react to what the agency has developed, and they tend to feel bound by the frame of reference which the agency has put forth.

It is true that the Advance Notice provides another step in the rulemaking process. Thus, it appears to take additional time and to require more red tape. There are, however, several values in making use of an ANPRM. The public rightfully asks the agency to take it into its confidence at the earliest possible stages of consideration, before

solidifying concepts and approaches. When this is done, the public will tend to be more responsive and less apathetic and their contribution will be more effective. Consumer groups will be less antagonistic if they have had an opportunity to participate in the formulation of the proposed rule; therefore, there is likely to be less negative reaction when the rule is finally proposed, less polarization of ideas and more cooperation and support through the rest of the rulemaking process. Overall, it is possible that there would be less rather than more delay.

It is not expected that the Advance Notice of Rulemaking procedure would be used in all cases. It should be used where the consumers' stake in the subject or the rule is apparent and substantial. In some situations there may have already been a substantial public involvement with the agency about the rule, making an ANPRM unnecessary; the proposed rule may be of a perfunctory or technical nature which would draw little, if any, public interest. There may be instances where the issue being considered is minor, having little effect on consumers; again, the emergency conditions surrounding a rulemaking may not allow time for an ANPRM.

In cases where the consumer public is affected either directly or indirectly, or in matters where there is apt to be disagreement, public reaction or controversy over certain issues, it is especially important to use the ANPRM procedure. Each administration or program would be expected to use its own judgment in identifying the appropriate situations



for use of the Advance Notice, though it is the intent of this recommendation that it be used both uniformly throughout the Department and as frequently as can be justified from the consumer point of view.

Recommendation C

THAT, WITHIN THE DEPARTMENT, THE NORMAL MINIMUM LENGTH OF TIME FOR PUBLIC COMMENT ON A NOTICE OF PROPOSED RULEMAKING FOLLOWING PUBLICATION IN THE FEDERAL REGISTER SHALL BE FORTY-FIVE DAYS.

Throughout the Workshop, there was frequent comment that there was not enough time allowed for consumers and consumer groups to react in an organized and thoughtful way to the proposed rule. Consumer groups, for example, may wish to consult with their constituencies before taking a position on a rule. Since most consumer groups have very low budgets and severe staff limitations, preparation for a meaningful response is apt to take them more time than a business, industry, professional group or other government agency.

We recommend, therefore, that in place of the present minimum of 30 days established by the Administrative Procedure Act to comment on a Notice of Proposed Rulemaking, 45 days be established in DOT as the minimum comment period for rulemaking that significantly affects the consumers' interest or welfare. It should be understood, however, that this length of time is often not enough and that in most cases, 60 to 90 days is more desirable. In fact, if in the agency's judgement a proposed rule directly and substantially involves consumers, then it

is urged that the response time be broadened to 90 days or more.

This recommendation is not meant to inhibit a shorter time for processing a rule where there are technical considerations of little or no importance to consumers or where emergencies must be met.

Recommendation D

THAT EACH DOT ADMINISTRATION AND APPROPRIATE SECRETARIAL OFFICE  
SUBMIT TO THE GENERAL COUNSEL AND THE OFFICE OF CONSUMER AFFAIRS  
ITS POLICY AND PROCEDURES FOR CONSUMER INVOLVEMENT IN RULE-  
MAKING WITHIN 60 DAYS FROM RECEIPT OF THE SECRETARY'S  
MEMORANDUM; THAT THEREAFTER A COPY OF ANY SIGNIFICANT CHANGES  
IN SAID POLICY AND/OR PROCEDURES BE PROVIDED TO THE GENERAL  
COUNSEL AND THE OFFICE OF CONSUMER AFFAIRS; THAT BY SEPTEMBER  
30 OF EACH YEAR, A BRIEF REPORT BE SUBMITTED TO THE OFFICE OF  
CONSUMER AFFAIRS HIGHLIGHTING SUCCESSFUL ACTIVITIES AND  
TECHNIQUES EMPLOYED DURING THE COURSE OF THE YEAR BY THE  
ADMINISTRATION OR SECRETARIAL OFFICE TO INVOLVE CONSUMERS IN  
THE RULEMAKING PROCESS; THAT PERIODICALLY THE OFFICE OF CONSUMER  
AFFAIRS SHALL COMPILE A REPORT OF CHANGES IN POLICIES AND/OR  
PROCEDURES AND SPECIAL ACTIVITIES AND TECHNIQUES FOR CONSUMER  
INVOLVEMENT IN RULEMAKING; AND THAT AFTER SAID REPORT HAS  
BEEN REVIEWED AND APPROVED BY THE APPROPRIATE OFFICES, THE  
OFFICE OF CONSUMER AFFAIRS SHALL DISTRIBUTE THE REPORT  
THROUGH CHANNELS OF COMMUNICATION ACCESSIBLE TO CONSUMERS.

## Discussion

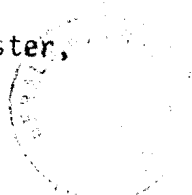
The ultimate objective of this recommendation is to establish a program within each operating administration that will actively solicit consumer input in the rulemaking process and explain the workings of the program to the consumer. "Notice-and-comment" procedures are not enough.

Too often, public agencies have assumed that the public can find out about rulemaking by reading the Federal Register where the notice is published prior to promulgation of the rule. There is consensus, however, that the Federal Register is seen by only a very small percentage of the public. An indication of this fact comes from a recent in-office survey of the mailing list of the Federal Register.<sup>11</sup> Of the approximately 26 thousand paid subscriptions, less than six percent went to consumer groups and social organizations in contrast to 60 percent going to business and industry. Another nine percent were sent to lawyers, the majority of whom, it is reasonable to assume, were representing business interests. This pattern of subscription distribution has held in recent years even though the number of paid subscribers to the Federal Register has more than doubled in the last two years.

Most consumers are generally unaware of the existence of the Federal Register and of those who are, many would be at a loss to know how to make use of it effectively. For example, more often than not, consumers don't understand what a "docket" is or how to use it.

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<sup>11</sup> As reported in a separate memorandum by the Director, Federal Register, April 1973.



There is feeling among some government officials that the public is apathetic and not interested in being involved. On the contrary, widespread professional agreement with the Office of Consumer Affairs supports its conclusion that "consumers, both as individuals and members of organizations, are interested and can make positive views if the opportunities to do so are readily available."<sup>12</sup> The Workshop on Consumer Involvement in the Development of Rules, Regulations and Procedures, described earlier in this report, stressed that it is non-productive for the agency or program to wait until the consumer comes to them.

#### Some Techniques for Involving Consumers in Rulemaking

Below is a summary of some of the methods for consumer involvement in rulemaking which were suggested by workshop participants and others. While some of these have already been used successfully within the Department, all are listed here in the hope that many more will be adopted as each administration undertakes a critical review of its policy and procedures for consumer involvement in rulemaking. Because of the differences in DOT's programs, no single list of techniques would apply to all. Thus each administration should incorporate in its procedures its own program for dealing with and reaching out to the consumer.

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Executive Office of Consumer Affairs, Division of Program Analysis: "An Examination of Consumer Expression in the Development of Federal Rules and Regulations." November 19, 1971. (See Appendix 4 for excerpts from this report.)

The suggestions are as follows:

- ° Prior to the submission of a notice of proposed rulemaking in matters of substantial public interest, find out what consumers believe to be the main issues and what their needs are in regard to these issues.
- ... Develop a key list of a wide variety of consumer groups and organizations who have a special interest in and potential involvement in a particular administration's program.
  - a. Make direct contact with these groups and invite them to submit their views regarding proposed rules in writing and orally.
  - b. Let these groups know the importance your agency places on consumer involvement. Send them appropriate materials.
  - c. Encourage them to send representatives to hearings, and to national, regional and local meetings on the matter.
- ... When rules are contemplated which relate to a specific geographical area, conduct an informal conference or workshop in close geographical proximity to those substantially affected in order to get their views.

- ... Include consumer representatives in discussions about guidelines and other criteria which lead to rules, standards or procedures.
- ... Invite the public to attend regularly scheduled or special national conferences and meetings in which the major issues facing your operations are openly discussed. Provide means for interaction and encourage citizen-consumers to register their views.
- ... Conduct public hearings, when appropriate, allowing a fair amount of time for all participants to comment.
- ... Arrange for scientifically conducted public opinion sampling as one tool for understanding consumer interests and points of view.
- Keep consumers informed from the period preceding development of the Notice of Proposed Rulemaking until the rulemaking process is completed.
- ... Make full use of the advance notice of proposed rulemaking.
- ... Develop a list of editors of magazines and newsletters that relate to a wide variety of consumers. Send them all information relating to rulemaking in an easily understood form.

- ... Highlight current rulemaking activities and related issues in feature stories for the local news media, trade journals, union papers, the minority press and other channels.
  
- ... Make greater use of the mass media, particularly television, in informing and interpreting to the consumer rulemaking matters that are under discussion.
  
- ... Use the regular DOT public news releases to draw attention to proposals for rules and regulations. Such releases should encourage consumer groups and private citizens to submit their views. Press releases should state where, when and how comments should be submitted. In distributing such news releases, the appropriate trade media should be included.
  
- ... Publish a periodic bulletin listing:
  - a. The name and docket number, or other identification, of any scheduled proceeding in which public input may be appropriate.
  
  - b. A brief summary of the purpose of the proceeding.
  
  - c. The date, time and place of public hearings or meetings.
  
  - d. The name of the agency and address of the person to contact if participation or further information is sought.

- ... In connection with each notice of proposed rulemaking, issue a set of instructions which will set forth the procedures for consumer submission of comments and responses to a proposal. Such instructions should emphasize the need for and the importance of consumer comment and describe how the consumer can be most effective in making his input.
  
- ... Stimulate consumer organizations to publicize information regarding preparation for rulemaking and to establish a flow of feedback from their constituents to their own offices as well as to the government administration in question.
  
- ... Make easily available to the public those documents, materials and public submissions upon which the proposed rule is based.
  
- ... Prepare a "consumer digest" as an automatic companion piece to every major important Notice of Proposed Rulemaking and the final rule. Such digests could present the widest possible lay interpretations of each proposal and action. These could also be used in the Federal Register, with press releases and in feature articles.
  
- ... Use simple clear layman's language when writing the preamble, the proposed rule and rulemaking actions to be published in the Federal Register.



... When the final rule is published, make specific reference in the Federal Register and elsewhere to the number and meaningfulness of the pro and con comments received from the public. This is a way of expressing gratitude for public response and encouraging it in the future.

- ° Before final determination is made on a proposed rule, collect, analyze, and evaluate data from a variety of consumers upon which to base the necessity and direction of a new rule that may substantially affect them.
- ° If an agency has difficulty in reaching consumers regarding rule-making that may affect them, conduct research to determine how best to proceed to inform and involve the public in the rulemaking process.
- ° Conduct, at least annually, an evaluation of the state of rule-making as it affects consumers. This assessment should include rules needed, rules in the process of being developed, rules in effect, and rules needing revision.

#### The Critical Factor of Attitude

The suggestions listed above for involving consumers in rulemaking do not begin to exhaust the creative methods and techniques available for this purpose. However, even if all of the best methods were tailored to each situation, this would not necessarily guarantee

proper involvement. Again and again, the workshop pointed out that success depends much more on the state of mind of the regulating agency than it does on following any checklist of things to be done, although a checklist may be useful.

It should be the basic concern of each administrator and office director that there be understanding and positive acceptance of the need for consumer involvement in rulemaking. If transportation officials have a determined and positive attitude, this will go far toward achieving the desired result.

#### Recommendation E

THAT EACH ADMINISTRATOR AND APPROPRIATE SECRETARIAL OFFICER  
DESIGNATE A MEMBER OF HIS STAFF KNOWLEDGEABLE IN THAT  
ADMINISTRATION'S OR OFFICE'S RULEMAKING PROCEDURES TO WORK  
IN A LIAISON CAPACITY WITH THE OFFICE OF CONSUMER AFFAIRS  
IN ITS WORK WITH CITIZEN/CONSUMER LEADERS AND GROUPS CONCERNED  
WITH CONSUMER PARTICIPATION IN RULEMAKING MATTERS WHICH HAVE  
A SUBSTANTIAL PUBLIC INTEREST.

Throughout the conduct of this study, it has been clear to those involved that there must be some mechanism within the Department of Transportation which would help to keep active and alive the concern for enhancing consumer participation in rulemaking. From the beginning, two thoughts have been advanced: (a) that there should be a consumer advisory committee attached to each of the operating administrations that would act as a stimulant to achieving this goal and (b) that there should be coordinated and unified procedures within DOT to enable it to keep abreast of the status of consumer involvement in rulemaking in each of the administrations.

Both of these ideas have received wide support. The December 1972 workshop discussed both, but emphasized the need for a consumer advisory group which would focus on rulemaking in each modal administration. At later stages of the study, the General Counsel's Office, the Office of the Assistant Secretary for Administration and others pointed out the desirability of consolidating consumer or citizen committees rather than adding to their number within DOT. This thinking is consistent with the Federal Advisory Committee Act of 1972, which discourages the proliferation of new committees, seeks to abolish those that are ineffective, and to consolidate others.

In view of this development, the Office of Consumer Affairs recommends that the Administrations make full use of the citizen/consumer committees within the Operating Administrations and Secretarial Offices rather than establishing new committees for this purpose. It also recommends that each Administrator and appropriate Secretarial Officer designate a member of his staff knowledgeable in that Administration's or Office's rulemaking activities and procedures to work in a liaison capacity with the Office of Consumer Affairs in its work with community and consumer leaders and groups concerned with the public role in Federal rulemaking activities.

This mechanism will assure that a knowledgeable person from each Administration will be available to advise the Office of Consumer Affairs and to keep it abreast of new procedures and techniques for

consumer involvement in rulemaking. It will also provide the basis for a working relationship that will assist in the implementation of Recommendations A, B, C and D.



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RESOURCE PERSONSWORKSHOP ON CONSUMER INVOLVEMENT IN THE DEVELOPMENT OF RULES, REGULATIONS  
AND PROCEDURES

December 4 and 5, 1972

Department of Transportation

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|--------------------------|--|
| 1. Fred Emery            | Director, Federal Register   |
| 2. Everett Crawford      | Director, Federal Program Studies,<br>Center for Governmental Studies                                      |
| 3. George Washnis        | Director, Municipal Studies,<br>Center for Governmental Studies  |
| 4. Richard K. Berg       | Executive Secretary, Administrative<br>Conference of the United States                                     |
| 5. Margaret Gilhooley    | Senior Attorney, Administrative<br>Conference of the United States   |
| 6. Ernest A. E. Gellhorn | Consultant to the Administrative<br>Conference of the U.S. and Professor<br>of Law, University of Virginia |
| 7. Kenneth Harris        | Executive (White House) Office of<br>Consumer Affairs  |
| 8. Edward P. Taptich     | Vice Chairman, Agency Rulemaking<br>Committee, Administrative Law Section,<br>American Bar Association     |

CHAIRMEN AND CO-CHAIRMEN OF WORKSHOP GROUPS

Workshop on Consumer Involvement in the Development of Rules, Regulations,  
and Procedures

United States Coast Guard

Chairman, A. C. Wagner, Chief, Office of Boating Safety  
Co-Chairman, Peter Ueberroth, Member, Citizens' Advisory Committee  
on Transportation Quality

Federal Aviation Administration

Chairman, R. Dewey Roark, Deputy General Counsel  
Co-Chairman, Ki Suh Park, Member, Citizens' Advisory Committee on  
Transportation Quality

Federal Highway Administration

Chairman, Ali Sevin, Chief, Network Evaluation Branch  
Co-Chairman, Mary Head, Member, Citizens' Advisory Committee on  
Transportation Quality

Federal Railroad Administration (Combined with Hazardous Materials and  
Pipeline Safety)

Chairman, Lucien M. Furrow, Attorney Advisor, Safety Regulations Division  
Co-Chairman, Henry Acchione, Member, Citizens' Advisory Committee on  
Transportation Quality

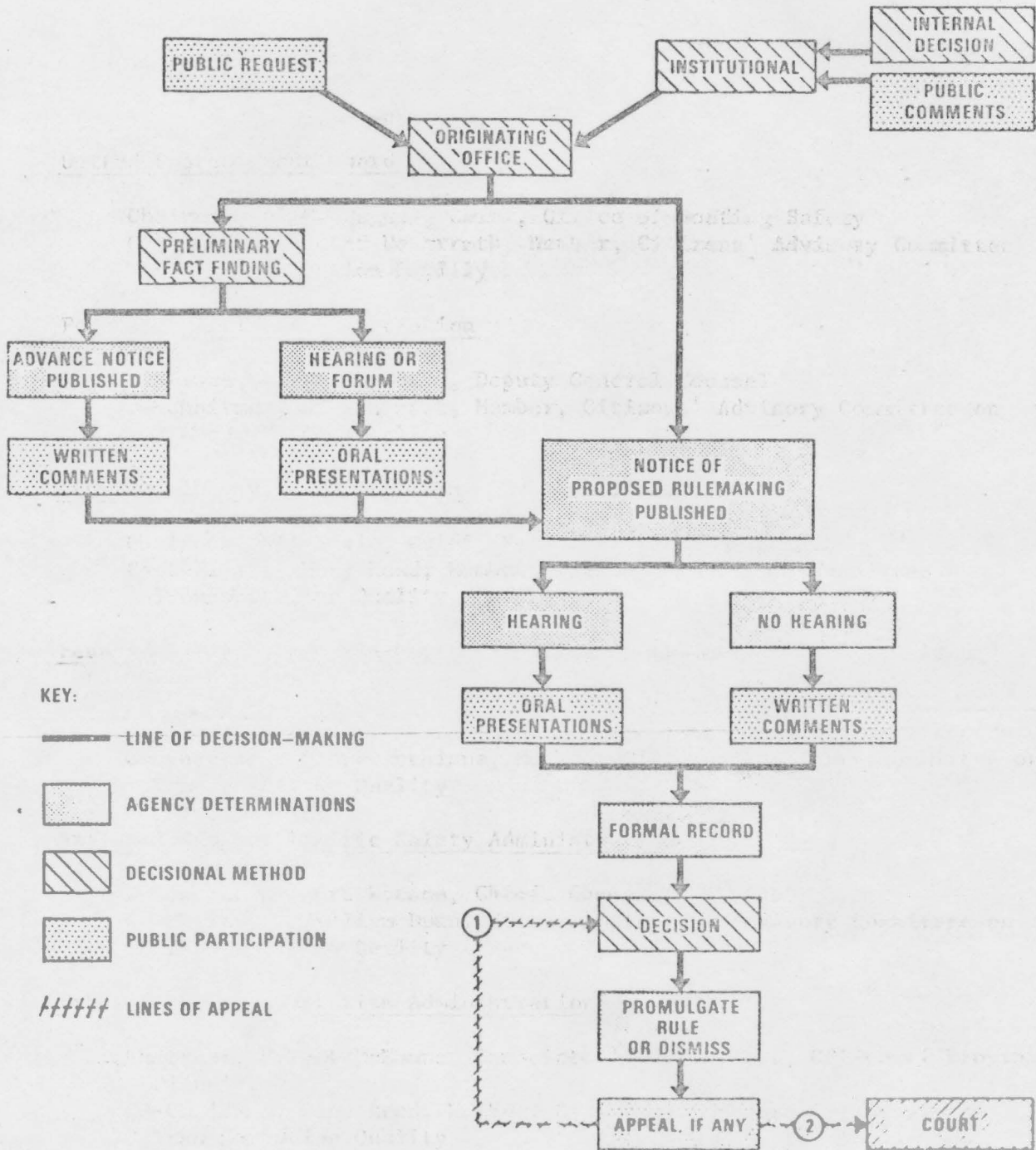
National Highway Traffic Safety Administration

Chairman, Gilbert Watson, Chief, Consumer Affairs  
Co-Chairman, William Dunn, Member, Citizens' Advisory Committee on  
Transportation Quality

Urban Mass Transportation Administration

Chairman, Robert McManus, Associate Administrator, Office of Program  
Planning  
Co-Chairman, Dana Reed, Member, Citizens' Advisory Committee on  
Transportation Quality

# DEPARTMENT OF TRANSPORTATION BASIC RULEMAKING PROCEDURES





AN EXAMINATION OF CONSUMER EXPRESSION  
IN THE DEVELOPMENT OF FEDERAL RULES AND REGULATIONS

(An excerpt from the draft staff study, Office of Consumer Affairs (White House), Division of Program Analysis, November 19, 1971)

A. Conclusions

1. Consumers, both as individuals and members of organizations, are interested and can make positive views if the opportunities to do so are readily available.
2. There is little formal survey of consumer opinion prior to drafting and proposing rules and regulations to enable agencies to recognize public views rather than acting with a presumed knowledge of public sentiment.
3. Few individual consumers subscribe to the Federal Register.
4. Few agencies request OMB approval to solicit the public for information.
5. Agencies generally are meeting the requirements of law in rulemaking. However, there are many examples where agencies do not allow adequate time for consumer response or where consumers are completely omitted.
6. Federal Register articles often are complex, in many cases so much so that a complete understanding requires not only reading the proposed rule but also the related section of the Code of Federal Regulations.
7. There is no single source in the Federal Government extracting and publishing Federal Register articles of interest to consumers in a concise, easy to understand manner.

B. Recommendations

Federal agencies should increase consumer participation in rulemaking by:

- a. Conducting field surveys to confirm consumer attitudes concerning particular potential policies affecting them.
- b. Taking care to invite consumer groups representing a cross-section of consumers to submit views orally or in writing.

- c. Holding more formal hearings or informal conferences in close geographic proximity to those substantially affected by rules being contemplated.
- d. Including consumer representatives in government/industry discussions on guidelines which ultimately lead to establishing the criteria by which Federal officials evaluate compliance with standards or procedures (e.g., FDA Manufacturing and controls of Investigational New Drugs and New Drug applications.)
- e. Making the Code of Federal Regulations available to consumers through free or low-cost subscription to libraries or through having a free copy available for use at convenient Federal locations (i.e. Civil Service Commission offices or Consumer Information Center).
- f. Working closely with the Office of Consumer Affairs to publish a Consumer Federal Register or to incorporate pertinent Federal Register articles in the semi-monthly Consumer News.
- g. Extending time for public comments on Federal Register articles.
- h. Stimulating the use of public news announcements by agencies, as a source to draw attention to significant proposals for rules and regulations, and to otherwise request consumers to submit their views on topics in consumer matters generally affecting them.

With respect to OMB:

- a. Further evaluating of the procedural requirements relating to the Federal Reports Act, so as to encourage agencies to undertake essential public surveys.
- b. Evaluating the possibility of amending the Federal Reports Act to enable more flexibility in surveying of consumer desires.
- c. Encouraging Federal Executive Boards located in major metropolitan areas to serve as catalysts to inform the consumer of proposed rules, and to indicate in general how the consumer can become more informed.

DEPARTMENT OF TRANSPORTATION

1. What specific problems does the bill present to your department?

The answer depends most heavily on how aggressively the Act is administered. The powers conferred by the Act are very sweeping and if exercised to their limit could be a serious impediment to the effective and timely administration of many of our programs, particularly in the regulatory area. At the other end of the spectrum, if the Act is administered with wisdom and restraint, the new agency's activities could provide constructive and different points of view in our decision making process.

Specifically, the bill risks imposing administrative burdens that ultimately may harm, rather than benefit the consumer. The potential for massive expenditures required of the government and the private sector may have serious consequences. Advisory committees might proliferate (Sec. 4(b)(3)); additional burdens would be placed upon agencies by requiring them to make already scarce resources available to the new agency (Sec. 4(c)(5)); and each agency would be required to respond specifically to every complaint forwarded to it by the ACA and to keep it informed of agency action on the complaint (Sec. 7(a)). All businesses and other commercial establishments would be required to supply massive amounts of information through interrogatories (Sec. 10(a)(1)), and face potential severe hardship as a result of the public complaint file to be maintained by the ACA (Sec. 7(c)). Complaints would be included in the public file regardless of their merit, and even anonymous submissions would be included. Agency sponsorship of the file at least implies the complaints are meritorious.

Resolution of competing issues would be made more cumbersome and costly in many respects. Today's informal proceedings could become formalized if in a cautious effort to develop an "ironclad" record the agency should decide the interest propounded by the ACA is not, on balance, in the public interest. Additionally, resources of the DOT would, to some extent, be diverted from its primary, ever-expanding mission in order to assist the ACA.

To the extent the government will be forced to expend these sums, consumers in their taxpayer roles will suffer. To the extent businesses face increased expenses, the consumer will pay higher prices. Yet this is the very consumer whose interests are to be protected.

Further, the bill risks impeding the implementation of other laws. The Freedom of Information Act (5 U.S.C. 522), for example, recently was amended (P.L.93-502) to ensure greater access by the public to information possessed by agencies. The bill would effectively vitiate the provisions of that Act in which the Congress recognized certain specified classes of information should not be required to be released. The bill would provide the Administrator access to some of this information (Sec. 10(b)), especially that permitted to be withheld from the public under 5 U.S.C. 552(b)(4) unless it falls within the more narrow definition in Sec 10(b)(7) of the bill. The Administrator then could release this information to the public if he determined it is necessary to protect health or safety (Sec. 11(a)(1)).

It might also be noted that much of the consumer type criticism leveled at the Department concerns DOT funded public works projects -- highways, airports, and so on. The new Act does not address this question, and we believe that the opportunities given consumers to participate in the environmental impact statement process fully protect their interests.

With respect to safety regulatory activities, all of which affect consumers particularly in the automobile and aviation field, we do not believe that the Act would have a serious effect, although it may introduce some further delay in the issuance of final rules.

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Freedom of Information Act (5 U.S.C. 552), for example, recently amended (P.L. 93-502) to ensure greater access by the public to information possessed by agencies. The bill would effectively violate the provisions of that Act in which the Congress recognized certain specified classes of information should not be released to the public. The bill would provide the Administrator access to some of this information (Sec. 10(b)), especially that permitted to be withheld from the public under 5 U.S.C. 552(b)(1) where it falls within the narrow definition in Sec 10(b)(7) of the bill. The Administrator could release this information to the public if he determines it is necessary to protect health or safety (Sec. 11(c)(3)).

2. What specific effort is the Department making to represent the consumer in its decisions and activities?

The Department of Transportation has within the Office of the Secretary an Office of Consumer Affairs which serves as a focal point for consumer advocacy in the Department. A major function of this office is to provide DOT policy leaders with an accurate picture of the needs and concerns of the individual transportation consumer as this office has determined them through various techniques.

The Office of Consumer Affairs has conducted 54 consumer public hearings in 21 states in the 10 regions of the country to listen first hand to the consumer's transportation problems, needs and suggestions. A detailed report is now being transmitted to the Secretary and to all Secretarial Offices and Administrations of the Department for consideration in policy decisions and activities. The report indicates that consumer concerns range from those of a policy nature such as the need for transit operating subsidies, more mass transit facilities and greater consumer involvement in comprehensive transportation planning to such modal concerns as automobile repair problems, stricter enforcement of traffic laws and baggage problems in air travel. In addition, the special transportation needs of the elderly and handicapped were voiced loud and strong.

The Office of Consumer Affairs, after an intensive study of the DOT rulemaking process which included a sponsorship of a workshop attended by consumers outside of the Department as well as DOT representatives,

submitted a report to the Secretary with five specific recommendations for greater citizen involvement in the rulemaking of the DOT administrations. These recommendations, which have been adopted by the Secretary and are being implemented, are:

is to provide DOT policy leaders with an accurate picture of the needs and concerns of the individual transportation consumer as this office has determined them through various techniques.

(a) That DOT administrations utilize the Notice and Comment rulemaking procedures in substantive rules relating to public property, loans, grants, benefits or contracts.

(b) That the DOT administrations made the fullest use of the Advance Notice of Proposed Rulemaking.

(c) That within DOT the normal minimum length of time for public comment on a notice of proposed rulemaking be 45 days.

(d) That DOT administrations and Secretarial offices submit to the General Counsel and the Office of Consumer Affairs its policy and procedures for consumer involvement in rulemaking and that by September 30 of each year a brief report be submitted to the Office of Consumer Affairs highlighting successful activities and techniques employed during the year to involve consumers in the rulemaking process.

(e) That each Administrator and Secretarial Office designate a member of his staff to work in a liaison capacity with the DOT Office of Consumer Affairs on rulemaking matters which have a substantial public interest.

The Department has conducted a number of studies to determine the problems, needs and preferences of the consumer regarding transportation. Among these are studies entitled "Traveler Service Problems," "Journey to Work Patterns of the Transportation Disadvantaged," and "Consumer Problems of the Transportation Disadvantaged." The Department is also conducting studies and demonstration programs to determine the transportation needs and best methods for solving the transportation needs of the elderly and handicapped.

(b) That the DOT administrations made the fullest use of the Office of Consumer Affairs serves as sponsor of the Department's 21 member Citizens' Advisory Committee on Transportation Quality. The purpose of the Committee is to provide the citizens' point of view to the Secretary in order to assist the Department in developing policy initiatives for consumer related transportation affairs. The Committee has recently submitted recommendations on improving the adequacy and quality of public transportation. It has made recommendations pertaining to the federal role in abandoned automobiles on the highways, and on ways to compensate consumers for impacts of transportation facilities on their environment.

during the year to involve consumers in the rulemaking. Two of the seven administrations of the Department have consumer affairs programs. These are the Office of Public Affairs and Consumer Services in the National Highway Traffic Safety Administration (NHTSA), and the Community and Consumer Liaison Division in the Federal Aviation Administration (FAA). Six of the seven administrations of the Department





administer laws and programs that benefit consumers directly. The seventh administration, the St. Lawrence Seaway Development Corporation, benefits the consumer indirectly by facilitating the movement of goods.

Finally, it should be noted that the Department makes extensive use of the Federal Register to invite consumer comment on proposed actions. This applies not only to rulemaking procedures where advanced notice of the opportunity for comment are required, but in informal proceedings as well. For example, the Department published in the Federal register on March 6, 1975, a Request for Public Participation in connection with an international aviation policy review conducted by the Department and other agencies: Citizens' Advisory Committee on Transportation Quality.

The purpose of the Committee is to provide the citizens' point of view to the Secretary in order to assist the Department in developing policy initiatives for consumer-related transportation affairs. The Committee has recently submitted recommendations on improving the adequacy and quality of public transportation. It has made recommendations pertaining to the federal role in abandoned automobiles on the highways, and on ways to compensate consumers for impacts of transportation facilities on their environment.

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3. What additional efforts could you take to better represent the consumer in your department's decisions and activities.

Adequate machinery exists in the Department to project the consumers' concerns into the Department's decisions and activities, as demonstrated above. What is needed is a continued determination of the opportunity for comment and input, but in informal proceedings to make that machinery work effectively. As was pointed out in the DOT Workshop on Consumer Involvement in DOT Rulemaking (copy of proceedings attached), "success depends much more on the state of mind of the regulatory agency that it does on following any checklist of things to be done although a checklist may be useful."

4. What regulatory reforms would you suggest to assist the consumer?

Much of government economic regulation of transportation has produced results detrimental to consumers which far outweigh its social benefits.

Much Federal regulation, originally imposed to prevent monopoly abuses, and <sup>encourage the development and expansion of the nation,</sup> has long outlived its original purposes. Indeed, this Federal regulation,

which is administered by the Interstate Commerce Commission and the Civil Aeronautics Board, has grown so cumbersome that consumers are denied prompt realization of technological innovations, and pricing adjustments that reflect changes in competitive conditions, and have to suffer unnecessary inefficiency. As a result, consumers get poorer service and have to pay higher prices. The Administration is committed to reform of economic regulation of all phases of intercity transportation: rail, truck, air and water, and expects to submit legislation to Congress for the rail mode within two weeks with legislation to follow in the other areas <sup>in 4 to 6 weeks.</sup> ~~within two months.~~ The need for these regulatory reforms and the benefits to consumers have been recognized by a wide-ranging group of consumer advocates.

We also suggest the President issue an Executive Order directing all Federal agencies to immediately review their regulatory procedures for the purpose of determining how they can encourage and facilitate public participation in appropriate phases of the regulatory process. This would be an internal measure to require stronger management attention to consumer affairs and stop "tokenism" treatment, if any, of this subject. A report of the review with new actions taken or of

proposed actions should be submitted to the President and Congress within six months of date of the order. The report then should identify actions which have been taken and proposals for new activities which are designed to bring the consumer into closer contact with the decision-making process.