

DOCUMENT RESUME

01786 - [A1051892] (Restricted)

[Comments on H.R. 1157, A Bill to Provide Cargo Security for Property Transported in Interstate and Foreign Commerce]. B-169347. March 29, 1977. 4 pp.

Report to Rep. John H. Murphy, Chairman, House Committee on Merchant Marine and Fisheries; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Transportation Systems and Policies: Management Practices in Transportation Programs (2405).

Contact: Office of the General Counsel: Transportation Law.

Budget Function: Commerce and Transportation: Other Advancement and Regulation of Commerce (403).

Organization Concerned: Office of Management and Budget; Interstate Commerce Commission; Department of the Treasury; Department of Transportation.

Congressional Relevance: House Committee on Merchant Marine and Fisheries.

Authority: Interstate Commerce Act, sec. 204, 220 (49 U.S.C. 304 ; 49 U.S.C. 320); 49 C.F.R. 1249; 40 Fed. Reg. 51645.

Federal Aviation Act (49 U.S.C. 1324; 49 U.S.C. 1372; 49

U.S.C. 1377); 1. C.F.R. 239. Federal Reports Act (P.L.

93-153; 44 U.S.C. 3501 (Supp. V)). H.R. 10473 (94th Cong.).

H.R. 1175 (95th Cong.).

H.R. 1157, a bill to provide for improved cargo security for property transported in interstate and foreign commerce, would impose a degree of unreasonable and unnecessary regulation and reporting on carriers. Findings/Conclusions: Existing statutory provisions empower regulatory agencies to require from carriers whatever loss and damage reports would be considered necessary by the bill. The regulatory agencies would have no apparent use for the information they would collect under certain sections of the bill. The agencies that would use such information ought to collect it in order to accomplish the purpose intended by the bill. The double tier reporting requirements by two different agencies as suggested in the proposed bill would permit possible duplication and conflicts in standards of control. The responsibility for program evaluation should rest initially upon the responsible agencies, since such evaluation is a fundamental part of effective program administration. Recommendations: Since the Office of Management and Budget (OMB) would review initial Department of Transportation plans requiring loss and damage reports to be made to the regulatory agencies, OMB ought to review all plans for the collection of loss and damage information. Congress should attempt to specify the kinds of information and tests needed to enable it to better assess how such programs are working. (RRS)

01786

Robert Hätzman
Transp.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

MAR 29 1977

B-169347
CED7-264

The Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives

Dear Mr. Chairman:

Your letter of February 3, 1977, requested our views and comments on H.R. 1157, 95th Congress, a bill "To provide a comprehensive program to improve cargo security for property being transported in interstate and foreign commerce."

H.R. 1157 is identical to H.R. 10473, 94th Congress, on which our Office commented in a letter dated March 8, 1976, to the former Chairman of the Committee, the Honorable Leonor K. Sullivan. We believe that our comments on H.R. 10473 are applicable to H.R. 1157, and these comments are summarized herein.

We recognize the probable need for increased Federal involvement in the cargo security field in order to preserve the free flow of commerce. However, in our overall view, the bill as drafted would impose a degree of unreasonable and unnecessary regulation and reporting because of a decentralized flow of information, possible duplication of reporting requirements, and duplication of review under the Federal Reports Act. Public Law 93-153, 44 U.S.C. 3501 (Supp. V 1975).

There are statutory provisions that seem to empower the regulatory agencies to require from carriers whatever loss and damage reports would be considered necessary by the bill; these agencies have published regulations, subject to our review, requiring such reports from many carriers. Examples include the ICC's regulations in 49 C.F.R. 1249.15 (1974) as amended 40 Fed. Reg. 51645, November 6, 1975, published under authority of sections 204 and 220 of the Interstate Commerce Act, 49 U.S.C. 304, 320; the FMC's regulations published under authority of 46 U.S.C. 812, 816, 820, and 841a in C.F.R. Part 546; and the CAB's regulations published in 14 C.F.R. Part 239 under sections 204, 402 and 407 of the Federal Aviation Act, 49 U.S.C. 1324, 1372 and 1377.

The regulatory agencies would have no apparent use for the information they would collect pursuant to sections 101(a), 108, and 109 of the bill. These agencies would act as collecting agencies or as conduits for the flow of information under section 107(a) to DOT and section 207(a) to the Treasury for use in the preparation of security standards by DOT under section 101(a) and by the Treasury under section 202(a); for use in the preparation of annual reports to the Congress under sections 105 and 205; and for use by the Office of Cargo Security for study and publication under section 302.

To accomplish the purpose intended by the bill, perhaps the agencies that would use the information ought to collect it. Since DOT and Treasury would promulgate the regulations containing the security standards with which the carriers would be required to comply, these departments would be in a better position to know what information they wanted, and they would obtain it faster by obtaining it directly from the sources.

It also appears that the regulations that would be issued by DOT would be subject to review by OMB under the Federal Reports Act while the reporting requirements of the regulatory agencies would be reviewed by the Comptroller General. This double tier review of reporting requirements by two different agencies would permit possible duplication and conflicts in standards of control and might compound any duplication and complexity in reporting requirements. To avoid this we recommend that, since the OMB would review the initial DOT plans requiring loss and damage reports to be made to the regulatory agencies, OMB ought to review all plans and forms for the collection of loss and damage information including those proposed under the bill and those that have been reviewed by the Comptroller General under Public Law 93-153 since 1973.

Following are certain additional comments for consideration by the Committee.

Sections 101 and 202 of the bill provide for the issuance of cargo security and safety regulations by the Secretaries of Transportation and Treasury, respectively. Section 202 states that regulations issued under this section shall become effective 6 months after publication (unless additional time is granted by the Secretary of the Treasury) and provides procedures for the withdrawal of regulations previously issued under the section. We believe that similar provisions should be included in Section 101 of the bill.

We also note that sections 101 and 202 do not prescribe maximum time frames for the initial issuance of Federal regulations by the Secretaries. Since the issuance of such regulations is a necessary precedent for implementation of other provisions of the bill, the

B-169347
CED7-264

Committee may wish to specify that the initial regulations be issued within a certain period. Since the beginning of the present cargo security program nearly 6 years ago, the Department of Transportation has issued only three Cargo Security Advisory Standards, the last in February 1974. A number of others have been under consideration for several years.

Consideration also should be given to including in sections 101 and 202 provisions for individual waivers of regulations issued. Experience with other regulatory programs has shown that there are sometimes circumstances which may warrant the issuance of individual waivers for good cause, without doing violence to the purpose of the act.

Section 201 of the bill defines the term "person" as used in title II, sections 203 and 204. The term should also be defined for use in title I, sections 102 and 103.

Sections 105 and 205 of the bill would require separate annual reports to the Congress on the administration of titles I and II. These two titles pertain only to the issuance and enforcement of regulations. We suggest that the bill be amended to require the Secretary of Transportation to submit consolidated annual reports on the administration of the entire act, including, and perhaps most importantly, titles III and IV which deal, respectively, with the establishment and operations of an Office of Cargo Security and an Interagency Council on Cargo Security.

It is our view that program evaluation is a fundamental part of effective program administration and that the responsibility for evaluation should rest initially upon the responsible agencies. In line with this concept, we believe the Congress should attempt to specify the kinds of information and tests which will enable it to better assess how well programs are working and whether alternative approaches may offer greater promise. Such information might include:

- A compilation of cargo losses and trends;
- A list of the regulations issued, withdrawn, or waived during the year;
- An evaluation of compliance with the regulations, including the status of enforcement actions taken;
- An analysis and evaluation of the research and development, education, and cooperation activities that took place during the year; and
- A summary of outstanding problems facing administration of the act, along with proposed solutions.

B-169347
CED7-264

We will be happy to work with the Committee in developing specific language if you wish.

Sections 108 and 109 of the bill would require reporting by water and motor carriers. We believe these sections should be amended to clarify the following matters.

- (1) Will all cargo losses, by whatever mode of transportation, be reported in comparable terms (e.g., "damaged as a result of theft or attempted theft, lost, missing, stolen, or presumed stolen," etc.), and in comparable time frames?
- (2) Section 108, which deals with water carriers, speaks of "periodic" reports of "cargo damaged, lost..." There appears to be a need to specify the required reporting period (e.g., "quarterly" or "annually") and to modify the term "cargo damaged" to specifically require reporting of cargo "damaged as a result of theft or attempted theft."
- (3) Similarly, section 109, which deals with motor carriers, speaks of reports of "freight loss and damage claims." We believe such reports should clearly show theft-related losses and claims.

Title III of the bill would establish within the Department of Transportation a separate "Office of Cargo Security," and transfer to it the functions, powers, and duties of the present Office of Transportation Security. From an administrative efficiency standpoint, the Committee may wish to retain the present Office of Transportation Security because its current responsibilities relate to both cargo and passenger security areas. The passenger security activities are not involved in this bill.

Sincerely yours,



[Deputy Comptroller General
of the United States