

AUDIT REPORT NO. 75-6

DECEMBER 1975

# MANAGEMENT AUDIT OF THE PUBLIC UTILITIES PROGRAM

## VOLUME III THE REGULATION OF TRANSPORTATION SERVICES

A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF HAWAII



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The office of the legislative auditor is a public agency attached to the Hawaii State legislature. It is established by Article VI, Section 7, of the Constitution of the State of Hawaii. The expenses of the office are financed through appropriations made by the legislature.

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The office of the legislative auditor endeavors to fulfill this responsibility by carrying on the following activities.

1. Conducting examinations and tests of state agencies' planning, programming, and budgeting processes to determine the quality of these processes and thus the pertinence of the actions requested of the legislature by these agencies.
2. Conducting examinations and tests of state agencies' implementation processes to determine whether the laws, policies, and programs of the State are being carried out in an effective, efficient and economical manner.
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STATE CAPITOL  
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**MANAGEMENT AUDIT OF THE PUBLIC UTILITIES PROGRAM**

**VOLUME III**

**THE REGULATION OF TRANSPORTATION SERVICES**

**A Report to the Governor and the Legislature of the  
State of Hawaii**

**Submitted by the  
Legislative Auditor of the State of Hawaii**

**Audit Report No. 75—6**

**December 1975**



## FOREWORD

During the long period in which public utilities have been subject to governmental regulation, many changes have occurred, the scope of regulation has greatly expanded, and the nature of this regulation has become increasingly complex and widespread in its economic, social, and political implications. As a result, there has been in recent years a growing awareness of this field of governmental activity and of the need to focus upon various issues which it presents. Representative of this emerging interest in and concern for public utility regulation is Senate Resolution No. 28, which the senate of the Hawaii legislature adopted at its regular session in 1972, requesting the legislative auditor to examine: (1) the organizational structure of the public utilities commission, (2) the policies and procedures of the commission, and (3) the adequacy and current applicability of the laws pertaining to the commission.

This is the third in a series of volumes reporting on the audit we made in response to Senate Resolution No. 28. Volume I dealt with basic organizational issues in the field of public utility regulation and with certain procedural and financial aspects of the regulatory program. Volume II addressed the regulation of the utility industries in Hawaii—i.e., those engaged in providing services relating to communications, energy, water, and sewage disposal. This volume focuses upon the regulation of transportation services in Hawaii, with particular emphasis upon the regulation of motor carriers, which is a function that was assigned to the public utilities commission under the Hawaii Motor Carrier Law enacted in 1961.

The volume is divided into four parts. Part I contains an introduction and background information on the regulation of transportation services in Hawaii. Part II deals with those aspects of transportation regulation which are directly economic in nature and have to do with the relationships between transportation carriers and consumers who utilize their services. Part III discusses at length the safety regulation of motor carriers in Hawaii, not only by the public utilities agency but also by other federal, state, and local agencies which share responsibilities in this field. We have followed our customary practice of inviting comment from agencies affected by this volume of our report; part IV contains their responses.

We wish to acknowledge the cooperation and assistance extended our staff by the agencies contacted during the course of this audit.

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Legislative Auditor  
State of Hawaii



## TABLE OF CONTENTS

		<i>Page</i>
<b>PART I INTRODUCTION AND SOME BACKGROUND</b>		
Chapter		
1	Introduction . . . . .	3
	Objectives of the Audit . . . . .	3
	Scope of the Audit . . . . .	3
	Organization of the Report . . . . .	3
	Terminology . . . . .	4
2	Some Background on Transportation Services and Transportation Regulation . . . . .	5
	Nature of the Regulated Industries . . . . .	5
	Regulation of Transportation . . . . .	7
<b>PART II ECONOMIC REGULATION OF TRANSPORTATION SYSTEMS</b>		
3	Introduction . . . . .	15
	Summary of Findings . . . . .	15
4	Economic Regulation of Motor Carriers . . . . .	17
	Summary of Findings . . . . .	17
	The Hawaii Motor Carrier Law . . . . .	18
	Inefficiency of Current Motor Carrier Economic Regulation . . . . .	24
	A Case for Deregulation . . . . .	31
	An Alternative . . . . .	34
	Recommendations . . . . .	38
5	Motor Carrier Regulation for the Protection of Consumers . . . . .	39
	Summary of Findings . . . . .	39
	Consumer-Carrier Bargaining Imbalance . . . . .	39
	No Consumer Protection Program . . . . .	40
	Some Suggestions for Consumer Protection Regulation . . . . .	53
	Recommendations . . . . .	56

Chapter		<i>Page</i>
6	Other Problems in the Economic Regulation of Motor Carriers . . .	57
	Summary of Findings . . . . .	57
	A Perspective . . . . .	57
	Lack of Data . . . . .	58
	Illegalities in Ratemaking . . . . .	59
	Motor Carrier Regulation and the State's Antitrust Law . . . . .	64
	Representation of Hawaii's Interests Before Federal Agencies . . .	66
7	Economic Regulation of Air and Water Carriers . . . . .	68
	Summary of Findings . . . . .	68
	Regulating Air Carriers . . . . .	68
	Regulating Water Carriers . . . . .	70
<b>PART III</b>	<b>SAFETY REGULATION OF MOTOR CARRIERS</b>	
8	Introduction . . . . .	77
	Summary of Findings . . . . .	77
9	Background on Motor Carrier Safety and Highway	
	Traffic Safety in Hawaii . . . . .	79
	Highway Traffic Accidents in the United States and Hawaii . . .	79
	Need for Motor Carrier Safety Regulation . . . . .	81
	Statutes Governing the Regulation of Highway Traffic Safety . . .	82
	Agencies Involved in the Administration of Highway	
	Traffic Safety and Motor Carrier Safety Regulation . . . . .	87
10	Organizational Issues in the Safety Regulation of	
	Motor Carriers in Hawaii . . . . .	91
	Summary of Findings . . . . .	91
	Dysfunctional Regulation of Motor Carriers by the PUC . . . . .	91
	Organization for a Statewide Coordinated	
	Highway Safety Program . . . . .	97
11	Recordkeeping and Information Handling for	
	Motor Carrier Safety . . . . .	106
	Summary of Findings . . . . .	106
	Prelude . . . . .	106
	Deficiencies in Information System, Generally . . . . .	107
	Deficiencies in Information System: Specific Areas . . . . .	108
	Impact of the Deficiencies in Motor Carrier Safety	
	Information on the Statewide Program for Highway Safety . .	110
	Recommendation . . . . .	111

Chapter		<i>Page</i>
12	Motor Carrier Driver Licensing, Physical Fitness, and Performance .....	112
	Summary of Findings .....	112
	Licensing .....	112
	Physical Fitness .....	120
	Driver Training and Performance Evaluation .....	128
13	Motor Carrier Vehicle Safety .....	131
	Summary of Findings .....	131
	Licensing and Registration .....	131
	Vehicle Inspection .....	135
	Preventive Maintenance .....	142
14	Motor Carrier Vehicle Size, Weight, Use, and Modification .....	143
	Summary of Findings .....	143
	Motor Carrier Vehicle Size and Weights .....	143
	Hazardous Materials .....	151
	Modification of Motor Carrier Vehicles .....	152
	Motor Carrier Safety Equipment .....	157
15	Reporting and Investigation of Motor Carrier Accidents .....	159
	Summary of Findings .....	159
	Generally .....	159
	PUC Rules .....	160
	Accident-Reporting Deficiencies .....	161
	No Analysis of Accident Statistics .....	162
	No Accident Investigations .....	165
	No Corrective Action Taken .....	165
	Summary .....	167
	Inaccessibility of Motor Carrier Accident Reports .....	167

	<i>Page</i>
<b>PART IV</b>	
<b>RESPONSES OF THE AFFECTED AGENCIES</b> .....	169
Comments on Agency Responses .....	171
Attachment No. 1 .....	174
Attachment No. 2 .....	175
Attachment No. 3 .....	176
Attachment No. 4 .....	180
Attachment No. 5 .....	183
Attachment No. 6 .....	187
Attachment No. 7 .....	190
Attachment No. 8 .....	194
<b>APPENDICES</b> .....	197
A	
Financial and Operating Data on Hawaiian Airlines for the Years 1967 Through 1971 .....	199
B	
Financial and Operating Data on Aloha Airlines for the Years 1967 Through 1971 .....	200
C	
Financial and Operating Data on Young Brothers, Ltd., for the Years 1967 Through 1971 .....	201

## LIST OF TABLES

<i>Table</i>		<i>Page</i>
2.1	Scope of Federal Regulation over Intrastate Transportation Activities .....	8
4.1	Summary of Distribution of Gross Revenues Among Common Carriers of Property in Hawaii by Class of Carrier in Each Specified Category for the Years 1971 and 1967 .....	20
4.2	Summary of Gross Revenues Among Common Carriers of Passengers in Hawaii for the Years 1971 and 1967 .....	21
4.3	Summary of Motor Carriers in Hawaii, Which Do and Do Not File Their Tariffs Through the Western Motor Tariff Bureau (WMTB), as of July 31, 1973, by Type of Carrier .....	23
4.4	Summary of Applications Handled by the Hawaii Public Utilities Commission Relating to Motor Carrier Certificates of Public Convenience and Necessity (CPCNs) and Permits for the Years 1970, 1971, and 1972 .....	27
4.5	Summary of Outcome of Applications Before the Public Utilities Commission Relating to Motor Carrier CPCNs and Permits for the Years 1970, 1971, and 1972, as of June 30, 1973 .....	28
4.6	Summary of Actions Taken on Applications Relating to Motor Carrier CPCNs and Permits Filed During 1972, as of October 1, 1975 .....	30
5.1	Summary of Motor Carrier Rates Allowed by the Hawaii Public Utilities Commission to Go into Effect Within or Automatically after the Expiration of 30 Days of Filing During the Years 1970, 1971, and 1972 .....	42
5.2	Summary of Action Taken by the Hawaii Public Utilities Commission on Motor Carrier Rates Filed During the Years 1970, 1971, and 1972 .....	43
5.3	Comparison of Approvals, Withdrawals, and Denials of Motor Carrier Rate Notices Filed with the Hawaii Public Utilities Commission During the Years 1970, 1971, and 1972 .....	46
5.4	Comparison of Various Legal Rates, or Fares, for Transporting Passengers from the Honolulu International Airport to Central Waikiki and to the Kahala Hilton Hotel via Taxicab or 1-7-Passenger Carrier, as of December 1973 .....	48



<i>Table</i>		<i>Page</i>
14.5	Selected Samples of Trucks and Combinations with Tare Weights of 7500 Lbs. or More Determined at the Municipal Scales During the Period June 1, 1973 Through November 30, 1973, Indicating Vehicles Which Probably Should Have Received Major Modification Approval by the PUC .....	156
15.1	Summary of Reporting of Accidents Involving Non-Fatal Injuries Within the Prescribed Limits of 30 Days Following the Accident for the Year 1972 .....	161
15.2	Summary of Reporting of Fatal Accidents Within the Prescribed Time Limit of 24 Hours Following the Accident or Fatality for the Year 1972 .....	162
15.3	Summary of Probable Primary Causes of Motor Carrier Accidents in Hawaii in 1972 by Type of Vehicle .....	162
15.4	Comparison of Accident Records of Passenger Carriers and Property Carriers in Hawaii During 1972 .....	163
15.5	Comparison of Accident Records of Property Carriers in Hawaii in 1972 by Types of Carriers (Industry) and Vehicles Involved in Accidents .....	164



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**PART I**

**INTRODUCTION AND SOME BACKGROUND**

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## Chapter 1

### INTRODUCTION

This volume is the third in a series reporting on the results of our management audit of the State's program for regulating public utilities. The audit was conducted pursuant to Senate Resolution No. 28, Regular Session of 1972. The resolution requested the legislative auditor to review, among other things, the organizational structure of the public utilities commission and the policies and procedures under which the commission is operating.

#### Objectives of the Audit

The objectives of the audit were:

1. To evaluate the effectiveness and efficiency of the organization, management, and processes of the public utilities program in attaining the program's objectives.
2. To recommend changes in the organization, management, and processes which would produce greater efficiency and effectiveness in meeting the program's objectives.

#### Scope of the Audit

The audit generally examined the organization and management of the public utilities commission and the public utilities division of the department of regulatory

agencies. However, the public utilities program touches on so many facets of government and impinges on so many parts of the community that occasionally it was necessary to review the operations of other agencies as well.

In this audit we focused primarily upon those activities, events, and situations occurring during fiscal years 1972-73 and 1973-74. In a number of cases, however, we also traced matters well into the 1960's to gain proper perspective. The field work on the audit and the initial drafting of sections of the report consumed many months. This necessitated that we expand our inquiry beyond 1973-74 in some instances to keep this report as current as possible.

#### Organization of the Report

Because this report is so lengthy, it is being issued in several volumes. The first of these, issued in March 1975, dealt with the organization of the utilities program, program management in general, and certain procedural matters. Volume II concentrated on the State's management and operation of the program of regulating the energy and communications utilities. This volume, number III, concentrates on the regulation of transportation and transportation services.

Part I of this volume contains this introduction and a chapter providing some

general background information on the nature of the transportation industry and the development of transportation regulation.

Parts II and III contain our findings regarding the State's regulation of the transportation industry. The State's regulatory functions over transportation may be divided into two major categories: (1) economic regulation and (2) safety regulation. Economic regulation relates to achieving some economic end; safety regulation has as its focus the safety of the workers, consumers, and the general public. Part II is concerned with economic regulation, and Part III is on safety regulation.

Part IV contains the responses of agencies affected by the audit. We asked the agencies to comment on the findings and recommendations

in the preliminary draft of the volume. Their comments are included in this part.

### Terminology

As in the previous volumes, in this volume whenever the terms "agency" and "regulator" are used they refer to both the public utilities commission and the public utilities division in the department of regulatory agencies. These are the two agencies most directly involved in regulation. Where our comments are applicable to only one of them, that agency is specifically referred to by name as the "PUC" or the "PUD."

As used in this report, the abbreviations "PUC," "PUD," and "DRA," refer to the public utilities commission, the public utilities division, and the department of regulatory agencies, respectively.

## Chapter 2

# SOME BACKGROUND ON TRANSPORTATION SERVICES AND TRANSPORTATION REGULATION

Air, sea, and land transportation serving the State of Hawaii are all subject to some measure of regulation by federal, state, or local government authorities, or some combination of the three. This chapter discusses the size and nature of the respective transportation industries in Hawaii and the development of regulation over these industries.

### Nature of the Regulated Industries

**Air transportation.** Hawaii is served by a number of domestic and foreign air carriers. Passenger transportation comprises the bulk of the business of these carriers, but air freight business is increasing.

1. *Overseas carriers.* Air traffic between Hawaii and points outside the State has increased rapidly in recent years. Passenger movement recorded at Honolulu International Airport has grown from about 1.2 million in fiscal year 1962-63 to about 5.9 million in fiscal year 1972-73, an increase of about 394 percent.

2. *Interisland carriers.* Hawaiian Airlines and Aloha Airlines are the only regularly scheduled interisland carriers, but there are several small air taxi services which provide light plane passenger service between various points on a semi-scheduled basis, and several

helicopter services which offer tour and point-to-point services, usually on a single island.

Hawaiian and Aloha airlines' passenger business is substantial and has grown rapidly in recent years. Interisland passenger movement recorded at Honolulu International Airport has grown from about 850,000 in fiscal 1963 to about 3.5 million in fiscal 1973, an increase of over 300 percent. Hawaiian is the older and larger of the two airlines and serves more points in the State. The two airlines have been competitive, though the market is limited, leapfrogging one another in scheduling and otherwise duplicating services and effort. Competing in a limited market, the two have been able to sustain load factors of about 50 percent since 1967, and, despite increasing revenues, their profit performance has been erratic as appendices A and B indicate. They frequently have applied to the Civil Aeronautics Board for subsidies to offset operating deficits, and the CAB appears to have encouraged mergers between them. Merger negotiations conducted from time to time have not been fruitful, however.

**Water transportation.** Several U.S. shipping lines carry passengers and freight between Hawaii and the mainland, and various foreign-flag lines sail between Hawaii and foreign ports. There is only one interisland surface carrier, but there is a continuing interest in

additional interisland carriers. The bulk of all existing surface shipping is devoted to freight transportation.

1. *Overseas carriers.* Federal law restricts shipping between Hawaii and mainland ports to American flag lines using American-made ships. There are several of these lines, but Matson Navigation Company, a wholly-owned subsidiary of Alexander and Baldwin, Inc., dominates the trade. Other lines include the Pacific Far East Line, Inc. (the only American shipping line continuing to operate passenger liners in the Pacific Ocean), the States Steamship Company, and United States Lines. PFEL operates between Hawaii and the U.S. mainland and South Pacific ports; States Steamship and United States Lines between Hawaii and the gulf and east coast ports.

During the last several years, Seatrain Lines California competed with Matson for the Hawaii-west coast trade, but in 1974 withdrew from the competition, selling out to Matson.

Foreign shipping is significant, but does not bulk large in comparison with the domestic trade between Hawaii and the mainland.

2. *Interisland carriers.* Young Brothers, Ltd., (see appendix C for operating and financial data) is the only interisland water carrier at the present time. Its business is exclusively that of transporting goods and livestock between the islands.

There long has been an interest in expanding the interisland water carrier business. For many years it has been proposed that passenger and/or freight-carrying ferry system(s) be established. A report on the prospects for an interisland ferry system (*Proposed Interisland Ferry Systems*) issued by the department of planning and economic development in 1973 cites 22 prior studies on the subject. Other studies are still in progress. In 1963, legislation (Act 186) was enacted authorizing the department of transportation to establish a system of ferries financed by revenue

bonds. However, until now, progress toward the establishment of a ferry system has been slow. In part this has been because all pertinent studies have indicated that an operating subsidy from the State of several million dollars a year would be required to sustain such a system. Yet, both the private and public sectors have continued to be interested in developing a ferry system.

In the private sector, both the Hawaiian Inter-Island Ferry System, Ltd., organized several years ago under the leadership of State Senator John J. Hulten, and Kentron Hawaii, Ltd., have been pursuing the formation of a ferry system. The Hawaiian Inter-Island Ferry System, Ltd., envisions the operation of one or more large, oceangoing ferries capable of transporting both passengers and vehicles between the islands. The company does not as yet have any vessel in operation. However, before May 1974, it received a conditional certificate from the public utilities commission and on May 23, 1974, under Decision and Order 3503 of Docket No. 849, it has received permission to take all the time necessary to get its system going.

Kentron Hawaii, Ltd., a subsidiary of LTV Corporation, is interested in providing only passenger transportation services. It recently acquired three hydrofoil vessels which it has put into service under a conditional certificate from the PUC. The company has also organized the Pacific Sea Transportation, Ltd., which runs an experimental, passenger-only commuter service between Honolulu, Pearl Harbor, and Iroquois Point. This commuter service company operates one 450-passenger boat, occasionally supplementing it with two additional craft during peak hours, under a permanent certificate from the PUC.

In the public sector, the state department of transportation recently called for competitive designs for a vessel capable of being used for ferry purposes. It has also proposed a new, tri-modal transit system (TMTS) for Oahu. As the TMTS is envisioned, 14 hydrofoil buses would provide regular water transit between

such points as Hawaii Kai, Hickam, and Waipahu and downtown Honolulu. It is not clear whether the State anticipates the State or private enterprise to operate either the interisland ferry system or the TMTS.

**Land transportation.** Land transportation services in Hawaii consist of pipelines and motor carriers, the latter being by far the more important. Most pipelines are of the water- and sewer-utility type, the exceptions being a major gas pipeline between Honolulu and the gas utility's manufacturing plant at Barber's point, and certain oil pipelines, most of which are short and located in and around airports and harbors. Motor carriers, however, are everywhere.

Buses, trucks, and automobiles provide almost all the ground transportation on the various islands of the State. Those which operate commercially generally are called motor carriers, and operate as carriers of goods or passengers under varying arrangements. The Bureau of Motor Carrier Safety of the U.S. Department of Transportation in 1974 reported that more than 45,000 commercial vehicles of all types were registered in the State, including some 10,000 truck-tractors and 1,000 buses. Statistics developed by the PUC indicate that in 1973 there were about 1,800 private carriers within the State in addition to approximately 400 commercial water carriers.

## Regulation of Transportation

**A brief history.** The evolution of regulatory agencies has been traced in volume I of this report; here, however, it is appropriate to review briefly the history of those regulatory efforts devoted particularly to transportation. The earliest of these were aimed at railroads, the dominant mode of transportation in the United States during the last half of the nineteenth century and the first quarter of the twentieth.

Railroads were the perpetrators of all manner of abuses: rates were set at what the

traffic would bear or through side deals involving rebates and the like; speculative new lines competed with the old simply to obtain corporate ransom; land speculation and financial manipulation ran rampant. As John Burby notes in *The Great American Motion Sickness* (1971), "Rate wars, rebates to favored customers, rule-or-ruin struggles among New York financiers for empire and the fact that the railroads monopolized transportation in the late 1800's left the United States government no alternative to bringing under control the lifeline of its commerce, industry and agriculture."

The regulatory agency established for this purpose was the Interstate Commerce Commission (ICC), created by Congress in 1887 with powers to set and enforce rates and control competition. From 1903, additional legislation broadened the purview of the ICC to include some pipelines, maximum freight rates, railroad ownership of other transportation companies, minimum rates (having to do with railroad/barge rate wars), trucking and water carrier operation on inland waterways. From the 1930's on, Congress created still more transportation regulatory agencies, chief among them the Civil Aeronautics Board (CAB) which regulates air carriers; the Federal Maritime Commission (FMC) which regulates water carriers engaged in foreign and domestic offshore commerce and the Federal Power Commission (FPC) which regulates the interstate transmission of electricity and natural gas. Specialized agencies, in regulating various aspects of transportation safety, also have been created. These include the Federal Aviation Administration (FAA), the Coast Guard, and the Bureau of Motor Carrier Safety in the U.S. Department of Transportation.

**Federal-state jurisdiction.** Most commercial transportation is regulated by either the federal or the state government or by a combination of the two. The federal government's jurisdiction stems from the "interstate commerce" clause of the U.S. Constitution. By court decisions, this authority extends over any activity (even though the activity takes place wholly within a single state) which "substantially" affects interstate

commerce. State regulatory authority flows from its police power to protect the health, safety, and general welfare of its citizens.

As a general rule, the federal government regulates all interstate and international aspects of transportation. With regard to those transportation activities that occur wholly within the state, although the federal government could conceivably regulate most, if not all, of these activities on the ground that they substantially affect interstate commerce, there is no consistent pattern in the way it, in fact, exercises that authority in the various transportation fields. In some areas, federal jurisdiction is almost total; it virtually preempts the field and leaves little for the states to regulate. In other areas, there is considerable

room for the exercise of regulatory jurisdiction by the states. The extent of federal regulatory authority may also differ depending on the type of regulation—i.e., economic or safety.

Table 2.1 presents a bird's-eye view of the scope of federal regulation at present over the intrastate activities of the air, water, and land carriers operating in Hawaii. As noted, in each transportation field, federal jurisdiction is divided between two agencies, one regulating the economic aspect and the other regulating the safety aspect. The following paragraphs are a narrative description of the information contained in table 2.1.

*1. Air transportation.* The Civil Aeronautics Board (CAB) exercises economic

Table 2.1

Scope of Federal Regulation over Intrastate Transportation Activities

Transportation mode	Scope of federal economic regulation	Scope of federal safety regulation
Air	<p><i>Regulatory agency:</i> Civil Aeronautics Board</p> <p>All activities of scheduled commercial airlines, except financing programs</p> <p>CAB's authority does not extend to activities of non-scheduled or non-commercial airlines, such as light planes, air taxis, helicopters</p>	<p><i>Regulatory agency:</i> Federal Aviation Administration</p> <p>All activities of all carriers, without exception</p>
Water	<p><i>Regulatory agency:</i> Federal Maritime Commission</p> <p>Activities of water carriers operating between Hawaii and the U.S. mainland</p> <p>No intrastate (interisland) activity of any carriers is regulated by FMC</p>	<p><i>Regulatory agency:</i> U.S. Coast Guard</p> <p>All activities of all carriers, without exception</p>
Land	<p><i>Regulatory agency:</i> Interstate Commerce Commission</p> <p>All activities of movers of household goods</p> <p>None others</p>	<p><i>Regulatory agency:</i> Bureau of Motor Carriers, U.S. Dept. of Transportation</p> <p>All activities of all carriers in interstate business</p>

regulation over the scheduled commercial interisland airlines (Hawaiian and Aloha) in much the same fashion as it regulates interstate and international carriers. The CAB assumed jurisdiction for the economic regulation of the interisland airlines on the grounds that the waters between the islands of Hawaii are international, and the air space above these waters therefore is similarly international, making federal regulation appropriate. The state government contested this assertion of federal authority, but the federal courts supported the federal claim.

In the view of the attorney general of the State of Hawaii (Opinion No. 71-3; January 29, 1971), the CAB's jurisdiction extends over such matters as interisland air fares and schedules. However, this CAB jurisdiction is not total. It does not extend to the supervision of certain aspects of the internal business operations of the interisland airlines. These are primarily matters of financing, such as the issuance of stocks, bonds, notes, and other evidences of indebtedness and the sale of assets. Supervision of these matters is left to the State.

CAB jurisdiction also does not extend to light plane and helicopter service provided by the "air taxi" or "commuter carrier" operators. The CAB has no jurisdiction over such flights between points on a single island, and it has granted an exemption from federal jurisdiction over these carriers' interisland flights.

So far as safety regulation of air transportation is concerned, the Federal Aviation Agency (FAA) exercises jurisdiction over *all* aircraft operating within the State. Thus, safety regulation of aircraft is preempted in its entirety by the federal government.

2. **Water transportation.** The Federal Maritime Commission (FMC) has exerted jurisdiction over the economic regulation of water carriers operating between Hawaii and the mainland, but not over interisland water carriers. It does not now exercise jurisdiction over interisland water carriers by choice. When the

question arose at the time of statehood, the FMC, unlike the CAB, elected not to exercise this jurisdiction. The Coast Guard, a part of the U.S. Department of Transportation, regulates the safety of both Hawaii-mainland carriers and interisland carriers.

3. **Land transportation.** Overland transportation of goods and passengers within Hawaii is unique because such transportation services are rendered almost exclusively by motor carriers. During most of the post-statehood era, federal government regulatory control was very small. The state government, instead, bore the chief responsibility for regulation. However, in recent years, federal control has become more pronounced. A brief historical sketch explaining this situation follows.

Before statehood, there was next to no regulation of land transportation within Hawaii. Passenger carriers were required to obtain certificates of public convenience and necessity before commencing operations, and the several county governments were empowered to supervise passenger transportation. But in the main, there was little real regulation by either the federal government or the State. Although this was the situation in Hawaii, elsewhere in the United States, the Interstate Commerce Commission (ICC) was exercising economic and safety regulation over land transportation under various federal acts, including the Motor Carrier Act of 1935.

When Hawaii became a state, the ICC, along with other agencies, reviewed its operations relative to Hawaii. The new state presented something of an anomaly to the ICC. Since the ICC was empowered to regulate not only traffic which crossed state and international boundaries, but also traffic which moved within a state as part of a longer cargo movement that crossed boundaries, trucking of cargo within Hawaii which was shipped between Hawaii and other points could have been subjected to ICC jurisdiction. The ICC, however, chose to exempt Hawaii from its regulation. The

ICC had previously recognized the practical difficulties of attempting to regulate short-haul motor transportation, especially within urban areas, and thus had included in its regulatory framework procedures for exempting from its regulation short-haul transportation either on a statewide basis or on a municipality or commercial district basis. In Hawaii, motor transportation is essentially short-haul and resembles the mainland "local cartage" or "intracity" operations. Hence, an exemption for Hawaii was not difficult to secure.

The exemption of Hawaii was on a statewide basis. The island of Oahu alone could have been exempted as a commercial zone, but since Oahu included most of the commerce of the State, there was nothing particularly persuasive about exempting Oahu only. Thus the ICC, upon the urging of state officials in 1960, chose to exempt the State as a whole.

The exemption given Hawaii was not without reservation. It was based upon the understanding that virtually all freight hauling in Hawaii, even by interstate carriers, consisted of local pickup and delivery services over short distances, and it was conditioned on the State's enacting and enforcing legislation which would provide adequate safety regulation of interstate carriers operating in the islands.

Thereafter, the various affected interests in Hawaii held a series of meetings and conferences which resulted in the submission of a widely supported bill to the 1961 session of the legislature. It was enacted as the Hawaii Motor Carrier Law (Act 121), now chapter 271 of the Hawaii Revised Statutes. The act included both safety and economic regulation of motor carriers. The PUC began implementation of this new law on July 1, 1962. For a decade after 1962, the PUC regulated both the economic and safety aspects of motor carrier transportation activities within the State of Hawaii, whether or not such activities constituted a part of interstate business.

In 1972, pursuant to its own proceedings, the ICC partially revoked the state exemption from economic regulation and resumed jurisdiction over a specific group of interstate carriers, movers of household goods. Then in 1974, pursuant to proceedings begun in 1973 by the Hawaii local of the Teamsters union, the Bureau of Motor Carrier Safety revoked Hawaii's exemption from federal safety regulation of interstate motor carriers and assumed jurisdiction. (The Congress in 1966 created a new U.S. Department of Transportation and transferred from the ICC to the Bureau of Motor Carrier Safety within the new transportation department the function of regulating interstate motor carrier safety.) The bureau ordered a phased changeover, with part of the Bureau's safety regulations taking effect October 1, 1974, and the remainder by April 1, 1975.

To summarize the situation in Hawaii today: the ICC is responsible for the economic regulation of interstate movers of household goods operating within the State. The PUC is responsible for the economic regulation of all other interstate and intrastate carriers operating in the State and covered by the Hawaii Motor Carrier Law. The Bureau of Motor Carrier Safety in the federal Department of Transportation is responsible for the safety regulation of all interstate motor carriers operating within the State. The PUC is responsible for the safety regulation of all intrastate motor carriers, and any interstate carriers which the Bureau of Motor Carrier Safety does not regulate.

It should be noted that private mass transit lines and bus companies are also subject to regulation by the PUC. They are subject to such regulation not under the Hawaii Motor Carrier Act, but under HRS, chapter 269. As a practical matter, this power of regulation over mass transit and buses is virtually obsolete, since the counties are now empowered by legislation to enter into the mass transportation business without being subject in any manner to regulation by the PUC. Under this mass transit legislation (HRS, chapter 51), the city and county of Honolulu has moved to take over

completely the private bus companies which had previously been regulated under chapter 269 by the PUC. Thus, for all practical purposes, land

transportation for the purposes of our audit consists of motor carriers subject to regulation under the Hawaii Motor Carrier Law.



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**PART II**

**ECONOMIC REGULATION OF TRANSPORTATION SYSTEMS**

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## Chapter 3

### INTRODUCTION

This part is concerned with the economic regulation of the various modes of transportation. Chapters 4, 5, and 6 are devoted to the economic regulation of motor carriers. Chapter 7 covers the economic regulation of air and water carriers.

The bulk of this part is devoted to motor carriers, inasmuch as regulation in this area is much more fully developed than in the areas of air and water transportation. Indeed, economic regulation of air and water carriers is now only in the formative stages.

#### Summary of Findings

Our findings generally are as follows:

1. The present form of economic regulation of motor carriers detracts from, rather than promotes, economic efficiency. If there is any real economic need for regulation, it is the need to make workable that competitive force which exists in the motor carrier trade. The present form of regulation chokes off what competition naturally exists rather than making it work as it should. In part, this is due to the fact that the current form of regulation is grafted on to that framework for regulating monopolies rather than being tailored to the competitive characteristic of the industry.

2. Economic regulation of motor carriers as now constituted is heavily

pro-industry. It is extremely weak in protecting the interests of consumers, particularly individual consumers and small business firms. This is so in both the area of ratemaking and the area of quality of service.

3. Violations of law and rules and regulations under the Hawaii Motor Carrier Law are evident both in administration by the regulators and in operations by the carriers.

4. The motor carriers currently enjoy a limited exemption from the State's antitrust law. The Hawaii Motor Carrier Law allows the carriers to set rates by agreements. In all other respects, it appears the State's antitrust law is applicable to motor carriers. However, there has been little or no activity to examine or evaluate the impact of the antitrust law on motor carriers. In the meantime, there has been a growing tendency toward bigness and concentration of control of the industry in the hands of a few.

5. As of now, there is very little activity in the regulation of air and water carriers. It is by no means clear that economic regulation of air and water carriers is required, nor is it clear, if regulation is desirable, what sort of regulation should be imposed. In the water carrier area, in particular, state policy and program for interisland water transportation system are vague and uncertain.

6. There is no real state program to ensure representation of Hawaii's interest before federal regulatory bodies in matters relating to air, water, and land transportation. The regulators give but scant attention to this area

and the department of attorney general, which normally takes the lead in appearing before federal regulatory bodies, is not efficiently organized to mount a consistent and comprehensive program of representation.

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Our findings generally are as follows:

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2. Economic regulation of motor carriers as now constituted is heavily competition oriented rather than being tailored to the competitive characteristics of the industry.

## Chapter 4

### ECONOMIC REGULATION OF MOTOR CARRIERS

Most of the State's economic regulatory activities in the transportation field are concentrated in the land transportation mode. The principal, if not the exclusive, means of land transportation in the State is motor carriage—trucks, vans, buses, and limousines. Railroads once formed an integral part of the State's land transportation system. However, railroads long since have disappeared from the scene and are no longer a major component of land transportation in Hawaii.

In volume I of this report, we suggested that the economic regulation of motor carriers be terminated. Since volume I focused on the issues related to the organization and general management of the public utilities program, the subject of deregulation was not accorded the full treatment it deserves. In this chapter, we focus in greater detail on the efficacy of economic regulation of the motor carrier trade. This discussion adopts as its starting base the manner of operation of the current system of regulation. Thus, to the extent that they bear directly on the subject, this chapter includes our findings on the operating practices under the current regulation. Our other findings on the current regulatory activities are contained in the succeeding two chapters. The findings included in the next two chapters in many cases have some bearing on and are supportive of the discussion contained here, but to keep this chapter to a manageable size only those findings that are necessary to a disposition of the

discussion on the efficacy of economic regulation of the motor carrier industry are included in this chapter.

#### Summary of Findings

Our findings are summarized as follows:

1. Although the purpose of economic regulation is to foster efficiency, the present regulatory scheme is counter-efficient in its effects.
2. Normally, competition forces industries to be efficient. The motor carrier trade is competitive in nature. Thus, there appears to be little reason why the force of competition should not be allowed to work in the motor carrier trade.
3. The usual argument advanced for the economic regulation of motor carriers is the one of "excessive" competition; that is, the motor carrier trade is so easy to enter that, without regulation, many firms would engage in the business and compete severely on the rates to be charged, much to the detriment of the industry as a whole. If this is indeed the case (although no real study on the matter has ever been made), economic regulation of motor carriers should be designed to make existing competition work, not to suppress competition as the current system of regulation does.

## The Hawaii Motor Carrier Law

Before proceeding to discuss the economic regulation of motor carriers, it is helpful to describe briefly the Hawaii Motor Carrier Law under which such regulation presently occurs and to provide some general information on the industry that is regulated under the law.

**The law's coverage.** The Hawaii Motor Carrier Law recognizes three major classes of motor carriers: (1) common carriers, (2) contract carriers, and (3) private carriers.

*Common carriers* are those which offer motor carrier transportation of passengers or property to the general public. These include tour bus companies and local trucking operations. *Contract carriers* are those which enter into contractual arrangements with particular customers to provide continuous or regular transportation services to the customers, whether of goods or passengers. A particular trucking firm which has a year's contract with a particular shipper to haul all of the shipper's goods to and from the pier is an example of a contract carrier. *Private carriers* are those not included in the common or contract categories; they are primarily those which are in some business other than transportation but provide their own motor transportation services. A retail store which hauls its goods by trucks which it owns, driven by drivers whom it employs, is an example of a private carrier.

Subject to certain specific exemptions, all categories of carriers are covered by the law with respect to safety (see part III, this volume). However, insofar as economic regulation is concerned, private carriers generally are not covered by the law; only common and contract carriers are subject to such regulation. Since the bulk of motor carriage is in the hands of private carriers, there is a large number of carriers which is not regulated, except for safety.

The number of carriers subject to economic regulation is further reduced by the exemptions which the law provides. The following common

and contract carriers are exempt: school buses; taxicabs; bus companies subject to regulation under HRS chapter 269 (the Public Utilities Law); nonprofit agricultural cooperatives; tow trucks; mail, newspaper, magazine, and message delivery vehicles; funeral cars and ambulances; refuse trucks; trucks used by the sugar and pineapple industries; and trucks used by various other types of agricultural enterprises.

The law places both the safety and economic regulatory functions in the state public utilities commission.

**Classes of motor carriers subject to economic regulation.** In addition to being classified as common or contract carriers, the motor carriers subject to economic regulation are classified as either carriers of passengers or carriers of commodities. Common carriers are also classified according to the size of their gross operating revenues. A brief description of the classes follows:

1. *Passenger carriers.* There are three subcategories of passenger carriers. They are:

*Carriers operating 1-7-passenger vehicles:* those operating vehicles with a capacity for holding one to seven passengers (actually most cars falling into this category only carry five passengers in addition to the driver)

*Carriers operating 8-12-passenger vehicles:* those operating vehicles with a capacity for holding eight to 12 passengers

*Carriers operating over-12-passenger vehicles:* those operating buses or other vehicles capable of carrying more than 12 passengers

A carrier may have authorization to operate in one, two, or all three of the above categories.

2. *Property carriers.* Property carriers are differentiated by the kinds of property they haul or by the types of equipment they use to

do the hauling. Four such subcategories are recognized in Hawaii, as follows:

*Carriers of general commodities:* carriers transporting all types of commodities except for carriers of household goods and except for commodities ordinarily transported in dump trucks

*Carriers of household goods:* carriers transporting household goods for persons making a change in residence; transporting furniture, fixtures, and equipment for businesses and other organizations when they are making a change in location; and transporting unusual or valuable articles requiring special handling (e.g., art objects)

*Carriers of commodities in dump trucks:* carriers engaged in transporting commodities normally hauled in dump trucks (e.g., sand, gravel, aggregates)

*Carriers of specific commodities:* carriers engaged in the hauling of specific types of commodities which usually require some sort of specialized equipment (e.g., armored cars, tank trucks, refrigerated trucks, trucks for hauling heavy machinery and equipment) or specialized handling (e.g., hauling explosives, handling small package and parcel deliveries, handling film and dated products)

A carrier may have authorization to operate in only one, several, or all of the above categories.

3. *Size of carrier, in terms of gross operating revenues.* Classification of common carriers according to the size of their gross operating revenues were, until recently, as follows:

*Class A:* carriers whose average annual gross operating revenues for the preceding three years exceeded \$100,000

*Class B:* carriers whose average annual gross

operating revenues for the preceding three years exceeded \$25,000 but were less than \$100,000

*Class C:* carriers whose average annual gross operating revenues for the preceding three years did not exceed \$25,000 <sup>1</sup>

**The numbers of carriers subject to economic regulation.** In 1971 there were 177 common carriers of passengers, 199 common carriers of property, and 9 contract carriers of property. Of the 177 common carriers of passengers, 139 (or 79 percent) grossed less than \$25,000; and of the 199 common carriers of goods, 66 (or 33 percent) grossed less than \$25,000. Only about one-fourth of all common carriers grossed more than \$100,000 in 1971. The regulated industry, thus, might be said to consist of many small companies and a few large operators.

When the performances of the small and large operators are compared, it appears that the small number of large operators command a substantial part of the total carrier business. Tables 4.1 and 4.2 illustrate this. Table 4.1 shows how the gross operating revenues from the transportation of *goods* in 1967 and 1971 were distributed among the three classes (A, B, C) of common carriers engaged in that business. Table 4.2 shows how the gross operating revenues from the transportation of *passengers* in 1967 and 1971 were distributed among the three classes of common carriers engaged in that business.

In 1967, the large class A carriers earned 81 percent of the total revenues from hauling goods. This percentage increased to 87 percent in 1971. Of the total revenues from the transportation of passengers, 88 percent went to the class A carriers in 1967 and 90 percent in 1971. The ten largest class A carriers of goods of the various categories earned anywhere from 43

<sup>1</sup>Under revised General Order No. 5, which went into effect June 24, 1974, the class B category was eliminated, leaving carriers divided into two classes: class A carriers grossing more than \$100,000 and class C carriers grossing less than \$100,000.

Table 4.1  
 Summary of Distribution of Gross Revenues Among Common Carriers of Property in Hawaii<sup>(3)</sup>  
 By Class of Carrier in Each Specified Category  
 For the Years 1971 and 1967  
 (In thousand dollars)

	General commodities		Household goods		Dump trucks		Specific commodities		Other motor carrier related revenues		Total operating revenues			
	Revenues	% of total	Revenues	% of total	Revenues	% of total	Revenues	% of total	Revenues	% of total	Revenues	% of total	No. of carriers	Average revenue per carrier class
<i>1971:</i>														
Tot. revenues—all carriers <sup>(1)</sup> . . .	\$20,175	100	\$6,155	100	\$7,269	100	\$1,421	100	\$2,605	100	\$37,625	100	178	\$211
Class A . . . . .	17,239	85	5,660	92	6,054	83	1,091	77	2,546	98	32,590	87	64	509
Top 10 carriers <sup>(2)</sup> . . . . .	[9,671]	[48]	[5,425]	[88]	[4,725]	[65]	[1,091]	[77]	[2,061]	[79]	—	—	—	—
Others . . . . .	[7,568]	[37]	[235]	[4]	[1,328]	[18]	—	—	[486]	[19]	—	—	—	—
Class B . . . . .	2,325	12	485	8	952	13	282	20	56	2	4,100	11	63	65
Class C . . . . .	612	3	10	—	263	4	48	3	2	—	935	2	51	18
<i>1967:</i>														
Tot. revenues—all carriers <sup>(1)</sup> . . .	\$13,673	100	\$3,917	100	\$4,719	100	\$2,409	100	\$2,078	100	\$26,796	100	195	\$137
Class A . . . . .	10,550	77	3,492	89	3,949	84	1,986	82	1,765	85	21,742	81	59	369
Top 10 carriers <sup>(2)</sup> . . . . .	[5,824]	[43]	[3,412]	[87]	[3,493]	[74]	[1,985]	[82]	[1,558]	[75]	—	—	—	—
Others . . . . .	[4,726]	[34]	[80]	[2]	[456]	[10]	[1]	—	[208]	[10]	—	—	—	—
Class B . . . . .	2,459	18	386	10	421	9	206	9	95	5	3,566	13	53	67
Class C . . . . .	664	5	39	1	349	7	218	9	218	10	1,488	6	83	18

<sup>(1)</sup> Carriers are classified "A," "B," or "C" in terms of average gross operating revenues of the three preceding years:

Class A — Carriers whose average annual gross revenues exceed \$100,000.

Class B — Carriers whose average annual gross revenues exceed \$25,000 but are less than \$100,000.

Class C — Carriers whose average annual gross revenues do not exceed \$25,000.

<sup>(2)</sup> These are the gross revenue data on the top 10 class A carriers by each category only; may be different companies in each category.

<sup>(3)</sup> Represents only those filing financial reports; 2 class A and 10 class C carriers did not file in 1971 and 2 each in class B and class C carriers did not file in 1967.

to 87 percent of the total revenues generated by the carriers in each category in 1967, and from 48 to 88 percent in 1971. The ten largest carriers of passengers cornered 72 percent of the total revenues in 1967 and 84 percent in 1971. In contrast, the class C carriers of goods earned only 6 percent of the total revenues in 1967 and 2 percent in 1971; and the class C carriers of passengers earned only 11 percent of the total revenues in 1967 and 7 percent in 1971.

The organization for the regulation of motor carriers. When the Hawaii Motor Carrier Law was first enacted, the PUC established a separate unit within its organization to handle motor carrier matters. This unit was known as the motor carrier bureau. This organizational pattern was followed because at that time the PUD, the regulatory agency's staff arm, was organized along industry categories (utilities, motor carriers, etc.). However, in the

Table 4.2  
Summary of Gross Revenues Among Common Carriers of Passengers in Hawaii  
For the Years 1971 and 1967  
(in thousand dollars)

	Total operating revenues	Percent of total revenues	No. of carriers and/or companies	Av revenues per carrier and/or company
<i>1971:</i>				
Total revenues—all carriers <sup>(a)</sup> . . . . .	\$19,147	100	155 <sup>(b)</sup>	\$ 124
Revenues—class A . . . . .	17,146	90	16 <sup>(b)</sup>	1,072
(Top 10 companies) . . . . .	[15,987]	[84]	[10] <sup>(b)</sup>	[1,599]
(Others) . . . . .	[1,159]	[6]	[6]	[193]
Revenues—class B . . . . .	660	3	9	73
Revenues—class C . . . . .	1,341	7	130	10
<i>1967:</i>				
Total revenues—all carriers <sup>(c)</sup> . . . . .	\$13,167	100	172 <sup>(b)</sup>	\$ 77
Revenues—class A . . . . .	11,579	88	17 <sup>(b)</sup>	681
(Top 10 companies) . . . . .	[9,492]	[72]	[10]	[949]
(Others) . . . . .	[2,087]	[16]	[7]	[298]
Revenues—class B . . . . .	133	1	3	44
Revenues—class C . . . . .	1,455	11	152	10

<sup>(a)</sup> These totals represent the gross revenues of all carriers who filed financial reports as of August 31, 1972. Nine class C carriers failed to file financial reports for 1971.

<sup>(b)</sup> Affiliated companies are counted as one.

<sup>(c)</sup> These totals represent the gross revenues of all carriers who filed financial reports as of December 31, 1968. Nineteen class C carriers failed to file financial reports for 1967.

mid-1960's, the agency was reorganized along functional lines (engineering, auditing, etc.) and the separate motor carrier bureau as such ceased to exist. Thus, at the present time, there is no organizational unit within the agency which deals exclusively with motor carrier matters. Nevertheless, there are some functional units which are much more heavily engaged in motor carrier matters than others. These include the transportation administrator, the rates and tariff branch, and the investigation (or certification and compliance) branch. To a lesser extent, the audit and engineering branches also become involved in motor carrier matters. According to the federal Bureau of Motor Carrier Safety's report on Hawaii's motor carrier program made in 1974, motor carrier matters are being handled for the PUC by the transportation administrator and a technical staff of 20 spread through four branches of the PUD. On this basis, two-thirds of the staff of the PUD (i.e., 20 out of the 30 employees) have some involvement in the regulation of motor carriers in Hawaii. In terms of PUC dockets, a large proportion of them is concerned with matters pertaining to the regulation of motor carriers.

**Industry organization.** Despite being made up of many different elements with widely disparate interests, there is a reasonable degree of organization and internal cohesion within Hawaii's motor carrier industry. This is evidenced by the existence and fairly active functioning of three separate but overlapping intra-industry organizations—namely, the Western Motor Tariff Bureau (WMTB), the Hawaii Trucking Association (HTA), and the Hawaii Sightseeing Association (HSA)—and a separate organization of small passenger carriers, the Hawaii State Certified Common Carriers Association (HSCCCA).

**1. Western Motor Tariff Bureau.** This organization enjoys a semiofficial status even though it is supported and operated by the motor carriers themselves. It is closely patterned after similar bureaus on the mainland. The tariff bureau acts as the catalyst for joint and cooperative action by the carriers in the

establishment of rates and is the publisher of tariffs on behalf of its members. It has its own internal machinery for screening proposed tariff changes. The WMTB is incorporated and headquartered in California but has established a virtually autonomous branch office in Hawaii. This branch office is subject to regulation by the public utilities commission, has a paid staff, and, at the present time, is actively involved in the filing and publishing of tariffs for both passenger and property carriers in Hawaii. Table 4.3 indicates the degree to which the WMTB represents motor carriers in Hawaii.

**2. Hawaii Trucking Association.** The Hawaii Trucking Association is a typical trade organization and is dedicated to protecting and promoting the interests of the owners and operators of commercial vehicles on Hawaii's streets and highways. It is made up through regular and affiliate memberships not only of the carriers subject to the economic regulation of the PUC but also of private carriers and such other interests as oil companies, etc. It also has its own paid staff, but it shares office facilities and staff with the WMTB, and the two organizations work very closely together. The HTA engages in the normal type of legislative lobbying and public affairs activities with particular emphasis at present in such areas as air and noise pollution control, safety regulations, gasoline taxes, restrictions against trucks in the use of the highways, etc. The HTA is incorporated under the laws of the State of Hawaii. Most of the owners and operators of large fleets of commercial vehicles are members of this organization.

**3. Hawaii Sightseeing Association.** This organization claims to represent most of the major common carriers of passengers in Hawaii. At present, it lists all but one of the motor coach companies as members. The organization engages in normal trade-organization-type activities designed to protect and promote the interests of the tour bus owners and operators (e.g., support for the legislation enacted in 1973—Act 166—which prohibits the counties from using their authority to operate mass

transit systems to engage in the business of providing school bus, charter bus, or sightseeing bus services). Although passenger carrier tariffs are processed through the WMTB, the HSA does not appear to maintain quite the close relationship with the WMTB as does the HTA. The organization has just recently been renamed the Hawaii Sightseeing Association and has revised its bylaws so that it will not be a direct participant or intervenor in proceedings before the PUC nor engage in ratemaking activities.

**4. Hawaii State Certified Common Carriers Association.** This is an organization composed of 53 of the small, independent common carriers of passengers on the island of Oahu who hold certificates of public convenience and necessity (CPCN's) to operate vehicles in the 1-7-passenger category. It is a combination trade association and tariff publishing organization. However, its tariff publishing functions have been minimal and intermittent over the years. Most of the tariffs in

Table 4.3  
**Summary of Motor Carriers in Hawaii**  
**Which Do and Do Not File Their Tariffs Through the Western Motor Tariff Bureau (WMTB)**  
**As of July 31, 1973, by Type of Carrier**

Type of Carrier	Total No. of Carriers	WMTB		Non-WMTB	
		No.	%	No.	%
<b>Property carriers</b>					
General commodities . . . . .	47	45	96	2	4
Household goods . . . . .	—	—	—	—	—
Dump trucks . . . . .	32	32	100	—	—
Specific commodities . . . . .	13	9	69	4	31
Combination of the above categories . . . .	90	89	99	1	1
Subtotal . . . . .	182	175	96	7	4
<b>Passenger carriers</b>					
1 - 7 . . . . .	155	90	58	65*	42
8 - 12 . . . . .	4	2	50	2	50
Over 12 . . . . .	7	1	14	6	86
Combination of the above categories . . .	28	22	79	6	21
Subtotal . . . . .	194	115	59	79	41
Total . . . . .	376	290	77	86	23

\*53 of these are members of another rate-publishing organization, The Hawaii State Certified Common Carrier Association (HSCCCA).

its current tariff book are those which were originally filed in 1963 and the last revisions occurred in 1967. It is on the public utility division's mailing list to be kept advised of applications for CPCN's to operate in the 1-7-passenger category, but during 1972 the organization did not appear as an intervenor in any of the cases involving applications for CPCN's in this category although quite a few such applications were processed during the year by the commission. The organization is incorporated under the laws of Hawaii.

### **Inefficiency of Current Motor Carrier Economic Regulation**

The purpose of economic regulation is to foster efficiency—that is, to ensure that society's resources are used in the manner society wants them used. Ordinarily, market competition induces firms to behave as society wants them to behave—to use those resources to produce those goods and services of that quality in such quantity at those prices that the public wants. There are, however, some industries that do not admit of competition. The energy and communications utilities are examples. They are natural monopolies. They admit of no competition because the nature of the industry and the kind of services they render make it vastly more efficient to deliver such services under a monopolistic setting. For instance, they are capital-intensive, requiring a large investment in fixed costs, and they are characterized by pronounced economies of scale. However, since these industries are without competition, they sometimes behave in an inefficient manner, to the detriment of the consuming public. Thus, governmental regulation of these industries is necessary to ensure that they operate as efficiently as possible and produce goods or services of quality in sufficient quantities at reasonable prices. Governmental regulation in these cases substitutes for competition and tries to make these industries behave in the manner they otherwise would under competitive conditions. The tools that are used in governmental regulation to accomplish this

purpose are ratemaking, certification and licensing, and business regulation.

The motor carrier industry is not a monopoly. Rather, it is a highly competitive business. There are literally hundreds of motor carriers in operation in Hawaii (thousands, if those exempt from economic regulation are counted). Thus, it is natural to expect this competitive force itself to induce the carriers to be efficient, without the necessity of any intervention by government. But for reasons which are noted later, the State of Hawaii has chosen to impose economic regulation on motor carriers.

Since the purpose of economic regulation is to promote economic efficiency and since the motor carrier industry by nature is competitive, whatever reasons for imposing economic regulation, if it is imposed at all, should be such as would support, indeed reinforce, efficiency which existing competition ordinarily would be relied upon to achieve. But, the economic regulation of motor carriers, at least in its present form, does not meet this expectation. As now constituted, such regulation tends to promote inefficiency rather than efficiency. This is so even though the same tools of ratemaking, certification and licensing, and business regulation that exist in regulating natural monopolies are prescribed for motor carrier regulation. The application of these tools in the motor carrier area produces results vastly different from those produced when the tools are properly applied as in the case of natural monopolies. Note the following.

**Ratemaking.** In the competitive market, the price that consumers pay for a given product or service is the result of the balance achieved through the forces of competition. Competition tends to level out the interests of producers and consumers. In a monopolistic situation, competition being absent, regulatory ratemaking tries to approximate as closely as possible the normal market mechanism in balancing the interests of producers and consumers.

Ratemaking in the motor carrier area not only does not act to approximate the normal market mechanism (indeed, a proxy is hardly required when actual competition exists) but it also does not reinforce the market apparatus. What in fact it does is the opposite—it renders competitive price-setting largely inoperative. It does so without providing a substitute for the competition that it has rendered useless, thus exposing the industry as a whole to inefficiency. At least two things combine to cause ratemaking for motor carriers to behave in this way: (1) rates are allowed to be set collectively by the carriers and (2) rates are determined on the “cost plus” basis with emphasis on profits.

1. *Rate-fixing.* The Hawaii Motor Carrier Law places responsibility for initiating rate-setting in the industry. Unlike the authority it enjoys relative to public utilities, the PUC has no power to initiate rate reviews for motor carriers. The law further allows the carriers to agree among themselves on the rates to be charged consumers and exempts any such agreement from the State’s antitrust laws. Although the rates agreed to are required to be filed with the PUC, they automatically are allowed to go into effect 30 days after such filing without the necessity of any PUC review and affirmative approval. The PUC may suspend the operation of the rates. (Suspension is permitted by the law for periods aggregating no more than five months beyond the initial 30-day period.) However, such suspension is possible only if there is a complaint filed by an interested person or if the commission on its own believes that the proposed rates should be investigated or studied. Generally, complaints are rare on industry-formulated rates. The nature of rate-filing is such that potential complainants are only the members of the industry itself; the consumers generally are completely unaware of these rate-filings. Since the proposed rates are the products of agreement among industry members, no member is likely to object to the filings. Equally rare is the exercise of initiative by the PUC to subject any rate-filing to study and investigation. Indeed, if anything, the PUC is likely to allow the rates to take effect before the

expiration of the 30-day period. Under the Motor Carrier Law, the PUC has the discretion to do so for “good cause.”

The motor carriers agree on the rates to be charged through industry rate bureaus, the most commonly utilized bureau being the Western Motor Tariff Bureau (WMTB). The Hawaii State Certified Common Carriers Association (HSCCCA) is another rating bureau representing independent passenger carriers of 1–7 passengers.<sup>2</sup> Rates proposed by any member of the bureau are sent to the bureau for screening. The bureau reviews the proposals, resolves the differences and conflicts among its members, and, once group concurrence of its members is achieved, files the proposals with the PUC on behalf of its members. Once filed, the bureau defends the reasonableness of the proposals before the PUC to the extent this may be necessary. This occurs but very rarely because complaints are rarely registered and the PUC generally does not see fit to subject the proposals to in-depth studies. In most cases the rates filed are allowed to go into effect automatically upon the expiration of 30 days.<sup>3</sup>

The members of rate bureaus (and, of course, nonmembers) are not restricted to proposing rates or changes in rates through their respective bureaus. They may take independent action and file proposals directly with the PUC. However, a vast majority of the rate proposals are filed through the bureaus, particularly the

<sup>2</sup>HSCCCA has not been very active in recent years. It consists of 53 of the small 1–7-passenger operators on Oahu. Of the two rate bureaus, WMTB is the major one. In July 1973, about 96 percent of the property carriers and almost 60 percent of the passenger carriers were operating under rates filed through WMTB.

<sup>3</sup>The rates filed by the rate bureaus are allowed generally to take effect automatically upon the expiration of the 30-day waiting period even though the Motor Carrier Law provides that rates agreed to by the carriers must receive the affirmative approval of the PUC. The rules and regulations of the rate bureaus, including the procedure to be followed in filing of rate proposals by members with the bureaus and the consensus to be secured from the members on any rate proposal, have been affirmatively approved by the PUC. Apparently this approval of the bureaus’ rules and regulations has been deemed sufficient for the purpose of the Motor Carrier Law making it unnecessary for the PUC to approve affirmatively each and every rate proposal submitted through the bureaus.

WMTB, and when proposals are made independently by a carrier the bureaus vigorously oppose those proposals which they feel are not in the best interest of their members.

In effect, what the Motor Carrier Law does is to enable motor carriers, otherwise in competition with one another, to act as one in setting rates. It has given carriers a "monopolistic" power over rates, with very little governmental check on the exercise of this power, a situation, ironically, not tolerated in the natural, monopolistic industries such as utilities. In the case of utilities, each rate proposal is subjected to study and extensive public hearings, and it becomes effective only upon the affirmative approval of the PUC. With carriers, since the industry agrees on the rates to benefit all of its members including those which might be inefficient, the rates that are set are bound to be higher than they would otherwise be if competition were allowed freely to operate.

## 2. *Cost-plus approach in setting rates.*

Both the rate bureaus and the PUC follow the "cost-plus" approach in setting motor carrier rates. Under this approach, rates are set at levels which permit the carriers to recover their costs of providing service, plus a margin over and above these costs. This margin is the carriers' profits.

While it does not make sense to expect rates to be set at less than what it costs to provide the service, the cost-plus approach removes one of the major virtues of the competitive system; namely, the powerful incentive to increase efficiency. This is because, in the cost-plus approach, attention is focused on the margin of profits, not the costs of doing business. Hence, in every motor carrier ratemaking case, the discussion is primarily on the "operating ratio" (that is, the relationship between costs and revenues) produced by a given or proposed rate. If the operating ratio is in the range of 90 to 92 percent (i.e., if expenses amount to 90 to 92 percent of the revenues), the rate is considered acceptable or reasonable.

If the ratio falls below 90 percent, the rate is considered excessive. If it goes much beyond 92 percent, an increase in the rate is considered appropriate.<sup>4</sup>

This concentration on profit margins could allow a firm to be extravagant (e.g., high salaries, unneeded capacity, etc.) and inefficient in operation and yet be assured of a return ranging from 8 to 10 percent above costs. If competition were permitted to influence rate-setting, such a firm would be compelled to improve its efficiency, reduce its costs to reasonable levels, and set its rates at levels competitive with those charged by other efficient firms.

**Certification and licensing.** In the case of natural monopolies, certification and licensing (franchising) is the act of granting exclusive authority to a single firm to engage in business in a given locale. Its purpose is to preserve the monopolistic situation. Competition is deemed undesirable because of the inefficiencies it would create in the industry.

Certification and licensing in the motor carrier area restrict entrance into the industry, but not for the purpose of preserving a monopoly in the usual sense—that is, to allow only one firm to operate. Indeed, no good case can be made for the creation of a monopolistic condition in the motor carrier area. The industry is not capital-intensive and it is not characterized by pronounced economies of scale. Clearly, the Motor Carrier Law itself recognizes this. On reading the law, one can quickly surmise that the law contemplates a number of firms in the field. Further, in practice, over the years, numerous new certificates and permits have been issued by the PUC. For instance, as reflected in tables 4.4 and 4.5, in the years 1970, 1971, and 1972, of the 162 applications filed for certificates of public convenience and necessity (CPCN's), 141 were approved and only 6 denied.

<sup>4</sup>Although the 90- to 92-percent range generally is accepted as the normal range of reasonableness, PUD personnel indicate that in some instances 95 percent operating ratio may be deemed reasonable.

Table 4.4

**Summary of Applications Handled\* by the Hawaii Public Utilities Commission  
Relating to Motor Carrier Certificates of Public Convenience and Necessity (CPCNs) and Permits  
For the Years 1970, 1971, and 1972**

Type of Application	1970			1971			1972			3-Yr. (1970 thru 1972) Summary		
	<i>Property</i>	<i>Passengers</i>	<i>Total</i>	<i>Property</i>	<i>Passengers</i>	<i>Total</i>	<i>Property</i>	<i>Passengers</i>	<i>Total</i>	<i>Property</i>	<i>Passengers</i>	<i>Total</i>
<b>CPCNs</b>												
New applications . . . . .	5	7	12	6	8	14	5	20	25	16	35	51
Transfers . . . . .	19	10	29	17	17	34	17	15	32	53	42	95
Extensions of authority . . .	0	7	7	1	5	6	1	2	3	2	14	16
Total . . . . .	24	24	48	24	30	54	23	37	60	71	91	162
<b>Permits</b>												
New applications . . . . .	2	1	3	1	0	1	2	1	3	5	2	7
Transfers . . . . .	1	0	1	0	0	0	1	0	1	2	0	2
Total . . . . .	3	1	4	1	0	1	3	1	4	7	2	9

\*Actual applications filed and docketed during each year but not necessarily completed during the year.

How, then, does certification and licensing restrict entrance into the field and for what purpose? Certification and licensing in the motor carrier field exist for the purpose of protecting those already in business, whether they are efficient or inefficient. The granting or denial of applications for CPCN's and permits depends on whether those already in business perceive the applications as a benefit or detriment to them in their operations.

That is to say, applications are invariably approved, and approved almost automatically, when those in the industry raise no objections, but they are just as invariably denied (or approved only in a limited fashion) when the industry objects. Note the actions taken on the applications filed in calendar year 1972.

1. *In general.* In 1972, there were 64 applications relating to certification and licensing.

In 54 of the 57<sup>5</sup> applications approved by the PUC, there was no intervention or objection by those in business. All of these 54 applications, except one, were processed and approved as a matter of course. The one exception to this automatic approval was an application for the transfer of a CPCN. A protracted and confusing series of hearings were held on this one application, not because of any objection from the industry but because the holder of the CPCN had been inactive through 1971 and had been involuntarily dissolved by the department of regulatory agencies in 1970 for failing to file the required annual exhibits. The transfer was eventually approved, but to a party who was not involved in the initial application.

<sup>5</sup>Two approvals subsequently have been granted by the PUC, making a total of 59 applications approved.

Table 4.5

**Summary of Outcome of Applications\* Before the Public Utilities Commission  
Relating to Motor Carrier CPCNs and Permits  
For the Years 1970, 1971, and 1972  
As of June 30, 1973**

Year and Type	Total Filed	Total Approved	Total Denied	Total Others**
1970 .....	52	42	4	6
CPCNs .....	48	41	1	6
Permits .....	4	1	3	—
1971 .....	55	48	3	4
CPCNs .....	54	47	3	4
Permits .....	1	1	—	—
1972 .....	64	57	2	5***
CPCNs .....	60	53	2	5***
Permits .....	4	4	—	—
Three-year (1970-72) total .....	171	147	9	15
CPCNs .....	162	141	6	15
Permits .....	9	6	3	—

\*Applications include those for new authority, for transfers and extensions of authority, and for mergers, but excludes voluntary and involuntary cancellations of CPCNs and permits.

\*\*Others include applications which are pending, withdrawn, and failure of applicant to appear at scheduled hearing before the commission.

\*\*\*Subsequent to June 30, 1973, the PUC approved two applications, denied two applications, and the remaining application was pending at October 1, 1975.

In two of the 57 applications approved by the PUC, the Hawaii Trucking Association (HTA), on behalf of its affected members, initially objected to the applications. These two applications were for permits and were submitted by the same individual—one for a temporary permit to engage in the contract transportation of raw milk for certain dairy farmers and the other for a permanent permit to do the same thing. The applicant was (and still is) one of the larger independent dairymen on Oahu. He started hauling milk for other dairy farms when the common carrier previously doing the hauling was unable to provide adequate service (especially during a period when the operator's employees were out on a strike). The HTA later withdrew its opposition

when the carrier previously doing the milk hauling quit the business and gave up its operating authority. The PUC then approved the application.<sup>6</sup>

The milk hauling case represents two of the four permits approved by the PUC. One approval was simply for the transfer of an existing permit. The remaining permit application was initially an application for a CPCN to provide 8-12- and over-12-passenger service to Hana, Maui. As an application for a CPCN, it

<sup>6</sup>In 1973, legislation was passed (Act 193) adding the transportation of unprocessed raw milk to the list of motor carrier activities specifically exempted from "economic" regulation by the PUC.

met opposition from the industry. When the CPCN application was converted to a permit application, it met no resistance and was approved.

In summary, the applications approved by the PUC were approved basically because there were no objections by the industry.

**2. CPCN's for 1-7-passenger carriage.** In the case of the 20 applications for new CPCN's for the carriage of one to seven passengers, not only were there no objections to the granting of these applications, but the industry itself, particularly the large passenger carriers, openly urged and encouraged the filing of the applications and their approval.

The 1-7-passenger carriers constitute the largest number of regulated carriers, and this carrier business appears to be the most competitive element in the motor carrier industry. Yet, the filing and approval of applications were (and are continuing to be) encouraged because having more 1-7-passenger carriers in business works to the benefit of the large tour bus operators. The benefit may be described as follows.

A large proportion of the tourist trade is handled on a group basis and channeled through large tour companies which provide ground transportation either on buses owned by themselves or by their subsidiary or related companies, or on buses owned by others with whom the tour companies have special arrangements. Sometimes a given tour is too small to transport economically on the buses; at other times, the tour size or volume exceeds the capacity of the large carrier's fleet of buses. In these instances, the tour operators (or tour bus companies) turn to the 1-7-passenger operators. The 1-7-passenger operators take the small tours or the overflow tourists and charge the large carriers rates on a "wholesale" basis—that is, at rates lower than they would normally charge in the open or "retail" market. The large carriers who refer business to these small operators retain the difference between the

wholesale and retail rates. (The tourists pay in advance the costs of the tours, including ground transportation costs at the retail rate.)

It is in the interest of the large carriers to have more, rather than less, 1-7-passenger carriers, even if this means an overcapacity of 1-7-passenger carriers. The presence of a large number of small carriers guarantees a ready reserve of transportation for those times when the tours are small or when the tour volume exceeds the capacity of the large carriers' fleet, and ensures this reserve at costs which will not sacrifice their anticipated profits. Thus, the large carriers not only do not object to but encourage the issuance of additional CPCN's for 1-7-passenger operations. One large bus operator actually appears to be selling its small vehicles to various drivers and encouraging each buyer to apply for a new CPCN in the 1-7-passenger category.

It might be assumed that, given the large number of 1-7-passenger carriers, these existing carriers would object to the issuance of additional 1-7-passenger CPCN's for their own economic survival. But such is not the case. These 1-7-passenger operators are so dependent upon the referral business from the large carriers that they dare not risk opposing what the large carriers favor. Further, even if they dared to do so, they are without the resources, sophistication, and internal cohesiveness to counter successfully the efforts of the large carriers to increase the number of 1-7-passenger carriers.

**3. Applications denied.** In contrast to the above, the four applications denied by the PUC and the three applications approved, but with the restrictions, were all those which the industry opposed. A summary of these actions is shown in table 4.6, which updates (to October 1, 1975) data relating to motor carrier CPCN and permit applications filed in 1972.

One of the two applications for CPCN's which were denied was for the carriage of general commodity on Oahu and the other was for the carriage of a specific commodity

Table 4.6

**Summary of Actions Taken on Applications  
Relating to Motor Carrier CPCN's and Permits Filed  
During 1972 As of October 1, 1975**

Kind of application	Total filed	Total approved	Total approved with restrictions	Total denied	Application pending
New application for CPCN's for 1-7 passenger carriage . . . . .	20	20	-	-	-
New application for CPCN's for property carriage . . . . .	5	2	-	2	1
New application for permits . . . . .	3	3	-	-	-
Extensions of existing CPCN's and permits . . . . .	3	-	1	2	-
Transfers of CPCN's and permits . . . . .	33	31	2	-	-
Totals . . . . .	64	56	3	4	1

(pianos and organs). In both cases the PUC denied the applications on the representation of HTA that existing carriers could adequately provide the services that were proposed. Of the two applications to extend existing authority that were denied, one would have extended the applicant's authority to transport property from the western end of the island of Hawaii to the entire island. The other rejected extension application was to expand an 8-12-passenger carrier service on Oahu to an over-12-passenger service.

The three applications approved by the PUC with restrictions included one for the expansion of existing authority from 1-7-passenger service on Oahu to over-12-passenger service. Upon the objection of the large carriers, the PUC approved the application but limited the expanded authority to transport golf tours only. Two applications approved with restrictions involved the transfer of existing authority from the holder of the authority to another individual or company. In one of these, the HTA objected and the approval which was given limited the use of the trans-

ferred CPCN to the West Hawaii area only. In the other case, the reason is not readily apparent, but the transfer was approved after the CPCN was restricted in scope.

*In Summary. What the above examples illustrate is that certification and licensing are used by the industry to protect itself from the intrusion into the field by others. What this means is that the certification and licensing device enables all firms already in business to continue to stay in the motor carrier business, no matter how inefficient they may be, and to bar entrance into the field by firms which may be more efficient than they. Thus, whatever inefficiency that may already exist is allowed to continue and the opportunity to upgrade the efficiency of the industry by allowing the entry of new and perhaps more efficient firms is effectively denied. The whole focus of certification and licensing is thus devoid of concern for promoting efficiency in the motor carrier industry.*

**Business regulation.** Business regulation is aimed at supervising and controlling the internal

business operations of the regulated industry. It includes such specific activities as investigating the adequacy and efficiency of service, reviewing and passing upon major financial undertakings, determining the reasonableness of costs of industry projects, and auditing the books of the industry. These activities are conducted to determine the quantity and quality of the service being rendered and the reasonableness of the costs being incurred by the industry which are ultimately reflected in the rates charged consumers. The thrust of business regulation is closely tied to ratemaking and to questions of efficiency. Thus, the relevancy of business regulation to the regulation of natural monopolies is obvious. It is necessary because competition is not present to ensure that prices are fair and the industry is efficient.

In the motor carrier area, business regulation is not seen as a vital part of regulation. In the first place, the statute is not explicit on the matter. There are no express, specific provisions requiring the PUC to supervise and regulate the internal business affairs of motor carriers. Secondly, the PUC has formulated no rules, regulations, standards, or criteria relating to adequacy and quality of service, the financing of capital improvements, efficiency in carrier operations, methods of accounting, and the like. This is so although, if the PUC so desired, it could conceivably find some basis for the exercise of the function of business regulation in the Motor Carrier Law, ambiguous though the statute might be on the matter. For instance, the statute speaks of promoting "economical and adequate" carrier service and requires the PUC to establish "reasonable requirements" to "investigate complaints" and to issue licenses and permits only to those who are "fit, willing, and able."

This noticeable lack of business regulation (and the vagueness of the Motor Carrier Law on this matter) is not surprising. It is due to the fact that the whole thrust of the law is not economic regulation in the usual sense. As already noted in the discussions above on ratemaking and certification and licensing, the

Motor Carrier Law in its present form runs counter to increasing competition and improving efficiency. This being so, there is no apparent reason to be concerned with regulating the internal business operations of the motor carriers.

### A Case for Deregulation

The counter-competitive and counter-efficient tendencies of the present economic regulation of motor carriers are the reasons why in volume I of this report we recommended the deregulation of the carriers. We note here one further reason for deregulation and consider the impact of deregulation on the small carriers.

**The demise of the common carrier trade and the plight of the small business firms.** The common carrier business, particularly the carriage of goods, is essential to a viable land transportation system. It frees the small businessman whose shipments are small in volume and the occasional shippers from resorting to uneconomical means (such as self-haul) for the movement of their goods. However, the tendency of motor carrier regulation to protect the inefficient carriers and the attendant rates which are bound to be higher than would otherwise be the case under competitive conditions appear to detract from rather than promote the common carrier trade.

As noted earlier, the regulation of motor carriers is incomplete in coverage. Private carriers, for one, are fully outside the regulatory scheme. In addition, specific kinds of carriers (e.g., refuse trucks, trucks used by sugar and pineapple industries, vehicles of nonprofit agricultural cooperatives, and trucks used by various other types of agricultural enterprises) are exempt.<sup>7</sup> The number of carriers exempt from regulation greatly exceeds the number which is

<sup>7</sup>From the economic point of view, it is difficult to justify the exemption of some of these carriers. Why they are any different (except in the specific commodity transported) from the other carriers which are regulated is difficult to discern.

subject to regulation. For example, the PUD has indicated that, as of June 30, 1973, there were approximately 1800 private carriers in the State owning about 75 percent of all commercial vehicles registered with the PUD. In comparison, there are approximately 400 regulated motor carriers. By the count of the federal Bureau of Motor Carrier Safety, in 1973-74, there were 3000 private carriers in Hawaii.

Then, among those that are regulated, the contract carriers are only partially regulated. For instance, contract carriers may file only minimum rates with the PUC and may maintain different rates for different shippers for the same service. In contrast, common carriers are required to file the exact rates they charge and may charge no more and no less than the filed rates.

All carriers, whether exempt or not, whether partially or fully regulated, are in competition with one another. That is, private carriage (self-haul), other exempt carriage, contract carriage, and common carriage are optional ways to transport goods. But, these other carriage systems have a built-in advantage over common carriage when it comes to pricing. Pricing by these carriers is pretty much within the control of each individual carrier. In addition, private and exempt carriers do not have to contend with the costs of regulation (costs associated with getting an agreement on the rates to be charged and the costs of subsequent hearings, if any, on the proposed rates). This being so, these modes of carriage offer attractive alternatives to common carriage when common carriage operates in an inefficient way. That is to say, these other means of carriage may offer a less expensive way to transport goods than the common carriage method. This does not mean that such alternatives are efficient; it is just that they may be less expensive than common carriage. Indeed, since carriage in the islands is basically short-haul, private carriage in particular is an inefficient way to transport goods. This is so because vehicles bought for private carriage business can and do have periods when they are not utilized at all.

These alternatives, especially the one to enter into private carriage, are real to large business firms. They are, however, infeasible for the small businessmen and the occasional shippers whose shipments are small in volume or infrequent. What this means is that, as the large businesses are attracted to alternative means of transportation, the small businesses and the occasional shippers must increasingly bear the burden of supporting the inefficient common carrier trade—they must bear the brunt of the burden of ensuring that the common carriers, inefficient as they are, recover their costs and margins of profit and, at the same time, face growing prospects of a lessening of services.

Statistics are extremely poor in this area in Hawaii, but there are already indications that common carriage is diminishing in importance when compared particularly to private carriage. Over the years, there appears to have been an increase in the number of vehicles used in the carriage of goods, but the number of these vehicles accounted for in the common and contract carrier trade is nowhere near the number of trucks registered. For example, between the years 1969 to 1973, there appears to have been an increase of 45 percent in the number of trucks registered in the State. During the same period, the PUD statistics show that the number of trucks in common and contract carriage decreased by 3 percent. In addition, between 1969 and 1973, there was an increase in the number of truck-tractors and trailers and semi-trailers registered in the State of 19 percent and 62 percent, respectively. The PUD statistics show an increase in the number of truck-tractors and trailers and semi-trailers in common and contract carriage of only 8 percent and 22 percent, respectively, during this same period. PUD's own statistics on the number of vehicles used in the transportation of goods (which number differs markedly from the state registration figures) show that the number of vehicles in private carriage has been increasing at a vastly faster rate over the years than the number of vehicles in common or contract carriage. It can thus be reasonably assumed that

the bulk of the new vehicles is the result of the growth in private carriage of goods. This trend, if true, confirms what is occurring nationally—a decrease in the common carrier trade and an increase in private carriage.

Of course, one resolution to this problem of loss in the common carrier trade is to subject all carriers to full regulation, thereby ensuring that common carriage would be no more expensive than the alternative means of transporting goods. But, aside from the fact that this would only perpetuate the inefficiencies in the common carriage of goods, it would cause the whole transportation mode to be inefficient. Further, the sheer number of carriers would make such an option an administrative nightmare.

The other solution would be to deregulate the entire industry. Without economic regulation, all forms of land transportation—private, contract, and common carriage—can be expected to compete with one another. No built-in cost advantage would accrue to any of them as it now does under regulation. Moreover, the natural force of competition and the resulting efficiency in common carriage would tend to promote the common carriage trade.

#### **Impact of deregulation on small carriers.**

Deregulation will not be without some impact on existing motor carrier firms. Obviously, it will cause inefficient firms to become more efficient or will cause them to go out of business. But beyond eliminating inefficient firms from the business, the effect of deregulation on particular firms is not all that clear—that is, no sweeping conclusions can be made concerning the impact of deregulation on specific motor carriers. It would appear that much will depend on the nature and operations of the firms themselves.

One concern that might be expressed is the effect of deregulation on the small motor carriers. Will deregulation drive the small carriers out of business?

Deregulation in and of itself cannot be said to be the cause of small carriers' being forced out of the motor carrier trade. To reach the conclusion that they would be would necessitate one to assume that all small carriers are inefficient. This, of course, is not the case. The efficiency of any firm is not dependent on its size. Small as well as big firms can be efficient, and big as well as small firms can be inefficient.

The problem of survival of small firms is not peculiar to the motor carrier trade. It exists in other endeavors as well. It is in part to meet this problem that both the state and federal governments have enacted antitrust and antimonopoly statutes. Vigorous enforcement of these statutes would in some measure assist the preservation of small businesses as well as the preservation of competition.

Further, whether an industry is regulated or not has little influence on the survival of small business firms (except in those cases where regulation is intended to foster and preserve monopolies as in the energy and communications utilities). This is clearly demonstrated in the motor carrier area. Although the industry is currently regulated, it is already characterized by an increasing degree of concentration of control of the industry in a few large firms. Evidence of this tendency toward bigness and control by a few large firms was noted briefly earlier in this chapter (see tables 4.1 and 4.2).

At the beginning of this chapter, we noted that a very high proportion of the annual revenues are accounted for by the large (i.e., class A) carriers. Among these large carriers, the ten top companies in each category account for a very high percentage of the total revenues for each category, ranging from 88 percent for movers of household goods down to 47 percent for general commodity truckers. The top ten property carriers averaged, for example, in 1971, \$1.5 million in gross revenues as compared to \$16,921 for the 56 class C carriers. Three of the top ten each grossed more than \$2 million. Two of these three top carriers are subsidiaries of the

same company, Castle & Cooke, Inc., one of Hawaii's largest corporations and among the largest in the nation. The two Castle & Cooke subsidiaries (Hawaiian Hauling Service, Ltd., and Oahu Transport Company, Ltd.) together grossed \$4,533,866 in motor carrier revenues in 1971, or 11.5 percent of all property carrier revenues in Hawaii in that year. In addition, through other divisions and subsidiaries, Castle & Cooke is one of Hawaii's largest private motor carriers. In the passenger carrier field, the pattern is much the same. Among passenger carriers, the average gross revenues of the ten largest carriers in 1971 was \$1.6 million compared to an average of \$10,315 for the 130 class C carriers. Among the large passenger carriers, several have corporate relationships and affiliations with other companies in the travel and tourist business and related industries.

Tables 4.1 and 4.2 also show rather dramatically the decline in the number and significance of the small motor carriers (i.e., class C). Despite the overall growth of the industry between 1967 and 1971, the number of class C property carriers declined from 83 to 51, and their percentage share of total revenues declined from 6 percent to 2 percent. For the class C passenger carriers, the number of carriers went from 152 to 130, and their percentage share of total operating revenues declined from 11 percent to 7 percent. In more recent years, the number of small operators seems to have been increasing again in both categories of common carriers, but there has been no significant increase in the share of the business enjoyed by them.

This trend toward bigness and smaller participation by the small carriers in the motor carrier trade is probably in part due to the regulatory scheme itself. Industry control over pricing and over entry into the field, the touchstones of the current regulatory mechanism, appears to encourage the concentration of control in a few large firms.

In summary, there is no reason to suppose that under deregulation the small motor carriers could not survive any better than under

regulation, particularly if deregulation is accompanied by vigorous enforcement of the antitrust laws.

### An Alternative

Although the economic regulation of motor carriers as now constituted is counter-competitive and counter-efficient, the industry strongly objects to any move to deregulate the carriers. We examine here the reasons for such opposition and consider, if the reasons are valid, whether the economic regulation of the carriers might be reshaped in a form which resolves the problems that the industry perceives, without detracting from the goal of promoting efficiency in the industry.

**The argument for regulation: excessive competition.** The argument raised against deregulation is essentially the same one that was advanced by the carriers for the passage of the Motor Carrier Law in 1961. The thinking behind the industry's push for the passage of the law is reflected in the following comments made by one who was close to the scene when the enactment of the act was under consideration by the legislature.

"When statehood came, more than 300 motor carriers existed in the islands. Most of them were family-owned, one- and two-truck operators, and the driving, repairing, management, billing, and bookkeeping were usually done by the same person or other members of the family. The situation resulted from the ease with which a business could be started; often a down payment on a truck was all that was needed.

"As usual, with small-scale, easily started operations in the industry, there were many poorly trained and inadequately financed operators. The industry was demoralized by carriers whose rates were set with little or no

knowledge of costs. Often financial needs drove operators to rates which they knew would not cover all of their recognized costs.

“It was clear to the industry’s leaders that if motor carriage was to grow and properly serve Hawaii under statehood, some sort of economic regulation was needed right away to stabilize the industry by eliminating the concept that the best means of competition was by price cutting.”<sup>8</sup>

What the above observation alludes to is “excessive” competition in the motor carrier field. The argument runs as follows. Since the motor carrier industry is one where a great amount of capital is not required to enter the business and there is no pronounced economies of scale, there is a tendency toward an overabundance of carriers.<sup>9</sup> The resulting large number of carriers in the business creates too much competition. The competition becomes so intense that rates are often set by the various carriers at levels below costs. This compels others also to lower their rates as shippers opt for carriers with the lower rates. The lowering of rates by the carriers, whether by choice or by the force of competition, is at the sacrifice of quality and quantity of service.

Ordinarily, in the competitive market, the poorly managed and inefficient firms which set their rates at levels below cost are driven out of business. However, it is said, because entry into the industry is so easy, the places of those driven out of business are quickly taken by more of the same sort of poorly managed and inefficient firms. This prevents those who are otherwise efficient from pegging their rates at reasonable levels and the industry as a whole is continuously kept in a depressed state.

This argument is no different from the argument that was advanced for the passage of similar motor carrier legislation in the other states and for the enactment of the federal Motor Carrier Act. Unlike Hawaii, however,

legislations in the other states and on the federal level were enacted at the time when the motor carrier industry was still in an embryonic stage. Legislation in most of the states was enacted during the period 1914 to 1935,<sup>10</sup> and the federal act was passed in 1935. In addition, in these other states and on the federal level, the motor carrier acts were passed at the urging of not only of the motor carriers but also of the railroads. The railroads were already under regulation, and, as the trucking industry grew, the railroads began to feel the economic pinch resulting from the lower rates being charged by the competitive but unregulated motor carrier mode of transporting goods.<sup>11</sup> In these other states and on the federal level, then, at least initially, the intent of regulating motor carriers was to protect the railroads from being driven out of business by the motor carriers as much as

<sup>8</sup>Wilbur K. Watkins, Jr., “Hawaii’s Regulation of Motor Carrier Property Transportation,” *Public Utilities Fortnightly* (September 28, 1967), p. 92. The author of this article was the deputy attorney general who was most deeply involved in the drafting and implementation of the Hawaii Motor Carrier Law. The article provides a fairly detailed discussion of the origins of the law. It is a reprint of the paper which he delivered to the public utility law section of the American Bar Association at its meetings held in Honolulu, Hawaii, August 7-9, 1967.

<sup>9</sup>In the motor carrier trade, the vehicle is the principal equipment needed. The major facilities required in the trade, streets and highways, are provided by the state and local governments, with financial participation by the federal government.

<sup>10</sup>Regulation of motor carriers was first attempted in the states of Pennsylvania and Illinois in 1914. By 1933, 42 states had some form of control over common carriers of property operating over regular routes, 34 states regulated common carriers of property over irregular as well as regular routes, and 31 states regulated contract carriers of property. The regulatory provisions and enforcement varied widely among the states.

<sup>11</sup>In general, price-cutting by motor carriers aside, motor carriers provided a more efficient mode of transporting short-haul cargo than the railroads. Motor carriers also offered door-to-door service which the railroads could not offer, the railroads being confined to station-to-station service, with the shipper having to find a way to get the goods to the station and the receiving merchants having to find a way to get the goods from the receiving railroad docks to their stores. The motor carriers, however, did not confine their operations to the short-haul runs in which they were most efficient. They competed with the railroads for long-haul cargoes as well.

to protect the motor carriers from excessive competition among themselves.<sup>12</sup>

In Hawaii, of course, given the geographic makeup of the State, the protection of competing modes of transportation was not at issue when the Hawaii Motor Carrier Law was enacted. The sole question was that of competition within the single mode of transportation, the motor carriers.<sup>13</sup>

That the same argument used many years ago nationwide and in Hawaii back in 1961 should continue to be used to keep the motor carriers under regulation is disconcerting. The motor carrier industry is now fully developed, with many years of experience; it is no longer in an embryonic stage. It would appear that over

<sup>12</sup> On the federal level, this intent to save the railway mode of transportation (indeed to save each competing mode of transportation—rail, land, and water) was given explicit expression when Congress in 1940, in enacting the federal Water Carrier Act, adopted the following National Transportation Policy:

“It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this act [rail, motor, water], so administered as to recognize and preserve the inherent advantages of each to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.”

This statement of the National Transportation Policy appears in the Interstate Commerce Act just before Part I of the act which deals with railroads. Part II of the act embodies the federal Motor Carrier Act, and Part III constitutes the federal Water Carrier Act.

Of some interest is the fact that notwithstanding the National Transportation Policy, the ICC in early years engaged in practices which did not in fact preserve the “inherent advantage” of the rail and motor carrier modes of transportation. The commission proceeded on the course of “parity” in the rates of the rail and motor carriers and failed to recognize the cost advantages of each mode of transportation. This worked to the

the years the industry would have acquired the skills and know-how to cope effectively with competition. Apparently, this has not occurred. More importantly, in Hawaii, neither in 1961 nor in recent years has a case been made to substantiate the argument of excessive competition. Neither the PUC nor the industry has undertaken any industrywide economic study of motor carriers. Data about motor carriers and their operations are very meager. Thus, the real economics of the industry are largely unknown. No one knows to what extent, if any, the industry or any part of it may be suffering from overcapacity or undercapacity of vehicles, equipment, facilities, etc.

It is perhaps noteworthy that the fears of cutthroat competition and destructive pricing in

detriment of the railroads, so much so, that in recent years, the railroads have been clamoring for deregulation.

<sup>13</sup> This is reflected in the declaration of policy contained in the Hawaii Motor Carrier Act. The declaration is a carbon copy of the National Transportation Policy, minus any reference to inter-modal competition. Hawaii’s declaration is as follows:

“Sec. 271-1 Declaration of policy. The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, over the public highways of this State constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation in the interest of preserving for the public the full benefit and use of the highways consistent with the public safety and the needs of commerce; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy.”

Note, that the enumeration of the intent of chapter 271 (i.e., all that follows the clause, “It is intended by this chapter . . .”) is not preceded or followed by any reference to the different modes of transportation as the National Transportation Policy statement does. The statement of the National Transportation Policy begins with the declaration, “to provide for fair and impartial regulation of all modes of transportation, so administered to recognize and preserve the inherent advantages of each.” It then enumerates exactly that which the Hawaii policy recites, but it ends the enumeration with the clause, “—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as by other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.”

the motor carrier field are voiced not by the small carriers but by the large ones. Yet, of all the carriers, it is the large ones who could be most expected to have acquired over the years the skills and tools to compete effectively in the open market.

**Limited economic regulation.** Assuming, however, that excessive competition is indeed a problem requiring some sort of governmental regulation to resolve the problem, the form of such regulation should squarely meet the problem posed. The present Motor Carrier Law does not meet the problem.

Any form of economic regulation has as its objective the promotion of economic efficiency. In the normal competitive situation, the force of competition itself compels firms to be efficient. The argument of excessive competition says in effect that, although the motor carrier industry is a competitive one, it is *too* competitive for the competitive force to work in the usual fashion as to produce efficiency. If this be the case, then, legislative solution lies not in choking off such competition as does exist, but in making that competition work as it should. The present Motor Carrier Law, however, stifles existing competition rather than making it work.

The present act fails to promote workable competition in the motor carrier industry because the solution embodied in the act is grafted onto the framework for regulating natural monopolies. Thus, the Motor Carrier Law vests in the PUC the same functions of ratemaking, certification and licensing, and business regulation which it has been given to regulate the public utilities. Yet, the situation in the utilities field is vastly different from that in the motor carrier area. The former is monopolistic in nature while the latter is competitive. Although the regulation of both is aimed at achieving the same result—economic efficiency—it is one thing to regulate a single firm and quite another to regulate hundreds of firms. In a monopoly situation, a substitute must be provided for the absent competition; when competition exists, that competition must be made to

work. Thus, the framework for regulating public utilities, which is to substitute for competition, is not suitable for the regulation of motor carriers.

In the paragraphs which follow we suggest the form that economic regulation for motor carriers may take, if there is a continuing need to protect the industry from excessive competition (a need which is by no means all that clear).

### *1. Prohibition against below-cost rates.*

The brunt of the excessive competition argument is that some firms inefficiently set their rates at levels below the cost of doing business and that this causes the industry as a whole to fall into a depressed state. If this contention is true, then what is needed is a prohibition against below-cost rate-setting by any carrier and an administrative mechanism to ensure that this prohibition is observed. However, other than prohibiting below-cost rates, there is no good reason why the force of competition should not be allowed to work in rate-setting by the various carriers. The setting of the actual rates by governmental action or by agreement of the carriers should not be necessary. Allowing competition to work would compel the various carriers to be efficient; that is, to reduce their costs commensurate with the quantity and quality of service offered, and thereby competitively reduce their rates.

The term “cost,” of course, requires definition. But such a definition can be supplied by the administrative agency responsible for enforcing the prohibition against below-cost rates. In this regard, we note that the carriers in pressing the excessive competition argument have never intimated that any firm deliberately or intentionally establishes rates at levels below cost. What they have suggested is that rates are set below cost out of ignorance as to what constitutes cost.<sup>14</sup> The establishment of a definition of “cost” and standards and criteria

<sup>14</sup>Hawaii’s Unfair Practices Act (HRS, chapter 481, Part I) prohibits the setting of rates knowingly at levels below cost.

regarding cost by the administrative agency thus should go a long way toward removing the practice of setting below-cost rates by the various carriers.

Allowing competition to set rates over cost would require that many of the rights now enjoyed by the carriers to set rates through their rate bureaus and the existing exemption from the State's antitrust law be curtailed. Price-fixing as now authorized is incompatible with rate-setting through competition.

### **2. *Setting economic standards on entry.***

The excessive competition argument states that entry into the motor carrier field is relatively easy ("often a down payment on a truck [is] all that [is] needed") and that this encourages inefficient firms to enter the trade. If this be so, then entry into the motor carrier trade should be regulated (if at all) in a fashion which assures that only efficient firms are allowed into the field and that the admission of additional firms would not disrupt the efficiency of the industry as a whole. While perhaps a 100 percent assurance can never be achieved, there are several ways in which such an assurance might be furthered.

One approach is for the responsible administrative agency to establish financial, capital, and other standards or criteria which must be met before a license or permit to engage in the business of a motor carrier is issued. Such standards or criteria should of course be aimed at ensuring efficiency in operation. In addition, the administrative agency might be vested with the responsibility of pre-determining the maximum number of carriers (by kind or class) that the market might reasonably and efficiently bear. The issuance of additional licenses or permits might then be based on which firms best meet the standards of entry and offer the lowest rates.

**3. *Continuous surveillance.*** In any economic regulation, the responsible

administrative agency must continuously monitor performance by the industry being regulated. In line with the proposals outlined above, continuous surveillance of the motor carrier industry is required to ensure that the carriers' rates are at levels not less than cost and that the efficiency standards required to be met for entrance into the trade are continuously maintained. Further, continuous observation is needed to ascertain whether conditions have so changed as to require a revision of the previously determined maximum number of carriers that the market can reasonably and efficiently bear. One indication of whether or not the number should be adjusted upward or downward is the amount of profit the motor carriers are earning. This means, of course, that the function of continuous surveillance needs to include inspection and review of the financial records of the motor carriers.

**Conclusion.** If excessive competition is truly a problem in the motor carrier field, any economic regulation should be designed to meet squarely the specific evil that flows from too much competition. The end to be sought should be to make existing competition work, not to convert that which is competitive into a collective monopoly, minus all safeguards against the consequences of such a monopoly.

### ***Recommendations***

*We reiterate our earlier recommendation that the motor carriers be deregulated. In the alternative, if "excessive" competition is indeed proven to pose serious economic problems in the industry, we recommend that the current regulatory scheme be revamped. In lieu of the present system, a limited form of economic regulation should be imposed which meets the specific problems that excessive competition presents and which makes existing competition workable and promotes efficiency in the industry.*

## Chapter 5

# MOTOR CARRIER REGULATION FOR THE PROTECTION OF CONSUMERS

Our recommendation that the motor carrier industry be deregulated is aimed at the existing regulation for economic purposes. Obviously, this does not mean that there might not be regulation for other noneconomic purposes. The safety of industry employees and the general public is one of these other purposes. The subject of safety is treated at length in part III of this volume. In this chapter we explore possible regulation for another noneconomic purpose—the protection of consumers.

### Summary of Findings

Individual consumers (as distinguished from consumers who are business firms), because of their infrequent utilization of common carriers, are at a decided disadvantage in dealing with motor carriers. However, the current regulatory mechanism is almost completely devoid of means to protect the interests of these individual consumers.

### Consumer-Carrier Bargaining Imbalance

Governmental regulation to protect consumers may be imposed for a variety of reasons. Among the more common reasons are (1) to avoid overreaching by the industry regulated, (2) to assure that the customer gets what has been promised, and (3) to assure fair treatment of consumers.

Regulation to avoid overreaching is focused primarily on marketing practices. It seeks to prevent misleading and false advertising, duress in purchase, deceptive warranties, and the like. Regulation to assure that the consumer gets what has been promised is aimed at availability, quality, and reliability of the product or service. Regulation to assure fairness is directed at ensuring that customers are not treated unfairly or discriminated against in price, service, or product.

The fact that these are desirable ends, in and of themselves, does not justify regulation. Normally, competition assures that these ends will be met. Where competition does not exist, regulation is invariably necessary to ensure that these ends will be achieved. But even where competition does exist, sometimes regulation is necessary to ensure these ends. Such regulation may be necessary due to certain distinctive characteristics of the industry concerned which make competition by itself ineffective in protecting the interests of consumers.

A striking characteristic of the motor carrier industry which furnishes some basis for consumer protection regulation (at least to ensure quality of service and fairness in treatment) is the bargaining imbalance that exists between common carriers and individual consumers, with the weight decidedly on the side of the carriers. We are addressing ourselves here to the individual consumers, not consumers

who are in business. Business consumers, due to their frequent utilization of the common carriers, are generally in a position to negotiate effectively with the carriers. This is not the case with individual consumers who utilize common carriers infrequently. The imbalance that exists between the carriers and the individual consumers is illustrated as follows.

**Transportation of goods.** Most of the customers of common carriers of goods are business firms. However, in one class of goods there are individual customers as well as business firms. This is in the area of household goods.<sup>1</sup> Individual customers, unlike business firms, are at a disadvantage in their relationship with the carriers in the following ways.

In the *first* place, most movement of household goods occur when residences are being changed, and in a lifetime of an individual, he is apt to change his residence no more than a few times. This means that individual customers come in contact with movers of household goods very infrequently. Thus, the intricacies in the carriage of goods are not likely to be well-known to the individual customers. Further, the individual customers have little or no experience to rely upon in making judgments about the relative quality of service of the various carriers. Thus, their selection of the carriers to move their household belongings is apt to be at random.

*Second*, goods in shipment are in the exclusive custody and control of the carrier. Thus, what happens to the goods and how they are handled while in transit are within the exclusive information and knowledge of the carrier. This places the carrier at a considerable advantage in any dispute which might arise between the consumer and the carrier concerning the handling of goods.

**Transportation of passengers.** With government taking over the mass transportation business, the principal business of the common carriers of passengers is the tour bus operation and the predominant customers are the tourists.

Some residents of Hawaii do occasionally ride the tour buses and utilize taxicabs, but they represent a very small proportion of the State's permanent population.

That tourists who utilize the tour buses have very little leverage in dealing with the carriers is obvious. *First*, they are here for a very short time; they come and go. *Second*, the average tourist is an infrequent visitor to the State. *Third*, in this age of package tours and prearranged travel services, there is a middle man between the tour bus operators and the tourists; thus, the relationship between the company and the tourist is indirect rather than direct in most cases. This makes it nearly impossible for the tourists to judge the quality of service of the company and to determine whether the price they pay is reasonable and the treatment they receive is fair.

#### **No Consumer Protection Program**

Despite the imbalance in the relationship between the common carrier and the individual consumers and the obvious need for some protection of these disadvantaged consumers, there is not now any mechanism within the regulatory scheme under the Hawaii Motor Carrier Law or any interest on the part of the regulators to ensure that such protection is furnished. Indeed, evidence indicates that whatever regulatory mechanism does exist only worsens the plight of the individual consumers.

**No consumer representation in ratemaking.** Under current regulation, motor carrier ratemaking is almost completely devoid of consumer protection. This is so, both in the orientation of the Motor Carrier Law and in ratemaking practices.

<sup>1</sup>Economic regulation of interstate movers of household goods is out of the State's jurisdiction. These movers are regulated by the Interstate Commerce Commission. However, there are some movers of household goods who are still subject to the Hawaii Motor Carrier Law in whole or in part.

1. *Statutory orientation.* The whole tenor of the Motor Carrier Law is to allow the industry to get its way in setting motor carrier rates. The Motor Carrier Law, unlike the statute governing the regulation of public utilities, requires no public notice and no public hearings on industry filings of proposed rates. Rather, it allows proposed rates to go into effect automatically upon the expiration of 30 days after filing. It further authorizes the PUC, in its discretion, to permit the proposed rates to go into effect sooner than the 30-day period.

It is true that any interested consumer, by filing a complaint or objection to the proposed rates, can cause the PUC to suspend the running of the 30-day period for as long as five months. However, the presence of this avenue is but a small consolation to the individual consumer. Without notice that proposed rates have been filed, individual consumers can hardly be expected even to consider filing any objections. Individual consumers are such infrequent users of motor carrier services that they cannot be expected to be aware on their own of any industry filing.

2. *In practice.* The whole thrust of the Motor Carrier Law being weighted in favor of the industry, it might be expected, particularly in light of society's current concern for the welfare of consumers, that the regulators would be sensitive to consumers' interests. But, this is not the case. Unfortunately, the thrust of the statute has caused the regulators to harbor attitudes and to behave in a fashion detrimental to the needs of consumers. This is so, even though the statute, despite its industry-orientation, contains a sufficient basis for the regulators to exert greater efforts to protect the interests of consumers. For instance, the statute authorizes the PUC on its own initiative to suspend the running of the 30-day period and to cause the proposed rates to be subjected to careful review and study. However, in most cases, the PUC does not exercise this authority and allows the proposed rates to go into effect automatically upon the expiration of 30 days after filing, without any study. In some cases, it even

permits the proposed rates to take effect before the passage of the 30-day period.

The statistics for the years 1970, 1971, and 1972 are revealing in this regard. As noted on table 5.1, in 1970, 88.6 percent of all filings (both for property and passengers) were allowed to go into effect automatically after 30 days. In 1971, this percentage fell to 55.3 percent, but in 1972, it climbed up again to 65.5 percent. The percentage for 1972 would probably have been higher, except for the fact that it was an unusual year. Phase II of the federal government's economic controls under the Economic Stabilization Act was then in effect under which the PUC was charged with implementing and enforcing certain guidelines affecting regulated utility and transportation rates. The PUC was thus compelled to suspend a number of rate filings to ascertain that the federal guidelines were being met. Indeed, in 1972, by one single action, the PUC suspended 34 motor carrier tariffs, many of which under normal circumstances probably would have been allowed to take effect after the 30-day period.

Even in those situations where the PUC suspends the automatic effective date of rate filings, no meaningful review and study of the proposed rates are conducted. It appears that very little activity on the part of the regulators occurs during the five-month suspension period and that staff reports are slapped together as the expiration of the suspension period nears. Most of these staff reports are extremely limited in scope and depth. They consist mainly of a review and verification of the data submitted by the applicant and a determination of the extent to which the applicant's operating ratio is affected by the proposed rates. Such a cursory study of the proposed rates invariably results in the rates being allowed to take effect. In 1970, for example, of the 15 rate filings suspended, 11 were ultimately approved, only 2 disapproved, and 2 were withdrawn by the applicants. In 1971, 35 of 42 suspended filings ended in approval with 2 disapprovals and 5 withdrawals. In 1972, 48 of 51 suspended filings

Table 5.1

**Summary of Motor Carrier Rates Allowed by the Hawaii Public Utilities Commission  
To Go into Effect Within or Automatically After the Expiration of 30 Days of Filing  
During the Years 1970, 1971, and 1972**

Type of carrier	1970			1971			1972			3 yrs. combined		
	No. filed	No. approved	% approved	No. filed	No. approved	% approved	No. filed	No. approved	% approved	No. filed	No. approved	% approved
Property carriers . . .	104	89	85.6	81	41	50.6	116	73	62.9	301	203	67.4
Passenger carriers . . .	27	27	100.0	13	11	84.6	32	24	75.0	72	62	86.1
All carriers . . . . .	131	116	88.6	94	52	55.3	148	97	65.5	373	265	71.0

were approved and only 1 disapproved and 2 withdrawn. (See table 5.2.)

The following specific examples of the manner in which some of the 1972 suspended filings were handled illustrate the cursory examination given even when rate filings are suspended. Since, in 1972, Phase II controls under the federal Economic Stabilization Act were in effect and since the guidelines set by the federal government under Phase II controls imposed additional burdens on the carriers to demonstrate that rate increases were "cost justified," one might expect to find that more review and attention were devoted to the 1972 rate filings than would normally be the case. But as the examples reveal, such was not the case.

*Sixteen tariff filings affecting the island of Hawaii—Docket No. 2086.* Among the rate filings that were suspended in 1972 were 16 pertaining to carriers on the island of Hawaii. They were suspended on March 30, 1972, along with 18 others. Although the statute provides for a suspension period no longer than five months beyond the initial period of 30 days after filing, no action appears to have been taken on the 16 rate filings during this period. On September 20, 1972, the chief rate analyst of the PUD

submitted a staff report to the PUC relating to these 16 rate notices (Staff Report No. 9-14). Noting that no public hearings had been scheduled on these rate notices within the statutorily authorized suspension period, he recommended that 14 of the 16 rate increases be allowed to go into effect on October 12, 1972 without any hearing. As for the other two, he recommended that, if they could not be delayed beyond October 12, 1972, they be approved on an interim basis and hearings be held later to determine their reasonableness. The following quotes relating to three of the rate filings are representative of the justifications supplied for the staff's recommendations:

"Resulting effect will be increase in charges for shippers of said commodity. However, as to the degree of impact the increase may have upon the shippers, the Staff is unable to make a determination."

"The increases sought range between 32% and 137.5%."

"Change sought is to increase the service fee charge for carrier

Table 5.2

Summary of Action Taken by the Hawaii Public Utilities Commission  
On Motor Carrier Rates Filed During the Years 1970, 1971, and 1972

Year and type	Rates filed	Allowed with- out action	Suspended but allowed with- out hearing	Suspended and allowed after hearing	Suspended and disapproved after hearing	Withdrawn	Totals					
							Approved		Disapproved		Withdrawn	
							No.	%	No.	%	No.	%
1970:												
Property . . . . .	104	89	1	10	2	2	100	96	2		2	
Passenger . . . . .	27	27	-	-	-	-	27	100	-		-	
Total . . . . .	131	116	1	10	2	2	127	97	2		2	
1971:												
Property . . . . .	81	41	2	33	2	3	76	94	2		3	
Passenger . . . . .	13	11	-	-	-	2	11	85	-		2	
Total . . . . .	94	52	2	33	2	5	87	93	2		5	
1972:												
Property . . . . .	116	73	22	21	-	-	116	100	-		-	
Passenger . . . . .	32	24	5	-	1*	2	29	91	1		2	
Total . . . . .	148	97	27	21	1	2	145	98	1		2	

\*Rate notice was actually rejected before any commission action was taken because of a technicality.

Source: Tariff branch, public utilities division, department of regulatory agencies, State of Hawaii.

preparation of shipping permits from \$6.50 to \$10. Carriers attest that the present assessment of \$6.50 is not compensatory.”

By motion adopted by the commission on September 29, 1972, all 16 rate filings were allowed to go into effect on October 13, 1972, without a hearing or any further consideration. Thus, with six months to consider the rate proposals, the commission and staff not only did not schedule a hearing on the cases but allowed the proposed rates to take effect with a minimum of information, study, or review.<sup>2</sup>

*Oahu Transport Company, Ltd. case—Docket No. 2080.* On January 28, 1972, the Oahu Transport Company, Ltd., filed for a change in its specialized tariff to bring it into conformance with a general tariff change previously obtained by the WMTB on behalf of many truckers on Oahu, including Oahu Transport Company. Both because of the Phase II price controls and because of questions the regulators had about the proposed specialized tariff change, the tariff was suspended, by commission order on February 28, 1972, to extend from February 29, 1972, for five months until July 29, 1972.

On July 21, 1972, an unsigned staff report (Staff Report No. 7-37) was submitted to the commission on this matter. In this report it was stated that aside from the carrier's allegation of only seeking rate parity with the WMTB general tariff, no other data or study had been submitted by the carrier to justify its proposed new rates. Accordingly, the report went on to state:

“For this reason, the Staff is unable to determine the impact of the increases as they may have upon the shippers and revenue position of the Applicant. Further, without a cost justification study, Staff is unable to

determine whether the rates proposed are cost based. Perhaps, the Applicant will be able to substantiate the increases it is seeking at the hearing.”

Although the report was six pages long and contained other information and comments on the proposal, the above - quoted paragraph constituted the gist of the report. On the basis of this report, the decision was made to proceed to a hearing on the case.

On July 27, 1972, a full-blown hearing before the full commission was held on the case. The hearing lasted less than half an hour, and came to a rather abrupt halt after a few initial questions to the company spokesman. In his testimony, the company's representative not only pointed out that the proposed change was relatively minor and had been inadvertently overlooked at the time the WMTB was obtaining a change in the general tariff but went on to reveal that the total effect of the change would be to increase by \$200 per year the company's revenues, or about one-hundredth of one percent of the \$2 million in revenues generated each year by the company.

It would appear that with little effort this information could have been secured by the staff. Although, in this case, consumers' interests were little affected, it graphically illustrates the cursory care that the regulators give to rate filings. It should be noted that involved in the hearing were four commissioners, three members of the staff, the deputy attorney general assigned to the public utilities division, and a representative of the company. The cost of the hearing could have been totally avoided with a little more attention.

<sup>2</sup>Although the decision to allow the proposed rates to take effect was made on September 29, 1972, no formal decision and order confirming the PUC's action was issued and the docket was left pending. As nearly as can be determined, the docket is still open awaiting the issuance of a final order in the matter.

*Eight tariff filings affecting the island of Oahu—Docket No. 2086.* The example just given illustrates the inattention that the State gives to rate filings. The example here illustrates inattention on the part of the commission.

Eight tariffs affecting motor carriers on Oahu were among the 34 tariff filings that we noted in the first example as having been suspended in 1972. Hearings on these eight tariffs were held during June, July, August, and October 1972. (At one of these, on October 12, 1972, the commission gave its approval on an interim basis.) Excerpted below are some comments that the staff made on some of these rate proposals in an unsigned report dated October 20, 1972 (Staff Report No. 10-15):

“...Without any cost study, Staff is unable to determine whether the proposed schedule is just and reasonable. However, at a hearing held on June 22, 1972, Mr. \_\_\_\_\_ of \_\_\_\_\_ Company presented testimony supporting the proposed rate schedule. Allegedly, \_\_\_\_\_ Company is engaged in the business of building modular homes, a land development in the State of Hawaii.

“There was no opposition to the rates being proposed. Therefore, inasmuch as the change sought is to establish new rates which is supported by the shipper, Staff has no objection to permit the rates to go into effect.

“... [Spokesman for carriers] testified that there was no cost study made with respect to the increases that is being sought in the referenced rate notices. Lacking the cost study, the Staff believes that approval of the tariff change in the manner sought

will be in violation of the Price Commission’s guidelines. Therefore, Staff recommends denial.”

.....

“The change being sought ... is to remove \_\_\_\_\_ from the exception schedule ... resulting in increases to the carrier’s shippers ranging from 59% to 69%.

“... [This carrier] must comply with the guidelines established by the Price Commission under the National Economic Stabilization Act. Where the Price Commission has adopted the policy of utilizing the states as a mechanism by which to implement the guidelines, it behooves the carrier to comply with the Commission’s requirements. Presumably, a cost study should be presented at the hearing together with data showing the revenue impact, if any. Without a cost study, this request should be denied.”

.....

“...using the criteria handed down by the Price Commission as a guideline ... Staff feels that no increase is necessary ....”

Despite the foregoing views and comments on these proposed rate changes, the commission voted, on October 27, 1972, to allow all of the requested changes to go into effect, effective November 1, 1972.<sup>3</sup>

<sup>3</sup>From all indications no final decision and order has yet been issued. In the meantime, however, the increased tariffs went into effect and some have been adjusted upwards again since that time.

It thus can be concluded that, whether the automatic effective dates of proposed rates are suspended or not, the regulators are not very much concerned about the effects of such rate proposals on consumers, particularly individual consumers. Indeed, it can safely be said that rate filings in general are permitted to take effect rather routinely. During the three-year period 1970, 1971, and 1972, of the total 373 rate filings, 359 (or 96 percent) were approved, 9 (or 2.7 percent) withdrawn, and only 5 (or 1.3 percent) denied. The 373 rate filings included 301 for property and 72 for passenger carriage. Of the 301 filings for

property 292 (or 97 percent) were approved, 5 (or 1.7 percent) withdrawn, and 4 (or 1.3 percent) denied. Of the 72 filings for passengers, 67 (or 93 percent) were approved, 4 (or 5.6 percent) withdrawn, and only 1 (or 1.4 percent) disapproved. (See table 5.3.)

The need for governmental interest in protecting the interests of consumers is particularly important in the area of rates for passenger carriage, where the bulk of the customers are tourists. Yet this is the area most neglected. During the entire three-year period 1970, 1971, and 1972, only one rate filing was

Table 5.3  
Comparison of Approvals, Withdrawals, and Denials  
Of Motor Carrier Rate Notices Filed with the Hawaii Public Utilities Commission  
During the Years 1970, 1971, and 1972

	Filed	Approved		Withdrawn		Denied	
		No.	%	No.	%	No.	%
<i>1970</i>							
Property . . . . .	104	100	96	2	2.0	2	2.0
Passenger . . . . .	27	27	100	0	0.0	0	0.0
Total . . . . .	131	127	97	2	1.5	2	1.5
<i>1971</i>							
Property . . . . .	81	76	94	3	3.5	2	2.5
Passenger . . . . .	13	11	85	2	15.0	0	0.0
Total . . . . .	94	87	93	5	4.9	2	2.1
<i>1972</i>							
Property . . . . .	116	116	100	0	0.0	0	0.0
Passenger . . . . .	32	29	91	2	5.8	1*	3.2
Total . . . . .	148	145	98	2	1.3	1	0.7
<i>3-year totals</i>							
Property . . . . .	301	292	97	5	1.7	4	1.3
Passenger . . . . .	72	67	93	4	5.6	1*	1.4
Total . . . . .	373	359	96	9	2.7	5	1.3

This rate notice actually was rejected before any commission action was taken, due to a technical deficiency.

disallowed, and that on a technicality. Moreover, in 1970, all 27 filings and in 1971, 11 out of 13 filings (two were withdrawn) were allowed to go into effect automatically during or at the end of the 30-day waiting period. Only in 1972, were some filings suspended for periods beyond the 30 days. But, as noted, 1972 was the year in which Phase II controls imposed by the federal government were in effect. Even in that year only 8 of the 32 filings were postponed. Of the eight, two were withdrawn and only one disallowed on technical grounds. The rest were routinely allowed.

In our interviews and discussions with those involved in the motor carrier aspect of the public utilities program, we detected not only a neglect in looking out for the interests of the tourists but a general attitude that one might expect from the carriers themselves but not from a governmental agency—namely, that the tourists are here today and gone tomorrow and that prices should be set at what the traffic will bear to make sure as many outside dollars are left in Hawaii as possible. Thus, the cards are all stacked against the tourist-consumers who use passenger carrier services in Hawaii.

**Multiplicity of rates.** Motor carriers operate under multiple and complex tariffs (for common carriers) and schedules (for contract carriers). Tariffs and schedules now in effect in Hawaii number in the thousands. They are a conglomeration of (1) rates (the basic prices for providing transportation services from one place to another), (2) accessorial charges (charges made for accessorial services such as packing, crating, waiting), and (3) rules and regulations (requirements applicable to transportation arrangements which have cost implications, such as loading requirements and hours within which pickups and deliveries will be made). Indeed, the tariff books utilized by carriers, shippers, and regulators are voluminous and have been likened to mail order catalogues in their scope and the amount of detail which they contain. They are also constantly in flux with changes being made all the time. Thus, a certain amount of expertise is required just to be able to read many tariffs,

to comprehend what they mean, and to keep abreast of the changes as they occur.

Those who have large interests at stake in the ratemaking process (i.e., the carriers themselves and major shippers) understand the system, of course, and know how to work within it. They devote a great deal of time and effort to tariff matters and the ratemaking process. However, for the average citizen (and for the many small and inexperienced shippers and carriers as well), the whole matter of tariffs is just a baffling and bewildering melange of complicated, contradictory, and senseless array of charges and requirements, so much so that it is often difficult for the consumer to ascertain beforehand approximately how much the transportation service is going to cost him. Illustrating the confusion that the present rate and schedule structures present to the consumer is table 5.4.

Table 5.4 notes the varying rates that exist for travel from the Honolulu International Airport to central Waikiki and to the Kahala Hilton Hotel on a 1-7-passenger carrier. As shown, the rates differ depending on whether regular rates or regular charter rates are charged. "Regular" rates are supposed to apply when a party does not have exclusive use of a vehicle for a particular trip but may have to share the vehicle with others. "Regular charter" rates are supposed to apply when a single party secures exclusive use of the vehicle. The rates also differ depending on whether the carrier belongs to the Western Motor Tariff Bureau or the Hawaii State Certified Common Carriers Association.

Included in the table are the fares charged by taxicabs over the same route. Taxicabs and taxicab fares are exempt from the economic regulation of motor carriers; they are, however, under the control of the counties. There is no prohibition against anyone operating as both a 1-7-passenger carrier under PUC jurisdiction and as a taxicab company under county jurisdiction. A great many of the 1-7-passenger carriers on Oahu hold CPCN's from the PUC and are also registered as taxicab operators with the city and

Table 5.4  
 Comparison of Various Legal Rates, or Fares  
 For Transporting Passengers from the Honolulu International Airport  
 To Central Waikiki and to the Kahala Hilton Hotel via Taxicab or 1-7-Passenger Carrier  
 As of December 1973

Route served	No. of passengers	Taxicab fare (approximate taximeter amt)		1-7-passenger carrier rates							
				Regular rates				Regular charter rates			
				WMTB*		HSCCCA**		WMTB*		HSCCCA**	
Per person	Total fare	Per person	Total fare	Per person	Total fare	Per person	Total fare				
<i>Effective date of present rate:</i>				<i>(1/1/73)</i>		<i>(11/15/67)</i>		<i>(1/1/73)</i>		<i>(11/15/67)</i>	
Airport to Waikiki - one way	1	\$6.50	\$6.50	\$4.00	\$ 4.00	\$3.00	\$ 3.00	\$20.00	\$20.00	\$5.00	\$ 5.00
	2	3.25	6.50	4.00	8.00	3.00	6.00	10.00	20.00	2.50	5.00
	3	2.17	6.50	4.00	12.00	3.00	9.00	6.67	20.00	1.67	5.00
	4	1.63	6.50	4.00	16.00	3.00	12.00	5.00	20.00	1.35	5.40
	5	1.30	6.50	4.00	20.00	3.00	15.00	4.00	20.00	1.35	6.75
	6	1.09	6.50	4.00	24.00	3.00	18.00	4.67	28.00	1.35	8.10
	7	.93	6.50	4.00	28.00	3.00	21.00	4.00	28.00	1.35	9.45
<i>Effective date of present rate:</i>				<i>(3/1/73)</i>		-		<i>(3/1/73)</i>		<i>(11/15/67)</i>	
Airport to Kahala Hilton Hotel - one way	1	\$10.00	\$10.00	\$5.00	\$ 5.00	N		\$25.00	\$25.00	\$7.50	\$ 7.50
	2	5.50	10.00	5.00	10.00			12.50	25.00	3.75	7.50
	3	3.34	10.00	5.00	15.00	O		8.34	25.00	2.50	7.50
	4	2.50	10.00	5.00	20.00			6.25	25.00	2.00	8.00
	5	2.00	10.00	5.00	25.00	N		5.00	25.00	2.00	10.00
	6	1.67	10.00	5.00	30.00			5.84	35.00	2.00	12.00
	7	1.43	10.00	5.00	35.00	E		5.00	35.00	2.00	14.00

\*Western Motor Tariff Bureau.

\*\*Hawaii State Certified Common Carriers Association.

county of Honolulu. As a result, a vehicle can be equipped with a taxicab domelight and a taximeter to calculate the fare on a mileage basis, and at the same time operate as a 1-7-passenger carrier with a flat rate. The operator of the vehicle apparently has almost complete discretion as to when and where the vehicle will be operated in one capacity or the other. It is for this reason that the fares of taxicabs are included in table 5.4 for comparison purposes.

What table 5.4 illustrates is that at the outset the passenger has little notion of what fare he is going to be charged, much less that there is a difference depending on whether he is treated as a single customer or as a member of a group of customers, whether the carrier belongs to one association or another, and whether the operator of the vehicle decides to utilize his vehicle at that moment as a taxicab or as a 1-7-passenger carrier.

The differences in the fares are significant. For example, suppose there are six passengers in a vehicle travelling from the airport to Waikiki. If the vehicle is operated as a taxicab, each person's cost is \$1.09. However, if the vehicle is operated as a 1-7-passenger carrier, and each is considered a nonexclusive customer, each person's cost is either \$4.00 or \$3.00, depending on the association to which the carrier belongs. This \$4.00 or \$3.00 cost is increased to \$4.67 or reduced to \$1.35, if all six are considered as belonging to a single group having exclusive occupancy of the vehicle.

Such an array of rates cannot help but be confusing to the customer and is probably also confusing to the driver. Thus, even where there is no intent to cheat the customer, the customer may be easily overcharged (or undercharged) by mistake.

Further confusion in the rate structure is illustrated by table 5.5. The "regular" and "regular charter" rates are known in the trade as the "retail" rates. They are the rates ordinarily charged when individual customers either by

themselves or through travel agents arrange for carriage. There is another set of rates known as the "wholesale" rates. These rates supposedly apply only when one carrier diverts business to another and the second carrier transports passengers for the first. This occurs for example when a tour bus company has an overflow of passengers which cannot be accommodated in one of its buses but which can be handled in a 1-7-passenger vehicle. Available evidence indicates that such intercarrier transactions occur with considerable frequency for runs between the airport and Waikiki. Table 5.5 compares the regular or retail rates with the wholesale rates. To the tourists who have prepaid for a package deal, including ground transportation, the difference in the retail and wholesale fares has no impact, because the difference between the retail rate and the wholesale rate is retained by the tour bus company. But the existence of wholesale rates points out the confusing nature of the rate structure.

This confusing array of rates currently exists in part because the regulators exercise little influence over the number, kind, and contents of the rates. For the most part, the rate structure is developed and edited by the motor carrier industry itself and simply accepted and approved by the regulators. Although the rate structure is revised from time to time, that is again the result of industry action and the general tendency is to add more and more to the structure. No attempt has ever been made by the regulators to review the structure on an overall basis with the objective of making it simple enough for consumers to understand.

**No standards for service.** Because the average individual is an infrequent customer of carrier services and, in the case of the transportation of goods, facts and information relating to the handling of goods in transit are largely within the knowledge of the carrier and not the shipper, individual customers have little by which to judge the quality of service to be rendered by the carrier or to determine which among the several carriers is likely to offer him

Table 5.5  
 Comparison of Regular, or "Retail," Rates and Special, or "Wholesale," Rates  
 Established by the Western Motor Tariff Bureau for the Transporting of Passengers  
 From the Honolulu International Airport to Central Waikiki and to the Kahala Hilton Hotel via 1-7-Passenger Carrier

Route served	No. of passengers	Regular rates				Regular charter rates			
		Regular or "retail" rate*		Special or "wholesale" rate**		Regular or "retail" rate*		Special or "wholesale" rate**	
		Per person	Total fare	Per person	Total fare	Per person	Total fare	Per person	Total fare
Airport to Waikiki - one way	1	\$4.00	\$ 4.00	\$6.00	\$ 6.00	\$20.00	\$20.00	\$12.00	\$12.00
	2	4.00	8.00	3.00	6.00	10.00	20.00	6.00	12.00
	3	4.00	12.00	2.40	7.20	6.67	20.00	4.00	12.00
	4	4.00	16.00	2.40	9.60	5.00	20.00	3.00	12.00
	5	4.00	20.00	2.40	12.00	4.00	20.00	2.40	12.00
	6	4.00	24.00	2.40	14.40	4.67	28.00	2.80	16.80
	7	4.00	28.00	2.40	16.80	4.00	28.00	2.40	16.80
Airport to Kahala Hilton Hotel - one way	1	\$5.00	\$ 5.00	\$8.50	\$ 8.50	\$25.00	\$25.00	\$15.00	\$15.00
	2	5.00	10.00	4.25	8.50	12.50	25.00	7.50	15.00
	3	5.00	15.00	3.00	9.00	8.34	25.00	5.00	15.00
	4	5.00	20.00	3.00	12.00	6.75	25.00	3.75	15.00
	5	5.00	25.00	3.00	15.00	5.00	25.00	3.00	15.00
	6	5.00	30.00	3.00	18.00	5.84	35.00	3.50	21.00
	7	5.00	35.00	3.00	21.00	5.00	35.00	3.00	21.00

\*These rates are available to consumers directly where arrangements are made by individuals or through travel agents.

\*\*These are special tariff rates for transfer services furnished by independent operators and are available only on an inter-carrier basis (e.g., where a 1-7 carrier provides services for a tour bus operator).

the best service. This being so, it would appear that, in the interest of these consumers, some governmental standards would be included in any regulatory scheme.

Under the current system of regulating motor carriers, such standards are decidedly lacking. This is so although the Motor Carrier Law as now constituted provides ample basis for the formulation of such standards by the regulators. For example, in the statement of legislative policy contained in the law, it is provided that among the purposes of the legislation is the promotion of "safe, adequate, economical, and efficient [transportation] service." Then, in the enumeration of the powers of the PUC to regulate motor carriers, the law provides that "the commission shall establish reasonable requirements with respect to continuous and adequate service." In the issuance of CPCN's and permits, the law states that they shall be issued only if the PUC finds the applicants "fit, willing, and able properly" to perform or provide the service proposed.

The lack of standards or guidelines does not appear to bother the regulators. The general attitude appears to be that standards and criteria are not particularly relevant in the motor carrier area and that a case-by-case approach is the only appropriate way to deal with the problem of quality of service. However, if a case-by-case approach had indeed been pursued, surely some principles should have begun to emerge during the 14 years that the Motor Carrier Law has been in existence as to be susceptible to the formulation of standards. This has not occurred. It has not occurred because the regulators have not given quality of service the consideration it deserves even on a case-by-case basis. For instance, as already noted, in ratemaking the question of quality of service is hardly ever raised. Rate proposals are allowed or not allowed to take effect only on the basis of whether there are objections or no objections from within the industry itself.

Then, in the granting of CPCN's and permits, the record is singularly silent on the

matter of the quality of service to be provided by the licensee. As in ratemaking, the basic criterion upon which CPCN's and permits are issued or not issued is the presence or absence of objections from the industry to the granting of such CPCN's and permits. No evaluation is made of the ability of the applicant to provide any level of service. Indeed, in this area of CPCN's and permits, the PUD has declined to do any meaningful evaluation whatsoever.

In a position paper dated October 8, 1971 (Staff Report No. 10-5), addressed to the commission, the executive director and the transportation administrator of the PUD stated as follows:

"The Public Utilities Staff is of the opinion and recommends that its participation in new applications for certificates or permits and extension be limited to an advisory capacity upon direction of the Commission to furnish information not directly available to either the applicant or the intervenors."

The executive director and the transportation administrator then argued at length in the paper that the staff should be disengaged as completely as possible from the whole process of reviewing and acting on CPCN's and permits and that the PUC should rely upon the evidence presented by the affected parties in reaching its decisions on such matters. Among the reasons advanced for such a posture were: (1) by taking a position, the staff might be substituting its judgment for that of the applicant or favoring the applicant or the intervenor in a case; (2) staff efforts might simply be duplicating those of the applicants and intervenors or the staff might be doing something the parties to the case should do; (3) the staff's responsibility is primarily with regard to authorized motor carriers, not to new applicants; and (4) the staff has more important things to do. None of these reasons is particularly valid or persuasive. It is at the point of staff review, much more than at the

point of PUC review, that the interests of consumers can be effectively considered.

Since the issuance of the position paper, although the PUD has continued to submit staff reports on dockets relating to CPCN's and permits, such submissions have been negligible in terms of consumer protection. The staff reports amount to no more than a summarization and verification of the data included in the applications submitted by those seeking PUC approval. The staff takes no positions and makes no recommendations.

Even though the lack of standards and guidelines does not appear to bother the regulators, it does seem to be a matter of concern to some of the carriers. This is evidenced in testimony which the Hawaii Sightseeing Association representing most of the larger passenger carriers gave to the legislature at its 1973 session regarding the subject of a full-time public utilities commission. In its testimony the association made the following comments:

“Under the Administrative Procedure Act, there is a great deal of ambiguity left to the ‘discretion’ of the Commissioners. Without proper knowledge, understanding, and concern, this ‘discretion’ can be to the detriment of the industry.”

.....

“Additional criteria should be included in the law to minimize the absolute ambiguity of that law—especially in the consideration of ‘fit, willing, and able’ or in the consideration of ‘CONVENIENCE AND NECESSITY’.”

The difficulty of developing and implementing standards and measurements for the motor carrier industry should not be minimized. Considering the number and variety of motor carrier services subject to regulation, it

is indeed a formidable task to undertake the establishment of standards or criteria for the many different segments of the industry. Yet, the interests of consumers demand that efforts be directed toward the formulation of such standards.

**No policing action.** Governmental regulation, even for the purpose of consumer protection, is only as effective as the rules, rates, and standards that are established are enforced. Although currently there is very little consumer concern reflected in the ratemaking process and there are little, if any, standards on quality of service, such regulatory requirements as do exist are being rendered meaningless by the lack of any working mechanism for enforcing them.

**Take ratemaking.** Even if it is assumed that the rates allowed to take effect are fair, reasonable, and nondiscriminatory (an unsafe assumption, of course, in view of our comments above), there is no way of ensuring that the rates actually charged are in conformance with those authorized. The PUD readily admits that it does not monitor actual charges against approved tariffs. This is so even though it does receive information from time to time that carriers are undercharging, overcharging, or charging rates which have not been filed with the PUC.<sup>4</sup> No followup action is taken on receipt of such information.

The situation is the same in the area of service. Once CPCN's and permits are issued, no monitoring is conducted to ensure that such little standards and requirements as may be imposed as conditions are continuously adhered to by the carriers. Again, as in the area of ratemaking, that the conditions imposed are being violated is known to the regulators. For example, as described more fully later in the

<sup>4</sup>Note, for instance, table 5.4. There are no official regular rates for the airport to Kahala Hilton Hotel runs for HCCCA vehicles. The PUD staff has no explanation for this omission but concedes that HCCCA vehicles are probably providing this service and using the WMTB rates as their guide.

next chapter, it is known that buses registered as school buses are unlawfully being used as tour buses, and that private carriers are engaging in the common carrier business.

There are two apparent mechanisms for conducting the monitoring function, but neither is systematically required or used. The first of these is the audit of regulated companies. Although the PUD conducts audits of motor carrier firms, there is no real program for such audits. Firms are selected for these audits on a hit-or-miss basis, and the real purpose of such audits is not readily apparent. With approximately 282 regulated motor carriers on the island of Oahu in 1972, the PUD conducted 172 audits during the five years from 1968 through 1972, covering 114 carriers. Of these audits, 81 were made in 1972, or almost half of the five-year total. Although 58 repeat audits were conducted during this period, there are at least 56 carriers on Oahu which have never been audited, including some with certificates dating back to 1963 and including large carriers which have been involved in recent rate proceedings.

The audits that are conducted from time to time reveal nonadherence to rates and standards. But, even then, there is no effective followup to make sure that indicated corrective actions are taken by the carriers involved. On occasion, a letter may be sent to the violator calling attention to the violation uncovered in an audit, but this is the extent of any followup action. There is no further follow-through even when a subsequent audit reveals a continuation of the same practices.

The other apparent mechanism is the complaint system. But this mechanism also is largely nonfunctioning. This is due to the general ineffectiveness of the agency's overall approach to complaint handling which is discussed in volume II, chapter 6, of this report. Although the discussion there is concerned primarily with shortcomings in the handling of complaints in the area of energy and communications utility regulation, the

deficiencies noted are even more evident in the area of motor carrier regulation. This is because complaint-handling procedures and practices are even less developed and less vigorously pursued in the motor carrier area than in the utility area. Thus, in the motor carrier area, there is no overall system for handling complaints and complaints are treated as separate and unrelated events.

In short, while the audit and complaint mechanisms are available, neither is being effectively directed at the enforcement of the rates and standards.

### **Some Suggestions for Consumer Protection Regulation**

Whether the motor carriers continue to be subject to the present system of economic regulation or are completely freed from any such regulation or are made subject to limited economic regulation as outlined above, the imbalance in the relationship that exists between consumers, particularly individual consumers, and the carriers cries out for some form of protection for consumers. The shape of regulation for consumer protection will necessarily differ, depending on whether the present system of economic regulation continues, or a new, limited system of economic regulation is imposed, or the motor carriers are completely deregulated.

**Under continuing current system of regulation.** If the present form of economic regulation of motor carriers continues, then the remedies needed to foster consumer protection are fairly evident.

In the area of ratemaking, the existing procedure needs overhauling. As observed in the previous chapter, the present system in effect creates a collective monopoly. If the motor carriers are to be accorded this monopoly status, they should be treated as such. The ratemaking procedure should then provide a mechanism which would substitute for competition inbalancing

the interests of consumers and carriers. It is difficult to imagine that such a mechanism could indeed perform as well as competition in setting reasonable rates, particularly in light of the many hundreds of carriers under regulation, but, nonetheless, if the motor carrier industry is to continue to enjoy its privilege of formulating consensus rates, governmental intervention to protect the interests of consumers is needed.

Such a mechanism should include those elements of ratemaking present in the case of public utilities, with the improvements as have been suggested in volume II of this report. It ought to include public hearings on rate proceedings, meaning that the current system of automatic allowance of proposed rates should be eliminated and that all rates allowed should be backed by findings and conclusions of the PUC. It is recognized, of course, that public hearings in and of themselves will probably generate little participation by individual customers since they are infrequent users of the carriers or, as in the case of tourists, too far removed, at least physically, to be able to participate even if they may want to. Nevertheless, the requirement of public hearing at least provides or ought to provide the PUD with the opportunity to carefully review in depth the reasonableness of the proposed rates.

The mechanism must also provide sufficient time and manpower for review and examination of the proposed rates by the PUD. The timetable now established for processing tariff changes, especially the 30-day initial deadline, places the regulators under fairly intense pressure to act quickly rather than carefully on these matters. The problem is further exacerbated by the workload which is imposed upon the two-man rates and tariff staff in the PUD. Table 5.6 shows what this workload was for motor carriers during the three years of 1970 through 1972.

During this three-year period, the PUC and PUD had to process an average of almost 12 motor carrier tariff cases a month. In addition to these motor carrier tariffs, the staff had to handle numerous utility tariff matters. A very high

proportion of the motor carrier tariff cases acted on during these three years (i.e., 367 out of the 420 cases) involved changes in rates while only a small number (i.e., 53) related to nonrate matters. Even if it were assumed that a full 30 days were available to work on every tariff case and that the staff were able to work full time on just motor carrier tariff cases (which would amount to only about 21 working days per month)—neither of which assumptions would be realistic—this would allow an average of less than two days to be devoted to each such case.

This is not to say that there should not be any time limits within which regulatory action on rate requests should be taken. As seen from the experience in the utilities area discussed in volume II of this report, the absence of deadlines has allowed utility rate cases in Hawaii to drag on for intolerably long periods. However, when deadlines are established, they should be long enough to allow reasonable consideration of the matters requiring action.<sup>5</sup>

With regard to the other aspects of consumer protection, the motor carrier regulators need to direct their attention to simplifying the rate structure so that it is understandable to the average individual consumer; to the establishment of standards of quality of service both for entry into the business of motor carriage and for continued operation in the business; and to the formulation of a system of monitoring performance by the carriers to ensure that authorized rates and the standards of service are adhered to by the carriers. In addition, the complaint-handling procedure must be strengthened.

**Under limited economic regulation.** Limited economic regulation has three major

<sup>5</sup>It is noteworthy in this regard that at the PUD's request the new Water Carrier Act passed in 1974 (Act 94) provides for a 45-day initial period rather than the 30 days proposed by the water carrier industry. While water carrier cases may be more complicated than motor carrier cases, it is highly unlikely that they will ever number more than several a year in contrast to the 150 or so motor carrier tariff cases processed each year.

Table 5.6  
**Summary of Motor Carrier Tariff Changes**  
**Filed with the Hawaii Public Utilities Commission**  
**By Common Carriers of Property and of Passengers**  
**For the Years 1970, 1971, 1972**

Type of carrier	1970	1971	1972	Total	3-yr avg
Property . . . . .	116	96	134	346	115
Passenger . . . . .	<u>27</u>	<u>13</u>	<u>34</u>	<u>74</u>	<u>25</u>
Total . . . . .	143	109	168	420	140

components to it: (1) prohibition against setting rates at levels less than cost, (2) standards on the quality of service both for entry into the carrier business and for continuing authorization to conduct such business, and (3) a system of continuous surveillance to ensure adherence to the first two requirements. These major thrusts readily suggest the shape that a consumer protection program might take under limited economic regulation.

Limited economic regulation assumes that the competitive force would establish reasonable rates, but ensures that no rate would be uneconomical to the carrier. The focus of regulation in the area of rates would be on costs. Thus, there is less need for consumer representation in the establishment of the actual rates. Nevertheless, in the process of requiring the carriers to submit cost information to the regulators, they may also be required to file the rates actually charged by them. Such filings of actual rates with the regulators is desirable in providing consumers with a single source to which they may turn for comparisons of rates charged by the various carriers. In connection with the requirement of rate filings, the regulators could prescribe reasonable standards and classifications for rates so as to simplify and make more comprehensible to the consumer the structure of the rates charged by the carriers.

Since the purpose of limited economic regulation is to make existing competition work, the quality of service standards established

under limited regulation must necessarily take into account that degree of quality that consumers can reasonably expect were motor carriers left completely to the forces of competition.

Finally, the system of continuous surveillance under limited regulation properly designed should enable the regulators effectively to enforce the established standards. Any such surveillance mechanism should incorporate a system for the proper and effective handling of consumer complaints.

**Under deregulation.** Complete deregulation is premised on the thought that open and unrestrained competition would cause the carriers to behave efficiently as in other competitive businesses. That is to say, the expectation is that competition itself would cause carriers to set reasonable rates and provide reasonable quality of service. It can also be expected that the force of competition would encourage the carriers themselves to devise rate structures which are understandable to consumers. Under such a situation, consumer protection in the area of motor carriage could be left for handling under the general prevailing laws affecting the rights of consumers. Such laws include the State's fair trade regulation, Uniform Deceptive Trade Practices Act, and the general law on consumer protection. It can further be expected that the office of consumer protection would be the principal governmental agency involved in furthering the interests of consumers.

This does not mean that some special legislation to protect consumers in the motor carrier area should not be enacted. For instance, in light of the number of carriers and the infrequent use made of them by individual consumers, as in the case of limited economic regulation, a central filing of carrier rates is perhaps desirable. Such filings would permit potential customers to go to a central source for comparisons of rates charged and services offered by the various carriers. In addition, some regulation relating to the handling of complaints, particularly by tourists, may be in order.

### **Recommendations**

*We recommend as follows:*

1. *If the present system of economic regulation of motor carriers is continued, the system be revised to afford greater protection to the individual consumer. In particular,*

a. *The statute should be amended to require affirmative approval of the PUC before any proposed rate is allowed to go into effect; or, in the alternative, the statute should be amended to extend the waiting period before any proposed rate goes automatically into effect; to require the PUC to review all rate filings; and to authorize the PUC to roll back any rate which has automatically gone into effect, if after the expiration of the waiting period, the PUC determines that the rate is not justified. All decisions of the PUC should be supported by reasons based on facts.*

b. *All proposed rates, whether or not they have automatically gone into effect, should be subject to review by the PUC within a*

*reasonable time and to public hearings. In its review, the PUC should review the cost bases for the rates proposed and the quality of service being rendered as well as the margin of profit to be enjoyed by the carriers.*

c. *The PUC should simplify the rate structure.*

d. *The PUC should establish standards and criteria relating to quality of service. The issuance of CPCN's and permits should be conditioned on continuing adherence to such standards and criteria. Such standards and criteria should further be utilized in reviewing all rate filings.*

e. *The PUC should formalize a system for monitoring performance by the carriers to ensure adherence to the rates authorized and the standards of service established by the PUC. The system should include a planned program of periodic audits and the systematic handling of complaints.*

2. *If limited regulation is substituted for the current system of regulating motor carriers, such regulatory scheme include the matters set forth in recommendations 1c, 1d, and 1e above.*

3. *If motor carriers are deregulated, the office of consumer protection assume the responsibility for ensuring fair treatment of all consumers, including the establishment of a complaint-handling procedure. In addition, all motor carriers should be required to file the rates they charge with the department of regulatory agencies and be required to charge only such rates so filed. Such filing would provide the public with a central source with which it may check to determine the rates charged by the various carriers.*

## Chapter 6

# OTHER PROBLEMS IN THE ECONOMIC REGULATION OF MOTOR CARRIERS

This chapter contains our findings not otherwise included in the previous two chapters. It focuses on the administrative and other problems in regulating motor carriers under the current Motor Carrier Law. Some of the findings reinforce the conclusions reached in the previous chapters; others are significant in and of themselves.

The recommendations contained in this chapter are relevant if the present form of economic regulation of motor carriers continues. If limited regulation or deregulation is substituted for the present form, the recommendations may yet apply in some, although not in all, respects.

### Summary of Findings

1. Although nearly 14 years have gone by since the enactment of the Hawaii Motor Carrier Law, the regulation of motor carriers continues to suffer from a lack of basic economic data on the motor carrier industry.
2. Ratemaking for motor carriers is marked by several illegalities. They include a disregard of statutorily established effective date of rates and the statutorily required filing of rates.
3. A number of motor carrier operators are violating the law by engaging in the common

carrier business without being properly certified by the PUC to do so.

4. In the regulation of motor carriers, there is currently little concern about the impact of the State's antitrust law on motor carriers. This lack of concern exists even in the light of a trend toward bigness and concentration of control in the industry.

5. As in the area of energy and communications utilities, there is little coordinated and systematic effort to represent Hawaii's interest before federal regulatory bodies in the area of motor carriers and transportation as a whole.

### A Perspective

The change from no regulation to a system of elaborate regulation of motor carriers was sudden and abrupt. It was virtually an overnight change. Neither the PUC nor the PUD (nor, for that matter, neither the industry) was adequately prepared for the shift. Although implementation of the Hawaii Motor Carrier Law was delayed for a year or more, this time period was insufficient for the regulators to become fully ready to implement the law. *First*, the task involved was enormous and complex. *Second*, the resources (money and staff) made available were limited. *Third*, the regulators were not psychologically attuned to assuming this new responsibility;

indeed, it appears that the PUC never wanted to become involved in the motor carrier area. As a consequence, the regulators encountered numerous difficulties in seeking to get the regulation of motor carriers off the ground. As between the safety and economic aspects of the easier of the two, to be more visible insofar as the general public was concerned, and to be the primary concern of the federal government, emphasis was placed on the safety facet of regulation. However, even here, the regulators' efforts have fallen short of expectations.

Although the Hawaii Motor Carrier Law was enacted more than 14 years ago, to a great extent it still can be said that the PUC and PUD have never fully oriented themselves to the scope, magnitude, and implications of the functions and responsibilities imposed upon them by this legislation and have never adequately equipped themselves to discharge effectively the range of duties placed upon them. The fairly rapid turnover in commission membership and legal counsel assigned to the agency and the continuing staff limitations have contributed to this inability to gear up fully for the discharge of the responsibilities outlined in the law.

Subsequent sections of this chapter point out some resulting inadequacies and deficiencies, but it is important to bear in mind the general climate that existed at the beginning and continues to exist in the regulation of motor carriers in Hawaii. It is also important that we recognize that the lack of preparation and staff resources constitutes the major reason, although not the sole reason, for the problems and difficulties in installing and continuing to carry out a system of motor carrier regulation in Hawaii.

### **Lack of Data**

In an earlier chapter we noted that, by the count of the Bureau of Motor Carrier Safety of the U.S. Department of Transportation, there were some 3000 private carriers in Hawaii in 1973-74. We also noted that this figure is

greatly at odds with the figure of 1800 supplied by the PUD. One of our specific findings is that the figures maintained by the regulators on the number of motor carrier vehicles of various classes in Hawaii are highly unreliable. The PUD readily concedes that the figures are neither accurate nor complete.

The inaccuracy in the count of motor carrier vehicles is not the only difficulty with the data kept by the regulators. Data of all kinds, useful in regulation, are either missing, inaccurate, or incomplete. Indeed, basic economic data necessary for an effective economic regulation of the industry are virtually nonexistent. This lack of data was very much in evidence when the Hawaii Motor Carrier Law was first enacted. Since its enactment, such data have continued to be sparse, even though the regulators should now be in a position to collect and report such data on a systematic basis. Thus, to date, no real economic study on the motor carrier industry and its operations has been possible.

Note, for example, that when the formal and rather elaborate system of tariffs was first introduced in the early 1960's, it was not based on a rational and economically justifiable framework, but rather upon compromises and expediences which were designed to cause as little disruption, dislocation, and dispute as possible within the industry. In the intervening years, in the absence of data, the tariff structure has continued to be based upon this rather shaky and makeshift set of accommodations. No determination has ever been made as to what is happening to the industry under the structure first set up and as to the trends within the industry and what they may portend for the future. No assessment has been made on the impact of the rate structure on overcapacity or undercapacity of equipment, facilities, and resources. In like manner, in the absence of data, no evaluation has ever been undertaken to determine the trends and interrelationships between the common carriers and the private carriers in Hawaii. (It would be useful to know, for example, what effect the large, unregulated

portion of the industry has on the regulated portion and vice versa.)

**Recommendation.** *If motor carriers remain subject to the economic regulation of the PUC, we recommend that the PUC and the PUD develop a system for the gathering and recording of comprehensive, accurate, and complete economic data on the carriers and that such data be subject to continuing analysis and use in the economic regulation of motor carriers.*

### Illegalities in Ratemaking

The issues in ratemaking in the context of economic regulation of motor carriers and protection of consumers were discussed at length in prior chapters. Here we describe some additional problems in ratemaking for motor carriers. These problems consist essentially of violations of the law and the PUC rules and regulations and are the result of neglect on the part of the regulators. If economic regulation as now constituted is to continue, greater attention to these matters will need to be given by the regulators.

**Noncompliance with statute on rate effective date.** Earlier we noted that regulators give but cursory review to most tariff filings and that proposed rates are perfunctorily allowed to go into effect in most cases. Along with, and perhaps as a result of, this practice, there is a general tendency to disregard and neglect the requirements set forth in the laws and rules and regulations governing the effective date of rates. Some examples follow. These examples are from the tariff filings processed in 1972.

**1. Noncompliance with short-notice requirement.** Under section 271-21(c) of the Hawaii Revised Statutes, the PUC is granted the discretionary authority to waive the 30-day notice requirement before tariff changes can go into effect, but this authority may be granted only "for good cause shown." This would seem to indicate clearly that, before the commission decides to allow a tariff change to go into effect

in less than 30 days, it should take some formal action to make a finding of the need or "good cause" for allowing the change to take effect sooner than normal. As a matter of fact, however, the commission has allowed tariffs to go into effect with less than 30-day notice, without any formal action or any finding justifying the earlier effective date. As the 30-day notice requirement is designed to provide a procedural safeguard for other interested parties who may be affected by the proposed tariff change, it would appear only reasonable that the commission be required to state the reasons for and justify its action before granting a waiver of this procedural safeguard.

**2. Nonadherence to the 30-day waiting period requirement.** Although the statute stipulates that the 30-day waiting period can be waived only with PUC approval, there have been a number of instances when the rate proposals have been allowed to take effect before the expiration of 30 days, without commission approval. In one case, in fact, the effective date of the tariff occurred before the date of the actual filing of the tariff.

These violations arise from the fact that tariffs are filed by private agencies, and the private agencies insert on the tariff sheets the effective date calculated on the basis of 30 days after the anticipated date of filing of the tariffs with the PUC. However, for one reason or another, tariffs are not always filed on the date anticipated. In the case of the WMTB, tariff sheets are printed on the mainland and this probably causes difficulties in timing on occasion.

Since the tariff sheets are relied upon by all parties concerned and the effective date printed thereon is usually the actual date observed, care should be taken to make sure that the tariff sheets are properly dated at the time of filing. Apparently, however, those responsible for processing the papers neglect to check out the dates when receiving the rate notices. The result is that some tariffs actually go into effect in less than 30 days after filing, without commission approval.

**3. Nonconformance with officially designated effective dates.** In some instances, the commission designates an effective date for a tariff which is beyond the normal effective date of 30 days after filing of the tariff. In some such cases, tariffs have nonetheless taken effect on the day the 30-day period expired. In some of these cases, this has occurred because the effective date noted on the tariff sheet was never amended to conform to the commission's decision. More care should be exercised to ensure that tariff sheets are amended to conform to the commission's actions.

The purpose of establishing clearcut and detailed legal and procedural requirements is to protect the rights and interests of the various parties involved by fixing definite means for making decisions and taking actions and by assuring fair, equal, and reasonable treatment for all of the participants. This objective can be thwarted and distorted, however, if the rules and regulations are not observed and followed. This applies to the regulators as well as to the regulated. Thus, it is especially important that the PUC and PUD adhere to the requirements which have been established for handling motor carrier rate matters. Unfortunately, however, as indicated by the examples cited above, this has not been the case.

***Recommendation.** We recommend that the PUC and the PUD take steps to ensure that the provisions of the statutes and the PUC rules and regulations relating to the effective date of rate proposals are complied with.*

**Neglect of rate filings by HSCCCA motor carriers.** In a case already cited, we noted that a tourist can be charged one of a number of differing rates in transportation from Waikiki to the airport. The rate charged depends on whether the vehicle operator decides that the transportation involves the use of his vehicle as a 1-7-passenger common carrier or as a taxicab. The rate charged also depends on whether the vehicle owner belongs to the Western Motor Tariff Bureau (WMTB) or the Hawaii State Certified Common Carriers Association (HSCCCA).

In the latter of these situations, it might be supposed that the rates differ for essentially the same services because of competition between the carriers belonging to the WMTB and those belonging to the HSCCCA. However, such is not in fact so. It appears that the only reason why the rates differ as between the WMTB carriers and the HSCCCA carriers is that the HSCCCA has not bothered since 1967 to seek any revision in its rates. It has not sought any revision because it does not feel compelled to do so since its members are probably charging the WMTB rates rather than the official HSCCCA rates. Technically, of course, the use of WMTB rates by the HSCCCA operators is illegal. Also technically illegal is the charging of WMTB rates established for the Kahala-Hilton and airport run. The HSCCCA has not bothered to file any rates for this run, although its members do provide service between the two points. It is acknowledged by the regulators that the HSCCCA operators are probably charging the WMTB rates on runs between Kahala-Hilton and the airport.

The above technical violations by the HSCCCA operators exist because the regulators have neither the compulsion nor the inclination to make certain that the motor carriers observe the law. Rates are being charged by the HSCCCA members without observing the requirements of law and the rules and regulations of the PUC.

***Recommendation.** We recommend that the PUC and the PUD examine the rate status of the carriers belonging to the Hawaii State Certified Common Carrier Association to ensure that they comply with applicable statutory and rule provisions on rate filings.*

**Illegal operations as common carriers.** That portion of the motor carrier business that is subject to the full range of regulation by the PUC is common carriage. With the exception of a few, specific kinds of carriage, all who are in the common carrier business are required to hold a certificate issued by the PUC. Operating as a common carrier without such a certificate is

illegal. However, there appears to be flagrant violations occurring in this area.

**Illegal operation of school buses for common carrier purposes.** Some school bus operators are knowingly serving as common carriers of passengers without proper authorization from the PUC to do so. The disregard of legal requirements in this respect has reached the point where school bus operators who have no operating authority from the PUC are openly advertising common carrier services in the yellow pages of the telephone directories. A random telephone check with several of these school bus operators indicated that tour bus charter services could indeed be arranged with such operators. Moreover, the department of accounting and general services which contracts school bus services for public school students has advised us that it does not know of a single school bus contractor which restricts its business exclusively to the transportation of students to and from school.

Generally speaking, neither the PUC nor the PUD, although they both know of these violations, is doing very much about them. The public utilities agency's standard response to any inquiries about school buses is that school buses are the responsibility of the department of education. This is so, even when a specific violation is brought to the attention of the regulators through the filing of a complaint. This is illustrated by a case involving two carriers on the island of Oahu, both of which also operate school buses.

In January 1973, one of the companies filed an informal complaint with the public utilities agency alleging that the other company was improperly and illegally using its school buses for the transportation of tourists in Waikiki. In its response acknowledging receipt of the complaint, the PUD agreed that, if the alleged activities were in actual fact occurring, then the second carrier was indeed engaged in an unlawful action which violated the Hawaii Motor Carrier Law. It also advised the complainant that an investigation of the matter

had been initiated. From all available evidence, however, no action at all was taken on the matter at that time.

Having received no response from the agency and no satisfaction of his complaint, the complainant again wrote the public utilities agency in late August 1973 reiterating his previous complaint and citing a number of specific examples of apparent violations of the Hawaii Motor Carrier Law and the rules and regulations of the public utilities agency. In its response this time, the PUD without any further explanation or apology simply stated that "an investigation will be conducted soon." It did solicit, however, the complainant's cooperation in supplying the names of travel agents that might be involved with the other carrier's tour bus operations using school buses.

Following up on the PUD's request for more information, the complainant wrote still another letter in late September 1973 seeking agency action on the matter and supplying some of the additional information requested. This apparently stirred the PUD into some action because in the files of the agency there is an investigation report to the transportation administrator dated several days later in which one of the investigators summarized his examination into the matter and confirmed the allegations made by the complainant. The investigator concluded his report with the following statement: "On the afternoon of Sept. 25, 1973, [the transportation administrator] informed Staff and Chief Investigator . . . to lay the report aside and that [the president of the offending company] would come in for a permit [to provide contract carrier services of the nature being complained about]. In the meantime, [the president of the offending company] would let [the party using the services] have a bus and driver for free."

Several days later, in early October 1973, the PUD sent its response to the complainant's third letter of late September 1973. The gist of this response is contained in the following quotation from the letter:

"The staff appreciates the relay of information on the alleged operations of these buses. However, as you are a carrier that may be affected by the alleged violations and having first-hand observation of the equipment at a given time, place and activity, we would strongly recommend the filing of a formal complaint pursuant to rule 3.02 of General Order No. 1.

"Pursuant to rule 3.01 of General Order No. 1, the staff will handle your informal complaint by conference with the alleged operator and the matter will be disposed of informally. Disposal of the informal complaint will not bar the filing of a formal complaint by your firm."

In other words, the PUD informed the complainant that if he wished any action on the matter he would have to take the matter before the commission and he, himself, and not the commission, bear the burden of proving his case against the other carrier.

This is where the matter rests at the present time. The complainant has initiated no action to file a formal complaint, and no further action has been taken by the public utilities agency. Indeed, the investigators reported that they are no longer conducting any investigation relating to the matter or taking any other action on it pursuant to the transportation administrator's instructions to set the matter aside. The complainant has not filed a formal complaint. He apparently has decided to follow the example of his competitor rather than rely upon the public utilities agency for relief. This is evidenced by a memorandum dated early November 1973 from one of the investigators to the chief investigator of the PUD. This is a report on an incident in which the complaining company was using its school buses in a manner similar to that of the carrier against which the informal complaint was lodged. In the meantime, the operator of the other company

has not come to the agency to seek a permit as a contract carrier as the transportation administrator had indicated to his staff would happen. Apparently, therefore, both companies are now using their school buses for unauthorized activities.

It would seem that uncovering such flagrant violations of the law is of vital concern to the regulators and that they would take all appropriate steps to bring the violations to a halt. Ignoring the problem is irresponsible and inexcusable.

**Illegal involvement of taxicabs in common carrier business.** As already noted, the operator of a passenger carrier vehicle capable of carrying up to seven passengers can be registered as a taxicab operator with the county which has jurisdiction over taxicab operations and at the same time be a holder of a CPCN from the PUC to operate as a 1-7-passenger common carrier. There are a great number of passenger carrier operators in the State, particularly in the city and county of Honolulu, who are both county-regulated taxicab operators and PUC-regulated common carriage operators. There are others, however, who are not licensed at all by the PUC and are taxicab operators only.

We have also noted that it is a common practice for tour bus companies to hire 1-7-passenger carriers at "wholesale" fares to transport overflow passengers whenever the tour bus companies encounter the situation where there are more passengers than their buses can accommodate. The tour bus companies also divert their customers to the 1-7-passenger carriers when the number of passengers does not justify the use of a large bus. There is a great deal of this sort of intercarrier business being transacted within the State. It is not confined to tour bus operations nor to situations of too many or too few passengers for a larger-sized passenger vehicle economically to handle. It occurs in many different contexts.

The volume of this intercarrier business is so great that the business spills over to taxicab

operators who do not hold CPCN's from the PUC to engage in the 1-7-passenger common carrier trade. This practice of diverting passengers to non-PUC-certificated taxicab operators is fairly widespread. It generally occurs under a standing arrangement or agreement between a certificated carrier and a taxicab operator as to the fares or fees to be charged by the taxicab operator for the transportation of referred passengers and the method in which payment is to be made.

At least two devices are used to pay for the services of noncertificated taxicab operators. One is the issuance of coupons. In this case, the certificated carrier issues a coupon to a customer and advises the customer that it is good for a trip via one of the taxicab operators. The customer exchanges the coupon for the designated transportation service after which the taxicab operator cashes in the coupon with the issuing carrier. The second device is the use of so-called "charge accounts" where trips will simply be charged to an account which a certificated carrier holds with the noncertificated taxicab operator. A settlement of accounts is reached periodically between the certificated carrier and the taxicab operator.

This use of non-PUC-certificated taxicab operators is apparently illegal. It causes uncertificated parties to engage in the business of passenger common carriage. It is illegal, particularly when the fares or fees charged by the non-PUC-certificated taxicab operators are other than the authorized taxicab meter rates. However, even when the authorized taxicab meter rates are charged, the use of non-PUC-certificated taxicab operators appears to be illegal because the Hawaii Motor Carrier Law defines a "taxicab" (which it exempts from the economic regulation of the PUC) as a vehicle which the *passenger* hires and completely controls. This would not be the case in the referral situations.<sup>1</sup>

The PUC and the PUD are aware that passengers are being diverted to non-PUC-certificated taxicab operators and that

such transactions are apparently illegal. Alleged transactions of this sort have been the source of several complaints filed with the public utilities agency. In addition, the reports on audits conducted by the PUD of 1-7-passenger carriers have repeatedly pointed out the problem. In one case involving the use of the coupon device, the PUC held a hearing and ordered the certificated carrier involved to cease and desist from engaging in the practice. On the whole, however, except for a few sporadic and half-hearted investigations, the regulators have done little to deal with the problem. Even in the one case where the PUC ordered the carrier to desist from engaging in the practice of utilizing the coupon device, no action has been taken to enforce the order. It is readily admitted by the PUD that the practice of utilizing non-PUC-certificated taxicab operators is presently continuing; but no plan or program to take any action in this matter is discernible.

**Other illegal operations as common carriers.** The problems of school bus operators engaging in tour bus operations and taxicab operators conducting 1-7-passenger carriage trade were presented above in the context of school bus operators and taxicab operators who do not hold any CPCN from the PUC authorizing them to engage in the common carriage trade. However, illegal operations in the common carriage trade are not confined to these non-PUC-certificated operators. They can and do exist even among those who are PUC-certificated.

Some owners of vehicles who hold CPCN's and engage in the PUC-regulated common carriage business also, at the same time, engage in business which is not subject to PUC

<sup>1</sup>The definition of a "taxicab" contained in the Hawaii Motor Carrier Law differs from the definition contained in the ordinance of the city and county of Honolulu governing taxicabs operating within the city and county. The ordinance allows transportation by taxicab to be arranged by one party in behalf of another. The Honolulu ordinance was used by the cited carrier in the one case described in the text of this report where the PUC held a hearing and ordered the carrier to cease the practice of utilizing non-PUC-certificated taxicabs. As between the ordinance and the statute, it would appear that the statute controls.

economic regulation. For instance, tour bus operators who hold CPCN's from the PUC and thus are regulated by the PUC in their tour bus operations may, at the same time, be engaged in school bus operations which are exempt from PUC economic regulation. Also, owners of small vehicles may hold CPCN's to engage in the PUC-regulated 1-7-passenger carrier trade and at the same time be registered with the counties as taxicab operators. Similarly, PUC-certificated common and contract carriers of goods may simultaneously be engaged in the non-PUC-regulated private or exempt carriage business.

Often the same vehicle is used in both the PUC-regulated and the non-PUC-regulated businesses. In these situations, it is extremely difficult to keep the PUC-regulated and the non-PUC-regulated businesses separate and distinct. There is thus always a temptation on the part of the operators to use the nonregulated portion of the business as a means of reducing the impact of regulation or of escaping some aspects of regulation altogether.

The problem is compounded and the opportunity for reducing or escaping economic regulation of the PUC is increased when an operator owns more than one vehicle and registers some but not all for the regulated business. The temptation in such instances is to use those vehicles not registered for the regulated business in the operations which are subject to PUC regulation and thus avoid the gross weight fee, seating capacity fee, or other requirements imposed on vehicles used in the PUC-regulated business.

For example, in one instance we noted that an operator in both the school bus and tour bus businesses registered certain new vehicles as school buses, but not as tour buses. A check with the department of accounting and general services disclosed that these vehicles were not being used to transport pupils to and from school. It is safe to assume that these new vehicles were not being left unused, and it can reasonably be conjectured that they were being used as tour

buses if they were not being used as school buses. If such were indeed the case, then a clear violation of the law was being perpetrated.

Here, again, however, the regulators have taken a very casual attitude. There are no rules, regulations, criteria, or guidelines to govern the operators, and there has been no activity to initiate any sort of investigation of possible violations of the law. Thus, the carriers themselves determine when they will be considered as operating as a common carrier and when as a private or exempt carrier. Then, they alone decide which vehicles are to be registered for the PUC-regulated business and which are not. No one in the agency seems to question the carriers' decisions on these matters, even though there appears to be very little logic to the decisions made by the carriers.

*Recommendation.* We recommend that the PUC and the PUD devise a system by which to ensure that noncertificated carriers do not operate as common carriers. The system should include a means of monitoring and policing the operations of the carriers. We also recommend that appropriate guidelines and requirements be established for segregating the regulated and nonregulated portions of the business of any carrier engaged in both types of business activity.

### **Motor Carrier Regulation and the State's Antitrust Law**

The Hawaii Motor Carrier Law exempts the establishment of carrier rates by agreement of the carriers from the State's antitrust law provided any such agreement is approved by the PUC. Beyond this specific exemption, the act is silent on the applicability of the State's antitrust statute. Since the Hawaii antitrust law unlike the federal antitrust law grants no blanket exemption to the areas under the jurisdiction of any state regulatory body, it would appear that except for the ratemaking aspect, the State's antitrust law is fully applicable to the motor carrier field.

However, as in the case of energy and communications utilities (see volume II of this report), there appears to be little, if any, concern on the part of the motor carrier regulators and the state attorney general (who is responsible for enforcing the State's antitrust law concerning the implication of the state antitrust law relative to the motor carrier industry. This is so despite the fact that as between the fields of energy and communications utilities and motor carriers, the applicability of the antitrust law to motor carriers seems much more obvious. The motor carrier industry is not a natural monopoly as are energy and communications utilities, and the Hawaii Motor Carrier Law does not contemplate the creation of monopolies in the motor carrier trade.

This apparent lack of concern about the antitrust law is evidenced by the following. *First*, the issuance or nonissuance of CPCN's and permits to operate as motor carriers is based principally on the presence or absence of industry opposition. Thus, for example, as noted in an earlier chapter, new CPCN's for 1-7-passenger carriage are issued freely because the operators of larger passenger carrying vehicles voice no opposition (indeed, encourage the issuance of such CPCN's), but new CPCN's for over-12-passenger carriage are rarely given since the existing tour bus operators consistently mount a solid wall of opposition to the entry of newcomers into the business. No serious attempt is made to assess on an impartial basis what the needs may be, how adequately these needs are being met, the nature and effect of intra-industry relationships within these fields, or how increasing or decreasing the number of allowed CPCN's might affect the various interested parties. Reliance simply on the attitude of the industry appears to run counter to the purpose of the antitrust law.

*Second*, the PUC and PUD routinely process and approve transfers in ownership of motor carriers without any real consideration of possible antitrust ramifications. Except in rare instances, no public hearings are held on applications for transfers, and approvals are

granted with a minimum of examination and attention. The rationale advanced for such routine handling of these cases is that the public convenience and necessity have already been established by virtue of the fact that a CPCN had been granted and thus the only thing required to be determined is the financial fitness of the proposed new owner. Such financial fitness can be determined on the basis of documentary and other written evidence submitted by the applicant, and, of course, presents no problem or obstacle when a large interest is simply expanding and acquiring greater control of the business. What is forgotten in such a rationale is that while public convenience and necessity and financial fitness are relevant under the Hawaii Motor Carrier Law, there are other considerations that need to be taken into account if the objective of the State's Antitrust Law is to be furthered.

*Third*, the department of attorney general, by its own admission, has never initiated any inquiries or investigations into the motor carrier field relative to the State's antitrust law and it has no present plans or intentions to delve into this field in terms of antitrust law enforcement. Although it advises the PUC and PUD, the department has never conferred or consulted with the PUC, the PUD, or the department of regulatory agencies specifically on the subject of antitrust, and it appears to be operating on the assumption that the regulation being exercised by the PUC and PUD is sufficient.

Considering the size and importance of the motor carrier industry to Hawaii and, as demonstrated earlier, the apparent trend toward greater horizontal and vertical integration and increased concentration of control taking place within the industry, it would seem that the impact of the State's antitrust law on motor carriers should be of concern to both the regulators and the department of attorney general.<sup>2</sup> At a minimum, it would seem that the

<sup>2</sup>Concerning the fact that the common carriers of passengers in Hawaii (i.e., the tour bus and limousine operators) have many entangling relationships with other interests in the tourist industry, it should be noted that the federal antitrust authorities recently have filed suits against various parties in the tourist industry alleging violations of federal antitrust statutes.

attorney general's office should try to develop with the PUC and PUD some general policy guidelines governing the possible application of the antitrust law to the motor carrier field and to set up a means for exchanging information on the subject.<sup>3</sup>

*Recommendation. We recommend that the department of the attorney general and the department of regulatory agencies include the motor carrier area in their joint development of a consistent, coherent, and coordinated approach to antitrust matters as recommended for the public utilities field in volume II of this report.*

### **Representation of Hawaii's Interests Before Federal Agencies**

In volume II of this report, we discussed in some detail the shortcomings that characterize the representation of Hawaii's interests before federal regulatory agencies. The discussion there was in the context of energy and communications utilities. However, the observations there noted apply with equal force to the motor carrier industry and to the transportation field as a whole. For present purposes, we need only to review the major findings of volume II with respect to representation.

As noted, the PUC and the PUD, the office of consumer protection, and the state attorney general each appears under applicable statutes to have a role in and responsibility for representing Hawaii's interests before federal boards and commissions. However, the bulk of Hawaii's representation responsibility has been carried by the state attorney general. At the time when the state attorney general represented the PUC, the PUC's noninvolvement in federal proceedings might have been understandable, for the attorney general then represented the PUC as well as the State as a whole. However, when the attorney general became by law the legal counsel for the PUD and not the PUC, it would appear that the PUC would have taken a more direct

interest in these federal proceedings. Such has not been the case.

Insofar as the department of attorney general is concerned, it has lacked a consistent and coordinated approach to its participation in federal proceedings. It has not, for instance, coordinated its efforts with the PUC. It had not, before this audit report was written, exerted central control over the cases dispersed among the deputy attorneys general. It has not established operating procedures for handling federal regulatory matters on a consistent basis. There has been no policy guidelines respecting the results to be achieved on an overall basis by Hawaii's intervention in federal cases, except for the generalized statement, "to safeguard the rights and interests of the people in general," and there is no system for identifying cases of interests to Hawaii. One of the problems the department of attorney general has had in the development of a consistent and coordinated approach to representing Hawaii's interests before federal agencies has been the fairly rapid turnover in the deputies assigned to federal cases.

The weakness of Hawaii's program in representation before federal agencies in the motor carrier area was evidenced when the State did not intervene or otherwise become involved in the federal proceedings which resulted in the U.S. Department of Transportation, Bureau of Motor Carrier Safety, in 1974, reasserting federal jurisdiction over the safety of motor carriers. During the bureau's investigation, the PUD supplied to the bureau whatever requested

<sup>3</sup> Although the discussion here is confined to motor carriers subject to the jurisdiction of the PUC, it might be noted that there also appears to be a trend toward a high degree of concentration of control in the taxicab business (which is subject to regulation by the counties). This is particularly true on the island of Oahu, where three companies account for approximately 70 percent of the licensed taxicabs on the island. Many of the vehicles owned or under the control of these companies also are registered as 1-7-passenger common carriers with the PUC. Some thought might be given to the question whether governmental actions in the taxicab business, such as requiring taxicabs to operate out of fixed, off-street taxicab stands and prohibiting cruising and granting exclusive taxicab franchise at the airport, might not be contributing to this concentration of control.

information it had available. State personnel also monitored the public hearings held in Honolulu. However, this was the extent of the State's participation in the proceedings. At no time did the State attempt to intervene in the case or take any official position on the question pending before the federal agency despite the significant impact the proposed action would have on the functions, authority, and responsibilities of the PUC and the PUD.

At the very least it would seem that the State would have wanted to know what actual and practical effects the proposed change would have upon motor carrier safety regulation in Hawaii and would have wanted to satisfy itself that the change would truly improve the situation and enhance motor carrier safety within the islands. Moreover, whether it thought federal regulation should be brought into Hawaii or kept out, the State should have been willing and prepared to take a position and support that position to the fullest extent possible. Instead, the affected state officials simply sat back as somewhat uninterested observers and let the Teamsters Union and the Hawaii Trucking Association argue the pros and cons of the question before the Bureau of Motor Carrier Safety and have passively allowed the federal government's final decision in the matter to take effect. They are only now making some

attempt to find out just exactly how the federal government's action will affect Hawaii and the State's safety regulation of motor carriers.

*Recommendations. We recommend that:*

1. *The department of the attorney general and the PUC jointly develop a program for the representation of Hawaii's interests before federal regulatory bodies on matters concerning the motor carrier field. The program should be developed in the same manner that we recommended that a program be developed for the public utilities area (see volume II). In brief, we recommend that the two agencies, as a part of such a comprehensive program, develop guidelines to assist in determining who will represent Hawaii in what cases and in what context, and develop sources of information that will advise them on a timely basis of proceedings coming before federal regulatory bodies in which the State may have an interest.*

2. *The department of the attorney general develop and implement operating procedures for central assignment of federal regulatory cases and establish staffing patterns that will preserve within the department expertise in federal regulatory matters.*

## Chapter 7

### ECONOMIC REGULATION OF AIR AND WATER CARRIERS

Unlike the motor carriers, the air and water carriers are currently subject to very little economic regulation by the State. In the case of air carriers, the federal government has almost full regulatory powers over the two interisland commercial carriers. Air taxis and helicopters and all water carriers that provide services between the islands may be regulated by the State, but, in fact, the State has imposed regulation on them only minimally, if at all.

This chapter, thus, is necessarily brief. It does, however, point out some of the problem areas regarding air and water carrier regulation.

#### Summary of Findings

1. In the one area in air transportation where the State has jurisdiction to impose economic regulation—air taxis or commuter services—the State has not exerted much effort. However, there is a question as to whether or not some jurisdiction should be exercised and, if so, in what form.

2. Unlike the air component of transportation, in the water transportation field, the State has full jurisdiction to impose economic regulation on interisland water carriers. In anticipation of such regulation, the state legislature has enacted the Hawaii Water Carrier Act. The act, however, has been enacted without any state policy having been established in the field of water transportation. It is not at

all clear whether economic regulation of water carriers is needed and, if so, whether such regulation should be in the form prescribed by the Water Carrier Act.

3. In neither the air nor water transportation areas has the State developed any consistent and coherent program for the representation of Hawaii's interests before federal regulatory bodies.

#### Regulating Air Carriers

Being a chain of islands separated by quite wide and rough channels, the State of Hawaii is highly and peculiarly dependent upon air transportation as a mode of travel within the State. This is especially true with regard to passenger transportation. At the present time virtually all interisland passenger transportation is by air. With regard to cargo, the bulk of it is still moved into, out of, and within the State by water; however, the air freight business in Hawaii is significant and is increasing in importance. Thus, air transportation is a matter of keen concern to the State. One evidence of the interest the State has in air transportation is the great amount of resources devoted to the development, construction, and operation of a statewide system of major airport facilities.

In addition to the important role which the State plays with regard to airport physical facilities, the State probably would have been

deeply involved in the regulation of air transportation services affecting Hawaii but for preemption of this regulatory area by the federal government. As it is, direct involvement by the State of Hawaii in the regulation of air carriers is quite minimal. Particularly with respect to the regularly scheduled commercial airlines, its authority is restricted to review and approval of certain financing matters. These financing matters include such things as the issuance of stocks, bonds, notes, and other evidences of indebtedness and the sale of assets. But, being shorn of the right to regulate the other main operational aspects of the airlines' activities, the PUC does not appear to give these matters very much attention. Thus, the interisland airlines' requests for approval of various financing proposals are handled in a fairly routine manner with approvals being granted with little question, exception, or delay.

Despite this almost total regulation of air carriers by the CAB, there is at least one area where the state PUC could be much more aggressive in protecting the interests of the State, and there is another which is a potential area of regulation.

**Representation before CAB.** The CAB's exercise of control over interisland air and overseas air carriers does not preclude the PUC from participating in CAB proceedings affecting Hawaii with regard to these air carriers. Indeed, under HRS, section 269-15, the PUC is statutorily authorized to do so. Vigorous representation of the State's position before the CAB could serve to strengthen the PUC's role in the area of air transportation regulation by enabling it to influence indirectly what it is still not able to do directly. However, neither the PUC nor the PUD has had any extensive involvement in any of the CAB cases affecting airlines servicing Hawaii. Whenever the State has appeared as a party in a proceeding before the CAB, it has been by and through the department of the attorney general. But, as in the case of energy and communications utilities and the motor carriers, the attorney general's department has lacked a consistent and coherent

system to represent Hawaii adequately in these CAB proceedings.

**Recommendation.** *We reiterate our recommendations made in the utilities and motor carrier areas—that the department of the attorney general and the PUC jointly formulate a program of representing Hawaii's interests before federal regulatory bodies in the area of air transportation, and that the department of the attorney general organize itself in a manner which will permit it to represent Hawaii as effectively as possible.*

**Air taxis and commuter carriers.** The one area of intrastate air transportation which is not now being regulated in any way by the CAB and which therefore may be subject to the jurisdiction of the PUC is the light plane and helicopter services provided by the so-called air taxis or commuter carriers. For flights between points on the same island, the CAB does not appear to have any jurisdiction. For interisland flights by these carriers, the CAB has chosen to grant them an exemption from its economic regulation.<sup>1</sup> Up to the time of the writing of this report, however, the state regulatory authorities have not taken any action except to open a PUC docket on the matter.

The docket (No. 2274) was opened on April 19, 1973. It calls for the adoption of an order to investigate noncertificated air carriers in Hawaii (i.e., all those not now being regulated by the CAB). The docket is still open. No actual order of investigation has as yet been drafted and no real staff work has been undertaken by the PUD. Legal research into the matter is reported to have been initiated, but has now been put aside due to the transfer of the deputy attorneys general serving the PUD. As nearly as can be determined, no other plans have been made and no other action appears imminent.

<sup>1</sup>The FAA, however, exercises safety jurisdiction over these carriers and their aircraft.

Whether air taxis or commuter services should be made subject to the economic regulation of the State and, if so, what form such regulations should take cannot be answered without an economic study of the industry. Much of what has been said about the economic regulation of motor carriers appears applicable here. At least, it would seem, any economic regulation of air taxis should be based on sound economic rationale and the regulatory form, if any, should be aimed at removing such evil as may exist without hindering the working of the competitive force that appears now to be present in the air taxi industry.

*Recommendation. We recommend that the PUC, before undertaking any economic regulation of air taxis or commuter service, conduct an economic study of the industry to determine the nature of the industry, including the relative competitiveness or lack of the same that exists in the industry, and the specific problems in this field of transportation. Any form of economic regulation should be aimed at alleviating identified problems and fostering efficiency in the industry. It may well be that the form of regulation, if any, may require statutory change. In such an event, the PUC should formulate suggested legislation for submission to the legislature.*

### **Regulating Water Carriers**

The island nature of the State of Hawaii makes water transportation vitally important to the State, especially with regard to cargo transportation to and from Hawaii and between points on different islands within the State. Air transportation, the only alternative to water transportation, is not economically feasible for a very large bulk of the freight movements upon which Hawaii's commerce and livelihood depends.

As in the case of air transportation, the State is deeply involved in providing physical facilities for water transportation. However, to date, there has not been very much activity in

the economic regulation of water carriers. This is so despite the fact that the Federal Maritime Commission (FMC) has left to the State the power to impose economic regulation on interisland water transportation systems. Discussed below are the degree of involvement of Hawaii in regulating water transportation between the islands and what appears to be evolving in this regulatory area.

**Present activities in water carrier regulation.** Since statehood and up until quite recently, the only existing water carrier has been Young Brothers, Ltd., the carrier of goods between the islands. The main business of the PUC and the PUD in regulating Young Brothers, Ltd., has consisted of passing on the requests of this carrier for rate adjustments. The rate proceedings concerning Young Brothers, Ltd., have been conducted under the public utilities statute and have followed the pattern and procedures used in the case of the electric, gas, and telephone utilities.<sup>2</sup>

In 1970, the PUC attempted to formalize some rules concerning water carriers. It opened Docket No. 1869. That docket was aimed at adopting rules and regulations governing accounting procedures for water carriers. Two proposed general orders were developed as a result of this docket proceeding. However, neither was ever formalized and filed with the office of the lieutenant governor as required by law.

In 1974, the legislature enacted the Hawaii Water Carrier Act. This act appears to have rendered moot the efforts that the PUC expended in developing the two sets of general orders in Docket No. 1869. Since the enactment of the Water Carrier Act, there has been no real movement toward implementing the act.

<sup>2</sup>As in the case of the public utilities, rate proceedings for Young Brothers, Ltd., have consumed an inordinate amount of time. For example, a rate case which was under consideration when this audit was being conducted (i.e., Docket No. 1975) was opened in May 1971 but was not concluded until June 1973, a period of more than two years.

**Recent developments in the water carrier industry.** In recent times, both the private and public sectors have expressed interest in the development of water transportation systems. In the private sector, two firms, Hawaiian Inter-Island Ferry System, Ltd., and Kentron Hawaii, Ltd., have applied for certificates of public convenience and necessity to operate between the islands. In both cases, in the absence of any real activity to implement the Hawaii Water Carrier Act and in the absence of any criteria, guidelines, rules, and regulations, CPCN's have been issued as a matter of course. Indeed, the prevailing attitude of the regulators at present is to approve the application of any group willing to make an investment in the development of a new interisland marine transportation system, even though the applications may be duplicative, competing, conflicting, or overlapping.

Hawaiian Inter-Island Ferry System, Ltd., is currently seeking financing for its vessels, and it has received from the PUC several extensions of time to get its operations underway. However, Kentron Hawaii, Ltd., has placed three of its hydrofoils in operation to provide passenger service between the various major islands. Hawaiian Inter-Island Ferry System, Ltd., intends to transport both passengers and cargo.

In the public sector, the legislature in 1963 (Act 186) authorized the department of transportation to establish a ferry system financed by revenue bonds. Further, the state department of transportation has proposed the development of a tri-modal transit system (TMTS) for Oahu. This system is intended to create a supplementary high-speed water transit system between Hawaii Kai, Hickam, and Waipahu and the downtown business area. The system is still in the conceptual stage. The concept envisions the use of 14 hydrofoil buses, but is silent as to whether it would be a government- or privately-owned and -operated system.

**The need for economic regulation of water carriers.** The Hawaii Water Carrier Act was

passed at the time when interest in the development of interisland water transportation systems was developing in the private and public sectors. It is not at all clear at this time, however, whether water carriers should be subject to the economic regulation of the State. There is not now any policy as to whether such interisland transport systems should be state-owned or privately-owned. Nor is there any clearcut policy as to whether such systems, or any part of the systems, if privately-owned, should be monopolistic or competitive.

One message that appears to come through repeatedly in the studies made of an interisland ferry system is that the system would require governmental subsidy to keep it in operation. If this be the case, then it appears that an interisland ferry system may eventually be a state-operated system or a system or systems privately-owned but monopolistic in some form. In the event of the latter, some form of economic regulation may well be in order. What that form ought to be, of course, is not clear at this time, inasmuch as the configuration of the desired system has not yet been established. Neither the PUC nor the state department of transportation (which was given the responsibility to establish an interisland ferry system by Act 186, SLH 1963) has yet come to grips with this problem.

**The Hawaii Water Carrier Act of 1974.** In a sense, it might be said that the enactment of the Hawaii Water Carrier Act was an act of "placing the cart before the horse." It establishes a form of economic regulation without even a bare outline of what shape the State's water carrier system is to take. For one thing, it assumes a situation similar to the motor carrier industry—that is, that there would be a number of competing water carriers—for the act is patterned after the Motor Carrier Law. It further assumes a situation similar to that which exists on the mainland—where competition in the water carrier business exists and water carriage is in competition with both rail and motor carriages—for the act is also patterned after the

federal Water Carrier Act. The validity of the assumptions are questionable, particularly in light of the conclusion reached in numerous studies that any interisland water carrier system would not be self-supporting and in light of the fact that, in Hawaii, water carriage is not in competition with any other mode of transportation, except air in some respects.

If we assume that the situation envisioned for the water carrier industry will be the same as that which prevails in the motor carrier industry or on the mainland, that it will be competitive, then it appears that the same problems that exist in the economic regulation of the motor carriers under the Hawaii Motor Carrier Law are likely to surface in the regulation of the water carriers under the Hawaii Water Carrier Act, for both acts are substantially the same in form and content. The Water Carrier Act raises the same question of the efficacy of the form of the contemplated regulation as was raised in an earlier chapter on the form of regulation prescribed by the Motor Carrier Law for the motor carrier industry. For example, the Water Carrier Act allows the same sort of collective monopoly to exist without the usual regulatory safeguards against the use of monopolistic power. Also, the following should be noted:

The Water Carrier Act removes the issuance of securities and other evidences of indebtedness from the regulatory control of the PUC. Moreover, it specifically exempts from direct regulatory control the leasing, purchase, and disposition of vessels, vessel equipment, and vessel towing equipment—matters that have a direct bearing on ratemaking and other aspects of economic regulation.

The Act allows an industry-requested rate increase to become effective automatically after 45 days of filing, unless the PUC acts affirmatively to suspend the effective date of the increase, not exceeding six months. In the regulation of utilities, rate increases are not allowed automatically to go into effect; to become

effective, they must be affirmatively approved by the PUC.<sup>3</sup>

If, on the other hand, some form of monopoly (e.g., by runs or commodities carried) is expected to exist in the water carrier industry, then clearly the present act is insufficient for the reason already cited—the act's lack of restraint on the exercise of monopolistic powers.

What all this means is that no regulatory form can really be fashioned without first establishing a basic policy and developing an outline of the system, if any, desired for Hawaii.

*Recommendations. We recommend that:*

1. *The PUC in conjunction with the state department of transportation and the department of planning and economic development review the entire water carrier area and formulate suggested state policy in this area (including in the consideration of such a policy the issues of state versus private ownership and competitive or noncompetitive water transportation systems) and develop a program for the implementation of such a policy. Such a policy and program should be submitted to the legislature for review.*

2. *The legislature review any such policy and program as may be developed as a result of our recommendation above and amend the Hawaii Water Carrier Act as necessary to effectuate the policy and program as the legislature may ultimately adopt.*

<sup>3</sup>In January 1975, there were newspaper accounts reciting the fact that Young Brothers, Ltd. (which, before the Water Carrier Act had to have its rate requests processed under chapter 269), had just put into effect a rate increase under the provision of the new law, because the PUC had failed to act on its request for more than six months. Heavy rate case load of the PUC has been given as the reason for its failure to take any formal action on the request. Although, as the PUC staff represented, economic hearings might still be held on the matter and a reduction in the rate could be ordered by the PUC after such hearings, it is doubtful that any such reduction could be made to apply retroactively. It appears that, given the present, time-consuming PUC ratemaking powers (see Volume II of this report), the six-month deadline for action by the PUC would inevitably result in automatic fare increases whenever the carrier(s) desires to institute one.

**Representation before the FMC.** That portion of water transportation now regulated by the FMC (water carrier services between Hawaii and the mainland) is of vital interest to Hawaii. A large portion of the products entering and leaving Hawaii is transported by ships. The freight rates and quality of service (i.e., the availability, frequency, regularity, and flexibility of shipping) of the mainland-Hawaii carriers, especially the West Coast-Hawaii carriers, have a direct and pervasive impact upon Hawaii's economy and general well-being. Thus, the FMC's regulatory actions and decisions are of concern to the people of this State.

As in the case of air transportation, the PUC is not precluded from participating in federal regulatory activities relating to water carriers serving Hawaii to the extent this is allowed by the federal government. However, as in the case of air transportation, although the State has been a party to numerous proceedings before the FMC, the State's representation and participation has been by and through the department of the attorney general, and the PUC and PUD have played virtually no role in such representation. Some staff assistance by the PUD has been provided to the attorney general's

office in some of the FMC proceedings, but these have been on an individual basis rather than as a joint interdepartmental effort.<sup>4</sup> Then, with respect to the department of the attorney general, the same problems that exist in the utilities, motor carrier, and air carrier fields, that of establishing a coordinated and systematic approach to representing Hawaii's interests, are also present in the water carrier area.

*Recommendation.* We reiterate our recommendations made in the utilities, motor carrier, and air carrier areas—that the department of the attorney general and the PUC jointly formulate a program of representing Hawaii's interests before federal regulatory bodies in the area of water transportation, and that the department of the attorney general organize itself in a manner which will permit it to represent Hawaii as effectively as possible before such bodies.

<sup>4</sup>The wall separating the PUC and PUD from federal regulatory matters has become so firmly fixed that a staff member of the PUD sought a ruling from the state ethics commission which would allow him to act as an independent consultant to the attorney general's office in federal cases in the transportation field. The ethics commission, however, recognizing that the two areas of regulatory activity were potentially, if not actually, closely interrelated ruled against his request.



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**PART III**

**SAFETY REGULATION OF MOTOR CARRIERS**

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## Chapter 8

### INTRODUCTION

Apart from economic regulation and consumer protection, public safety is the only area of major program activity which is specifically assigned by law to the public utilities agency. Within the field of transportation services, the agency's public safety responsibilities lie almost entirely in the area of regulating motor carrier safety. The Hawaii Motor Carrier Law (HRS, chapter 271) specifically designates the PUC as the agency primarily responsible for regulating motor carrier safety in Hawaii. While the PUC also has an implicit responsibility relating to air carrier and water carrier safety in Hawaii, the nature and scope of this responsibility are greatly diminished by the preemption by federal agencies (i.e., the FAA and the Coast Guard) of major portions of the direct functional and operational responsibility for air and water (ocean) safety. Thus, this part is concerned only with safety in the motor carrier field. It considers the organizational issues in regulating motor carrier safety and examines the performance of the public utilities agency in the various aspects of this safety regulation, namely, (1) motor carrier driver licensing, physical fitness, and performance; (2) motor carrier vehicle safety inspections; (3) motor carrier vehicle size, weight, use, and modification; and (4) motor carrier accident reporting and investigation.

#### Summary of Findings

In summary our findings are as follows:

1. The public utilities agency's management of the motor carrier safety program is a shambles. The commission appears to have neither the will nor the wherewithal to carry out this program successfully. Under the circumstances, it appears that responsibility for the motor carrier safety program should be assumed by the office of the highway safety coordinator and the county police departments.

2. In addition to organizational deficiencies, the motor carrier vehicle safety program is suffering from the lack of an adequate recordkeeping and information system. The records of the public utilities agency are outdated, obsolete, incomplete, and generally unusable for any purpose.

3. The public utilities agency is doing little that is meaningful in the area of driver licensing, physical fitness, and training. The rules and standards that exist in this area are vague and confusing, and even these limited standards are not being enforced. As a result, motor carrier vehicles are being operated on the public highways by drivers who are not physically fit and qualified to operate such vehicles.

4. The public utilities agency is not now registering all motor carrier vehicles that by law it is required to register. As a consequence, the agency has no clear ideas as to the number of motor carrier vehicles that are on the public highways and is unable to administer the vehicle safety inspections and other vehicle safety

programs that the registration system is intended to support.

5. The public utilities agency is handling the motor carrier vehicle safety inspection program in a manner as to cast doubt that all motor carrier vehicles are being inspected as required, or that they are receiving the kind of inspection required to ensure safety on the highways. The PUC rules on vehicle safety inspections are not specific enough and the vehicle inspection stations and vehicle inspections are not being supervised as they should.

6. The State's laws on vehicle size and weight limitations are not being enforced, with the result that many motor carrier vehicles are currently carrying illegal loads and weights on the public highways. In addition, although there are PUC rules on the matter of transporting hazardous materials, these rules also are not being enforced.

7. Motor carrier vehicles are being modified, constructed, and reconstructed without the approval of the PUC, and without the review of proposed modifications, construction, and reconstruction required by the PUC rules. Further, there appears to be no interest whatsoever in ensuring that all motor carrier vehicles are properly and safely equipped.

8. Although it would seem that motor carrier vehicle accident data would be invaluable in the administration of the motor carrier safety program, the public utilities agency does not now have any comprehensive system for reporting, analyzing, and investigating accidents. Further the little accident investigation that does occur does not appear to result in any corrective measures to prevent the recurrence of such accidents, or in any program to improve the safety of motor carrier vehicles or their operations.

## Chapter 9

# BACKGROUND ON MOTOR CARRIER SAFETY AND HIGHWAY TRAFFIC SAFETY IN HAWAII

Most transportation safety regulations are administered by agencies of the federal government. The Coast Guard, for instance, regulates the safety of both interisland and Hawaii-mainland shipping, and the Federal Aviation Administration supervises the safety of air carriers. Ground transportation, involving motor vehicles for the most part, is a major exception to this rule, as state and local governments join federal agencies in providing safety regulation. Within this federal-state-local system of motor vehicles and highway safety regulation, the particular responsibility of the public utilities agency is the safety of motor carriers operating within the State of Hawaii.

This chapter contains background information on the need for highway traffic safety regulation, the organizational arrangements for safety regulation, and the responsibilities of various agencies involved in regulation.

### Highway Traffic Accidents in the United States and Hawaii

**Generally.** Motor vehicle accidents take a staggering toll in death, injury, and property loss across the country. In 1971 the national death toll from motor vehicle accidents stood at 54,700, about half the total of all accidental deaths, and economic loss attributed to motor

vehicle accidents was estimated at \$15.8 billion. Traffic accidents are the fourth leading cause of death in the population as a whole, the leading cause of death in age groups 1 to 34 years, and the major cause of accidental death among persons over the age of 15.

Statistics for the State of Hawaii make it clear that the situation in the State is not less tragic than in the nation. As shown in table 9.1, annually in Hawaii scores of persons are killed and thousands injured in traffic accidents, and property losses attributable to traffic accidents run into millions of dollars. Not included in the table are the economic costs of insurance, medical care, and wage loss, and public service costs (such as ambulance, police, etc.) that are incurred as a result of traffic accidents. When these are added, the costs of accidents are substantial.

In terms of deaths from traffic accidents, Hawaii does only moderately well in keeping the count down among states of similar geographic size, and the State's death rate experience is about equal to that of the nation. When Honolulu (where the bulk of the State's population resides) is considered alone, the death rate experience worsens. As table 9.2 shows, Honolulu has one of the worst death records among 16 cities of 500,000 to 750,000 population rated by the National Safety Council. This ranking suggests that traffic

hazards within the urbanized parts of Oahu are much greater than in other parts of the State.

The contribution of motor carriers to Hawaii's traffic accident record. Trucks and

Table 9.1

Summary of Traffic Accident Data for Hawaii  
Number of Major Accidents, Fatalities, and  
Injured, and Estimated Property Damage for 1972

Jurisdiction	No. of Accidents	No. of Fatalities	No. Injured	Estimated Property Damage
Oahu . . . . .	14,758	92	8,611	\$ 7,348,115
Hawaii . . . . .	1,716	27	1,262	1,410,186
Maui . . . . .	1,100	18	836	791,359
Kauai . . . . .	685	9	432	570,114
State total . . .	18,259	146	11,141	\$10,119,774

Table 9.2

Motor Vehicle Traffic Deaths and Death Rates  
For 16 Cities in the U.S. with Populations  
Between 500,000 and 750,000 for 1971  
(Ranked According to Population Death Rates)

Cities	No. of Traffic Deaths	Pop. Death Rate*	Registration Death Rate**
Indianapolis, Ind. . . . .	53	7.1	1.4
Pittsburg, Pa. . . . .	39	7.5	1.7
San Diego, Calif. . . . .	61	8.8	2.0
Milwaukee, Wis. . . . .	73	10.2	2.3
San Francisco, Calif. . . . .	77	10.8	2.3
Columbus, Ohio . . . . .	62	11.5	2.4
Denver Colo. . . . .	61	11.9	1.8
Phoenix, Ariz. . . . .	75	12.9	2.3
Seattle, Wash. . . . .	69	13.0	1.9
All 16 cities . . . . .	1,280	13.2	1.9
San Antonio, Tex. . . . .	92	14.1	3.0
St. Louis, Mo. . . . .	99	15.9	3.4
Memphis, Tenn. . . . .	103	16.5	3.9
New Orleans, La. . . . .	98	16.5	3.7
Kansas City, Mo. . . . .	89	17.5	3.9
Honolulu, Haw. . . . .	115	18.3	3.9
Jacksonville, Fla. . . . .	114	21.6	4.9

\*Motor vehicle traffic deaths per 100,000 population.

\*\*Motor vehicle traffic deaths per 10,000 motor vehicles.

Source: National Safety Council, *Accident Facts*, 1971 edition.

buses of all types comprise only about 11 percent of all motor vehicles on the road in Hawaii. However, their potential for getting into accidents is disproportionately large. This is because they tend to be on the highways more often than other vehicles. Further, because of their size and weight and the nature of the cargoes (explosives, rocks, etc.) or the numbers of passengers they carry, the losses that result from accidents in which they are involved are prone to be more serious than those that result from other traffic accidents.

It is difficult to establish with certainty the frequency with which motor carriers are involved in traffic accidents in Hawaii or the seriousness of the losses resulting from accidents involving motor carriers. This is because the PUC and PUD do not maintain reliable motor carrier accident data. The data that they do gather are in the first instance incomplete.

The information kept by them is based on accident reports submitted to the PUC, but not all accidents are reported and not all accident reports contain all of the information required to be submitted. Thus, the data available to the PUC and PUD understate the number, severity, and consequences of motor carrier accidents. Further, many of the statistics in the hands of the PUC and PUD are not summarized and are kept in a condition from which it is impossible to derive meaningful conclusions.

However, what little data we were able to extract from the records of the PUC and PUD suggest that motor carrier involvement in traffic accidents is serious as shown in table 9.3. This suggestion is bolstered by the data kept by the State's highway safety coordinator.

The data at the office of the highway safety coordinator are not kept in the same manner as the data of the PUC and PUD and they vary. Nevertheless, they appear to confirm that motor carrier involvement in accidents is disproportionate to the number of motor carriers. Table 9.4 displays a vehicle accident involvement index for the various classes of

vehicles for the years 1971 and 1972 as reported by the highway safety coordinator. It is based on the statistics compiled by the highways division of the state department of transportation. The index for each class of vehicles is derived as follows.

*First*, the number of registered vehicles in the class is divided by the total number of all classes of vehicles registered. *Second*, the number of vehicles in the class involved in accidents is divided by the total number of vehicles in all classes involved in accidents. *Finally*, the percentage secured in the first calculation is divided by the percentage secured in the second calculation. An index of 1.00 for any class of vehicles indicates an accident involvement rate for that class of vehicles which is in direct proportion to the number of vehicles in the class registered relative to the total vehicle population. Thus, if a class of vehicles registered is .75 of all vehicles registered, an index of 1.00 means that that class of vehicles was involved in .75 of all vehicles involved in accidents. An index of more or less than 1.00 indicates more or less proportional involvement in accidents.

Table 9.4 shows that in 1971 and 1972 passenger cars and taxicabs together were involved proportionately in slightly more accidents than the number that that class of vehicles bears to the total number of all registered vehicles. In the case of buses, they were involved proportionately in more than twice the number of accidents than their number bears to the total number of all registered vehicles (2.33 times as many in 1971 and 4.50 times as many in 1972). Trucks appear to have been involved proportionately in less accidents than their number bears to the total number of all registered vehicles.

### **Need for Motor Carrier Safety Regulation**

The facts that highway traffic safety in Hawaii is no better than that in the nation as a whole, and that the traffic death rate for Honolulu is worse than that for all but one of

sixteen cities of comparable population, indicate an urgent need for better traffic safety programs. The toll taken in death, injury, disability, economic loss, and property damage by vehicular accidents is so high that it would be irresponsible not to attempt to reduce it.

As stated, it is not possible at the present time to establish with certainty that the frequency with which motor carrier vehicles are involved in accidents is disproportional to the number of such vehicles being operated on the highways. However, because of the potential for their getting into accidents and the potential for the incurrence of serious losses when they do, it

is of utmost importance that a good deal of attention be paid to motor carriers in any traffic safety program.

### Statutes Governing the Regulation of Highway Traffic Safety

There is a maze of statutes, both federal and state, governing highway traffic safety programs. These statutes include (1) those that are general in nature, covering all aspects of traffic safety and applicable to all manner of vehicles, including motor carriers, and (2) those that are specifically related to safety in the

**Table 9.3**  
**Summary of Motor Carrier Accidents for 1972**  
**By General Categories of Carriers, Showing the Number of Carriers Involved in Accidents**  
**The Number of Accidents, Fatalities, and Injured, and the Estimated Amount of Property Damage for Each Category**  
**Based upon Accidents Brought to the Attention of the Public Utilities Division**

Type of Carrier	No. of Carriers Involved in Accidents	No. of Accidents	No. Injured	No. of Fatalities	Estimated Property Damage
Taxicabs . . . . .	16	28	35	—	\$ 22,025
Ambulances . . . . .	1	2	4	—	600
Buses . . . . .	20	34	68	2	23,262
County and State governments* . . . .	2	6	8	3	5,652
Refuse collection** . . . . .	4	6	1	2	3,570
Utilities† . . . . .	4	8	11	1	19,333
Concrete products industry . . . . .	2	5	6	—	33,685
Moving and storage . . . . .	3	6	1	—	19,630
Construction industry . . . . .	10	12	6	3	61,500
Pineapple and sugar industries . . . . .	11	29	32	3	44,851
Pineapple and sugar industry related ††	3	7	9	1	65,075
Other . . . . .	24	25	14	3	30,820
<b>Total . . . . .</b>	<b>100</b>	<b>168</b>	<b>195</b>	<b>18</b>	<b>\$330,003</b>

\*Excludes ambulances and refuse trucks reported separately.

\*\*Public and private.

†Electric, telephone, and gas companies.

††Carriers which do major hauling for the sugar and pineapple industries.

motor carrier field. A brief description of these statutes follows.

**Federal statutes.** Two principal federal statutes are relevant here. They are the federal Highway Safety Act and the federal Motor Carrier Act.

1. **Highway Safety Act.** Since 1966, the federal government has asserted leadership in the regulation of highway traffic safety. In that year Congress enacted the Highway Safety Act, which was designed to develop a coordinated national program of federal highway safety standards and to provide financial assistance to state and local governments for highway safety. The act requires that every state have a highway safety program which is approved by the federal secretary of transportation; failure to comply with this requirement can preclude a state from qualifying for federal road construction funds

and lead to the withholding of already authorized funds.

The act establishes requirements for state highway safety programs, including: a comprehensive statewide plan for highway safety which meets federal safety standards; gubernatorial responsibility for administration of the safety program; participation in the program by the political subdivisions of a state; comprehensive driver training; and standards covering such things as effective accident reporting, driver education, motor vehicle inspection, highway design improvement, highway maintenance, traffic control and detection of accident-prone locations. Other matters included in the act are an expansion of the federal government's highway safety research activities, the creation of a national highway safety advisory committee, the establishment of a national highway safety

Table 9.4  
**Vehicle Accident Involvement Index**  
 As Reported by the Highway Safety Coordinator, State of Hawaii  
 For the Years 1971 and 1972 with Vehicle Registration and Accident Data for 1972\*

Type of Motor Vehicle	Vehicles Registered	Vehicles in Accidents	1972 Index	1971 Index**
Passenger cars and taxicabs . . . . .	388,726	29,948	1.03	1.05
Trucks over and under 10,000 g.v.w. . . . .	48,541	2,779	.77	.68
Buses . . . . .	1,112	296	4.50	2.33
Motorcycles, motorscooters, and motor bicycles . . . . .	10,490	446	.57	.56
Other motor vehicles . . . . .	1,614	55	.50	.75
Total . . . . .	<u>450,483</u>	<u>33,524</u>		

$$\text{Vehicle involvement index} = \frac{\text{Percent involved in accidents}}{\text{Percent registered}}$$

1972. \*Highways Division, Department of Transportation, State of Hawaii, *Major Traffic Accidents, State of Hawaii,*

1971. \*\*Highways Division, Department of Transportation, State of Hawaii, *Major Traffic Accidents, State of Hawaii,*

agency to administer the act, and a requirement of comprehensive annual reporting on administration of the law.

In 1970, Congress amended the 1966 legislation. The 1970 act establishes a national highway safety bureau (the National Highway Traffic Safety Administration) as a separate entity reporting directly to the U.S. secretary of transportation; enunciates a policy that existing standards should be realized to the maximum degree before new standards are issued; emphasizes demonstration projects for drinking drivers and motor vehicle and traffic law enforcement; and requires governors to exercise their responsibility for state highway safety programs through "a state highway safety agency which shall have adequate powers and be suitably equipped and organized" to administer highway traffic safety programs to the satisfaction of the U.S. secretary of transportation.

In commenting upon the last change listed above, the Committee on Public Works of the U.S. House of Representatives said in House Report No. 91-1554:

"The committee believes that it is essential to administrative workability and success of the program that there be one central State agency through which the State's program is carried out. The present diffusion of responsibility through a wide variety of officials and State agencies found in most States hinders effective program implementation and control. However, it is not the committee's intention merely that a new level of bureaucracy be created. Under this section a Governor would be permitted to carry out his State's program through an existing State agency provided the Secretary of Transportation is satisfied that such agency has adequate powers and is suitably equipped and organized to carry out the program."

Pursuant to the 1966 act, the National Highway Traffic Safety Administration promulgated 18 highway safety program standards which serve as the framework for the development of state highway safety programs and as the basis for federal approval of such programs. These 18 standards cover the following functional areas of highway traffic safety:

- . Periodic motor vehicle inspection
- . Motor vehicle registration
- . Motorcycle safety
- . Driver education
- . Driver licensing
- . Codes and laws
- . Traffic courts
- . Alcohol in relation to highway safety
- . Identification and surveillance of accident locations
- . Traffic records
- . Emergency medical services
- . Highway design, construction and maintenance
- . Traffic engineering services
- . Pedestrian safety
- . Police traffic services
- . Debris hazard control and cleanup
- . Pupil transportation safety
- . Traffic accident investigation

2. *Federal Motor Carrier Act.* The federal Motor Carrier Act as originally enacted placed in the Interstate Commerce Commission the responsibility to regulate the safety aspects of motor carriers engaged in interstate commerce. With the creation of the U.S. Department of Transportation in 1966, this responsibility was transferred to the Bureau of Motor Carrier Safety of the U.S. Department of Transportation. The Bureau of Motor Carrier Safety has promulgated certain rules and regulations concerning motor carrier safety. These rules and regulations are applicable to motor carriers operating within Hawaii. The impact of these rules and regulations on Hawaii is discussed in a subsequent section.

**Hawaii statutes.** Following the federal precedence and requirements, Hawaii has enacted legislation which governs highway safety in general and motor carrier safety in particular. These statutes are as follows.

1. *Hawaii Highway Safety Act.* To comply with the federal Highway Safety Act of 1966, the Hawaii legislature in 1967 enacted Act 214, which now appears as chapter 286, HRS. This comprehensive law addresses: vehicle inspection; vehicle registration; safety equipment; driver training; driver licensing; alcohol and traffic safety; and traffic records. A few sections of chapter 286 deserve special mention.

Section 286-3 requires the governor to promote traffic safety and coordinate state and county traffic safety activities. The section also allows the governor to delegate these duties and functions to the state highway safety coordinator, whose position is established in section 286-4 and who is an appointee of the governor. Sections 286-5 and 286-6 create state and county highway safety councils to advise the governor and mayors on highway safety matters. Section 286-7 allows the governor to delegate highway safety programs to the counties. Section 286-8 gives the highway safety coordinator authority to adopt rules and regulations dealing with identification and

surveillance of accident locations; highway design, construction and maintenance; and traffic control devices.

Sections 286-21 to 286-30 (part II of chapter 286) generally vest in the respective counties authority and responsibility for carrying out the safety inspection of motor vehicles but gives to the state highway safety coordinator the authority to adopt necessary rules and regulations governing the vehicle safety inspection program. However, exempted from county inspection are those vehicles which are subject to the rules and regulations of the public utilities commission, provided that the inspection standards included in the commission's rules and regulations are at least as strict as those established by the state highway safety coordinator and the inspections required by the commission are at least as frequent as those required under chapter 286. This is the only place in chapter 286 where special reference is made to the highway safety duties and functions of the public utilities commission.

Sections 286-41 to 286-67 (part III of chapter 286) place responsibility in the treasurers of the several counties to register all motor vehicles in the State. Sections 286-81 to 286-84 (part IV) deal with motorcycles, and sections 286-91 to 286-97 (part V) relate to driver training schools and instructors. Sections 286-101 to 286-139 (part VI) vest in the counties the responsibility for examining and licensing motor vehicle drivers and authorize the chief executive of each county to designate one or more examiners of drivers for this purpose. Sections 286-151 to 286-162 (part VII) contain the State's implied consent law for testing drivers on the influence of alcohol. Sections 286-171 and 186-172 (part VIII) establish a statewide traffic records system under the control of the state highway safety coordinator. Section 286-171 designates the agencies from which traffic records are to be included in the statewide system. The list includes the violation bureaus of the district courts, the circuit courts, the county police departments, the county treasurers, the

department of health and the department of education, but not the public utilities commission. Section 286-181 (part IX) relates to pupil transportation safety and designates the DOE as the state agency having primary administrative responsibility for carrying out this aspect of highway traffic safety.

The exemption from county inspection of vehicles subject to regulation by the public utilities commission in section 286-26(g) and the exception of the public utilities commission from the traffic records system in section 286-71 appear to create a special case for commission-regulated vehicles and commission-generated records. However, nothing in the law precludes cooperation between the PUC and the highway safety coordinator or participation by the PUC in the statewide highway traffic safety system.

2. *Statewide traffic safety code.* In addition to the Hawaii Highway Safety Act, Hawaii has adopted a statewide traffic code which governs the operation of all vehicles on Hawaii's highways. This legislation was enacted in 1971 (Act 150) and appears now as chapter 291C of the Hawaii Revised Statutes. Under this legislation a uniform traffic code is applied for the first time throughout the State. Counties may supplement the code by passing county ordinances governing both traffic matters not covered by the statewide code and those specifically delegated to the counties under this law. Thus, county traffic ordinances also apply to motor carriers regulated by the public utilities commission.

3. *Hawaii Motor Carrier Law.* This statute gives the public utilities commission the authority to make rules and regulations governing the safety of motor carrier operations and equipment, in accord with the Motor Carrier Safety Regulations of the Interstate Commerce Commission (ICC). As motor carrier safety regulation has been transferred from the ICC to the Bureau of Motor Carrier Safety, presumably the PUC rules and regulations must now conform to the successor regulations of the

bureau. The Motor Carrier Law also grants to the PUC the authority to approve plans for the construction or modification of motor carriers in Hawaii, to conduct investigations, and to issue identification numbers signifying compliance by motor carriers with the Motor Carrier Law.

The jurisdiction of the PUC over motor carriers for the purpose of safety regulation is more extensive than its jurisdiction over carriers for the purpose of economic regulation. Many more vehicles and carriers are subject to the PUC safety regulation than to its economic regulation. Thus, for example, private carriers and taxicabs in general are subject to the PUC safety regulation although they are exempt from the PUC economic regulation.

The Hawaii Motor Carrier Law does exempt some carriers from the safety regulatory jurisdiction of the PUC. Among those exempt are sampan buses, station wagons used for the carriage of property, trucks or trailers weighing less than 10,000 pounds gross weight (other than truck tractors), limousines (8-passenger or less) operating between a fixed point in the city of Honolulu and a fixed point outside the city limits of Honolulu without picking up passengers other than at the fixed points, and motor vehicles used by farmers exclusively for their farm operations. These exempt vehicles, however, are required to comply with the safety ordinances and rules and regulations of the counties.

One other general class of vehicles and carriers that lies outside the jurisdiction of the PUC safety regulatory powers includes vehicles used to transport goods in interstate commerce and the operators of such vehicles. They are outside the PUC jurisdiction, not because they are specifically exempted by the Hawaii Motor Carrier Law, but because the federal government has preempted jurisdiction. Some recitation of history is necessary here to explain how these vehicles and carriers have come under federal rather than the state PUC jurisdiction insofar as safety is concerned.

Ordinarily, federal laws and regulations govern carriers operating within a state only with respect to the carriers' interstate business. However, as already mentioned, on attaining statehood, Hawaii secured an exemption from ICC regulation of all motor carriers operating within the State, including those engaged in interstate commerce. The exemption applied to both economic and safety regulation. The exemption from safety regulation continued in effect until 1974, when it came to an end. In 1973, pursuant to a complaint filed by the Hawaii unit of the Teamsters Union, the Bureau of Motor Carrier Safety (the successor to the ICC on safety matters) instituted an investigation of the safety aspects of Hawaii regulation of motor carriers engaged in interstate commerce, and following the investigation, it reasserted federal jurisdiction over the safety programs for these carriers. The full scope of this extension of authority is not yet known. However, it appears that the bulk of the property carriers in the State will be affected, but such important groups of carriers as tour buses will not.

4. *Act 58, 1973.* One other important Hawaii statute should be noted. In 1973, the legislature enacted Act 58 (part IX, chapter 286) to bring Hawaii into compliance with federal requirements concerning pupil transportation safety. This act vested in the department of education the "primary administrative responsibility and authority" to adopt and execute safety standards and safety regulations relating to the transportation of pupils by school vehicles. Specifically, the department was mandated to adopt rules and regulations governing such matters as school vehicle equipment design, construction, and identification; school vehicle driver training and qualifications; school vehicle operation safety; school vehicle maintenance safety; and school vehicle safety inspections. Enforcement of the standards adopted by the department was left to the counties and the county police departments.

Act 58 did not in any way amend the Hawaii Motor Carrier Law under which the PUC has jurisdiction over the safety of school vehicles

by virtue of the fact that the DOE's jurisdiction affects only the transportation of students to and from school and does not include the transportation of students on field trips, excursions, and other school sponsored outings. Thus, the result of Act 58 has been the creation of dual jurisdiction over school buses in the PUC and the department of education.

5. *Other legislation.* There are other state statutes impacting highway safety and motor carrier safety. As pertinent, these will be described fully elsewhere in this report.

### **Agencies Involved in the Administration of Highway Traffic Safety and Motor Carrier Safety Regulation**

Just as there are a number of statutes on the subject, there are a multitude of governmental agencies that are involved in highway traffic safety. Some of these have already been mentioned. However, we present here a summary listing of all pertinent federal and state agencies.

**Federal agencies.** Highway traffic safety functions at the federal level are centralized in the Department of Transportation but are administered through several agencies within the department. They are as follows.

1. *National Highway Traffic Safety Administration (NHTSA).* This agency has the primary responsibility for federal highway traffic safety programs. It develops federal safety standards, dispenses funds for highway traffic safety, and monitors state government compliance with federal standards.

2. *Federal Highway Administration (FHA).* This agency retains responsibility for safety matters relating to highway design, construction, and maintenance. It administers three and a part of a fourth of the 18 federal highway safety standards. These accordingly are called the "3.5 standards" and govern surveillance of accident locations,

highway construction and maintenance, traffic safety engineering, and pedestrian safety (the administration of the last standard is shared with the NHTSA).

3. **Bureau of Motor Carrier Safety.** This agency is located within the FHA, but operates on a somewhat autonomous basis. Its functions are the safety of motor carriers engaged in interstate and foreign commerce.

**State agencies.** Hawaii has no long tradition of state government involvement in traffic safety regulation, the insularity of the State having created a preference for local government control. However, with the passage of the Hawaii Highway Safety Act, the State's role in this area has become somewhat more pronounced.

1. **Office of the state highway safety coordinator.** To this office is delegated the governor's responsibility for compliance with federal highway safety requirements. The office is the focal point in the state government for highway traffic safety programs. The coordinator is chairman of the state highway safety council which advises the governor on highway safety matters. The coordinator is empowered to adopt rules and regulations governing identification and surveillance of accident locations, highway construction and maintenance, traffic control devices, pedestrian safety, police traffic services, debris hazard control, safety inspection of vehicles, official inspection station standards, motorcycle and motor scooter protective devices, liability insurance limits for driver trainers, certificated fleet safety examiners, and statewide traffic records.

Chapter 286A, HRS, also designates the coordinator as the Hawaii member of the vehicle safety commission, a multistate organization established under the interstate compact on vehicle equipment safety. The coordinator also is compact administrator for Hawaii for the interstate driver license compact, in which Hawaii is a participant.

However, the office of the state highway safety coordinator does not have direct operational responsibilities for highway safety programs; rather, it must rely on other agencies for execution of the rules, standards, and recommendations it adopts. The office thus is a compromise between the federal initiative for centralization of traffic safety responsibilities at the state government level and Hawaii's historic practice of county government administration of highway traffic safety.

The governor first appointed an acting highway traffic safety coordinator in January 1967. Following enactment of the Hawaii Highway Safety Act of 1967, the governor retained the highway safety coordinator in an acting capacity until June 1975 when the acting designation was dropped. From the beginning, the same person has held the post with a dual appointment, first as deputy director of transportation and now as director of transportation.

2. **Department of Transportation.** The office of the highway traffic safety coordinator has nominal responsibility for highway traffic safety programs within the State and the office is located administratively in the department of transportation, operating as an agency of that department. Even before the director of transportation and the coordinator became one, most communication between the coordinator and the governor moved through the director of transportation.

The department of transportation is the state government agency responsible for administering the 3.5 standards. The department has the primary responsibility for construction and maintenance of roads throughout the State and is involved in regulations and data collection affecting the weight, height, and length of vehicles using the state highways.

3. **Department of agriculture, division of weights and measures.** The division of weights and measures regulates the accuracy of taximeters and odometers on vehicles for hire,

licenses truck weighmasters, certifies vehicle weighing and measuring instruments, and regulates the weighing of truck loads.

4. *Department of education.* This department administers the program of driver education which is required by federal highway traffic safety standards and shares responsibility for the safety regulation of school buses with the public utilities commission. There have been several attempts to clarify the responsibility for school bus safety, the most recent (Act 58, regular session of 1973) being aimed at satisfying federal standards for student transportation safety. The federal standard covers only the transportation of students to and from school, but the National Highway Safety Council has recommended that it be expanded to cover all youth transportation. The existing standard requires that each state have a comprehensive pupil transportation safety program and that a single state agency have responsibility for it. The plan must assure that school buses are in proper operating condition and have suitable safety equipment aboard, and that drivers are properly trained and supervised.

5. *Department of health.* This agency contains an injury control branch headed by an administrative officer funded out of federal highway safety program moneys. The administrative officer acts in a liaison capacity between the department and other agencies involved in traffic safety matters. The branch's top priority highway safety effort is directed towards emergency medical services. The federal standards require quick responses to accidents and life support and injury treatment in transit to medical facilities. Also required are the coordination, communication, and transportation necessary to move injured persons to medical facilities in the shortest time possible without creating additional hazards.

Two new statutes (Act 5 and Act 56 of the 1973 regular session) give the department of health the authority to regulate ambulances and ambulance equipment and centralize

responsibility for emergency medical care in the department.

6. *Department of labor and industrial relations.* The industrial safety division of the department is responsible for safety regulation of the transportation and storage of explosives.

7. *Public utilities commission.* The responsibilities of the agency have been discussed under the section dealing with the Hawaii Motor Carrier Law.

8. *Courts (traffic violations bureaus).* The district courts have jurisdiction over all violations of traffic laws and ordinances and violations of the rules and regulations of the public utilities commission and the departments of education, health, and transportation and the office of the highway safety coordinator having to do with highway traffic safety. There is a separate district court for each of the four counties. Each court has a traffic violations bureau which processes violations. The administrator of the district courts is responsible for the coordination of the statewide traffic violations bureau system, which includes a remedial driver training program. The Honolulu district bureau is the central record depository for the system and is responsible for maintaining a uniform violations bureau information system.

9. *County police departments.* The police departments are the primary enforcement agencies for county traffic ordinances and the statewide traffic codes and rules and regulations pertaining to highway safety. The police departments also administer the driver licensing program and the inspection procedures of all vehicles except those subject to inspection by the public utilities commission. The police departments also regulate taxicabs and, of course, administer traffic control, accident prevention, and accident investigation programs.

10. *County treasurers or directors of finance.* These officers are responsible for the registration and reregistration of all motor vehicles within their respective jurisdictions

and the issuance of motor vehicle license plates. The Honolulu police department maintains a computerized statewide vehicle registration record which is accessible to other police departments via remote data processing terminals. This system includes gross laden weight of commercial vehicles registered for the first time since 1971; vehicles initially registered prior to 1971 are not so recorded.

**11. County departments of public works.**

These agencies have road construction and maintenance programs comparable to those of the state department of transportation though the scale of activity is much smaller.

**12. Honolulu department of transportation services.** This is the only department of its kind among the counties. It has responsibility for traffic engineering and control, traffic safety, development of mass transit facilities and services, traffic safety education and operation, and safety regulation of the municipally owned and operated fleet of some 400 transit buses.

**13. Other agencies.** There are other agencies that are involved in one form or another with highway safety. These include the county fire departments and the several ambulance services which operate emergency and rescue vehicles and services.

## Chapter 10

# ORGANIZATIONAL ISSUES IN THE SAFETY REGULATION OF MOTOR CARRIERS IN HAWAII

As described in the previous chapter, there are many statutes governing the safety of motor vehicles. There are also many agencies involved in administering these statutes. In general each agency's jurisdiction extends to motor vehicles of all kinds. However, in this regard, motor carriers constitute an anomaly. The administration of safety regulation of motor carriers is largely centralized (at least nominally) in the public utilities agency.

This chapter discusses the organizational arrangement for and issues in motor carrier safety regulation. Since motor carrier safety is a part of the general state program on highway safety, this chapter also discusses the organizational arrangement for and issues in highway safety regulation in general as they bear on the safety of motor carriers.

### Summary of Findings

1. The PUC and the PUD have neither the organization nor the motivation to administer the program of regulating motor carrier safety. Indeed, the current organization of the PUD structurally not officially sanctioned was specifically designed to downgrade the PUC and PUD functions in the area of motor carrier safety. As a result, the regulation of motor carrier safety is in a state of shambles, so much so that the federal government has found it necessary to reassert jurisdiction over the safety of interstate motor carriers operating in Hawaii.

2. Since the PUC and the PUD are reluctant to assume responsibility for regulating motor carrier safety, it is only logical and appropriate that this noneconomic function be transferred to the office of the highway safety coordinator and the county police departments. Under the statutes, the highway safety coordinator's office is now charged with the duty of formulating traffic safety standards in all areas, except in the area of motor carriers, and the county police departments have the duty of enforcing such standards established by the office of the highway safety coordinator.

3. In order for the highway coordinator's office and the county police departments successfully to administer the motor carrier safety program, there is a need for a change in the organization of the coordinator's office. There is also a need for the coordinator's office to develop greater commitment to the highway safety program. The coordinator's office is not now properly staffed, nor is it now sufficiently motivated to carry out its responsibility in the highway traffic safety area, much less to assume responsibility for regulating the safety of motor carriers.

### Dysfunctional Regulation of Motor Carriers by the PUC

Although the Hawaii Motor Carrier Law places primary responsibility for the safety of motor carrier vehicles in the public utilities

commission, that responsibility is not now being properly or adequately performed. The specific shortcomings in the discharge of this responsibility are the subjects of the ensuing chapters. In a large measure, these deficiencies exist because there is neither an appropriate organizational setting for nor an organizational commitment to the safety regulation of motor carriers by the PUC and the PUD. Given the nature of safety regulation and the apparent disinterest on the part of the PUC and PUD in this matter, it appears that the function of motor carrier vehicle safety is better placed elsewhere in the State's administrative organization.

**Shortcomings in the organizational structure for motor carrier safety regulation.** When the PUC first assumed responsibility for motor carrier regulation in the early 1960's, it created a separate motor carrier branch answerable to the PUC to administer the new Motor Carrier Law. For the first several years of its existence, the motor carrier branch's main efforts were directed at establishing a motor carrier safety operation and adopting rules and regulations governing the area of motor carrier safety. For the most part, the economic regulation of motor carriers received only secondary consideration during this initial period. However, beginning in 1966, the organization for administering motor carrier regulation in general and motor carrier safety in particular and the emphasis on motor carrier safety underwent significant changes.

**1. 1966 PUD organization.** In 1966, the department of regulatory agencies was reorganized. One result of this reorganization was the creation of the public utilities division (PUD) within the department. Transferred to the PUD were the staff personnel who were previously under the direct control of the PUC. As members of the PUD, they now came under the direct control of the director of DRA. The PUD in turn was organized along functional lines (engineering and safety, audit, tariff, and finance and economics) rather than along industry components (public utilities,

motor carriers, etc.) which was the case when the staff was under the direction of the PUC. Each major functional group became a branch and assumed responsibility in the functional area for all industries subject to regulation of the PUC. Thus, the former motor carrier bureau as such ceased to exist. The motor carrier safety responsibility became lodged in the newly designated engineering and safety branch which undertook the safety responsibility for all industries subject to PUC regulatory jurisdiction.

The motor vehicle inspection personnel of the former motor carrier bureau were transferred to the safety section of the new engineering and safety branch. Because of this, while the responsibility of the safety section was broad and included safety matters of all companies and industries regulated by the PUC, the new safety section was initially oriented toward motor carrier safety, which continued to receive emphasis. However, this continuing interest in motor carrier safety was short-lived.

**2. 1970 PUD reorganization.** In 1970, the director of regulatory agencies transferred the head of the safety section to the newly created cable television division of the department, and the PUD undertook a further reorganization of itself—a reorganization which has never been officially approved but which has continued to this day.<sup>1</sup> As reorganized, the number of branches within the PUD was increased from four to six. The engineering and safety branch, for one, was split into two new branches: the engineering branch and the investigation branch. Under this reorganization, the safety section as such was eliminated.

Initially, the description of the functions of the investigation branch appeared to be very much safety-oriented, although certification and compliance were intended to be the main focus

<sup>1</sup>Administrative Directive No. 12, January 25, 1965, requires the approval of the governor in effecting any organizational change in any executive department. The governor's approval was not secured for the 1970-71 PUD reorganization. A full discussion of this unofficial reorganization is contained in volume I of this report.

of the branch. The "final" version of the functional description of the branch, however, deleted all references to safety, particularly safety inspections of equipment, premises, and practices, all of which are at the heart of the total motor carrier safety program.

Indeed, the "final" functional descriptions of all units within the reorganized PUD appeared to scatter the various aspects of safety among several units. For instance, under the "final" functional statement for the office services section, that section was charged with the responsibility for evaluating the physical examination forms which are supposed to be submitted for all motor carrier drivers.

Still, the functional statement of the investigation branch might have been read to imply that the bulk of the safety and safety inspection responsibilities had been lodged in the investigation branch. This "final" functional statement of the branch contained such phrases as: "investigate all causes of accidents," "investigate and enforce compliance with applicable engineering and service standards," and "coordinate promotional programs regarding safety practices and requirements of the regulated industries with other governmental and private agencies concerned with industrial and public safety." However, the expressed reasons for the creation of the branch belied any such implication.

When the 1970-71 reorganization of the PUD was first proposed, the executive director of the PUD advised the director of the DRA that a continuation of the safety section (which existed before the 1970-71 reorganization) was "no longer appropriate since vehicle safety inspection activities is [sic] now more heavily consolidated under the State Department of Transportation and the local Police Departments." This representation was repeated in the "final" functional description of the newly created investigation branch, to-wit:

“. . . [M]otor vehicle safety inspection activities is [sic] now more

heavily concentrated under the State Department of Transportation (Highway Safety Coordinator's Office) and the local Police Departments. As a consequence, emphasis was shifted from safety per se to investigation of all facets of regulated utilities and transportation companies."

This representation, of course, was incorrect. The state Highway Safety Act in no way relieved the PUC and the PUD of their responsibility for motor carrier vehicle safety; it required that the PUC and the PUD adhere to the minimum standards imposed under federal and state highway safety laws in administering the PUC-PUD safety functions. What occurred in this unofficial reorganization of the PUD was an attempt on the part of the motor carrier regulators to divest themselves of the responsibility for motor carrier safety.

Accordingly, despite what might otherwise have been implied by the functional statement of the investigation branch, that branch was not staffed, either in number or competency, with such personnel as it might have been were it intended to assume most of the motor carrier safety functions. The branch was assigned a staff of only four, including the administrator of the branch, none of whom had had any broad knowledge, extensive background, or special qualifications in the area of motor carrier safety. Indeed, the only formal technical capability for evaluating the reconstruction of commercial vehicles, which is one of the motor carrier safety activities, was assigned to the engineering branch rather than the investigation branch. Then, none of the other organizational units in the PUD was ever staffed with motor carrier safety in mind.

**Lack of commitment.** The attempt of the motor carrier regulators to swing away from responsibility for motor carrier safety through the reorganization of the PUD has succeeded. As intended, the immediate result of the 1970-71

reorganization has been a dramatic downgrading of the motor carrier safety function by both the PUD and the PUC. Note the following:

The investigation branch, which might otherwise have been heavily involved in motor carrier safety, has exerted but minimal efforts in this area. In 1972, the staff of this branch worked 5930 hours (according to the monthly time sheets on file). But of these 5930 hours, only 227 hours were spent on motor carrier matters.

The office of the transportation administrator, the top office of the PUD with respect to motor carriers, appears to have spent no time at all during the first seven months of 1972 on motor carrier safety matters (there were no time sheets on file for the remaining five months).

Meanwhile, the PUC itself has joined the PUD in compromising the regulation of motor carrier safety. It has, for instance, dispensed with the quarterly motor carrier safety reports which it used to receive from the PUD. It has over the years given only perfunctory attention to such matters as requests for driver disability waivers, requests for major modifications of vehicles, and certifications of vehicle inspection stations. Although each of these matters must be acted upon formally by the PUC, the PUC has practically relinquished its responsibility over them to the PUD. The commission invariably accepts the PUD's recommendations, and sometimes simply confirms the decision already made by the PUD. The commission in recent years has never taken the initiative to raise questions, start any sort of action, or cause any investigation to be undertaken relative to motor carrier safety. On those rare occasions when the PUD sought to bring about stricter enforcement of safety requirements, the PUC invariably has rebuffed such efforts.

In short, from the PUC-PUD organizational point of view, there is a decided lack of interest in motor carrier safety. Indeed, there is a strong inclination to neglect this entire

area. The views of two top administrators in the PUD summarize the commitment or lack of commitment of the PUC and PUD to motor carrier safety. In the eyes of these two administrators, the motor carrier safety program currently resides in the PUD only temporarily—that is, it is in the PUD only until such time as it can be moved to the office of the highway safety coordinator and the county police departments.

**Deplorable state of motor carrier safety regulation.** The consequence of the neglect by the PUC and the PUD of their responsibility for motor carrier safety has caused the motor carrier safety program to fall into a deplorable condition. The extent to which the motor carrier safety program has deteriorated is indicated in the action taken recently by the federal government in the area of interstate motor transportation. The Bureau of Motor Carrier Safety of the U.S. Department of Transportation found that the State's motor carrier safety operations were so inadequate that, in 1974, it reasserted its jurisdiction over the safety of motor carriers operating in Hawaii in interstate commerce. Its conclusions were as follows:

“What has been said thus far clearly demonstrates that motor carrier safety in Hawaii warrants greater governmental attention. All parties to this proceeding appear to agree with this conclusion. At present, there is very little monitoring being accomplished to assure that commercial motor vehicles, particularly those operated by trucking companies, are in compliance with safety regulations. The Public Utilities Commission, with a staff of only three people available, including one supervisor, finds almost all of its time and resources taken up by its other responsibilities and therefore cannot conduct periodic audits and inspections of the State's motor carriers and their equipment. The

investigative staff is responsible for investigating illegal motor carrier operations (i.e., those performed without requisite operating authority), telephone service complaints, and power line and pipeline safety. Because of these other duties, the Commission's investigators are devoting an insignificant amount of their time to motor carrier safety. An increase in the Commission's staff appears to be unlikely in the foreseeable future. As an austerity fiscal policy measure, the Governor has declared a moratorium on hiring by State agencies.

“The Public Utilities Commission's hours-of-service regulations are, as noted above, similar to the Federal regulations in effect in 1966. As such, they require a motor carrier to file an Hours of Service report when violations of the rules occur during his operations. Virtually no auditing of these reports takes place, and they are seldom examined in conjunction with a carrier's records; accordingly, there is no way to ascertain whether the reports the Commission is receiving are accurate. Similarly, because the Commission rarely conducts an inspection or survey of a carrier's operations, it has no way of knowing whether, and the extent to which, Hawaii's motor carriers are complying with other facets of its safety regulations, such as the rules dealing with accident reporting, driver qualifications, maintenance and maintenance records, and the driving of vehicles transporting hazardous materials.

“In short, because of limited resources and other priorities, the Hawaii Public Utilities Commission cannot effectively administer and enforce its safety regulations. If this

situation is allowed to continue, the objectives of section 204 of the Interstate Commerce Act could well be frustrated.”

The conclusion of the Bureau of Motor Carrier Safety constitutes a damning indictment of Hawaii's motor carrier safety program. Hawaii could not defend the condition of the program that the federal authorities found. During the proceedings, Hawaii's motor carriers themselves did not contest the findings and conclusions of the Bureau of Motor Carrier Safety. Rather, they pleaded that the State be given a second chance to do the job with the assistance and support of the federal government. The State itself did not participate in the proceedings in any manner.

The federal reassertion of jurisdiction has not, of course, preempted the entire field of motor carrier safety. For example, the federal agency has already indicated that its jurisdiction does not extend to most of the passenger buses operating in Hawaii, whether they be mass transit buses, tour buses, or school buses. In addition, it is highly doubtful that many of the dump trucks operating within the State (some of the heaviest users of the highways and involved in many serious accidents) will fall under the federal government's jurisdiction. Further, although the federal government's motor carrier safety program is significantly more effective than anything that has been conceived in Hawaii and the extension of federal jurisdiction to interstate motor carriers in Hawaii will have a very salutary effect upon motor carrier safety within the 50th state, it appears reasonably likely that the federal officials will require supplementary, complementary, or cooperative action of the state and local safety authorities in Hawaii. Such action would be needed in order for them to discharge effectively their regulatory responsibilities over these interstate carriers. For example, local police cooperation and assistance will certainly be required for any roadchecks of motor carrier vehicles which the federal agency may undertake. However, the

PUC and the PUD, given the structure for regulation as it now exists and given, further, their disinclination to become involved in motor carrier safety, are not likely to be able to regulate effectively the safety of those carriers still under their jurisdiction or to provide the federal government with any supportive action it might require.

**A case for the transfer of function.** In volume I of this report we recommended that the noneconomic regulatory functions of the PUC-PUD be transferred to other governmental agencies performing similar noneconomic regulatory activities. Specifically, with respect to the function of regulating motor carrier safety, we recommended that the function be assigned to the office of the state highway safety coordinator for the development of standards and to the county police departments for enforcement. There, our recommendation was based on the dichotomy between economic regulation and noneconomic regulation and to the importance of economic regulation in and of itself. We observed as follows:

*“First, economic regulation is an important and complex governmental activity, requiring the full and undivided attention of the agency charged with regulating public utilities . . . . Adding functions having noneconomic ends to those aimed at achieving economic purposes results in either the economic-oriented functions not receiving the attention they require or in a neglect of the noneconomic-related functions . . . .*

*“Second, the economic and noneconomic ends are at times at odds with each other. This is so because economic objectives are intended to benefit society as a whole, while noneconomic objectives are intended to benefit a segment of that society. Thus vesting the responsibility for all activities, both those with economic and those with*

*noneconomic objectives, in a single agency harbors potential conflict-of-interest problems . . . .*

*“Third, several of the functions having noneconomic objectives now in the PUC are similar to those performed by other state agencies . . . . Since these other agencies are currently carrying out similar activities, there seems to be no good reason why they could not also carry out those noneconomic-oriented functions now vested in the PUC.”*

The absence of an organizational mechanism within the PUC-PUD to enable the motor carrier regulators effectively to administer the motor carrier safety program and the obvious disinclination on the part of the regulators to tend to motor carrier safety matters lend further support to our recommendation to transfer the motor carrier safety functions out of the PUC and the PUD. The transfer of the functions to the office of the highway safety coordinator for the development of standards and to the county police departments for enforcement is a natural. By statute, the highway safety coordinator is now responsible for standards and the county police departments for enforcement would be clearly appropriate. By statute, the highway safety coordinator is now responsible for standards and the county police departments for enforcement for virtually all vehicles and areas of highway safety except those under the PUC jurisdiction. The PUC regulation of motor carrier safety is the only aberration in this usual system of highway traffic safety administration.

***Recommendation.*** *We reiterate our recommendation contained in volume I of this report that the regulation of motor carrier safety be transferred from the public utilities commission to the office of the highway safety coordinator for standards development and the county police departments for enforcement.*

## Organization for a Statewide Coordinated Highway Safety Program

Transferring the motor carrier safety regulatory functions to the state highway safety coordinator and the county police departments is clearly the preferable and most logical solution to the existing problems in motor carrier safety. Under the statutes, the highway safety coordinator is generally responsible for setting standards for the safety of all motor vehicles (except those under the jurisdiction of the PUC) and the counties are generally responsible for the enforcement of such standards. However, for the transfer of functions to be successful—that is, successful in the sense that the motor carrier safety program would be effectively carried out after such transfer—some organizational and attitudinal changes will be required on the part of the office of the state highway safety coordinator (and, to some extent, on the part of the county police departments as well).

The expectation in the creation of the office of the highway safety coordinator was that there would be a statewide coordination of the various highway safety programs being administered by many governmental agencies at both the state and county levels. (A description of these state and county agencies involved in highway safety programs is contained in the previous chapter.) Although more than eight years have gone by since the statute creating the office was enacted, the State is nowhere near that effective coordination which was contemplated. It cannot be said that the State currently has a coordinated, comprehensive program in highway safety.

This lack of a coordinated program is due in a large measure to the lack of sufficient interest, concern, and desire on the part of the office of the safety coordinator to fulfill the expectations of the statute. This disinterest and unconcern have been vividly demonstrated by the office's disdain for assuming any responsibility for motor carrier safety and by the office's reluctance to organize itself

sufficiently to enable it to discharge its responsibilities under the statute.

In the following sections, we illustrate the degree to which the highway safety programs administered by the various agencies remain uncoordinated, the battle which the office of the highway safety coordinator has waged to keep it out of the motor carrier safety area, and the footdragging that has occurred in organizing the office.

**Lack of coordination of programs.** There are many state and county highway safety programs that are not properly coordinated. Here we cite a few.

*1. Vehicle registration systems.* At present, there are two vehicle registration systems in Hawaii: (a) the statewide computerized system maintained by the city and county of Honolulu which covers all motor vehicles in the State and (b) the manually operated and very cumbersome system maintained by the PUD relating to motor carriers only. The same basic types of information are required for both systems. But because jurisdiction over motor vehicle registration is split, neither system is complete in itself. The statewide system, for example, is incomplete with regard to data on commercial vehicles in the State. As for the PUD's system, it is burdened with information which is incomplete, inaccurate, outdated, and virtually inaccessible. Although generally aware of this situation, the highway safety coordinator's office has not done anything to date to integrate these two registration systems.

*2. Vehicle inspections.* There are several vehicle inspection programs being carried out in Hawaii at the present time with various requirements and affecting varying groups or types of vehicles. In general, all vehicles, except those within the exclusive jurisdiction of the PUC, are subject to inspection by the counties. But, the situation is not as clean-cut as it seems. There are vehicles that are subject to inspection

by two or more different agencies under two or more different standards.

For example, school buses transporting children to and from school are subject to inspection by the county police departments under standards established by the department of education. However, these buses (and other buses) if used for purposes other than transporting children to and from school (that is, for purposes such as taking students on excursions, transporting athletic teams and school bands, etc.) are also subject to inspection by the PUC under PUC-established standards.

Another example involves taxicabs. They are subject to inspection by the PUC, the county police departments, and the weights and measures division of the department of agriculture. The PUC and the weights and measures division conduct these inspections on a semiannual basis on standards established by each, respectively. The county police departments inspect taxicabs on an annual basis on standards promulgated by the office of the state highway coordinator.

Although each agency inspecting the same vehicle may focus on matters given only cursory attention by the others (for instance, the weights and measures division may be concerned primarily with odometers and taximeters), there is, nevertheless, a considerable amount of duplication in these inspections by the different agencies. Then, the standards established for these inspections by the different agencies vary in many respects. Indeed, the office of the state highway safety coordinator considers the standards of the PUC to be deficient. The department of education's standards for school buses follow those of the PUC. Moreover, each county police department administers the school bus inspection program differently, so that inspections on some islands are much more stringent and frequent than on other islands.

There is no reason why these inspections and the standards on which the inspections are

made cannot be coordinated, except for the reluctance on the part of the agencies concerned to cooperate with one another. The office of the state highway safety coordinator, although aware of the problem, has made little effort to seek such coordination.

As an example, a complaint was voiced by some taxicab operators on Oahu to the state ombudsman about the duplicative inspections. Upon inquiry by the ombudsman, the PUD, the police, and the state highway safety coordinator's office all agreed that at least two of the three different inspections could be combined with each other. There was a flurry of communications among these agencies between June 1970 and March 1971, but there has been no effective improvement in the situation to date. The PUD has taken the position that it is administratively too complicated and difficult to delegate its authority and responsibility in this area to the county police without an amendment of the statutes. The highway safety coordinator's office wants any such statutory change to require semiannual rather than annual inspections of taxicabs. The Honolulu police department seems to be unenthusiastic about such a statutory change, both because it does not want semiannual inspections as proposed by the office of the state highway safety coordinator and because it fears that this may be the opening wedge to transfer all motor carrier inspections to the counties. As a consequence, the matter remains stalemated more than five years after the original complaint about the situation was lodged with the ombudsman.

3. *Truck sizes and weights.* There are three state agencies which are concerned with the matter of truck weights and sizes. They are the highways division of the department of transportation, the division of weights and measures of the department of agriculture, and the public utilities agency. Although their activities are closely related, each has generally worked quite independently of the others.

The highways division is interested in facilitating the movement of traffic over the highways and at the same time in preventing unnecessary and unreasonable stress and wear on highway structures. In addition, it is responsible for implementing various federal requirements governing vehicle weights and sizes on federally aided highways. Thus, the department conducts annual surveys of truck sizes and weights in accordance with instructions issued by the federal government and compiles and reports considerable data on the vehicles actually sampled at various temporary weighing stations located throughout the State. This activity is aimed primarily at gathering information and to date the information gathered has not been used to enforce the State's restrictions on sizes and weights of trucks utilizing the state highways.

The division of weights and measures licenses weighmasters, certifies the accuracy of weighing and measuring devices, and requires the submission of copies of weighing reports by weighmasters to the division. Thus, there are numerous privately operated scales throughout the State where truck weighings are regularly made indicating actual loads being transported over the public roads. Reports on such truck weighings are submitted to the division, but, as in the case of the highways division's efforts, the data collected have not as yet been used to enforce compliance with the State's restrictions on truck sizes and weights.

The PUC has included in its General Order No. 2 provisions governing the size, weight, and loading of regulated motor carrier vehicles. The general order was adopted out of safety considerations. Until about 1969, the PUD, in cooperation with the police, had an enforcement program whereby it used portable scales which it owned to set up temporary weighing stations along various highways. Since then, however, it has disposed of the portable scales and has dispensed with the enforcement program.

At no time has any of the three agencies attempted to develop any sort of cooperative approach to this matter of assessing vehicle sizes

and weights. Moreover, although the volumes of data collected by the agencies clearly demonstrate widespread violations of the legal limits on vehicle weights and sizes, there is no coordinated effort (indeed, no effort at all presently) to enforce these legal limits. The office of the highway safety coordinator apparently does not consider this a subject falling within its scope of responsibility, even though overloaded vehicles constitute a safety hazard to themselves and to others.<sup>2</sup>

#### *4. Driver qualification and training.*

There are numerous agencies involved in matters relating to the qualification and training of drivers. The public utilities agency is concerned with the physical and mental fitness, driving competence, and continuing performance of persons operating commercial vehicles. The department of education is responsible for carrying out the driver training program for students and also is concerned with the driving abilities and performance of all persons driving school buses. The examiners of drivers under the county police departments examine the qualifications of all persons operating motor vehicles on the public roads within the State. In addition, the department of transportation services of the city and county of Honolulu is involved quite extensively in highway safety education where it has an impact upon driver training and qualification. It provides courses in defensive driving and sponsors the Oahu fleet safety organization, which is made up of governmental and private operators of large fleets of vehicles and which is dedicated to improving safety performance on the part of the fleet operators and their drivers. The courts are involved in driver training through the courses they provide in safe driving which are

<sup>2</sup>On the last day of the calendar quarter ending September 30, 1975, the division of weight and measures in cooperation with the department of transportation did engage in enforcement activities which resulted in numerous citations being issued to trucks for being overloaded. However, this was in response to pressure from the federal government for some evidence of enforcement activity in this field and there is no indication that this represents an effective on-going effort to enforce compliance with the State's truck weight and size restrictions.

required to be taken by serious and repeated violators of the traffic laws. Even the state department of personnel services, under a federal highway safety grant, has been offering courses in defensive driving to state personnel who operate motor vehicles. The industrial safety division of the department of labor and industrial relations is also tangentially involved. It is concerned with assuring the qualification and training of persons operating heavy equipment.

There is little enough coordination among these varied programs. This is illustrated by the failure of either the department of education or the public utilities agency to participate in any way in recent statutory changes governing the licensing and qualification of drivers of heavy-duty vehicles, including drivers of vehicles subject to the jurisdiction of both the PUC and the department of education. The changes were developed by a group working under the highway safety council and consisting of representatives of the county examiners of drivers, the office of the highway safety coordinator, and certain large private operators of motor vehicle fleets. Apparently neither the PUC nor the department of education was invited to participate.

The PUC and the industrial safety division of the department of labor and industrial relations work completely independently of each other regarding the qualification and physical fitness of operators of heavy-duty, on-highway and off-highway equipment even though the same persons may be involved in both groups and sometimes even the same equipment (e.g., mobile cranes which move over the highways from one site to another). Neither agency has developed an effective means of assessing the physical fitness qualifications of such heavy-equipment operators. Further, there appears to be no coordinated means of enforcement by the two agencies. Much the same thing can be said concerning action by the department of education and the PUC in the area of physical fitness of school bus drivers.

**Interagency disagreements.** There also appears to be open hostility and disagreement between the office of the highway safety coordinator and the PUD, and between the coordinator's office and the department of education.

*1. PUD-coordinator's office.* The strained relationship between the PUD and the coordinator's office has arisen from the PUD's insistence that the motor carrier safety functions be transferred from it to the coordinator's office and the office of the coordinator's equal insistence that no such transfer occur. Although both agencies are involved in formulating safety standards, communication between the two is minimal. This deteriorated relationship between the two agencies is exemplified by the following:

Although the executive director of the PUD has been a member of the highway safety council, he seldom attended any of the council's meetings and never bothered to send a representative from the PUD in his place. In turn, the highway safety coordinator's office largely ignores whatever the PUD is or is not doing in the area of motor carrier safety and to a great extent operates as if the PUD does not exist.

*2. DOE-coordinator's office.* The relationship between the highway safety coordinator's office and the department of education is hardly more cordial than the relationship between the coordinator's office and the public utilities agency. This is especially important because the department of education has been designated the state agency for administering the federal standards relating to pupil transportation safety. The gap between the office of the coordinator and the office of the student transportation administrator in the DOE appears to be almost unbridgeable. The student transportation administrator severely restricts participation by the coordinator's office in the development and adoption of rules and regulations governing student transportation safety and ignores almost completely the

suggestions which the coordinator's office has to make on the subject. The coordinator's office appears more concerned about establishing its position "for the record" than about making the student transportation safety program as effective as possible. As a result, there are serious deficiencies in the DOE's rules and regulations governing student transportation safety. No one at the present time is taking any forceful or effective action to correct these deficiencies.

**The conflict over motor carrier safety.** The degree to which the office of the highway safety coordinator has resisted assumption of responsibility for motor carrier safety is illustrated best by the following memorandum which the acting highway safety coordinator sent to the governor on March 8, 1968, concerning the PUD's testimony on a bill introduced in the legislature in 1968. The purpose of the bill was to transfer the motor carrier safety function from the PUC to the office of the highway safety coordinator.

"Senate Bill 40 proposes that the functions of the Public Utilities Commission for regulating private carriers of property and motor carriers as defined in the Hawaii Motor Carrier Act as to safety of operations and equipment be shifted from the Public Utilities Commission to the State Highway Safety Coordinator.

"Neither the Director of Transportation nor the Acting State Highway Safety Coordinator saw the proposed bill or knew of its contents. Such extension was considered undesirable for the following reasons:

- a. The Hawaii Highway Safety Act of 1967 is largely the child of the Federal Highway Safety Act of 1966, and neither make any reference to motor carriers.

- b. The State Highway Safety Coordinator is the official Governor's Representative only in dealing with the Federal Highway Safety Administrator, who is not empowered to control the safety of operations and equipment for motor carriers.

- c. The concept of the State Highway Safety Coordinator is that he is truly a coordinator, rather than a director, and that the responsibility for direction of highway safety remains in the cognizant State Department, such as driver education in the Department of Education, highway design in the Department of Transportation, and emergency medical services in the Department of Health. For this reason, the State Highway Safety Coordinator is located organizationally in the Governor's Office.

- d. To begin relieving individual departments or commissions of their present duties based on a concept of centralization in the Office of the State Highway Safety Coordinator would be a first step toward the creation of a Department of Motor Vehicles, a development which is considered undesirable, unnecessary and uneconomical."

"On March 4 and again on March 5, I advised the Executive Director . . . that the change did not appear desirable to Transportation and Coordinator, and asked that he either modify the proposal during the PUC testimony or let us discuss with the Governor. I urged that the Governor be permitted to have our joint recommendations, and that his direction be obtained so that there would be full concurrence at the hearing of the Judiciary Committee.

"On March 7, I reminded the Executive Director that I did not wish to testify and would look to him to clarify the unsuitability of the Office of the Highway Safety Coordinator for the PUC functions. This was done with the knowledge and approval of the Director of Transportation.

"In the Senate Judiciary Committee hearing on March 8, the Executive Director did not mention the considerations in the transfer of PUC functions to the Office of the State Highway Safety Coordinator, and I was highly embarrassed to take the stand to do so. The statements (a) (b) (c) and (d) above were made to the Committee. I deeply regretted a situation we had tried so hard to avoid."

Since that time, the two agencies have barely been on speaking terms with each other. Other bills have been introduced in the legislature for removal of the motor carrier safety function from the public utilities agency, but they have been supported by the department of regulatory agencies alone and never have been enacted.

The office of the highway safety coordinator is administratively responsible for establishing safety standards for all vehicles, except those under the jurisdiction of the PUC.

It is thus difficult to comprehend the reluctance of the office to assume responsibility for the safety of motor carriers. In more recent times, the office of the highway safety coordinator has begun to recognize the difficulties presented by this split jurisdiction over motor vehicles between the office and the PUC. In volume I of "The State Highway Safety Comprehensive Program, 1974-1977," prepared for the federal government, the coordinator's office remarked as follows:

"It seems apparent that an inspection program composed of two parts separately administered and controlled by two different units in the State organization will precipitate coordination problems. The State PUC administers and operates that part (basically vehicles over 10,000 pounds GVWR) of the inspection program for which they are responsible by State statute. The State Highway Safety Coordinator has administrative responsibility, for the other part (basically vehicles under 10,000 pounds GVWR) of the program. Since Hawaii has no State Police, Highway Patrol or Motor Vehicle Department there is no operating agency at the State level to which the total operational responsibility would 'normally' devolve. Assimilation of the PUC part of the program into the part of the program administered by the State Highway Safety Coordinator requires legislative enactment and the county police departments would need additional resources to operate the program.

"Such legislation has been proposed for several years and will be proposed for introduction before the 1973 Legislature by the PUC. Enactment will depend largely upon the attitude of the county police departments in having this additional

operational responsibility conferred upon them.”

Despite these comments, there has been no noticeable movement on the part of the office of the highway safety coordinator to assume jurisdiction over the safety of motor carriers. Indeed, the comments reveal that the office now appears to expect the county police departments to accept responsibility for enforcement of standards for motor carrier safety before the office will assume jurisdiction over setting safety standards for motor carriers.

**Organizational insufficiency.** Ordinarily, a newly created agency, if it were serious and diligent about discharging the responsibilities lodged in it, would organize itself to do so. In the case of the office of the highway safety coordinator, no such steps were taken. Even now, eight years after its creation, the office is not properly organized to perform its duties as contemplated by statute.

The chief organizational weakness of the office has been its failure to secure a full complement of staff authorized the office by the legislature. When the legislature first created the office, it authorized nine positions to staff it. Subsequently, the legislature added another position when additional duties were assigned to the office. During much of the office's existence, however, it has operated with as few as two or three staff members (including clerical), and the actual number of filled positions has never been greater than seven. The record reveals no real effort to fill the authorized positions, except when prodded to do so by the federal government under threats of termination of federal funds to the State. Such prodding by the federal government occurred on at least two occasions.

On September 7, 1971, the federal highway administrator and the national highway traffic safety administrator wrote jointly to the governor of Hawaii as follows:

“On December 19, 1969, you were advised by letter that although Hawaii's Comprehensive Highway Safety Plan had numerous weaknesses it was approved. You were advised also that continued approval of your program would be based upon the State taking remedial actions outlined for the program and the satisfactory implementation of each of the standard requirements. Beginning with Fiscal Year 1972 the Annual Work Program is the method to be used by all States to document in detail program action plans.

“It has been brought to our attention by our Regional Administrators in San Francisco that Hawaii has submitted only a partial and unacceptable Annual Work Program for Fiscal Year 1972. This is a cause of considerable concern to both Administrations.

“In the best interest of all concerned we wish to let you know of our views on this situation since, as Governor, you are responsible for the administration of the highway safety programs in your State.

“This situation appears to be further aggravated by the recent vacancies in key and experienced staff positions in the Office of the State Highway Safety Coordinator. The Highway Safety Act of 1970 established the requirement that a State administer its highway safety program through a State agency which shall have adequate powers, and be suitably equipped and organized to carry out to the satisfaction of the Secretary, such program. It is absolutely paramount for successful program administration that there be an adequate staff, generally of no less than three full-time professionals, and

competencies exist in total State program planning and administration.

“For your assistance, our Regional staffs have developed recommended corrective actions needed to implement a viable plan. These recommendations were transmitted July 12, 1971, to your Acting State Highway Safety Coordinator.

“Failure to implement a program designed to reduce fatalities, injuries, and damage to property in the State could jeopardize continued funding of the program. Hawaii’s highway mileage death rate increased almost 10 percent in 1970 compared to 1969. Implementation of a comprehensive highway safety plan by your State is essential for a reduction in its fatalities, injuries, and property damage accidents.”

On October 6, 1971, the governor approved the filling of two positions in the highway safety program to meet the minimum staffing requirement indicated in the letter from the federal officials. These positions were filled, however, only to avoid a possible reduction in the allocation of federal funds for state highway construction purposes, and thus were filled only on a temporary basis. This prompted the federal authorities to write the State again on April 27, 1973, as follows:

“The Hawaii Highways Safety Program is considered to be a complex program which required the State to maintain a staff of sufficient and competent persons to adequately administer and monitor its activities. In cooperation with your office, FHWA and NHTSA have made reviews and have determined that to adequately administer the program, no less than three full-time professionals in addition to the

Assistant Highway Safety Coordinator are required.

“Your letter of April 19, 1973 has been reviewed by both agencies and has caused us a great deal of concern. We must reaffirm our previous position regarding the staff, as conveyed to you at the Annual Work Program presubmission conference, by stating that our offices will not approve your FY 1974 AWP unless we have assurance these positions will be maintained and active recruitment will be undertaken for these positions prior to June 30, 1973.

“Our actions regarding this matter are mandated by NHTSA/FHWA Order 900-4/7-5 and Vol. 103 Ch 6, 1-b, which is a provision regulating the approval of the State’s Annual Work Program. Resolution of this matter at an early date is of utmost importance.”

In reaction to this letter, gubernatorial approval was secured to fill two full-time positions and one half-time position on a continuing basis. However, it took many months for these positions to be filled.

Contributing to the difficulties in securing organizational effectiveness in the office of the highway safety coordinator has been the fact that the position of coordinator has been filled on a part-time basis since the office was created in 1967. For eight years it was filled on an acting, part-time basis by the then deputy director and now director of the department of transportation. Since June 1975, it has been filled on a permanent but still part-time basis by the director of transportation. Considering the heavy demands other transportation matters make on his time, it does not appear possible for the director to devote much attention to the highway safety program.

The failure properly to organize the office of the highway safety coordinator and the office's failure to coordinate effectively the various safety programs in the State and the office's unwillingness to assume jurisdiction over the safety of motor carriers are unmistakable evidence of the lack of commitment to formulate a coordinated program for the State in highway safety. The result is that the State is falling far short of complying fully with federal standards and requirements governing highway traffic safety. Thus, unless a dramatic change for the better in organization and attitude occurs, the transfer of the function of motor carrier safety to the office of the highway safety coordinator would not result in any material improvement in the regulation of motor carrier safety.

***Recommendations. We recommend that:***

1. *The position of the highway safety coordinator be made a full-time position and the office of the coordinator be manned by the full*

*complement of staff that the legislature has authorized for it. Neither the highway safety coordinator nor the staff should be burdened with duties other than those of highway safety.*

2. *The office of the highway safety coordinator begin at once the task of coordinating the various safety programs in the State, including an assessment of the shortcomings in Hawaii's safety program in light of the federal requirements and the formulation of such statewide standards as are necessary. The personnel and funding requirements which may be necessary to improve Hawaii's program, to comply fully with federal safety standards, and to provide for enforcement of statewide standards by the county policy departments should be identified and the results submitted to the legislature as appropriate.*

3. *The office of the highway safety coordinator actively support the transfer of the motor carrier safety program to the coordinator's office.*

## Chapter 11

# RECORDKEEPING AND INFORMATION HANDLING FOR MOTOR CARRIER SAFETY

A motor carrier safety program cannot function well without detailed information about the regulated carriers, their activities, and the results of regulation. Thus, the facility with which an administering agency is able to collect, maintain, manipulate, and make use of pertinent information will influence significantly its capabilities to perform effectively in the traffic and motor carrier safety field. This chapter assesses the public utilities agency's overall recordkeeping and information-handling operations and capabilities as they relate to motor carrier safety.

### Summary of Findings

The public utilities agency's motor carrier safety recordkeeping and information-handling operations and capabilities are totally inadequate for the purpose of effectively performing the agency's functions in regulating motor carrier safety. Specifically:

1. The data currently kept by the agency are incomplete, inaccurate, obsolete, and largely unmanageable and unusable.

2. The sheer number of motor carrier vehicles and the assortment of data required to be kept for an effective information system dictate that the system be computerized. However, the agency currently is collecting and maintaining data manually. Moreover, it is not availing itself of the information readily

available in the information systems maintained by other governmental agencies.

3. The agency's information-handling operations and capabilities fall far short of federal standards for highway traffic information systems.

4. As a result of the agency's shortcomings, the State as a whole is currently falling short of meeting federal expectations. However, the office of the highway safety coordinator, despite its responsibilities for coordinating the State's efforts in highway traffic safety and for meeting federal standards in general, is doing virtually nothing to correct the deficiencies that exist in the public utilities agency's information-handling process.

### Prelude

There are a vast number of motor carrier vehicles that fall under the safety regulatory jurisdiction of the PUC. Estimates range as high as 40,000 or more vehicles. The number of drivers of these vehicles is also vast. It is thus quickly perceivable that in any information system for the regulation of motor carrier safety there is likely to be a voluminous amount of data.

Then, with the field of motor carriers being in a constant state of flux (i.e., there being constant additions and deletions of vehicles,

turnover in drivers, entry and exit of businesses into and from the field, and occurrence of accidents), the information system is also likely to be complex.

Finally, since vehicle, driver, and accident data provide the basis for the formulation of highway safety programs and for the enforcement of safety standards (e.g., for checking on the identification of vehicles, drivers, and carriers, and for determining the inspection status of vehicles and qualifications of drivers), there are likely to be heavy demands imposed on the system.

All of this means that an information system for motor carrier safety regulation must necessarily be somewhat sophisticated. Relevant information must be accurately and completely captured in a timely fashion, kept constantly up-to-date, and stored in such a fashion as to be quickly and readily retrievable.

One of the federal requirements in the area of highway and motor carrier safety is the maintenance by the states of an adequate recordkeeping and information-handling system. The federal government has established standards in this regard. These standards require the compilation and updating of detailed data relating to drivers, vehicles, and accidents. They also require that such data be readily accessible through a rapid system of information entry and retrieval. They further require that the data be amenable to statistical compilation and analysis.

### **Deficiencies in Information System, Generally**

As a general observation, the information system for motor carrier safety within the public utilities agency can only be described as grossly inadequate. There is, in fact, no system at all.

**Records in a shambles.** The public utilities agency has developed some forms for recording various data relating to motor carriers and motor carrier safety, and it does maintain some records on the subject matter. However, such records as

do exist are incomplete, inaccurate, and out-of-date. There is simply no system for the complete collection and verification of data and for the removal of obsolete data.

Also, the records are so stored as to make them unwieldy, unmanageable, and inaccessible. For instance, information on an individual file card with a tab that is supposed to indicate the type of vehicle it is. However, in many cases, the tabs have come off or are attached to the wrong cards, and the cards are shuffled and misplaced in the card file. There is no annual count of the cards, and the year-to-year changes are calculated from the original card count established when the card file was first set up, without any consideration being given to the possible withdrawal of vehicles from the motor carrier trade since the cards were first entered into the file. For another example, the motor carrier drivers' physical examination forms are sorted only in a very rudimentary way by island and age of driver and simply stuffed away in file cabinets and various places around the office in a haphazard manner. Vehicle inspection forms that arrive in bundles from inspection stations are tossed into boxes or on open shelves in the bundled form in which they are received.

Then, the records of one kind are not coordinated or integrated with records of another kind. For instance, vehicle data and vehicle inspection data are not so integrated as to enable quick verification that all vehicles required to be inspected have actually been inspected.

**Lack of use of computerization and other information source.** Although the nature and volume of data necessary to be kept and the complexity attendant to any information system for motor carrier safety regulation clearly require a rather sophisticated system, the public utilities agency is attempting to collect and maintain data manually, rather than computerizing the operation. This, of course, makes it virtually impossible to maintain an adequate system.

Further, the public utilities agency also makes matters difficult for itself by keeping an inadequate information system and by failing to utilize information that exists elsewhere. For instance, through cooperative efforts on the part of the State and the four counties, there are now in existence in Hawaii quite sophisticated information systems covering a wide spectrum of driver and vehicle data. Although these systems are concerned with highway safety in all aspects except for motor carriers which are subject to PUC jurisdiction, they nevertheless include some information about motor carriers and information otherwise useful in regulating the safety of motor carriers. In addition, the state department of transportation is developing a computerized system for accident data and has computerized information on truck weights derived from the annual studies which it is required to conduct under federal requirements. The weights and measures division of the state department of agriculture has also computerized data on truck weighings performed by weighmasters throughout the State. These data are, of course, of direct relevance to the regulation of motor carrier safety by the public utilities agency.

However, the agency is ignoring such data sources and capabilities and is continuing to struggle with its existing cumbersome manual operations or else it does without information altogether. Indeed, the agency has discouraged and resisted the efforts made by other agencies to include the motor carrier program in the other agencies' computerized information systems.

**Lack of plans.** The fundamental problem within the public utilities agency with respect to an adequate information system for the motor carrier safety program is that the agency has no commitment to develop any such system. It thus has no clear concept, program, or plan for identifying the information needs in the motor carrier safety field and for determining how these needs might be met. Nor does it have any notion as to the role that an information system

might play in regulating the safety of motor carriers.

### **Deficiencies in Information System: Specific Areas**

In the following sections we describe some specific ways in which the present so-called system of motor carrier safety information within the public utilities agency is deficient. In this evaluation we utilized as standards the minimum requirements established by the federal government for state highway safety information systems. The federal guidelines, of course, apply generally to all highway safety programs, and not specifically or only to motor carrier safety. But, the federal standards provide a reasonable basis for assessing the public utilities agency's system of record-keeping and information-handling.

The federal standards call for the development and implementation of information-handling capabilities in three main subject matter areas: (1) vehicles, (2) drivers, and (3) accidents. In each of these areas, the standards essentially require the establishment of a computerized system of data-handling. As already clearly indicated, the latter requirement is obviously not being met in the motor carrier safety field in Hawaii. There are, however, other requirements in each area, and when the public utilities agency's information system is evaluated against those requirements the results are as follows:

**Information on vehicles.** For every motor vehicle, the federal standards require that the following information be collected and be readily accessible: make, model year, identification number, type of body, license plate number, name of current owner, current address of owner, and registered gross laden weight if the vehicle is a commercial vehicle.

The public utilities agency's files contain some such information on motor carriers. However, the files are incomplete, inaccurate, and obsolete in many ways.

*First*, it appears that they contain information on not more than half of the vehicles over which the PUC has safety regulatory jurisdiction. This conclusion is inevitable when one compares the vehicle information files maintained by the public utilities agency and those kept by the counties on vehicle registration.

*Second*, even this estimate of not more than half is generous, when one considers that a great deal of the information on file with the public utilities agency is obsolete. The agency's files are clogged with cards (thousands of them) listing vehicles in the names of motor carriers which are no longer in business, such as several defunct sugar and pineapple companies. There are cards for vehicles which no longer belong to the owners listed and which may no longer be in existence.

*Third*, information on many vehicles is simply incorrect. For instance, there are many carriers noted on the public utilities agency's files as private carriers when they should be listed as common carriers. And there appears to be no consistent classification of vehicles by body types.

*Fourth*, even where vehicles are properly registered by carrier, body type, etc., the available information does not include all the data specified in the federal standards.

The upshot of all of these deficiencies is that the data maintained by the public utilities agency on motor carrier vehicles cannot provide accurate information on the number and kind of motor vehicles that are subject to the regulatory control of the agency. Nor can the data be used to determine who owns how many and which motor carrier vehicles—information that would be useful in the program of enforcing motor carrier safety standards.

**Information on motor carrier drivers.** The federal standards for information on motor vehicle drivers require that the following

information be kept on each driver: positive identification, current address, driving history, type of license held, and the limitations imposed on the license. For drivers of motor carriers, it appears that maintenance of the following additional data on each driver would be appropriate: qualification by type of license held, current employer, physical fitness status, traffic violation convictions, accident involvement, driver training, and current evaluation on driving performance.

The public utilities agency's information system contains none of this information, except physical fitness status. But even these data appear to be grossly inadequate. It appears that the physical examination forms are not being submitted as required for many persons who are driving commercial vehicles subject to PUC regulation. Physical examination reports are supposed to be submitted to the PUC every two years for drivers under 40 years of age and annually for drivers 40 years of age or older and for drivers operating commercial vehicles under physical disability waivers. The agency can hardly enforce this requirement of the submission of physical examination forms when by its records it is unable to tell how many trucks there are, who owns them, or who is driving them. Moreover, the driver physical fitness forms that are submitted are so crudely sorted (merely by island and age of driver) and the forms for several years are so jumbled that no meaningful information can ever be derived from them.

**Information on accidents.** Federal standards for motor vehicle accident records require that the following information be collected and kept on each accident: the accident time and location; the drivers and vehicles involved; the type of accident; a description of the resulting injury and property damage, if any; a description of the environmental conditions surrounding the accident; and an identification of the cause or causes of and factors contributing to the accident, including the absence of or failure to use safety equipment. For motor carriers, it would seem appropriate also to maintain

information on vehicle and carrier involvement in accidents by carrier.

Some of the above listed information is collected by the public utilities agency. The agency prescribes a form for accident reporting to yield most of these data. However, here, as in the cases above, the forms are not properly used. In many instances, motor carriers do not file the required accident report, and when they do file, the reports often are neither complete nor accurate.

We attempted to compare the accident reports of the public utilities agency with those prepared by the department of transportation under the auspices of the highway traffic safety coordinator. Only in the case of bus accidents did we find the two sets of information nearly comparable. Here we found vast discrepancies between the information kept by the two systems. For instance, the department of transportation's files reflect 296 bus accidents in 1972, while the files of the public utilities agency reflect only 34. While differences in threshold requirements for reporting accidents under the two systems may provide some explanation for variations in accident statistics, these differences are not sufficient to account for such a wide discrepancy between the two systems. The inescapable conclusion is that either not all reportable accidents are being reported to the PUD or the PUD is failing to record all accidents reported to it.

#### **Impact of the Deficiencies in Motor Carrier Safety Information on the Statewide Program for Highway Safety**

The public utilities agency's grave deficiencies in recordkeeping and information-handling for motor carrier safety not only seriously undermine the whole effectiveness of the motor carrier safety program but also adversely affect the State's total highway safety program in very significant ways. At least two such adverse effects are readily discernible: (1) the State as a whole is prevented from

complying with the federal requirement on maintaining motor vehicle information in a readily accessible form and (2) the state program for enforcing vehicle safety inspections is seriously impeded.

**Effect on statewide information system.** Although through the cooperative efforts of the State and the counties, sophisticated information systems are now in operation regarding motor vehicles and motor vehicle safety, these systems are necessarily incomplete at present. This is because motor carriers and motor carrier vehicles are under the jurisdiction of the PUC and outside the domain of the other state and county agencies. These other state and county agencies include in their information systems some data on motor carriers and motor carrier vehicles, but some other information at present can only be secured through the public utilities agency. One such piece of information is the registered gross laden weight of all commercial vehicles operating in the State. But such information cannot now be secured from the public utilities agency because of the voids and inaccuracies existing in the agency's records.

To the extent that such information cannot readily be furnished by the public utilities agency, the State is unable to comply with the federal requirements on information systems.

Due to the public utilities agency's neglect in this area, the other state and county agencies are now attempting to secure commercial vehicles' gross laden weight information on their own. They are now requiring the owners of all new commercial vehicles registered with them to include gross laden weight information on their registration forms. Eventually this should complete the statewide system, but the process is likely to be lengthy, because many commercial vehicles are in use for 20 years or more.

**Effect on enforcement of vehicle safety inspections.** One of the most effective enforcement tools for achieving compliance with motor vehicle safety inspection requirements is

to require evidence of a valid inspection of each vehicle before it is registered or reregistered each year. The State and the counties have instituted such a requirement covering most motor vehicles in Hawaii. Implementation of the requirement has been made possible through the inclusion of vehicle inspection data in the statewide traffic safety information systems. Thus, for most vehicles, the annual reregistration form mailed to the owner of a vehicle indicates whether or not a valid inspection certificate is in effect for the vehicle being reregistered. For all newly registered vehicles and for vehicles where the reregistration form indicates an inspection certificate is not in effect, the registrants must show separate evidence that an inspection certificate has been issued for such vehicles before these vehicles can be registered or reregistered.

This procedure does not apply, however, to vehicles subject to the safety regulation of the PUC. This is because aside from the fact that there is no way at present to feed PUC vehicle inspection data into the statewide traffic safety information systems no accurate and complete record of safety inspections of motor carriers is kept by the public utilities agency. As a consequence, it is possible for motor carrier vehicles to avoid going through the regular safety inspection process and to escape being detected through this very effective enforcement procedure. All indications are that a great many vehicles subject to inspection under the PUC program are not actually being so inspected.

**Impact on the office of the highway safety coordinator.** The deficiencies in information-handling by the public utilities agency place a burden on the office of the highway safety coordinator in moving to bring about a system which will readily furnish the necessary and desired information on motor carriers and motor carrier vehicles. Under the statutes, the office of the highway safety coordinator is charged with the responsibility to coordinate all governmental activities in Hawaii relating to highway traffic safety and to bring

Hawaii into compliance with federal standards in the highway traffic safety area. To the extent that no integrated, accurate, complete, and accessible records are available on motor carriers, the office of the highway safety coordinator is not fulfilling its responsibilities. To date, although the office is aware of the deficiencies in the motor carrier area, the office has chosen to ignore the problem and to maintain a hands-off policy regarding information on the motor carrier aspect, on the ground that this aspect is the responsibility of the public utilities agency.

This attitude and policy has required the office of the highway safety coordinator to be less than candid in its reports to the federal government. Thus, for instance, instead of acknowledging the existence of the problem and discussing plans and methods for overcoming it, the office has been advising federal authorities that the State of Hawaii is in full compliance, and has been since 1970, with the requirement relating to the registered gross laden weight of commercial vehicles, when, in fact, Hawaii has never been in compliance with this requirement and is still falling short of meeting it.

### ***Recommendation***

*We recommend that the office of the highway safety coordinator (in conjunction with the public utilities agency, if that agency is to continue to have some responsibility for motor carrier safety) give priority attention to the development and implementation of an accurate, up-to-date, complete, and accessible recordkeeping and information-handling system for the motor carrier safety program. Such an effort should emphasize the satisfaction of those data requirements which are necessary for carrying out an effective program of motor carrier safety regulation, the application of computer techniques, and the integration of the information system on motor carriers with the information systems on motor vehicles and traffic safety maintained by other governmental agencies.*

## Chapter 12

### MOTOR CARRIER DRIVER LICENSING, PHYSICAL FITNESS, AND PERFORMANCE

Driver error is a major cause of motor vehicle accidents. Therefore, it is vitally important to do all things possible to assure that only able and qualified drivers operate motor carrier vehicles. The programs for accomplishing this are driver licensing, driver physical examination, and driver training and performance evaluation. This chapter examines these programs as they are administered by the public utilities agency. It examines the extent to which the programs meet legal requirements and serve to assure the competence of motor carrier drivers.

#### Summary of Findings

1. Qualifications for licenses and certificates to operate commercial vehicles are determined by several state and county agencies. These qualification standards are uneven, nonuniform, and inconsistent in several respects when there appears to be no good reason why they should be so. Such unevenness, nonuniformity, and inconsistency causes unnecessary hardship to drivers seeking to qualify for two or more kinds of licenses or certificates.

2. PUC rules governing driver qualifications and licenses to operate commercial vehicles are vague, uncertain, and confusing. The limited standards that do exist in this area are not vigorously enforced by the public utilities agency.

3. Although the public utilities agency has done more work in the area of physical fitness of drivers than in any other area concerning the licensing of drivers, it has fallen far short of administering this program. The physical fitness standards established by the agency are weak and incomplete; the instructions to physicians conducting physical examinations of drivers are inadequate; the physical examination reports submitted by the doctors are hardly reviewed; and waivers for physical disabilities are granted without limitation or concern for the safety of the public. As a result, the seriously disabled are being permitted to operate commercial vehicles.

4. The public utilities agency has no program and no standards whatsoever governing driver training and performance evaluation, even though it is recognized that training and evaluation of drivers are key aspects of any licensing program.

#### Licensing

**The requirements.** Any person wishing to operate a motor vehicle on the public roads is required to be licensed. To be licensed, such a person must meet certain requirements relating to age, physical fitness, knowledge of traffic laws, and ability to operate a vehicle. The requirements that must be met depend on the kind of vehicle the person intends to operate and the purpose for which he is going to operate

the vehicle. Currently, there are ten categories of motor vehicle operator's licenses related to the kinds of vehicles to be operated.

1. Motor scooters;
2. Motorcycles and motor scooters;
3. Passenger cars of any gross vehicle weight and trucks having a gross vehicle weight rating of ten thousand pounds or less;
4. All of the motor vehicles in category 3 and buses;
5. All of the motor vehicles in category 3 and trucks having a gross vehicle weight rating of more than ten thousand pounds, other than tractor-semitrailer combinations and truck-trailer combinations;
6. All of the motor vehicles in category 5 and tractor-semitrailer combinations;
7. All of the motor vehicles in category 6 and truck-trailer combinations;
8. All of the motor vehicles in categories 4 and 5;
9. All of the motor vehicles in categories 4 and 6;
10. All of the motor vehicles in categories 4 and 7.

Note that, to be licensed to operate any of the vehicles included in categories 4 to 10, one must also be licensed to operate category 3 vehicles (passenger cars and light-duty trucks). In other words, the category 3 license is the basic motor vehicle operator's license. This license is held or required to be held by every person operating any other kind of motor vehicle.

To qualify for this category 3 license, one must be 15 years of age or older, pass a vision test, secure a medical waiver or meet

certain restrictions in the case of obvious physical handicaps, pass a written test on traffic laws, and pass a practical on-the-road test.

Beyond these minimum requirements there are additional, more stringent standards that must be met if one wishes (1) to be licensed to operate vehicles in categories 4 to 10, or (2) to be allowed to operate vehicles of any specific kind for certain specific purposes. These additional requirements are either expressly provided by statute or are imposed by rules and regulations of one or more state and county agencies.

There are a number of state and county agencies which are authorized, indeed required, to establish rules and regulations relating to operators' licenses. Among them are: the office of the highway safety coordinator, the public utilities commission, the department of education, the counties per se, and the examiner of drivers in each county.

The office of the highway safety coordinator has overall responsibility for setting or ensuring that there are licensing standards. The PUC has general jurisdiction to set licensing standards for drivers of motor carrier vehicles (buses, trucks, etc.). Other state and county agencies, in the main, have jurisdiction to establish licensing standards for drivers of particular kinds of vehicles or for drivers operating vehicles for particular purposes. For instance, the department of education is responsible for the standards covering persons who transport pupils to and from school in school buses, and the city and county of Honolulu may establish requirements for persons to drive taxicabs and municipal mass transit vehicles. The jurisdictions of these other state and county agencies may overlap that of the PUC. For example, both the department of education and the PUC have jurisdiction over the drivers of buses and the operation of these buses for transporting pupils. Also, the PUC has concurrent jurisdiction with the counties over drivers of taxicabs.

Generally, the actual examination of all applicants for operator's licenses of all kinds, for all purposes, is conducted at the county level. It is conducted by the examiner of drivers and, in the case of licenses to operate buses, heavy-duty trucks, tractor-semitrailers, and truck-trailers, also by a certificated fleet safety examiner.<sup>1</sup> The examination is conducted based on the minimum standard for category 3 operator's license described above and such additional standards for the operation of the various kinds of vehicles and for various purposes as are determined by the highway safety coordinator's office, the PUC, and other state and county agencies.

In the case of standards established by the PUC and other state and county agencies (other than the office of the highway safety coordinator), some aspects of the examination may be conducted by these state and county agencies themselves. For instance, the examination to determine whether an applicant for a license to operate school buses to transport pupils to and from school has or does not have any criminal convictions and has satisfied certain training requirements is performed by the department of accounting and general services on behalf of the department of education. When some aspects of the examination are conducted by these other state and county agencies, these agencies issue "certificates" to those found to be qualified on such examination. Thus, the department of education issues a certificate to any person it finds qualified on its examination to operate school buses.

Both the license issued by the examiner of drivers and the certificate issued by a responsible agency (when the agency issues such certificates) are necessary for a person to operate certain vehicles or to operate vehicles for certain purposes. Sometimes the issuance of the certificate by one agency concerned is a prerequisite to the issuance of the operator's license by the examiner of drivers. A certificate, however, may be required to be renewed more frequently than the license. Under the statute, any class of vehicle operator's license must be renewed every four years, except that renewal

every two years is required if the licensee is 65 years of age or older, is 24 years of age or younger, exhibits physical impairment, or has numerous convictions for violations of traffic laws. A certificate, however, may be required to be renewed annually. For instance, the DOE-issued school bus operator certificate must be renewed annually.

There are a number of difficulties in this licensing procedure. They are described in the paragraphs that follow. Some of the difficulties described are those that apply to the licensing of drivers in the State generally, and not necessarily only to the licensing of motor carrier drivers. They are included, however, for they affect the licensing of motor carrier drivers. Other shortcomings relate specifically to the licensing of drivers under the PUC.

**Shortcomings in licensing of motor vehicle operators, generally.** Although several different state and county agencies are involved in establishing standards for driver qualification, it would appear reasonable to expect that there would be some evenness, uniformity, and consistency in the standards, particularly as they apply to drivers of the same kind of vehicles and to drivers who operate vehicles for similar purposes where the risks and the extent of losses in cases of accidents are somewhat alike.

For instance, a driver who operates a school bus to transport pupils to and from school and a driver who operates a bus to transport pupils on excursions and to athletic events operate the same kind of vehicles and carry the same class of persons. Often the purposes. Thus, although the qualifications of one is set by the department of education and the qualifications of the other by the PUC, there is no logical reason why the qualification standards for one should be any different from those for the other. Similarly, there is no reason

<sup>1</sup>The requirement of examination by a certificated fleet safety examiner became effective on July 1, 1973.

why the qualification standards for taxicab drivers should differ vastly as between those set by the PUC and those set by the counties. Both agencies are concerned with the same drivers, the same vehicles, and the same clientele. Similarly, there appears to be no good reason why the qualification standards for drivers of school buses which are set by the department of education should not be substantially the same as those for drivers of tour buses which are set by the PUC. Except for the fact that one involves students and the other tourists, the circumstances are much the same.

This is not to say that there might not be some slightly different or some additional standards for one group of drivers than for another. For instance, the counties may want to require taxicab drivers to know in some detail the roads, streets, and geography of the community in which they ply their trade, a requirement which may not be of special concern to the public utilities agency in its safety regulation of taxicabs. But, in the main, standards applicable to drivers of the same kind of vehicles or to drivers who operate vehicles in the same kind of trade or for the same purpose should be uniform and even.

Aside from the reasonableness of one's expectation of evenness, uniformity, and consistency in the standards, regardless of how many agencies are responsible for establishing them, the presence of such evenness, uniformity, and consistency would be extremely helpful to the drivers who must qualify under the standards of the various agencies involved. It would mitigate the need for the driver-applicant to gather differing sets of documents and undergo differing sets of tests to drive the same kind of vehicle or the same vehicle in two similar but differently regulated trades or purposes. Further, if even, uniform, and consistent standards were coupled with integrated examinations, the driver-applicant could avoid going through duplicative examination processes; a single examination would be sufficient to satisfy the requirements of two or more agencies.

This ideal situation, unfortunately, does not exist today. There are unevenness, nonuniformity, and inconsistency in the standards established by the various agencies. Some examples are noted below, but before turning to these examples, we note that, under the statutes, the office of the highway safety coordinator has the responsibility to coordinate the State's traffic safety programs. This presumably includes coordination of driver qualification standards. However, the office of the highway safety coordinator has yet to concentrate on this area.

*1. Minimum age.* As a matter of statutory policy, no person below 18 years of age may operate any kind of motor vehicle for compensation. Beyond this statutory base, there are significant differences in the minimum age required to operate specific motor vehicles or to operate the vehicles for specific purposes as established by the rules of the various agencies.

The department of education requires that school bus operators driving buses to transport students to and from schools be at least 20 years of age. Under the PUC regulation, while drivers of motor carrier vehicles under its jurisdiction, including buses, must generally be at least 20 years of age, waivers are available to drivers aged 18 to 20, if they are enrolled in an approved apprenticeship program, and waivers may also be granted to drivers under 16 years of age through specific PUC approval.<sup>2</sup> This means that, while one must be at least 20 years of age (under DOE rules) to drive a bus to transport pupils to and from school, one may be less than 20 and drive the same or another (e.g., tour) bus to transport the same pupils on excursions or to athletic events.

The city and county of Honolulu's taxicab ordinance specifies no age minimum to operate a taxicab. Presumably, this means anyone 18 years of age or older (as stated in the statute) may drive a taxicab.

<sup>2</sup>Allowing persons under age 18 to operate commercial vehicles is an apparent violation of the statute prohibiting those below 18 from driving for compensation.

There appears to be no reason for such differences in the minimum age. It may well be that a sound basis can be advanced for requiring a higher minimum age to operate a vehicle to transport passengers than to operate a vehicle to convey commodities. But, no good reason is apparent why there should be a difference in the minimum age to drive a bus to transport pupils to and from schools from the minimum age to operate a bus (school bus or tour bus) to transport these same pupils on excursions, etc., or why taxicab operators may be 18 years of age but school bus operators must be at least 20 years of age.

Moreover, agency rules establish minimum ages, but not maximum ages. Age as a factor affecting qualifications to operate commercial vehicles may be significant not only at the younger end of the age scale but also at the older end. Some consideration, it would thus appear, needs to be given to the desirability of establishing age limits on qualifications to operate commercial vehicles.

### *2. Driving and training records.*

Applicants for school bus driver certificates and taxicab driver certificates may be disqualified on the basis of their criminal records and driving records. However, no such disqualification requirements apply to PUC-regulated drivers even though they may be driving the same types of vehicles and providing the same types of transportation services as those drivers covered by the school bus driver and taxicab driver certification requirements. Thus, bus drivers may be disqualified for criminal record if driving students to and from school, but not for driving the same students on field trips. And taxi drivers may be disqualified, but not 1-7-passenger common carrier drivers.

The same situation prevails with regard to training requirements, which range from virtually no requirements for PUC-regulated drivers to annually required courses for DOE-certificated school bus drivers.<sup>3</sup>

Again, it appears that there is no reason why some standardization in these areas cannot be put into effect.

*3. The number of requirements.* In addition to differences in specific requirements, there are differences in the number of requirements various agencies impose. To qualify for a DOE-issued school bus driver certificate, one must: (a) have a PUC doctor's certificate, (b) have a tuberculosis examination and clearance, (c) have a traffic abstract (from the district court) and a criminal clearance (from the police department) showing no convictions within the preceding five years for certain felonies and within three years for certain misdemeanors, (d) have a valid driver's license and one or more years of driving experience, (e) be 20 years of age or more, (f) have a certificate of completion of an approved school bus driver training course, and (g) be certified by an examiner of drivers as being competent to operate a school bus and as being able to read and understand simple English used in highway directional signs and as having knowledge of all traffic laws and ordinances relating to school buses.

In contrast, to qualify under PUC rules to drive a bus for purposes other than transporting pupils to and from schools, an applicant need only (a) have a PUC doctor's certificate; (b) have a valid driver's license; and (c) be 20 years of age or older, unless specific waiver is granted by the PUC.

A taxicab operator in Honolulu must: (a) submit a letter from the employer (taxicab company); (b) submit three photographs of himself, wearing glasses if required by the examiner of drivers to wear glasses while driving; (c) have a traffic abstract of his driving record; (d) have a PUC doctor's certificate; (e) submit to

<sup>3</sup>Since the passage of Act 214 in 1973, employers of drivers of most commercial vehicles are supposed to provide their employee-drivers with a driver improvement program, which shall include annual driver safety courses approved by the highway safety coordinator, but this requirement is not reflected in PUC General Order No. 2 and is not being enforced in any way by the public utilities agency.

a criminal record check, including a fingerprint check, from the police department's records division; (f) pass a written test concerning the Honolulu Taxicab ordinance; (g) pass an oral test on local geography; and (h) have a valid driver's license. That these requirements are different from those of the PUC and those of the department of education is readily evident.<sup>4</sup>

Although there may be good reasons for requiring that an applicant have certain particular skills or knowledge for operating a vehicle for a particular purpose (such as knowledge of geography for taxicab operators) but not for operating for another purpose, there is considerable room for standardizing the number and kinds of requirements.

**Shortcomings in the regulation of driver qualification by the PUC.** Although various state and county agencies have some responsibility in the matter, under the statute the PUC appears to have the primary responsibility to regulate the qualification of all motor carrier drivers. The PUC's authority is broad in scope. The only prohibition restricting its area of control is that relating to the qualification of drivers of county-owned and -operated mass transit systems. The other agencies' responsibility is limited in scope—e.g., school bus drivers and taxicab drivers—and is not exclusive. The PUC exercises concurrent jurisdiction in these areas. Unfortunately, however, the public utilities agency has failed almost completely in fulfilling its responsibility. Its specific failings are as follows:

1. **Limited focus.** The PUC has chosen to focus its attention exclusively on the very narrow physical fitness aspect of motor carrier driver qualification. Thus, it has established a form for medical certification of the physical fitness of motor carrier drivers. But, as noted in a subsequent section of this chapter, even here the PUC has failed significantly.

2. **Vague standards.** In the other aspects of motor carrier driver qualification, the PUC has done virtually nothing except to include in

its rules and regulations some very broad and largely meaningless general statements. Examples of these statements are as follows:

- . "Every driver shall be competent by reason of experience or training to operate safely the type of motor vehicle or motor vehicles which he drives."
- . "Every driver shall be familiar with the rules and regulations established by the Commission pertaining to the driving of motor vehicles."
- . "Every driver shall be able to read, speak and write the English language to the extent that he can operate a motor vehicle safely upon the highways and make reports as required."
- . "Every carrier, and his or its officers, agents, representatives and employees who drive motor vehicles or are responsible for the hiring, supervision, training, assignment or dispatching of drivers shall comply and be conversant with the requirements of this part."

Nowhere in the PUC rules are there any criteria, testing procedures, and administrative machinery by which to give meaning and effect to any of these generally stated requirements. By themselves, these statements constitute little more than general exhortations to the carriers and their drivers.

3. **Confusing standards.** Where the PUC has attempted to be more specific in setting qualification requirements, it has stated the requirements in such a manner as to cause

<sup>4</sup>The drivers of the buses of the contractor which has a contract with the city and county of Honolulu to provide mass transit services must meet the requirements imposed by the county officials responsible for overseeing the operations of the transit system. (Mass transit systems, vehicles, and drivers are outside the jurisdiction of the PUC.) Among the requirements currently imposed are physical fitness and mandatory participation in a certain training program.

confusion rather than clarity. For instance, its rule on the minimum age to operate a motor carrier vehicle begins with the statement, "No driver employed by a motor carrier shall be less than 20 years of age." The rule then makes some exceptions to this general requirement. The first exception states: "carriers of property may employ drivers under 20 years of age but not less than 18 years of age through individual waivers granted by this Commission if they are enrolled in an approved apprentice program." It then goes on to provide for a second exception which reads as follows:

"No driver employed by a private carrier of property by motor vehicle in the furtherance of a commercial enterprise shall be less than 16 years of age; provided, however, private carriers may use drivers who are less than 16 years of age but not less than 15 years of age, if they are immediate family members of the private carrier and when specifically authorized by the Commission upon written request by the private carrier."

This rule is confusing and contradictory. The first exception makes no distinction between common, contract, and private carriers of property. The second exception, however, covers only private carriers of property. A question arises as to whether or not the first exception applies to all common, contract, and private carriers of property or only to common and contract carriers of property. If it applies only to common and contract carriers of property but not to private carriers of property, then no private property carrier driver under 20 years of age who is an immediate family member of the carrier needs specific PUC approval unless he is between the ages of 15 and 16 years. If on the other hand the first exception applies to private property carriers as well, as it seems to, then we have the somewhat anomalous situation where specific PUC approval is required for drivers who are immediate family members of the private carriers if they are between 15 and 16 years of age or between 18 and 20 years of

age but not if they are between 16 and 18 years of age.

The illustration above points out other confusions. Why is an apprentice program applicable only to persons 18 to 20 years of age and not to those 15 to 16 years of age, and why is there a special exception made for drivers of private carriers of property who are immediate family members of the private carriers? As far as safety is concerned, it would appear to be completely immaterial whether a person is driving for a private carrier of property or a common or contract carrier of property and whether he is an immediate family member of the carrier or not. Driving skills and job requirements are the same in all instances.

Further, why does the rule vary from the statutory provisions? The rule sets as a general requirement a higher minimum age limit than the age limit (18 years of age) set by law to drive a motor vehicle for compensation, and it allows by way of an exception persons younger than the statutory age limit to drive motor carrier vehicles—as low as 15 years of age, in fact. It may be quite reasonable and appropriate to set a higher minimum age limit for certain commercial vehicle drivers, but there appears to be little justification for setting a lower minimum age limit than that specified by law.

**4. Failure to provide mechanism to make standards operative.** Not only are the qualification requirements confusing in those areas where the PUC has attempted to be more specific, but after having set those requirements, the PUC has rendered them virtually nugatory by not providing machinery to implement them. Take the matter of the minimum age for drivers of property-carrying commercial vehicles discussed above. An exception to the minimum age of 20 years is allowed if the driver is "enrolled in an approved apprentice program." Yet the PUC has not developed any criteria for approving apprentice programs. As a consequence, there is currently no PUC-approved apprentice program.

5. *Failure to enforce standards.* The PUC has no machinery for the effective enforcement of the limited driver qualification standards it has. For instance, although its rules provide that no one under the age of 20 may operate a motor carrier vehicle (except by a specific waiver in the case of transporting goods), it appears that many persons under the age of 20 are operating motor carrier vehicles in Hawaii, including passenger-carrying vehicles. This is confirmed by the result of our sampling of 2106 drivers who were reported to be driving motor carrier vehicles in late 1972 and early 1973 on the islands of Kauai, Maui, and Hawaii. We found among the 2106 drivers at least 29 who were underage as follows:

Age	No. of drivers
under 16	1
17	3
18	16
19	9
	<hr/> 29

Of the 29, 14 were employed by companies operating taxis and tour buses—i.e., motor carriers carrying passengers.

Further, there are a number of persons driving vehicles which are subject to the safety regulation of the PUC who have not been authorized to drive by the PUC or even properly licensed to do so by the police department as required by law. This problem exists particularly in the area of heavy vehicles rented from rental and U-drive companies. As things stand now, any person with the minimum basic operator's license to operate a passenger car or a light-duty truck can rent a heavy-duty vehicle from these rental and U-drive companies. Except for the normal police-patrolling of the highways, there is no way at present to prevent anyone from operating a heavy vehicle obtained from rental or U-drive companies on the public highways. In effect, the public roads are being thrown open to the hazards of heavy vehicles driven by persons who are unskilled, inexperienced, and generally unqualified to operate such vehicles.

From the above, it is very clear that the PUC has not carried out its responsibility in the area of motor carrier driver qualification. The inadequacy of the PUC's performance in regulating motor carrier driver qualification has, in recent years, led to movements to revise the statutes on driver licensing. For instance, such recent legislative enactments as Act 214, SLH 1973, creating "certificated fleet safety examiners" to assess the competence of bus, heavy-duty truck, tractor-semitrailer, and truck-trailer drivers were the result of the push for such legislation by an interagency committee composed primarily of county highway safety officials. While this is one way of getting around the PUC's inaction in this area, it is scarcely a satisfactory way to resolve the problem, because the PUC's legal responsibilities remain.

*Recommendations.* We recommend that the office of the highway safety coordinator assume the primary responsibility for the establishment of driver licensing standards, including the standards for the licensing of commercial vehicle drivers, and that the county police departments enforce such standards. In the establishment of such licensing standards, the office of the highway safety coordinator should:

1. Consult with the public utilities agency, the department of education, and the counties which may retain some residual regulatory jurisdiction over commercial vehicles.
2. Ensure that the standards established for the licensing of drivers of various classes of vehicles, in various business trades, and for various purposes are as even, uniform, consistent, clear, and specific as possible.
3. Formulate standards that bear a reasonable relationship to the risks to the public, the minimization of which is to be sought.
4. Consider the appropriateness of establishing uniform maximum as well as minimum age limits for licenses to operate commercial vehicles.

5. *Provide for a single application and examination process to qualify drivers for the various categories of licenses and certificates and their renewals.*

### **Physical Fitness**

An important requirement in the licensing and certification of motor carrier drivers is that the drivers periodically undergo physical examinations, including examinations for sight and hearing, and that they obtain medical certificates attesting to their physical fitness to drive. Such physical examinations must be conducted once every two years for drivers under 40 years of age and every year for drivers 40 years of age and older.

The purpose of this requirement is to ensure that for the safety of the general public only drivers who are physically fit operate commercial vehicles. Important though this requirement may be, neither the PUC nor the PUD appears to be serious about it. This is so, despite the fact that, as noted above, this is the area where the PUC and the PUD have concentrated most of their efforts. The shortcomings in the administration of this requirement are noted below. These shortcomings are all the more serious when one considers the fact that other agencies rely on the PUC physical fitness requirement and administration of the requirement. For instance, the department of education requires that the PUC regulation on physical fitness be followed for bus drivers who transport pupils to and from schools.

#### **Lack of input from the field of medicine.**

Although the physical fitness program is heavily dependent on medical examinations, it is administered by the PUC and the PUD without the benefit of the expertise of those in the field of medicine. The public utilities agency does not retain a physician or medical consultant and relies only upon its own resources, even though there is no one within the agency with any

training, experience, or other background in the field of medicine and physical fitness.

The desirability and need for medical advice and consultation have been recognized by highway traffic safety authorities generally. Hawaii's Highway Safety Act itself recognizes this and creates a medical advisory board within the office of the highway safety coordinator. The board's duties are to develop a system for medical evaluation of driver applicants and to furnish advice on medical criteria and vision standards for motor vehicle drivers. Despite the presence of this medical advisory board, the public utilities agency has not taken any steps to utilize the medical advisory board or to create one for itself.

Some of the problems noted in this chapter with the PUC-PUD administration of the physical fitness program are due in part to this lack of medical input. This is particularly the case in the establishment of physical fitness standards and evaluation of medical examination reports on drivers.

**Inadequate standards.** The standards set forth in the PUC rules governing the physical fitness of drivers of commercial vehicles are far from adequate. In making this assessment, we compared the physical examination standards contained in the PUC's rules with those of the U.S. Department of Transportation's Bureau of Motor Carrier Safety and also with those contained in a guide published by the American Association of Motor Vehicle Administrators. The latter standards were put together after an extensive study of conditions in California.

Generally, the Hawaii standards are vague and lenient by comparison and are silent on some important matters. To cite a few examples: (1) Hawaii standards allow diabetics requiring up to 15 units of insulin per day to be certified, whereas the other two standards prohibit diabetics requiring any insulin treatment from being considered fit to drive a commercial vehicle (this is significant because insulin shock can result in loss of consciousness);

(2) Hawaii standards make no mention whatsoever of alcoholism (which is the major factor involved in traffic fatalities both nationally and in Hawaii); (3) Hawaii standards also make no mention of drugs and narcotics (the taking of which has many of the same effects as drinking alcoholic beverages); and (4) Hawaii's visual acuity requirements are less stringent than those of the other two standards (taking into consideration the waiver privilege given to doctors in the Hawaii standards).

**Inadequate instructions to doctors.** As the doctor's medical certificate is the essential element in determining the physical fitness of a driver, it would appear only reasonable that adequate instructions be provided the doctor regarding the purpose and conduct of the physical examination that the doctor is expected to perform in issuing such a certificate. The instructions which the PUD currently issues are deficient in several respects.

*First*, aside from a brief, one-page form which requires the recording of a minimum of data, the PUD issues no further instructions to doctors. This is in contrast with the efforts of the federal Bureau of Motor Carrier Safety. The bureau's medical examination form contains many detailed instructions. In addition, the federal bureau has published a pamphlet aimed at informing and instructing doctors about conducting physical examinations of motor carrier drivers. It also utilizes its generalized communications program to convey information on physical examinations to motor carriers, trade associations, trade journal publishers, and medical associations.

*Second*, the brief, one-page form supplied by the PUD says nothing about the job that the driver-applicant is expected to perform. In assessing physical fitness, it is essential to relate the physical condition of the individual to the type of work, stress, and strain to which he will be subjected. While one may well be quite fit to drive a light vehicle on an occasional basis without constituting an unreasonable danger to himself or to others, he may be very unfit to

cope with the stress and strain and heavy work of driving a bus or large truck in congested traffic for hours on end, day after day. Thus, the doctor must be made fully aware of the demands of commercial driving, if the doctor is expected to make judgments about one's physical fitness for such a job.

The federal Bureau of Motor Carrier Safety recognizes the importance of informing physicians about the nature of the job of motor carrier drivers. In one of its bulletins it states:

"... some examining physicians have not become familiar with the minimum requirements as stated on the examination form, or have not been made aware of the physical, mental, and emotional responsibilities placed on drivers of commercial vehicles. Physicians who annually examine many commercial drivers are usually aware of these basic medical requirements. However, those physicians who on occasion examine potential drivers and certify them to be qualified, when in fact they are not qualified, may be unaware of these requirements, or the importance of driver compliance.

"This statement by no means is meant to reflect on the competence or thoroughness of the physicians. The point we intend to make is that all medical people who are, or will become involved, must be [made] aware of the minimum physical requirements prescribed by the regulations and be given full information about the responsibilities of, and the exacting demands on, present-day commercial drivers."

The difference in the certification that doctors are required to make on the federal and state forms is very illuminating in this regard. On the Hawaii form the doctor certifies that

the driver he has examined "appears physically fit" and "to the best of [the doctor's] knowledge" meets the physical requirements set out in the PUC rules. On the federal form, however, the doctor certifies that he has conducted the examination in accordance with the motor carrier safety regulations and with a knowledge of the driver's duties and finds the driver physically qualified. Some jurisdictions have even more pointed certification statements. The State of Florida, for instance, requires examining physicians to say whether or not they would be willing to ride with the individual they examined.

#### **Inadequate review of examination forms.**

The PUD review of the physical examination forms submitted by examining doctors is at best cursory. An indication of this is the amount of time devoted by the staff to examining the forms. In 1972, for example, the staff processed 14,447 forms. During this same period, the staff members who reviewed the forms reported spending a total of approximately 500 hours on this activity. This means that, on the average, the staff members spent about two minutes on each form, scarcely a testament to rigorous review. Moreover, about one-fourth of the total staff time was expended by a temporary clerk who worked part-time.

Another indicator of cursory review is the number of forms that go unquestioned even though they reveal conditions which appear to disqualify the persons affected from driving commercial vehicles or which indicate that further medical evaluation should be performed before a driving privilege is granted. That there are a great number of such forms was confirmed by our review of a sampling of 2106 forms submitted from the islands of Kauai, Maui, and Hawaii in late 1972 and early 1973. The results of that sampling were as follows:

**1. Drivers with physical problems.** In the 2106 forms sampled, we found that over 250 drivers had various physical ailments, such as hypertension, "high blood pressure," heart diseases, visual acuity deficiencies, hearing

disturbances, and diabetes. In addition, we noted that there were 29 underage drivers (below 20 years of age), 26 of whom had no audiometer reading recorded for them and one of whom had not been given a hearing test. Among the 29 were about 14 employed by companies engaged in the business of transporting passengers (i.e., taxicab companies and tour bus companies). One of these underaged drivers operating a taxicab was under psychiatric care for emotional problems.

In each of these cases, although the physician had certified that the driver "appeared physically fit," it appears that the PUD should have inquired further.

**2. 148 obesity cases.** The guide published by the American Association of Motor Vehicle Administrators indicates that extremely obese persons should not be permitted to drive commercial vehicles. It states that persons who are 20 percent or more overweight should not be permitted to drive commercial vehicles. Recognizing that this 20 percent limitation may be unnecessarily restrictive, it suggests that probably the limitation should be 30-35 percent.

There are several reasons for prohibiting overweight persons from driving commercial vehicles: (a) obesity may reduce the agility and restrict the freedom of movement of the driver, (b) obesity is frequently symptomatic of other more serious conditions, and (c) there is a rare condition among extremely obese persons which causes them to go to sleep during normal activities.

The PUC rules do not prevent obese persons from driving commercial vehicles. However, it appears reasonable to expect that the PUD, if it were paying attention to the physical examination forms, would question the physical fitness of any person whose form reveals an undue weight problem. Even more is this so when the form reveals that overweight is coupled with other physical infirmities. But our review of the 2106 physical examination forms

showed that no challenge was posed to the forms of any obese drivers.

Among the 2106 physical examination forms, we found 148 which indicated drivers were significantly overweight by comparison with national averages of weight relative to height and age. Moreover, the examining physicians noted that 14 of the overweight drivers had physical ailments.

3. *192 elderly drivers.* Although the PUC rules contain no limitation on the maximum age of commercial vehicle drivers, it would seem that the PUD would be extremely concerned about the physical fitness of elderly drivers. As noted in the guide published by the American Association of Motor Vehicle Administrators:

“The accidents and violations of drivers over the age of 60 frequently involve failure to obey a traffic signal or to observe right-of-way. There is good reason to suspect that such incidents can be attributed to inability to perceive the traffic environment, to make correct judgments about traffic flow, or to transfer correct perceptions and judgments into timely actions. Such persons should have their vision carefully evaluated. Information should be obtained about possible senile changes associated with cerebral vascular degeneration. In particular, questions should be asked about recent episodes of confusion, slowing of thinking processes, and declining memory. Information should be obtained about arthritis and other physical handicaps that may limit driving ability. Night driving should not be permitted since vision and other senses are especially reduced after dark. However, many of these persons should not be permitted to drive at all.”<sup>5</sup>

Our review, however, has shown that the PUD pays no more attention to the physical

examination forms for the elderly than for any other drivers. None of the forms for 65 out of 192 drivers 60 years of age or older was questioned, although each of these 65 drivers suffered from one or more of the following physical conditions: diabetes, hypertension, hearing impairment, visual acuity impairment, heart condition, uremia, osteoarthritis, lung dysfunction, gout, varicose veins, disc syndrome, minimal inactive pulmonary tuberculosis, history of chronic gastric and duodenal ulcers, and urinary frequency secondary to prostate surgery. In addition, the forms for 126 drivers indicated no audiometer reading and the forms for 4 drivers showed no hearing test had been given.<sup>6</sup>

**No enforcement.** Without more than a cursory review of the physical examination forms, physical fitness standards promulgated by the PUC (deficient though they may be in many respects) can hardly be enforced. It is doubtful, however, that even if the PUD paid closer attention to the forms the public utilities agency would conscientiously seek to enforce the standards. The conduct of the agency appears to point to a lenient policy.

1. *Examples.* The agency tolerates long delays in the submission of the physical examination forms. Time lapses of several months between examinations and submissions of examination forms are customary. Also drivers commonly fail to renew for one or more years the waivers granted to them for physical disabilities, although the rules require annual renewals. When they finally submit their applications for renewals, the applications are processed without question by the agency. This means that drivers can continue to operate vehicles even though they may be unfit to drive.

<sup>5</sup>The American Association of Motor Vehicle Administrators, *Guide for the Identification, Evaluation and Regulation of Persons with Medical Handicaps for Driving*, Washington, D.C.: 1967, p. 31.

<sup>6</sup>Of the 192 drivers aged 60 or over, 13 were 65 years of age or older (including 3 in their 70's); of the 13, at least 10 were driving passenger vehicles (i.e., tour buses or taxicabs).

Then, in those few instances where discrepancies on the physical examination forms are identified by the staff, its efforts to obtain clarification or compliance with the regulations are very feeble. The usual procedure is to send a letter noting the discrepancy and asking that the driver surrender the previously issued doctor's certificate. In response, in some cases, the driver provides further explanation or medical evidence to the division justifying retention of the certificate. In other cases, the driver surrenders his certificate, but when this happens the PUD frequently urges the driver to seek a physical disability waiver from the commission. In still other cases, the PUD letter is simply ignored. When this happens, no further effort or initiative is taken by the staff and the person retains his doctor's certificate and presumably feels free to continue driving.

The public utilities agency is also very lax in penalizing drivers who do not have doctor's certificates. In our review of violations reported to the agency by the traffic violations bureau, we found 44 instances in which county police issued citations to drivers for not having doctor's certificates, but no action was taken on any of these by the commission or staff. We did find three instances in which warning letters were sent to carriers about drivers' not having certificates, but no followup was made on these letters.

**2. Improper disability waivers.** Perhaps a more important indicator of the laxity with which the public utilities agency treats this matter of physical fitness is the ease with which it grants waivers for physical disabilities. Indeed, waivers are granted in violation of the PUC's own rules.

There are two provisions in the PUC rules relating to waivers for physical disability. One is found in that section of the rules relating to visual acuity requirements. It states as follows:

"A vision in each eye of 20/40 without glasses or correctible to 20/40 in each eye with glasses. (A waiver

may be granted by the examining physician if the individual has a corrected visual acuity of no less than 20/40 in one eye and no less than 20/100 in the other, providing there is no progressive eye disease present. This waiver is on a year-to-year basis.)"

The other provision is found in that section relating to hearing requirements. The section reads as follows:

"... Hearing should not be less than 10/20 for the low conversational voice in the better ear or shall not exceed an average loss of more than 30 decibels for the 500, 1000, and 2000 cycle tones in the better ear. (A physical disability waiver may be granted by the Commission only when such physical disability is of permanent and total nature that an additional physical examination is of no further value. The request must be in writing; accompanied by a physician's recommendation; abstract of the applicant's traffic record obtained from the Police Department or District Court (Traffic Bureau); and employer's recommendation and statement that applicant cannot be transferred to another position without reduction in salary or wages.)"

There are no other provisions relating to waivers for physical disabilities.

The waiver provision contained in the visual acuity requirement section is explicit on the limits of the waiver. A waiver can be granted under this section for vision less than 20/40 in each eye (with or without glasses) only if the disability, as corrected, does not exceed 20/40 in one eye and 20/100 in the other and there is no progressive eye disease present. This limitation, however, has not prevented the granting of waivers for vision defects in excess of the limits.

Thus, persons with monocular vision, blindness in one eye, and color blindness have been granted waivers.

Waivers for visual defects in excess of the limits specified in the visual acuity requirements section of the rules; indeed, waivers for physical defects of all kinds (loss of leg, heart condition, etc.) have been granted on the strength of the physical waiver provision contained in the hearing requirements section of the rules. But the very fact that the waiver provision is located in the section on hearing makes it apparent that it should apply only to hearing conditions, and not to visual or other physical disabilities.

The public utilities agency justifies its use of this waiver provision on the ground that this provision, when it was first adopted, was not intended to be limited to cases of hearing disabilities but was meant to apply to disabilities of all kinds. It is true that, from the outset, the public utilities agency has been granting waivers for disabilities of all kinds. But originally the rationale for doing so was to accommodate, as a matter of policy, those drivers who were operating or had operated motor carrier vehicles on or before June 1, 1962, when implementation of the Hawaii Motor Carrier Law was first taking place.<sup>7</sup> The reasoning was that, since the law itself contained a grandfather clause covering carriers which were in business on or before July 1, 1961, it was appropriate to extend a similar grandfather coverage to drivers who were or had been driving commercial vehicles as of June 1, 1962, and to allow them to continue to drive notwithstanding that they may have physical disabilities which would otherwise be disqualifying, even though such actions violated PUC rules. Thus, at the start, waivers were granted for disabilities of all kinds only to those drivers who were operating or had operated motor carrier vehicles on or before June 1, 1962.

That the granting of waivers for any disability originally was a grandfather device was confirmed in 1965 when a driver challenged the granting of waivers for disabilities of any kind

only to persons enjoying a grandfather status. The challenge was rejected, and upon the recommendation of the staff the PUC adopted a policy that "physical disability waivers will not be granted to drivers of commercial vehicles . . . where the disability is such that the lives of passengers or the public will be endangered, *except where, as in the past, a moral kind of grandfather rights have [sic] been recognized.*" [Emphasis supplied.]

In 1969, some uneasiness appears to have surfaced on the part of the staff about treating drivers with the same physical disabilities differently, depending on whether or not they were operating or had operated commercial vehicles on June 1, 1962. To be consistent in the treatment accorded all drivers, the staff recommended and the PUC adopted the policy of granting waivers for any kind of physical disability to all drivers, whether they belonged to the grandfathered class or not. Having adopted this new policy, the public utilities agency now justifies its action by urging that the waiver provision contained in the hearing requirements section was intended to apply to all kinds of physical disabilities and not just to hearing disabilities. No legal opinion from the attorney general has ever been secured to confirm this view of the waiver provision.<sup>8</sup>

The basic consideration in granting waivers for physical disabilities of all kinds is economic—that is, whether a denial of the privilege to operate a commercial vehicle would cause the driver to suffer economic hardship. The staff reports which accompany

<sup>7</sup> The law itself was enacted at the 1961 session and became effective on August 21, 1961, with the proviso that the PUC could extend the effective date of the law beyond August 21, 1961, but not beyond four calendar months thereafter.

<sup>8</sup> Under the federal motor carrier safety regulations, waivers are limited only to visual and hearing disability. Since Hawaii's Motor Carrier Law and the ensuing PUC rules were adopted mainly to satisfy federal requirements, it would not be surprising if the real intent was to limit the waiver provision contained in the hearing requirements section to hearing disabilities only. Note that to apply the waiver provision in the hearing requirements section to disabilities of all kinds causes the waiver limitation in the visual section and the other physical requirement provisions of the PUC rule to make no sense at all.

the requests for waivers that go to the commission reflect this emphasis. They are very careful to note the number of dependents each applicant has and they indicate the likelihood of the applicant's securing other employment in the event his request is denied.

This emphasis on economic considerations is contrary to the purpose of driver qualification. The essential purpose of such qualification is to ensure that the general public would not be exposed to unreasonable safety risks. Thus, the focus in granting or not granting waivers should be on the nature of the disability (some disabilities in and of themselves make it difficult, if not impossible, for drivers to operate commercial vehicles safely) and on whether the disability has been adequately compensated for (e.g., through the use of special equipment). In part, economic hardship is overemphasized because the PUC rules contain no specific limits or restrictions and no clear guidelines on granting or withholding waivers for physical disability. But the absence of such specific requirements alone does not provide the whole explanation. Even if we assume that the waiver provision in the hearing requirements section applies to all manner of disabilities, that waiver provision lists economic hardship as only one factor that must be considered. Although vaguely and generally stated, the provision requires consideration of the driver's driving record as well. Yet, even in those cases where the driving record has been poor, waivers have been granted.

For example, a driver with a vision deficiency of 20/400 in his left eye and suffering from alcoholism received renewals of his waiver year after year despite receiving two traffic citations in 1970 and another one in 1971 and despite having been involved in an accident in which four persons were injured and in which he was found guilty of leaving the scene of the accident. Another driver, blind in his left eye, continued to receive a waiver each year although he received four traffic citations before 1970, two more in 1970, one in 1971, and another one in 1973. Still another driver was granted an

initial waiver despite the fact that he had received five citations within a single year.

In 1972, 25 (or almost one-half of the 54 drivers granted waivers) had records showing traffic citations in the years 1970 to 1972. Eighteen of them had visual problems, and of the 18, 10 had received more than one citation. Indeed, one of these drivers with poor vision was issued another traffic citation shortly after receiving a waiver.

This emphasis on the economic well-being of the drivers (and the absence of any specific limitations and guidelines in the granting of waivers) has resulted in the granting of substantially all requests for waivers for physical disabilities of all kinds. Over a ten-year period (1963 to 1972), out of 571 requests for waivers, only 16 (or 7.8 percent) were denied. Five hundred fifty-five or 97.2 percent were granted. Vision defects (monocular vision, color blindness, poor vision, undeveloped eye, and other visual defects) accounted for more than half of the physical disabilities for which waivers were granted. The nature of the remainder of the disabilities for which waivers were granted ranged widely, including heart condition, poor hearing, and diabetes.

Under normal circumstances, the public utilities agency's concern for the economic well-being of an individual driver might be quite laudable. But where the safety of others is involved, the possible economic hardship to drivers should not be given overriding emphasis.

**Procedural shortcomings.** In addition to the deficiencies in the physical fitness program itself, the administrative process for handling the program falls short in almost every respect. For one thing, the public utilities agency exercises no control over the physical examination forms it prints and distributes. These forms are intended for use by physicians. However, almost any organization may request and receive blank forms; thousands of forms have been distributed under these circumstances to nonmedical

entities. Such laxity is an invitation to fraud and forgery.

More important, the completed physical examination forms are not handled in any systematic way. The treatment accorded these completed forms casts grave doubts upon the efficacy of the physical examinations required of drivers and the accuracy of the reports put together by the public utilities agency.

As described earlier, when the completed forms are received, they are date-stamped, briefly glanced over by the clerks, counted, and sorted by county and by age group. Although a few forms with discrepancies are flagged out for followup inquiry or clarification, for the most part the forms (including many with discrepancies as serious as those flagged out for special attention) are simply bundled up on the assumption that the drivers are physically fit. No effort is made to list the drivers by name or by employer or to arrange them in any order which would make it possible to locate a particular form at a later date or to find out if there is a physical examination form for any particular individual.

The bundled forms are scattered in the PUD's office. We found, for instance, bundled forms in four boxes next to the chief investigator's office, in two file drawers, and in a box under the desk of one of the clerks. The forms were in no chronological order, and forms with different year and month file dates were interspersed. Forms also were misplaced in terms of island and age categories. In addition, we found other forms dating as far back as 1968, even though the forms are supposed to be retained for no more than two years.

Obviously, these records are useless. The PUD periodically reports on the number of drivers subject to PUC jurisdiction. It purports to base its number on the number of physical examination forms it processes. Yet, the manner in which the agency handles these forms clearly indicates that it can never really get an accurate count. Further, as shown below, there were

inexplicable fluctuations in the numbers reported by the division for the years 1966 to 1972.

<i>Year</i>	<i>No. of forms</i>	<i>% change from previous period</i>
1966	12,571	
1969	14,397	14.5
1970	7,152	[49.7]
1971	9,910	38.6
1972	14,447	45.8%

As reported, the number increased from 1966 to 1969 but then dramatically dropped between the years of 1969 and 1970. No satisfactory explanation can be found for the dropoff. Generally, there is a relationship between the number of drivers and the number of registered vehicles, and over the years the number of vehicles registered in Hawaii, including commercial vehicles, has been steadily increasing.

In short, the agency has no accurate idea of the number of commercial drivers in Hawaii who should be undergoing physical examinations and it has no way of keeping track of individual drivers to ensure that they are being examined regularly as required by the rules.

These administrative and programmatic deficiencies simply indicate the general lack of concern by the public utilities agency about the physical fitness of drivers. The matter of physical examinations apparently is considered an onerous burden to be borne with as little effort as possible until it can be pushed off on some other agency or collapses under the weight of its own ineffectiveness. The commission has shunted its responsibilities off on the staff and gives all signs of not wanting to know about the physical fitness of drivers. The top administrators in the PUD, in turn, have pushed the handling of the program down to the lowest unit in the PUD administrative organization. Thus, to the extent that anything is done, it is done almost entirely by the clerks in the office services section.

**Recommendations. We recommend that:**

1. *The administration of the physical fitness program be transferred from the public utilities commission to the office of the highway safety coordinator. The office of the coordinator should develop those standards relating to the physical fitness of drivers.*

2. *The standards on physical fitness be complete, clear, and focused on the safety of the general public. The granting of waivers for physical disabilities should be limited in terms of both the degree and kind of disability allowed.*

3. *Detailed instructions be prepared to assist physicians in the conduct of physical examinations of drivers, including the consideration of the nature of the job performed by motor carrier vehicle drivers.*

4. *A systematic procedure for a careful screening of all submitted physical examination forms be established.*

5. *The office of the highway coordinator, in the establishment of physical fitness standards, the preparation of instructions to physicians, the review of the physical examination forms submitted by physicians, and the review for physical disability waivers, consult with the board of medical advisors located in the coordinator's office.*

6. *Strict controls be placed on the issuance of physical examination forms by prenumbering, distributing only to physicians, and periodic counting of and accounting for the forms.*

7. *A system be developed by which information as to the drivers for whom physical examination forms have not been submitted at the time required may be readily retrieved.*

**Driver Training and Performance Evaluation**

Continuous education and upgrading of driving skills and periodic evaluation of driving

performance are widely accepted as necessary ingredients of traffic and motor carrier safety programs. The legal requirements and the public utilities agency's activities in this area are described below.

**The requirements.** There are a number of federal and state requirements touching on the subject of driver training and driver evaluation. Among those which affect the drivers of commercial vehicles are:

**Federal motor carrier safety regulations.**

The federal motor carrier safety regulations require employers to obtain at the time of employment of a driver quite detailed information on the driver's qualifications, to retain the information thereafter, and to conduct an annual review of the driver's accident and traffic violations record. The review and the name of the reviewer must be retained in the driver's records, and the driver must have a physical examination each 24 months.

**DOE: school bus driver regulation.** The department of education requires school bus drivers to present evidence annually of having taken training, including training in first aid, defensive driving techniques, safe operating procedures, accident procedures, student control and other topics.

**Act 214, SLH 1973.** This new Hawaii legislation requires every employer of drivers of heavy vehicles (essentially commercial vehicles) to have a driver improvement program, including a system of continuous driver evaluation, annual driver safety courses, and other activities prescribed by the rules and regulations of the highway safety coordinator.

**Judiciary: compulsory driver training.**

Hawaii traffic courts, as part of their program to reduce traffic law violations, have been sponsoring driver training and education programs and have been requiring traffic law violators to take such

training. This program received legislative support in 1974, with the enactment of Act 91, which provides for a penalty assessment of one dollar against each traffic law violator. The dollar is paid into a special fund to finance this court-sponsored training and education program.

**Lack of PUC prescribed program.** Despite the acknowledged relevance of driver training and evaluation in any traffic safety program, and despite the responsibilities of the PUC for the safety of motor carrier operations, the PUC today has no program to upgrade the driving skills and to evaluate the performance of drivers of commercial vehicles. The PUC rules are completely silent on the subject. Further, the public utilities agency makes no effort to detect driver problems requiring attention and corrective action, although it is regularly supplied with information from which such problems might be uncovered. The traffic violations bureau sends monthly to the agency a summary of all violations of PUC rules and regulations. From these monthly summaries, the frequency of violations by individual drivers and by carriers (an indicator of existing or emerging problems) can easily be determined. However, these reports at present are unused. They are simply tossed into a box in the drawer of an empty desk—usually unopened.

It is not that the public utilities agency is unaware of the relevancy of driver training and evaluation to motor carrier safety. Recognition of the value of training and evaluation programs is reflected in the written summaries issued by the PUC in 1967, 1968, and 1969. The lack of any program in this area for motor carriers is the result of simple disinterest on the part of the public utilities agency. It apparently feels that its primary responsibility in the motor carrier safety field is only with respect to vehicle safety and that other agencies have primary responsibilities for the performance of drivers.

Although the public utilities agency has done nothing in this area, other governmental and private groups have sought to implement

driver training and evaluation programs. The city and county of Honolulu conducts driver safety education programs in cooperation with large motor carrier operators; the county sponsors the Oahu Fleet Safety Organization, which includes both governmental and private sector operators. The county also provides defensive driving training from time to time throughout the year. The Hawaii Trucking Association in past years has sponsored a driver training development program. Also, the Hawaii Teamsters unions have contracted with employers to contribute to a trust fund established to cover the costs of special training of union drivers. The training program requires 40 hours of classroom training, 40 hours of obstacle course training, and 120 hours of on-the-job training. The training program includes an initial diagnostic test and a written, concluding examination. The course is not mandatory, but drivers are encouraged to enroll. All of these voluntary efforts, however, have been and are being conducted without the benefit of governmental rules and regulations.

To a great extent, it is the general lack of any real program on the part of the public utilities commission and staff to develop and maintain the qualifications of drivers of commercial vehicles that gave rise to the passage of Act 214 (1973). The justifications given for this legislation included: the inadequacy of present arrangements; the absence of properly qualified persons to assess the competencies of drivers of heavy vehicles; the lack of adequate facilities to test such competencies; and the absence of ongoing programs to ensure the continuing competencies of drivers. The public utilities agency had no input into its formulation of this legislation or into the development of the rules and regulations to put it into effect.

With the passage of Act 214, the State is only now beginning to develop and implement rules and regulations governing driver training and evaluation. Under the act, the PUC has no role in its implementation; the office of the highway safety coordinator is given that responsibility. The PUC, however, still

retains its responsibility under the Motor Carrier Law. But neither the office of the highway safety coordinator nor the public utilities agency has made any move in recent years to cause a comprehensive program in driver training and evaluation to be developed in the field of commercial vehicles.

**Recommendations.** We recommend that the office of the highway safety coordinator establish standards for continuous driver

training and periodic evaluation of the driving performance of motor carrier vehicle drivers. The actual training and evaluation of drivers may be administered by the industry or the counties under the guidance and program standards set by the coordinator's office. In developing these standards the office of the highway safety coordinator should consult with the sponsors of voluntary, industry and labor programs for driver improvement to assure that the experience with such programs is taken into account in the standards.

## Chapter 13

### MOTOR CARRIER VEHICLE SAFETY

Safe vehicles and vehicle equipment are as indispensable to a sound highway safety program as are safe drivers. No driver, no matter how well trained or experienced, can be certain of avoiding accidents if the vehicle he operates is inherently dangerous. Driver skill will not put brakes in a runaway truck, prevent a tire from blowing out, or replace defective horns or turn indicators.

Assurance that the vehicles the carriers operate are in a good mechanical condition and functioning properly is achieved through systems of licensing and registering vehicles, periodic vehicle inspections, and regularly scheduled vehicle maintenance. This chapter examines the extent to which the public utilities agency does these things, and the effectiveness with which it does them.

#### Summary of Findings

1. The PUC's system of registering motor carrier vehicles fails to register all vehicles subject to the jurisdiction of the PUC. The PUC's poor maintenance of records on the vehicles under its jurisdiction and its lack of enforcement mechanism make it impossible for the PUC to determine what vehicles have not been registered with it. As a result, the registration system is not serving the purpose for which it was intended, namely, to facilitate the regulation of the safety of these vehicles and the collection of fees that are due on them.

2. There is no assurance that motor carrier vehicles are currently undergoing effective, periodic safety inspections. The PUC's rules on vehicle safety standards are overly vague and unspecific; inspection stations are being certified as such on improper standards, are being permitted to operate without adequate instructions on vehicle safety standards, and are being allowed to continue as inspection stations without periodic reexaminations; and inspection personnel at inspection stations are not being examined for competency and are not being provided with periodic training and retraining in inspection modes.

3. Not only is periodic vehicle safety inspection being largely neglected, but the requirement for continuous and regular maintenance of motor carrier vehicles is being ignored.

#### Licensing and Registration

Motor carrier vehicle licensing and registration is intended to facilitate the enforcement of other governmental requirements. For instance, it is useful in ensuring that all vehicles receive periodic safety checks and that the owners of motor carrier vehicles pay the fees levied on their vehicles (such as the gross weight fee). A carefully designed licensing and registration system could flag out those vehicles that have not received a current safety check and those vehicles for

which the required fees have not been paid. Further, the licensing and registration agency can withhold the licensing and registration of vehicles (and thus forbid their operation on the public highways) until the vehicles have undergone a current safety check and the fees levied on them have been paid.

There are two systems of motor vehicle licensing and registration in Hawaii. One is the statewide system operated by the county police and directors of finance in conjunction with the office of the highway safety coordinator. The procedures and requirements of this system are largely prescribed by state statute. It encompasses all motor vehicles in the State (except perhaps certain vehicles, such as mobile cranes, which may not fall nicely within the definition of "motor vehicles" contained in the statute governing this system). The statewide system is used to account for all vehicles using Hawaii's streets and highways. It is also used as an enforcement mechanism to cause compliance by owners of vehicles with other safety and nonsafety requirements of the State and county. For example, vehicle registration is not renewed unless vehicle safety inspection requirements have been met. The statewide system is highly automated and registration renewals can be accomplished almost entirely by mail.

The other system is maintained by the PUC. It covers only vehicles operated by motor carriers. The PUC's authority, indeed responsibility, to maintain its own system of vehicle registration is derived from the Motor Carrier Law. Although there is no express provision in the law relating to a vehicle registration system, the need for the maintenance of one by the PUC is implied by the law's requirements, particularly that requirement prescribing that all motor carrier vehicles bear suitable identification plates.

**A description of the PUC system.** The PUC has established some rules governing the registration of motor carrier vehicles with the commission. Under these rules, every carrier is required to file with the PUC the following

information on each vehicle subject to regulation by the commission: a description of the vehicle; its make, body type and year of manufacture; its state license number and engine number; its rated capacity and its unit number. This information must be filed when a vehicle is placed in service or withdrawn from service, or new license plates are issued. When the information is filed, a vehicle identification card containing the name of the owner of the vehicle is issued. This identification card must be displayed on the vehicle. In addition, every common and contract carrier vehicle is required to have painted on both sides of the vehicle, the name of the carrier, the identifying symbol or known initials of the carrier, and the number assigned to the carrier.

Essentially, the above requirements constitute the core of the PUC vehicle registration and identification system. However, a few other rules of the PUC might be mentioned here to illustrate the tie-in between licensing and registration and the enforcement of other motor carrier vehicle requirements that the registration system is intended to achieve. Under PUC rules, every vehicle is required to display a current sticker or decal showing that the vehicle passed its safety inspection. Then, every vehicle, other than a passenger vehicle, is supposed to be marked on both sides with its maximum allowable gross vehicle weight. Every common and contract carrier vehicle is also required to display a decal showing that the annual gross vehicle weight fee (in the case of a vehicle for carrying commodities) or the annual seating capacity fee (in the case of a vehicle for transporting passengers) has been paid for that vehicle by the owner-carrier.

The PUC rules require that every private carrier of property apply for and receive a PUC "safety clearance." In actual fact, this is a carrier registration requirement. It is designed primarily to elicit basic information pertaining to the carrier. Although the rules limit this requirement to private carriers of property, in practice, it is applied to all carriers. The information supplied on the PUC form is

updated from time to time for common and contract carriers, but it remains unchanged for private carriers unless the carriers themselves take the initiative to report changes.

**Shortcomings in the PUC system.** The PUC system of registering motor carrier vehicles is suffering from serious handicaps; so much so that it is unable to keep track and count of motor carrier vehicles and to accomplish its purpose of enforcing vehicle safety and other requirements. Specifically, the deficiencies in the system are as follows.

**1. Poor record maintenance.** As already noted in a previous chapter, the PUC vehicle registration system is manually operated. The cards on registered vehicles are jumbled, misfiled, out-of-date, obsolete, incomplete, and inaccurate. In their present state, the registration records are completely unusable.

**2. No enforcement mechanism.** The PUC system of registering motor carrier vehicles is completely devoid of any mechanism to ensure that all vehicles that are supposed to be registered do in fact get registered with the PUC. In the *first* place, the registration records are of little help to keep tab on the vehicles that are supposed to be registered. *Second*, the whole system is one which requires but a one-time registration and relies upon the carriers to take the initiative to report additions, deletions, or changes in their lists of registered vehicles. There is no system for reregistration on an annual or other periodic basis at all. *Finally*, the PUC's rules are silent as to how and where on the vehicle its registration card is to be displayed. This makes it difficult for the police to identify those vehicles that are not properly registered with the PUC. There is no way for the police by simple visual examination of a vehicle to determine whether the vehicle is registered or not. As a practical matter, about the only way the police can really check the registration status of a vehicle is to stop it on the road and ask the driver to produce the card. This does not often happen (and probably should not be expected to

happen, considering the number of motor carrier vehicles on the road).

Not only is there no mechanism for ensuring the registration of all motor carrier vehicles on the road, but there appears to be little interest on the part of the public utilities agency to do anything about those vehicles which the agency from time to time discovers are unregistered. Unregistered vehicles come to the attention of the agency in part when the vehicles become involved in accidents and the like. In 1972 (when the police issued 775 citations of which only one citation was for non-registration), the agency found ten unregistered vehicles through these means. The agency issued citations in some of these cases, sent warning letters in others, and levied fines in still others. But in many of these cases, these actions by the agency did not result in the registration of the vehicles. The expected result did not occur because the agency has no followup system to cause registration to result.

**3. No integration with other aspects of PUC vehicle safety program.** Although the motor carrier vehicle registration system is intended to facilitate the enforcement of motor carrier vehicle safety regulations (especially with regard to the periodic safety inspection of the vehicles), and the assessment and collection of the required motor carrier fees, the PUC's vehicle registration system is not very closely coordinated with either of these regulatory activities. Motor carrier vehicles are permitted to be registered without assurance that they have received a current safety check or that the required fees have been paid. This is in sharp contrast to that which occurs in the statewide vehicle registration system.

The statewide vehicle registration system is so structured that the system acts as an effective means of enforcing the State's vehicle safety inspection requirements. No vehicle, other than a motor carrier vehicle, is allowed to be reregistered unless the computer program shows that the vehicle has a currently valid safety

inspection certificate or the owner can provide evidence that such an inspection has been made.

There is no reason why the PUC's motor carrier vehicle registration system cannot be similarly set up to assist in enforcing the requirements for periodic safety inspection of motor carrier vehicles. Likewise, the PUC's motor carrier vehicle registration system could, if properly set up, be used to enforce payment of motor carrier fees. But this is not occurring at present.

#### **Result of shortcomings in the PUC system.**

**1. Failure to register all vehicles subject to PUC regulation.** The immediate and obvious consequence of the deficiencies in the PUC system for registration of motor carrier vehicles is that the public utilities agency is not now registering all those vehicles that are supposed to be registered with the PUC. The exact number and kinds of vehicles that are supposed to be but are not now registered with the PUC are unclear. However, as already noted elsewhere, probably more than half of the motor carrier vehicles that ought to be registered are not. This conclusion is reached by comparing the information contained in the public utilities agency's annual report with the records of the statewide vehicle registration system.

Although the statewide system does not now distinguish between commercial and noncommercial vehicles, some classes of vehicles identified in the system can readily be assumed to be commercial vehicles subject to the jurisdiction of the PUC. Buses, trucks, tractors, and trailers and semi-trailers are vehicles of this kind. Since the public utilities agency itself utilizes these categories of vehicles in its annual report, a comparison of the number of these vehicles registered in the statewide system and the number reported by the public utilities agency is possible. The comparison shows that the number registered with the statewide system is approximately twice the number reported by the public utilities agency.

**2. No assurance of safety check, etc., of vehicles.** Another obvious result of the shortcomings in the PUC's motor carrier vehicle registration system is that many motor carrier vehicles are probably avoiding periodic safety inspections, and carriers are successfully evading the payment of the fees they are required to pay.

A case for the absorption of the motor carrier vehicle registration into the statewide vehicle registration system. One real way, of course, by which the public utilities agency may at least be informed of the number and kinds of motor carrier vehicles that ought to be registered with the PUC is to secure such information from the statewide vehicle registration system. The statewide system registers all vehicles that use the public highways. It does not at present segregate commercial vehicles from other types of vehicles. However, it would appear that if the public utilities agency were interested in making the statewide system a source of information in identifying the number and kinds of motor carrier vehicles which ought to be registered with the PUC, the statewide system could be adjusted to make such information available. For instance, there should be no difficulty in adjusting the statewide system in such a way as to enable it to flag out all commercial vehicles by kind of carrier-ownership (private, common, or contract), type of vehicles (bus, truck, taxicab, etc.), and almost any other characteristic useful for PUC regulatory purpose.

However, in light of the existence of a computerized and sophisticated statewide vehicle registration system, and the fact that the statewide system now registers all vehicles, including motor carrier vehicles, there seems to be very little reason why there should be a separate registration system under the PUC for motor carrier vehicles. Even if the public utilities agency were to receive information from the statewide system, computerize its process, and otherwise correct the many deficiencies that now are present in registering motor carrier vehicles, the resulting system would be duplicative of the statewide system in many

respects. There is no reason why the statewide system, with a few adjustments, could not do for motor carrier vehicles all that which a separate, efficient system can be expected to do. For example, the statewide system is effective in enforcing the vehicle safety inspection program of the State for noncommercial vehicles. The system can be adjusted to include commercial vehicles as well. The present system is also an effective mechanism for ensuring that all traffic violation fines are paid. The system can be expanded with very little difficulty to ensure the payment of all such fees that the motor carrier vehicles are subject to.

*Recommendations.* We recommend that the PUC be relieved of its function of registering motor carrier vehicles and that the registration of motor carrier vehicles be completely absorbed by and integrated into the statewide vehicle registration system now administered by the counties. The statewide system should be adjusted to enable it to do that which a separate PUC-operated system was intended to do—i.e., ensure that motor carrier vehicles have undergone safety inspection and that motor carriers have paid the necessary fees on their vehicles.

### Vehicle Inspection

Periodic inspection of motor vehicles is a vital part of any comprehensive highway traffic safety program. About the only way to ensure that only safe vehicles are operated on the public highways is to require the vehicles to be inspected from time to time. Thus, the federal government has given this matter considerable attention. It requires as follows:

“Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or

increase the severity of accidents which do occur, and shall require the owner to correct such conditions.

I. The program shall provide, as a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time as may be designated under an experimental, pilot, or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Safety Bureau.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. class of vehicle
2. date of inspection
3. make of vehicle
4. model year
5. vehicle identification number
6. defects by category

7. identification of inspector
8. mileage or odometer reading

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary."

The periodic safety inspection of all vehicles other than motor carrier vehicles is administered by the counties. The safety inspection of motor carrier vehicles is the responsibility of the PUC. Although the counties appear to be doing a fairly effective job of administering the safety inspection program for vehicles under their jurisdiction, the same cannot be said about the PUC's administration of the program with respect to motor carrier vehicles. The PUC's administration of the program is sorely deficient, particularly when it is evaluated against the federal minimum requirements which are applicable to all motor vehicles. We describe the deficiencies below.

**Inadequate rules and regulations.** The PUC rules and regulations on the matter of vehicle safety inspection are grossly weak and insufficient. They are outdated, inconsistent with federal and state requirements, and overly vague and incomplete.

An example of the outdated character of the rules is one which deals with safety inspections of school buses. In recent years, the primary responsibility for the safety regulation of school buses has been placed in the department of education. The department has adopted its own rules and regulations in the matter. However, the PUC rules do not reflect this change in responsibility for school buses, nor

do they attempt to coordinate the efforts of the DOE and the PUC.

The inconsistency of the PUC rules with state statute is illustrated by the fact that the PUC rules call for annual inspections of vehicles (except for school buses and vehicles ten years or more old), even though the statute requires semiannual inspections.

The more serious shortcoming of the PUC rules is that they are too vague. The rules provide no guidelines or criteria for making safety inspections of motor carrier vehicles. Aside from providing that safety inspections shall be made and notice given of such inspections "as shall be designated by the Commission," the rules do not specify how inspections are to be conducted, what items or types of equipment on each vehicle must be inspected, or what criteria should be used for determining when particular items should be approved or disapproved. In contrast, the rules and regulations adopted by the office of the highway safety coordinator for vehicles other than those under the jurisdiction of the PUC delineate the items to be checked or tested and indicate the basis upon which each item is to be approved or disapproved.

The PUC rules are also vague with respect to the designation of inspection stations. Other than to state that inspection stations shall be approved by the PUC, the rules do not say on what basis inspection stations will be approved or what requirements stations must meet to be granted approval. Further, they are silent as to the instructions and forms to be issued to inspection stations.

The weaknesses in the PUC rules explain in part the deficiencies that exist in the actual implementation of the motor carrier vehicle inspection program.

**Deficiencies in the inspection station system.** The safety inspection of motor carrier vehicles depends upon the functioning of a network of inspection stations. The stations

inspect the vehicles and issue safety certificates and decals to the carriers. The stations are generally privately owned but they are all subject to the control and regulation by the public utilities agency. The federal standards in this regard provide that inspections be performed by "competent personnel specifically trained to perform their duties and certified by the State." The standards also require the inspections to cover systems, subsystems, and components having substantial relation to safe vehicle performance and to follow procedures equalling or exceeding those issued or approved by the federal government.

**1. No clear basis for designating inspection stations.** As indicated above, the PUC rules on designating inspection stations are so broad and so brief as to be virtually meaningless. In the absence of specific conditions for approval of inspection stations, the stations are designated on a highly individualized and uneven basis.

When an application for an inspection station permit is submitted to the PUC, the usual procedure is for an investigator to make an on-site visit. The investigation is made, however, without the benefit of written checklists to evaluate the facilities. No written or practical tests of the competence of would-be inspectors are administered. In general terms, an inspection station permit is granted if the applicant is already licensed as a county inspection station or if there are two first class mechanics employed at the location and the facilities are deemed adequate on the basis of the visual inspection. The validity and consistency of these evaluations are open to serious question when it is recognized that about one-fourth of the stations with permits have only one first class mechanic listed. A first class mechanic is defined as anyone receiving pay as a first class mechanic, and there are no specifications of the minimum requirements necessary for the facilities of an inspection station to be considered adequate.

This procedure is in sharp contrast to the approach taken by the counties. For instance,

the city and county of Honolulu, for purposes of evaluating inspection stations, has prepared a written checklist to be used by its inspectors. A copy of the completed checklist is provided the station at the time an inspection is made.

**2. No examination of inspectors.** Not only does the public utilities agency make little substantive evaluation of inspection stations, but it also does nothing regarding the evaluation of the inspectors who are expected to do the actual inspection of vehicles at the stations.

A key phrase in the federal standards is that which calls for vehicle safety inspections to be made by "competent personnel *specifically trained to perform their duties* and certified by the State" (emphasis added). This requirement is included in the standards in recognition of the fact that being well versed in the mechanical operation and repair of motor vehicles does not necessarily and automatically prepare and qualify a person to be a competent and effective vehicle safety inspector. It is essential also to be knowledgeable and capable in the use of testing equipment and inspection techniques and to have an appreciation of the effect of the mechanical condition of a vehicle.

The public utilities agency, however, does not take the responsibility to ensure the competence of inspectors. While it issues certificates to stations, it does not certify inspectors. This again contrasts with the procedures of the city and county of Honolulu. The city and county of Honolulu, in addition to certifying stations, also certifies individual inspectors. Each certified station must have at least one certified inspector. Applicants for an inspector's certificate must pass both a written test and a practical performance test. A written checklist has been prepared for the administration of the performance test. The performance test checklist covers 15 equipment components on a motor vehicle (steering mechanism, brakes, lights, etc.) and applicants are evaluated both on their familiarity with the mechanisms and systems and on their ability to

perform inspections of each component. Individual certificates must be renewed every four years and both tests are administered at each renewal. All stations are supposed to be visited and examined by the county inspectors several times each year.

**3. *No continuous surveillance over inspection stations or inspectors.*** Once a station is certified, the public utilities agency exercises virtually no supervision or control over the stations. The agency has no schedule or program for inspecting inspection stations or of requiring the renewal of permits issued. The permit, once granted, generally remains in effect indefinitely without question or challenge, unless some unusual event occurs, such as the lodging of a complaint against an inspection station by some third party. Thus, although personnel turnover is fairly high in this field, and stations lose some or all of the safety inspectors employed at the time their permits were granted, such changes frequently fail to come to the notice of the public utilities agency. Further, the public utilities agency has no program for ensuring the continuous training and upgrading of skills of the inspectors themselves.

One example of the lack of supervision over inspection stations and inspectors is the following. This case involved a truck rental firm. This firm was granted a permit to inspect its own vehicles. In 1971 a reprimand was sent to the company for failure to comply with inspection requirements. No followup action appears to have been taken. In 1973 a serious complaint was filed with the agency as a result of an accident in which a wheel from one of the firm's rental trucks came off the truck on a busy highway, rolled across the median strip, and struck a car coming from the opposite direction. No mention of this accident was made in the staff report submitted to the commission on the matter, but the commission accepted the staff's recommendation and voted to revoke the company's inspection station permit.

**4. *No instructions to inspection stations.*** The public utilities agency has developed an

inspection form to be used by the inspection stations in conducting safety inspections of vehicles. But beyond furnishing these forms, the agency has done little to illuminate the needs in inspection to the stations. There are no general instructions, detailed explanations, or operating manuals to guide the inspection stations in performing vehicle inspections and filling out the forms. The investigators say they discuss the making of safety inspections with inspection station personnel at the time a safety inspection station permit is issued, but the value of this informal discussion is highly limited. In the *first* place, the investigators themselves have not received any special training in this field. In the *second* place, the personnel turnover in many inspection stations soon negates the effects of any such discussion.

**5. *Self-inspection of motor carrier vehicles.*** There are two classes of motor carrier inspection stations—the “public” stations and the “private” stations. The public stations are open to all vehicles of the public in general (usually service stations, repair shops, and automobile dealers). The private stations are those which restrict their inspections to particular groups of vehicles, usually the vehicles which the owners of the stations themselves own and operate. An example is a large car rental company which runs an inspection station to inspect the company's vehicles.

The majority of the PUC-licensed inspection stations—71 of 130—are private stations operated by carriers to inspect their own vehicles. No statistics are available on the number of inspections conducted in these private stations, but considering the size of the carriers involved and the numbers of vehicles they operate, it is probably safe to assume that a majority of all motor carrier vehicle inspections are performed in these private inspection stations.

Allowing motor carriers to inspect their own vehicles is an open invitation to abuse. Although no hard data are available that inadequate inspections of carriers' own vehicles may be widespread in these circumstances is

suggested by the incident above described concerning the truck rental firm. It is also suggested by a case which the industrial safety division of the department of labor and industrial relations investigated. Following a disastrous accident involving a vehicle operated by a government agency which was licensed to inspect its own vehicles, the division (investigating on the assumption that a vehicle driver's compartment constitutes a working place) found that 40 percent of the vehicles operated by the agency did not meet PUC safety requirements.

It should be noted that the city and county of Honolulu inspection station system similarly allows vehicle operators to establish inspection stations for their own vehicles. However, the incidence of such cases in the county situation is far smaller (about 10 percent of the total number of stations). Further, stricter control over these stations appears to be exerted by the county than that exercised by the PUC.

Inspection stations should be operated by parties who are completely separate from and independent of the parties whose vehicles are to be inspected. If such a separation is infeasible for some reason, then a much heavier burden is placed upon the regulatory authority to exercise rigorous control and surveillance over those stations engaging in the self-inspection of their own vehicles. However, neither of these alternatives has been recognized and acted upon by the public utilities agency.

**Deficiencies in record-handling and information system.** The federal standards on motor vehicle inspections require the maintenance of accurate records. Accurate records are a means of ensuring that safety inspections are made in accordance with prescribed standards. The records which the public utilities agency maintains on motor carrier vehicle inspections are in complete disarray. Note the status of the following two most elementary but important kinds of records in the field of vehicle inspection.

**1. Information on inspection stations and inspectors.** The public utilities agency certifies inspection stations. While it does not license or certify inspectors, the inspection stations are supposed to file the names of their inspectors with the agency. It would appear then that the agency would be able to produce accurate and reliable information on the number of certified inspection stations and the number of inspectors at each station. But this is not the case.

Two different offices in the agency (the investigation branch and the office services unit) each purports to maintain a count of the inspection stations and inspectors. But the count kept by each differs from the other. Moreover, the figures reported at one time do not always jibe with the figures reported at another time. In our audit, for instance, we were supplied with two different figures by the two units in the agency when we asked them for such figures for late 1973, and the figures given to us could not be reconciled with the figures previously reported by the agency.

In part, this inability to keep track of the number of certified inspection stations and inspectors is due to faulty implementation of certifying inspection stations. In part, it is also due to insufficient attention paid by the public utilities agency to establishing a meaningful information system.

**2. Information on number of vehicles inspected.** Each inspection station is required to fill out a form for each vehicle it inspects. One copy of the form is supposed to be sent to the public utilities agency. Since the inspection of motor carrier vehicles is by PUC rules concentrated in the months of January and February and in the month of July, it would appear that a count of the number of vehicles inspected over a given period could be readily made. But such is not the case.

Copies of the forms received by the agency are wrapped up in bundles and dumped into a large box or other receptacle.

From that time on, nothing is done with the forms except to move them from one storage space to another until someone finally decides to dispose of them. It is thus not surprising that no one in the agency can give any accurate information on the number of vehicles actually inspected. In the absence of a count of these forms, the agency uses the number of safety decals sold as the indicator of the number of inspections made for reporting purposes. But, as described below, due to the manner in which the safety decals are handled, the number of decals sold is an unsatisfactory indicator.

A more serious consequence of the non-use of the copies of the inspection forms received by the agency is that the forms are not used for control purposes—that is, to ensure that all motor carrier vehicles are in fact inspected at the times provided in the PUC rules and to ensure that only vehicles that have been inspected are allowed to be registered.

**Lack of control over safety decals.** Safety decals are supposed to be issued for affixing only to those vehicles passing vehicle safety inspections. To prevent the use of the decals on vehicles which have not gone through such inspections, controls must be exercised in the issuance and distribution of the decals.

The PUC-designated safety decals are prenumbered, presumably to enable the public utilities agency to exert such necessary controls. However, this numbering system is of very little use and effectiveness. The whole system for the distribution of the decals is so loose that it offers an open invitation to abuse and circumvention of the vehicle inspection requirements. The specific deficiencies in this system are as follows.

*First*, once the decals are distributed to the inspection stations, the public utilities agency demands no accounting of the decals. Very little effort is made by the agency to find out what happened to the decals. Thus, the inspection stations can, and do, transfer the forms back and forth among themselves, without the approval or

knowledge of the agency. This also means that it is possible for inspection stations to dispose of the forms and decals to unauthorized parties without much chance of being detected.

*Second*, the agency's procedure in issuing the decals makes it quite easy for the decals to be issued to unauthorized parties. The actual issuance of the decals is not handled directly by the public utilities division itself, but rather by the cashiering section of the department of regulatory agencies. The latter unit is primarily concerned that the \$3.00 fee is received for each decal disbursed and has no real concern for what happens to the decals once they have been paid for. Thus, when the cashiers dispense the decals, they record the numbers of the decals issued, the amounts received for them, and the names of the purchasers, but they require no authorization or identification when persons come in to pick up the decals. This means that anyone can easily go to the cashiers, say he represents a particular inspection station, and acquire any number of safety decals as long as he is willing to pay \$3.00 apiece for them.

There has been some recognition within the agency that there are problems concerning the control of and accounting for safety decals. For instance, in December 1968, the executive director of the public utilities division sent a memorandum to the then head of the safety section calling attention to the need to develop a means of accounting for all decals, including all those issued, those used, those unused, and those unsold. This action was motivated by the expectation that the motor carrier vehicle inspection program might be transferred to another agency and that the agency would have to have its records in proper order to facilitate such a transfer. However, there has been no followup action taken on this directive.

**Nonintegration with other systems.** In a previous chapter we noted how the vehicle safety inspection programs of the State, including that of the public utilities agency, are not coordinated, and the same vehicle is often required to undergo a number of separate

inspections by different governmental agencies. Then, in a previous section in this chapter, we noted that the motor carrier vehicle registration system is not used to enforce the requirement that all vehicles be periodically inspected. This latter situation would not be all that bad if at the time of the annual registration of all vehicles, the statewide system would require the production of evidence that motor carrier vehicles have received the required safety inspections. However, at present, the statewide system does not flag out motor carrier vehicles that have not received the safety inspections required by the PUC.

This is so, despite the fact that the county police departments are furnished with a copy of the motor carrier vehicle inspection form filled out by the inspection station for each motor carrier vehicle. Apparently, the county police departments do not use the copy of the forms supplied them because of the form's incompatibility with the computerized system used by the counties. There is no reason why, however, the form could not be made compatible with the counties' computerized system. Indeed, it seems that since the counties now have a system which effectively screens out those vehicles (other than motor carrier vehicles) which have not been inspected, it should not be unduly burdensome for the counties to perform this function for motor carrier vehicles as well by adjustments in the statewide computerized system and the motor carrier vehicle inspection form. Neither the counties nor the PUC, however, have taken any steps to move in this direction.

**Summary.** Obviously, the motor carrier vehicle inspection program is not being carried out as it should. Federal requirements are not being met and some statutes are being violated (e.g., annual rather than semi-annual inspections; registration of vehicles without the required safety inspection). Despite these deficiencies, since 1971 the office of the highway safety coordinator has been reporting to the federal highway safety authorities that the State of Hawaii is in full compliance with all federal

requirements, except that providing for regular evaluation of the vehicle inspection program, and by 1973, with partial compliance even with that requirement.

The PUC's commitment to the motor carrier vehicle inspection program is virtually nil. Only one clerical and one-fourth of one supervisory positions were in 1972 assigned to this program. But the PUC alone is not at fault. The office of the highway safety coordinator, as the agency with overall responsibility to ensure that the State conforms to federal requirements, has itself done little to cause improvements to occur, although it has long known of the inadequacies in the PUC's vehicle inspection program.

*Recommendations. We recommend that:*

1. *The office of the highway safety coordinator, rather than the PUC, establish the standards for motor carrier safety, motor carrier vehicle inspection stations, and motor carrier vehicle inspection personnel and that the counties and the county police departments be charged with the enforcement of these standards.*
2. *The office of the highway safety coordinator, in cooperation with the counties, establish a program for the training of vehicle inspection personnel.*
3. *The office of the highway safety coordinator and the county police departments integrate the vehicle safety inspection program for motor carrier vehicles with that for other vehicles.*
4. *So long as private vehicle inspection stations are allowed to exist, they be subject to strict control and more frequent inspections by the county police departments under rules established by the office of the highway safety coordinator.*

## Preventive Maintenance

In recognition of the greater use and wear and tear to which commercial vehicles are exposed and of the importance of proper maintenance for such vehicles, the Federal Bureau of Motor Carrier Safety requires that attention be given to the daily checking and maintenance of commercial vehicles in addition to the program of periodic safety inspection. However, the PUC's activity in this area, as in the vehicle inspection program, is generally ineffective.

**PUC rules and regulations.** The PUC has established certain minimum requirements, patterned after the federal standards, which motor carriers are expected to meet to ensure the safe and proper operating condition of vehicles at all times. The rules appear to require (1) a daily inspection of each vehicle before its use on the road, (2) a more in-depth inspection of each vehicle at fixed intervals, and (3) the lubrication and maintenance of each vehicle on a regularly scheduled basis. The rules, further, suggest the forms on which the results of each of these activities are to be noted.

The rules in part are confusing, due to the manner in which they are put together, and are not entirely up-to-date. Nevertheless, the rules do provide some minimum standards in this area.

**Inadequate enforcement.** Despite the rules, it is doubtful that the motor carriers are adhering to them. In 1972, the public utilities agency inspected 17 carriers to determine the carriers' compliance with the rules. It found that only four of them were in compliance. If this is any indication of the compliance rate, the rules are being honored more in their breach than in their compliance.

In a large measure, this noncompliance by carriers with the PUC maintenance requirements is the result of insufficient attention by the PUC and PUD to the enforcement of the requirements. For instance, the 17 carriers inspected in 1972 were the only carriers inspected during that year out of the thousands which are subject to PUC regulation. Fourteen of these were inspected during a very short period at the end of January and early February. Sixteen were on Oahu and one on Molokai. Moreover, of the 13 found not to be in compliance, 10 were issued warning letters, but no followup action was ever taken to see if the warning letters had any effect. The record is not clear as to what action, if any, was taken with respect to the three remaining carriers.

**Recommendation.** *We recommend that the office of the highway safety coordinator revise and update the standards relating to vehicle maintenance and establish a system for the enforcement of such standards by the counties.*

## Chapter 14

### MOTOR CARRIER VEHICLE SIZE, WEIGHT, USE, AND MODIFICATION

A motor carrier vehicle, no matter how mechanically safe its operable condition and how skilled its driver might be, may nevertheless pose a hazard to public safety or harbor a potential for severe losses in case of an accident because of its physical characteristics, the weight it carries, or the use to which it is put. Thus, by statute and rules, the State has imposed regulations on such matters as size, weight, carriage, and modifications of motor carrier vehicles. This chapter examines the role of the PUC in the regulation of these matters.

#### Summary of Findings

1. Although the state statutes prescribe limitations on the size and weight of vehicles, they do not pinpoint responsibility for the administration of the statutory provisions. As a consequence, no agency is now devoting sufficient attention to vehicle sizes and weights. The public utilities agency seemingly assumed responsibility for motor carriers in this area by establishing rules and regulations, but it is doing nothing to enforce the law or its rules. In the meantime, both the department of transportation and the counties are issuing permits allowing vehicles to exceed the statutory size and weight limits without much deliberation or consideration of the safety implications involved.

2. The public utilities agency is doing nothing about ensuring the safe transportation of hazardous materials by motor carriers.

3. Motor carrier vehicle modification, construction, and reconstruction are permitted without adequate assurance of the safety of such modified, constructed, or reconstructed vehicles. The PUC rules in this area are sparse, reviews of applications for permits to modify, construct, or reconstruct vehicles are cursory, and enforcement of the requirement for securing permits is nil.

4. The PUC rules on safety equipment for motor carrier vehicles are outdated and enforcement of the limited rules which do exist are virtually nonexistent.

In sum, PUC performance in this whole area of vehicle size, weights, hazardous materials, vehicle modification, and safety equipment is dismal.

#### Motor Carrier Vehicle Size and Weights

Both the federal and state governments impose size and weight limitations on motor vehicles in general. These limitations are imposed not only for safety reasons but also for the protection of highway facilities against excessive wear and tear, the protection of consumers against fraudulent commercial transactions, and the raising of revenues (e.g., vehicle weight tax). Our concern here is with the safety aspect of these government-imposed limitations. Motor vehicles

(motor carrier vehicles in particular) must be kept to sizes and weights which can be safely handled on the facilities available.

**Statutory base.** Hawaii's basic statute on motor vehicle size and weight limits is HRS, chapter 291, part II. It prescribes maximum limits on the height, length, width, and weight of vehicles. The limitations imposed by Hawaii statute are more liberal than those specified by federal laws, but they are permissible under the federal law's grandfather clause, which allows those Hawaii limits which were in effect on February 1, 1960, to continue in force. The federal law limits the width of a vehicle to 96 inches and the weight of a vehicle as follows: 20,000 pounds on a single-axle, 34,000 pounds on a tandem-axle, and 80,000 pounds overall gross weight (including load), based upon a formula which relates maximum allowable load to the distance between the first and last axles of vehicles, with combination vehicles being considered a single unit for this purpose. The Hawaii statute limits the width of a vehicle to 108 inches and the weight to 24,000 pounds on a single-axle, 32,000 pounds on a tandem-axle, and approximately 80,000 pounds overall gross weight, based upon a formula similar to the federal formula.

**The role of the PUC *vis-a-vis* other agencies.** The sections of chapter 291 which impose the legal limits do not specifically name the PUC (or for that matter any other agency) as the governmental unit responsible for enforcing the limits. They do mention the PUC, but only in a limited way by providing that operators of vehicles subject to the commission's jurisdiction are required to file design specifications or other evidence of designed gross vehicle weight with the PUC for their vehicles. However, the PUC has to some degree accepted responsibility for regulating the sizes and weights of motor carrier vehicles. It has promulgated extensive rules on the matter, including a declaration that the statutory limitations "will be enforced in the interest of public safety." A schedule of fairly stiff penalties for violations, and an authorization allowing its staff to compel vehicles on the road to drive to

nearby scales for weighing and to unload on the spot any excess weight are also provided for.

In addition to the PUC, there are other governmental agencies that perform some activity in this area of vehicle sizes and weights. The state department of transportation is one of them. It undertakes no enforcement program and limits its activity to that specifically mentioned in chapter 291—that is, to issue permits authorizing vehicles to exceed the statutory limits on state highways. With respect to county roads, the authority to issue such permits is vested in the county engineer.

The state department of agriculture also performs some tasks in this area, although the effect of these tasks on vehicle size and weight limitations is indirect. Under applicable statutes, it inspects the accuracy of scales, odometers, and other measuring devices; licenses weighmasters and weight and odometer inspection stations; and regulates the issuance of weight certificates and certificates of odometer accuracy.

The counties also play a role in this area of vehicle sizes and weights. Under chapter 291, the counties may prescribe stricter limitations on vehicle sizes and weights than those contained in the statute. Pursuant to this provision, the city and county of Honolulu has enacted an ordinance similar to the statute and the PUC rules. The ordinance contains additional matters, however. It sets forth requirements for such things as securing of loads on vehicles, limitations on size and weight of vehicles for specific roads and bridges (Wilson Bridge in Wahiawa, Tantalus Road, etc.), and regulations on towing vehicles, etc.

**Lack of enforcement.** The State's limitations on sizes and weights of motor carrier vehicles are not now being enforced in any systematic and consistent way. There is no single governmental agency that has taken a truly active responsibility for the enforcement of the limitations.

The state department of transportation undertakes no enforcement. It is concerned only with the issuance of permits authorizing oversized or overweight vehicles to operate on state highways. Even in this area, its concern is chiefly with engineering—that is, whether the highway facilities will be able to handle the loads for which permits are requested—not with highway traffic safety. Further, the department acts on these permits only when applications are filed. It evidences little interest in violators who fail to obtain permits before transporting oversized and overweight vehicle loads.

The state department of agriculture is concerned chiefly with the accuracy of scales, odometers, and other measuring devices. In the course of its work, it does collect data on the weights being registered at weigh stations by motor carrier vehicles. However, it has no statutory authority to do anything about vehicles which register at weights greater than those authorized by law.

At the county level, the police departments generally have responsibility to enforce the various statutes, ordinances, and rules and regulations on vehicle size and weight limitations. However, the enforcement of the restrictions is said to require specialized techniques and personnel with which the police departments are not equipped and staffed. Thus, the police departments do little to enforce the requirements. Indeed, the police departments feel that primary responsibility in this area belongs to the public utilities agency.

Although the public utilities agency has elaborate rules and regulations on vehicle sizes and weights, it does virtually nothing to enforce these rules and regulations. At one time the agency had its own portable scales and, with the assistance of the police, conducted road checks of truck weights. However, since around 1970, the agency has ceased all such activity and has even disposed of its portable scales.

The degree of unconcern that the public utilities agency has shown for the enforcement

of size and weight limits is quite disturbing. The agency makes no use whatever of the data on truck weights which the department of transportation is required by federal law to collect annually, or of the data on truck weights collected at weigh stations by the department of agriculture, although both sets of data apparently would be valuable for enforcement. Indeed, it appears that the agency, at least prior to our audit, was not aware of the existence of such data. The agency takes the position that enforcement of size and weight limitations is the responsibility primarily of the police and the state department of transportation.

Finally, the office of the highway safety coordinator has not concerned itself with establishing a mechanism for the enforcement of the State's size and weight limitations.

**Consequences of no enforcement.** The result of not enforcing vehicle size and weight limits is, of course, that these restrictions are being violated with impunity. It is to carriers' advantage to carry the largest and heaviest loads possible.

There are two basic sources of data on the actual weights of motor carrier vehicles (trucks) operating on the roads in Hawaii which confirm the existence of violations of the size and weight limitations. One of these sources is the truck weight survey conducted regularly by the state department of transportation in compliance with federal requirements. The federal government has been studying truck weight trends since 1936. To assist it in this study, it requires every state to conduct annually a survey of truck weights in accordance with its manual of detailed instructions on how to conduct the survey.<sup>1</sup> The results of the survey are compiled and stored in computers. The other source of data is the reports submitted to the department of agriculture by weigh stations on actual

<sup>1</sup>The federal government ostensibly uses the results of the State's annual survey to assist it in formulating national transportation policy, establishing highway design criteria, evaluating enforcement effectiveness, developing size and weight regulations, studying accidents, etc.

weighings of trucks in compliance with the department's regulations on weights and measures.

**1. Department of transportation truck weight survey data.** The results of the 1972 truck weight survey of the state department of transportation are noted in table 14.1. The table shows how many of the vehicles surveyed exceeded the state statutory limits on vehicle weights.

The 1972 survey sampled (i.e., weighed) 4,027 out of the 26,761 trucks counted on the road during the survey. Of the 4,027 vehicles actually weighed in the survey, 378 had to be disregarded for various errors, leaving 3,649 vehicles included in the survey. These included

2,820 single unit trucks (panel, pickup, and two- and three-axle trucks)<sup>2</sup> and 829 combination trucks (tractors with semi-trailers, trucks with full trailers, tractors with both semi-trailers and trailers).<sup>3</sup>

For the purposes of table 14.1, we eliminated 1269 single unit trucks from the 2820 single unit trucks sampled. The table thus reflects the results of 2380, rather than the total 3649, single unit and combination trucks sampled. These 1269 single unit trucks were disregarded in constructing the table because these trucks were small and relatively light-weight trucks (panel trucks, pickup trucks, and trucks with only two axles and four tires), and the focus of the table is on heavy-duty or large trucks (trucks with six tires or three axles and greater).

Table 14.1

Summary of Trucks and Truck Combinations<sup>1</sup>  
In Violation of State of Hawaii Standards<sup>2</sup>  
By Vehicle Type, in the 1972 Truck Weight Study  
By the Department of Transportation, State of Hawaii

Vehicle type <sup>1</sup>	No. weighed	Violations	
		No.	%
Single unit trucks . . . . .	1,551	77	5
Combinations:			
Tractor, semi-trailer . . . . .	567	167	29
Truck and full trailer . . . . .	60	30	50
Tractor, semi-trailer & one trailer . . . . .	202	108	53
Subtotal combinations . . . . .	829	305	37
Total trucks and combinations . . . . .	2,380	382	16

<sup>1</sup>Truck and truck combination vehicles in this table exclude panel, pick-up, and light duty (2-axle, 4-tire trucks). The trucks and truck combinations shown in excess of State standards are regulated by the public utilities commission under the safety rules. Some of the above vehicles are also regulated under the economic rules.

<sup>2</sup>State of Hawaii laws refer to HRS-291, sections 34-35, on vehicle size and vehicle loading, respectively. The standards compared were axle load, gross weight, and axle group.

<sup>2</sup>2,820 single unit trucks sampled in the survey represented 11 percent of the 24,726 single unit trucks counted on the road.

<sup>3</sup>829 combination trucks sampled in the survey represented 40 percent of the 2,035 combination trucks counted on the road.

Table 14.1 shows that 16 percent of all trucks sampled and included in the table exceeded one or more of the weight limits set by statute. The percentages of truck-trailers and tractor-semitrailer-trailers exceeding the limits were 50 and 53 percent, respectively.

**2. Department of agriculture truck weight data.** The data collected by the state department of agriculture in administering the State's weights and measures law is equally revealing. Table 14.2 summarizes the data from selected weigh stations.

The department of agriculture's data do not indicate violations of specific limits for a specific kind or make of vehicle. This is because the weighmasters at weigh stations do not distinguish the vehicles they have weighed by type, size, axle number, etc. They simply report the result of each vehicle weighing. The data do indicate, however, the number of vehicles which exceeded the maximum possible gross weight (80,000 pounds)<sup>4</sup> that any vehicle operating on the road may have.

As the table shows, a substantial number of vehicles exceeded the maximum in the years 1972 and 1973. For example, on some days every single dump truck of a particular carrier was overloaded. In at least one particular case, the gross weight of a dump truck was as high as 136,500 pounds, or almost double the allowed maximum. For another example, note the data on the sugar trucks on Kauai. Overloading occurred consistently over a period of six months and the percentage of all trucks that were overloaded ranged from a low of 31 percent to a high of 75 percent. The maximum amount of overloading of a single vehicle averaged 21 percent above the 80,000 pound limit during five of the six months covered.

The examples shown in table 14.2 are by no means isolated or infrequent incidences of overloading. Department of agriculture personnel informed us overloading is widespread and persistent throughout the State.

**A possible remedy.** In light of the apparent disinterest of the public utilities agency in this whole area of safety, it does not appear that motor carrier vehicle size and weight regulation will be accomplished in any meaningful way, unless responsibility for it is assumed by other governmental agencies. In line with our general recommendation that the office of the highway safety coordinator establish all standards of safety and that the county police departments enforce all such standards, we believe that the office of the highway safety coordinator and the county police departments should assume similar responsibility for vehicle size and weight.

We are aware of the arguments posed by the police department that this is a specialized area, requiring specially trained or skilled personnel. We think that if the police department is correct in its assertion, it should be supported in its enforcement efforts by the state department of agriculture. The department of agriculture's weights and measures division has the equipment, know-how and personnel to assist the police. It also now certifies weighmasters and weigh stations. The division is already receiving reports from the various weigh stations on the weights being registered by motor carrier vehicles. It does not appear that very much more will be required to enable the division to be of assistance to the police in conducting examinations of vehicles' sizes and weights on some systematic basis.

In this connection we note that most of the existing truck-weighing scales in the State are privately-owned and -operated and are located for the convenience of the private enterprises involved rather than for the public in general. Moreover, according to the division of weights

<sup>4</sup>This is only an approximate limit applicable to certain combination-type vehicles. HRS, section 291-35, which establishes the weight limits for trucks, is an extremely complicated and difficult to understand provision. It contains three separate formulas and a table for determining allowable weights under varying conditions where weights are related to the distance between the first and last axles on a vehicle or combination vehicle. In contrast, the recent amendment to the federal law governing weight limits utilizes a single formula for determining allowable weight limits for various sized trucks.

Table 14.2

Summary of Selected Truck Weight Data from Weighmaster Stations  
Showing Incidences of Truck Overloading\* in Hawaii

*Example I*

Kauai Sugar Storage Corporation Scales – Weighings of Trucks from McBryde, Kekaha, Lihue, and Grove Farm Sugar Plantations

Date	Total no. of truck weighings	Weightings in excess of 80,000 lbs.		Maximum overload lbs.	% by which maximum overload exceeded limit*
		No.	%		
February, 1973 . . . . .	208	156	75%	—	—
March, 1973 . . . . .	1,002	344	34	14,620 lbs	18%
April 1973 . . . . .	858	264	31	15,930	20
June 1973 . . . . .	1,137	462	41	16,940	21
July 1973 . . . . .	1,097	463	42	17,010	21
August 1973 . . . . .	1,284	635	49	17,700	22
Average . . . . .	931	387	42%	16,440 lbs**	21%**

*Example II*

Grove Farm Company, Inc. (Quarry Operated by Hale Kauai) Scales –  
Selected Overload Data on Weights of Trucks of One Company

Date	Total no. of trucks weighed	No. of trucks weighing in excess of 80,000 lbs*	Range of weights of overloaded trucks
August 1, 1972 . . . . .	13	13	83,300 – 109,150 lbs
August 7, 1972 . . . . .	18	18	83,000 – 102,500
August 15, 1972 . . . . .	5	5	102,900 – 104,400
August 29, 1973 . . . . .	5	5	110,890 – 136,500
Total . . . . .	41	41***	—

\*The examples of truck overloading are based on the absolute limit of 80,000 lbs. This limit is allowable for vehicles with lengths (L) of 60 feet between the first and last axles by formula  $W = 800 \text{ lbs. } (L + 40)$  where "W" is the gross vehicle weight and "L" is the length between the first and last axles. No data on the length of the trucks are available. Presumably, if any of the trucks shown were less than 60 feet between the first and last axles, further violations can be noted within these examples. Vehicles of shorter lengths (e.g., 50 feet or less between the first and last axles) have lower gross vehicle weight limitations, which could mean further violations if length was a known factor.

\*\*Average is based on the five months shown.

\*\*\*One truck with a tare weight of 30,000 lbs. owned by this company has averaged 110,000 lbs. per load. This truck has five axles with a length of 38 feet between the first and last axles. The allowable maximum weight (HRS 291–35(2)(A)) is 69,500 lbs. On the average, this truck has been overloaded by 40,500 lbs. with each load.

and measures, very few of these scales may be considered truly adequate in terms of providing accurate measures for the very large trucks. A concept worth exploring for meeting this problem is the possible establishment of a network of state-owned-and-operated truck-weighing facilities and the location of such scales at strategically placed sites adjacent or convenient to the highways most heavily used by trucks. Through the imposition of fees, such a system of truck scales might be self-financing and not place any additional burden on taxpayers. Government-run facilities might also alleviate the conflicts which now can arise because facilities are run by private owners for their own vehicles and convenience.

Finally, to pinpoint responsibility for vehicle size and weight regulation, the legislature should amend chapter 291, part II, to place responsibility for standards in the office of the highway safety coordinator and responsibility for enforcement (with assistance from the department of agriculture) in the county police departments.

*Recommendations. We recommend that:*

1. *The office of the highway safety coordinator develop the standards for size and weight of motor vehicles, including motor carrier vehicles, and that the county police undertake the function of enforcing these standards.*

2. *The state department of agriculture, through its weights and measures division, provide the technical assistance the police require in their enforcement function.*

3. *The legislature amend chapter 291, part II, to fix responsibility for the administration of the statutory provisions in the office of the highway safety coordinator and the county police.*

4. *The office of the highway safety coordinator, the county police, and the department of agriculture jointly study the feasibility of constructing and maintaining*

*state-owned weighing facilities for the purpose of enforcing the size and weight standards.*

**Other shortcomings.** The nonenforcement of existing size and weight limitations is the single, most serious deficiency in the program of controlling motor carrier vehicle size and weight. There are, however, other deficiencies. They are as follows.

1. **PUC rules and regulations.** The PUC rules on size and weight are quite extensive. However, they are overly vague in some areas. For instance, they use such terminology as "manufacturer's nominal rated capacity," and "manufacturer's gross vehicle weight," without defining them. In other areas, the rules do not seem to be consistent. For example, the rules specifically require common and contract carriers to mark the gross vehicle weight limit of each of their vehicles on the two side doors if the vehicle is a truck, and on the two sides if the vehicle is a trailer. But for private carriers, the rules are not specific as to where the weight limit markings ought to be placed on their vehicles.

More important, the rules do not reflect the recent changes in the statutory requirements regarding vehicle sizes and weights. The PUC rules were adopted in 1966. Since then, however, there have been a number of changes in the law. For instance, in 1970, the legislature added the requirement that all motor carriers file with the PUC copies of the manufacturer's design specification or other evidence of the designed gross weight of the carriers' vehicles. Then in 1971, the legislature imposed certain new restrictions on loads projecting beyond the length of a vehicle. Despite these statutory developments, the PUC rules have remained unchanged since their adoption.

2. **Overly generous granting of exceptions to size and weight limitations.** As noted above, the statute authorizes the state department of transportation, in cases of vehicles using state highways, and the county engineers, in cases of vehicles using county roads, to grant special permits authorizing the

operation of vehicles which exceed the statutory limits on vehicle size and weight. A permit may be issued for a single trip or for continuous operations.

It appears that in practice, these permits are relatively easily granted. They are issued with such frequency that the validity of even establishing size and weight limits is brought into question. Table 14.3 summarizes the special permit applications processed by the state department of transportation in the years 1968 through 1972. As can be seen from this table, the waiver of restrictions occurs with considerable frequency. On Oahu alone, the number of permits issued averaged almost 400 a month during 1972, and for the State as a whole the average was almost 600 per month. Since some permits cover numerous trips (for instance, on Kauai, a truck exceeding ten feet in width and 150,000 pounds in gross vehicle weight was granted a permit for a year), it becomes readily obvious that many exceptions to the rule are being allowed.

Not only are permits being issued in great numbers, but it seems that many are being issued without much review of the applications for the permits. Some applications receive a fair amount of staff review, but there are many others which are processed in less than 15 minutes. Further, the reviews are focused primarily on the capability of the highway facilities to handle the particular situations for which permits are requested, rather than on highway safety.<sup>5</sup> For instance, there are no criteria by which to evaluate the effects of the permit applications on safety.

At the county level, the situation appears to be no different. In 1968, the city and county of Honolulu issued 4,005 permits. During the period 1968 through 1972, Honolulu issued a total of 13,743 permits. However, in the case of the city and county of Honolulu, there has been some trend in recent years toward issuing less and less special permits. In 1972, for example, the number of permits issued was 1,962, about 2,000 less than in 1968.

The officials at the state department of transportation have defended the granting of special permits for overloading, which they admit probably occurs with greater frequency in Hawaii than in other jurisdictions, on the grounds that hauls are shorter, costs are higher, and it is less economic to break up loads in Hawaii than in other states. They claim that they are aiding consumers by helping to hold down costs to truckers. These reasons appear to be rationalizations, however. No study has ever been made on the relative costs and benefits of allowing oversized and overweight vehicles on the roads in Hawaii, either from the economic or safety standpoint, or both.

It would appear that special permits should be granted only as infrequent exceptions, not as a rule. However, we note that merely making special permits more difficult to obtain, without simultaneously tightening up the enforcement of size and weight limitations, would not alleviate the problem. Without any enforcement, compliance with the special permit requirement depends solely on the voluntary cooperation of the carriers and we have already shown that this does not prevent excessive truck size and loads. Making permits more difficult to get without simultaneously stepping up the enforcement process would only cause operators more and more to carry oversized and overweight loads on their vehicles without even bothering to apply for permits to do so.

*Recommendations.* We recommend as follows:

1. *The state department of transportation and the counties, under such rules as the office of the highway safety coordinator may establish, review all applications for special*

<sup>5</sup>Ironically, the state department of transportation issues no oversize and overweight load permits for vehicles to operate on federal aid interstate highways, because allowing oversized and overweight vehicles to operate on such highways might jeopardize the State's ability to secure federal highway funds. Assuming that the interstate highways are the best built (as often represented), this means that heavily-laden trucks are being diverted to roads less able to sustain the wear caused by heavy vehicles.

**Table 14.3**  
**Special Permits Issued by District Offices, Highways Division, State Department of Transportation**  
**For Oversize and Overweight Vehicles, for 1968 Through 1972**

District Offices	No. of Permits Issued					Total 1968- 1972	Percent Change 1968- 1972	State High- way Miles
	1968	1969	1970	1971	1972			
Hawaii . . . . .	1,318	1,689	1,719	1,455	1,741	7,922	32	390
Oahu . . . . .	3,252	3,661	2,793	3,164	4,583	17,453	41	217
Maui . . . . .	77	57	188	121	107	550	39	192*
Kauai . . . . .	98	92	130	174	903	1,397	821	111
Statewide total . . .	4,745	5,499	4,830	4,914	7,334	27,322	55	910

\*Includes Lanai (14 miles) and Molokai (35 miles).

*permits to carry oversized and overweight loads, with traffic safety considerations in mind, as well as the capability of the roads to withstand the proposed loads.*

2. *To ensure that all such permits are issued with traffic safety in mind and to assist the police in their enforcement function, all permits be reviewed by the county police before actual issuance.*

**Hazardous Materials**

The transportation of hazardous materials provides a great potential for disaster in the motor carrier field. In this area, as in the area of vehicle size and weight, the PUC has promulgated rules, but has done little to enforce those rules. Other state agencies are also involved in this regulatory area, but they are hampered by jurisdictional and resource limitations.

**PUC rules and regulations.** The PUC rules define hazardous materials subject to regulation, classify them according to the degree of danger they represent, establish procedures to be followed in their transportation, specify the markings for vehicles transporting them, and

adopt by reference any more restrictive limitations contained in the rules and regulations of the industrial safety division of the department of labor and industrial relations on the transportation of explosives.

These PUC's rules were adopted in 1961 based on the then existing federal rules on the subject. Since then, the federal government's motor carrier safety rules affecting hazardous materials have grown more rigorous, but the PUC rules have not been changed to conform to the new federal rules. This caused the federal Bureau of Motor Carrier Safety in its evaluation of the PUC's motor carrier safety program for 1973-74 to comment that "Hawaii has no hazardous materials regulation of its own and has not adopted the Federal Hazardous Materials Regulation. The Hawaiian agencies merely recommend that carriers follow the Federal rules."<sup>6</sup>

**Nonenforcement.** Although the PUC rules are dated in some respects, they nevertheless offer some basis for active enforcement of safety in transporting hazardous materials. The public utilities agency, however, has not attempted to

<sup>6</sup>Federal Register, Vol. 39, No. 146 (July 29, 1974), p. 27441.

enforce its regulations. It has taken no steps to determine which carriers transport hazardous materials, when and where hazardous materials are being transported, and whether or not those transporting such materials are complying with the PUC rules. Indeed, it does little even where vehicles carrying hazardous materials are involved in accidents.

In 1972, a truck hauling 8400 gallons of propane gas went out of control and turned over, apparently due to an unsafe action on the part of the driver of the vehicle. Fortunately, the driver sustained only minor injuries and the tank in which the gas was contained remained intact. The accident occurred on a major highway, however, and could have resulted in a grave disaster. A public utilities division investigator investigated the accident in response to a call from the Honolulu police department, but the investigation was very cursory and did not consider the implications of the accident from the standpoint of transporting hazardous material. Other than checking the brakes of the vehicle, the investigator confined his investigation to a review of the police report on the accident. He did not check for compliance with the rules on carrying hazardous materials. (For that matter, he did not check for compliance with such other requirements as the driver having a valid doctor's certificate or the vehicle having a valid inspection decal.)

It appears that the public utilities agency's attitude is to rely on the industrial safety division of the department of labor and industrial relations to control and police the carrying of hazardous materials. It should be noted, however, that the department of labor and industrial relations' jurisdiction by statute extends only to the transportation of explosives, and not to all hazardous materials.

In the absence of enforcement by the public utilities agency of the PUC rules, the transportation of hazardous materials appears to be virtually unregulated in the State. As noted, the department of labor and industrial relations'

jurisdiction in this area is limited. The office of the state fire marshal appears also to have some responsibility in this area, but the staff of the office consists of the fire marshal and one secretary, and is too small to undertake enforcement. The city and county of Honolulu as a part of its traffic code has adopted an ordinance on transporting hazardous materials,<sup>7</sup> and presumably the county police enforce this ordinance as violations become apparent. But there is no consistent and systematic program as such on the county level to ensure that motor carrier vehicles take all necessary precautions in transporting hazardous materials.

***Recommendations. We recommend that:***

1. *The office of the highway safety coordinator assume responsibility for the establishment of standards, consistent with federal requirements, for the transportation of hazardous materials and the county police assume responsibility for the enforcement of the standards.*

2. *The office of the highway safety coordinator consult with the department of labor and industrial relations and the fire marshal when developing rules regarding hazardous materials transportation to make sure their concerns are reflected in the rules.*

**Modification of Motor Carrier Vehicles**

To meet the many varied needs of commerce and industry, motor vehicles often undergo all sorts of transformations and modifications, and many types of specialized equipment are fabricated for use on the highways. In a great many cases this modification and construction work may be

<sup>7</sup>This ordinance is more stringent than the PUC rules in some respects. For instance, the PUC rules require vehicles transporting explosives and other dangerous articles to avoid highway tunnels "so far as practicable, and, where feasible." By contrast, Honolulu's traffic code contains an outright prohibition against the transportation of any explosives through any vehicular tunnel used by the public as a street or highway.

done by persons who are highly skilled mechanics and fabricators, but who have no background in automotive engineering, safety engineering, or any other type of engineering or related fields. In some cases, they may be rank amateurs with no real skills and qualifications for making basic changes in a motor vehicle. As a result, much of this work may be done without adequate consideration of safety requirements, proper load factors, and related needs. Adding safety features often increases costs or otherwise detracts from the projected economics of the proposed modification or construction. Thus, to avoid these costs, carriers obtaining vehicle modifications or shops performing the work may neglect safety requirements and protective features. Government regulation guards against this.

The Hawaii Motor Carrier Law specifically charges the PUC with the duty “[t]o review and approve all plans and specifications for the construction in the State or modification of motor vehicles which will at any time be operated upon the highway by common carriers, contract carriers or private carriers of property.” Despite this statutory charge, the public utilities agency is neglecting this area of regulation.

**Inadequate rules.** To carry out its responsibility to review and approve plans for the construction and modification of vehicles, the commission has adopted the following rules:

**“MODIFICATION OF MOTOR VEHICLE.**

- (a) All carriers covered by this order will notify this Commission, in writing, of any modification of any vehicle which has been previously issued a safety decal; and
- (b) Any major modification, construction or reconstruction of the body of any vehicle must have prior approval of this

Commission. Description of change, together with detailed plans and specifications, must be submitted in writing.”

The above-quoted provisions constitute the extent of the rules on vehicle modification. It is apparent, of course, that these rules are insufficient. *First*, they contain no definition of the terms used in the rules. They make no distinction between “major modification,” “construction,” and “reconstruction.” *Second*, no guidelines are provided to indicate what can and cannot be done in modifying a vehicle and on what basis plans and specifications will be reviewed and approved or disapproved. For example, nothing is said about permissible weight characteristics of modified or newly constructed vehicles. As a result, vehicles may be constructed or modified to end up with gross vehicle weights which are in excess of established legal weight limits or of the designed carrying capacity of the vehicles themselves. Indeed, we are informed that modified vehicles being operated by the State itself are in violation of the legal weight limits. *Finally*, the rules are also silent on the means of assuring compliance with the requirement and on the type of action, if any, that can be taken for failure to follow approved plans and specifications.

**Inadequate review of applications.** When an application for modification of a vehicle is filed, it is referred to the investigation branch for review and staff action.<sup>8</sup> The review, however, is cursory at best. It cannot be otherwise, for the investigators are not particularly qualified to review any plan for vehicle modification from a technical point of view. Their technical experience has been limited to welding and auto mechanics. None of the investigators has had engineering experience or training of any kind. Moreover, there are no guidelines available to the investigators to assist them in reviewing any of the plans.

<sup>8</sup>In times past, applications were referred to the engineering staff for review, but this practice was discontinued three or four years ago when the engineer who used to do most of the reviewing left the staff of the division.

Once a plan has been reviewed, the investigator prepares a brief staff report for submission to the commission so that it can "ratify" the staff's prior action on the application. The commission generally supports the recommendation of the investigator in a rapid, perfunctory, and automatic manner. It makes no study of the application on its own. Indeed, the commission has generally implored the staff to minimize the need for the commission to become involved in handling vehicle modification applications. In effect, the commission has delegated to the staff authority and responsibility which are vested by law in the commission itself. There are no provisions authorizing the commission to delegate its authority.

The result of this review process is, of course, that there is no assurance that the safety of the modified or reconstructed vehicle has been thoroughly evaluated.

**Lack of enforcement.** Not only are vehicle modification applications given only perfunctory evaluation, it appears that many vehicles are being modified without the prior approval of the PUC. In some cases this occurs because the PUD, upon review of the applications submitted, authorizes (apparently with PUC concurrence) the applicants to proceed with the proposed modifications even before the staff recommendations are submitted to the PUC for action. At other times, the applications are submitted after the modifications have already been made.

More serious, perhaps, is the fact that modifications are made even without the knowledge of the PUD or the PUC—that is, applications are not submitted even after modifications have been accomplished. Table 14.4. shows the number of vehicle modification applications filed during the 1968–1972 period, by type of carrier and by county. As the table indicates, the number of applications processed during any one year has ranged from a low of 15 to a high of 28, or less than an average of 2 per month.

From all indications, these applications represent only a miniscule number of the actual number of vehicle constructions and modifications which occurred during this five-year period. It is generally agreed by all parties concerned that the results shown in table 14.4 do not represent by a wide margin the actual numbers of commercial vehicles which were constructed or which underwent major modifications in Hawaii from 1968 to 1972. The PUD staff agreed that this is probably so. A number of truck dealers and body shop operators felt that the total number of modifications was (and is ) probably several hundred a year.<sup>9</sup>

An examination of the vehicle registration records of the city and county of Honolulu further confirmed the understatement of the results in table 14.4. The city and county of Honolulu requires proof of the weight of all vehicles registered with it, either in the form of the manufacturer's rating sheet or through an actual weighing on municipal scales. Generally, trucks which have been modified must be weighed because the manufacturer's rating sheets are not applicable. Although such weighings are of the net weight, rather than the gross vehicle weight, nevertheless the net weights can be used to determine which vehicles should be under the jurisdiction of the public utilities agency. In other words, any vehicle with a net weight of 7,500 pounds or more is quite likely to have a gross vehicle weight in excess of 10,000 pounds. Accordingly, we took a look at the number of vehicles reporting weighings of 7,500 pounds or more at the municipal scales.

The period sampled was from June 1, 1973 through November 30, 1973. We found that, during this six-month period, a total of 339 vehicles were reported as weighing in excess of 7500 net pounds at the municipal scales. The data from our examination are summarized in table 14.5. Even if one were extremely

<sup>9</sup>These truck dealers and shops pointed out that most flatbed trucks entering the State come in as cab-chassis so as to save on shipping costs. Bodies are added after the trucks arrive in Hawaii.

Table 14.4  
Summary of Vehicle Modification Applications  
For the Years 1968 Through 1972

Industries	1968	1969	1970	1971	1972	Total (1968 -72)
Pineapple . . . . .	3	7	13	7	12	42
Sugar . . . . .	1	1	—	1	2	5
Pineapple and sugar related . .	—	1	—	—	1	2
Moving and storage . . . . .	2	1	—	—	—	3
Construction . . . . .	8	3	12	9	3	35
Other . . . . .	2	2	3	—	1	8
Total . . . . .	16	15	28	17	19	95

conservative and assumed that half of these vehicles had not been modified (and chances are that 90 percent or more of them had been modified), the data still indicate that the number of trucks being modified annually in Honolulu alone is in the hundreds.

The city and county of Honolulu also maintains vehicle registration records which describe thousands of vehicles as “homebuilt,” “homemade,” “shopbuilt,” and “unknown.” Such designations indicate that the vehicles have been modified. Without an exhaustive study, it is impossible to know how many of these vehicles were constructed or modified without the required approval of the PUC, but on the basis on the numbers alone it is fairly obvious that many vehicles have been modified without the required PUC approval.

Although the public utilities agency admits that many vehicles are being modified, constructed, or reconstructed without the required approval, the PUC is making virtually no effort at enforcement.<sup>10</sup>

While the task of devising an effective enforcement system is by no means an easy one, it appears that more could be done in this area than is presently being done. For example, through coordination in the area of vehicle registrations, a means could be established to identify at the time of registration those vehicles

which appear to fall into the category of constructed or modified vehicles and a penalty imposed for all vehicles modified or constructed without PUC approval. Similarly, through coordination with the counties the weighing of motor carrier vehicles at the municipal scales could be monitored to detect those which should be subject to the PUC’s regulatory requirements. Going even further, attention might be focused at the point where the most effective control might be established—i.e., the shops where the actual construction and modification of vehicles is being performed. It is doubtful, however, that given the overall attitude of the public utilities agency any of these means would be developed by that agency.

<sup>10</sup>In addition to the nonenforcement of the requirement that vehicle modification, construction, and reconstruction be undertaken only with PUC approval, there is one other aspect of vehicle modification that is not enforced. This is the payment of vehicle modification fee of \$50. We commented on this in volume I of our report. While common and contract carriers are required to pay the fee whenever they apply for vehicle modification, private carriers are not. The reason for this discriminatory treatment appears to be that the bulk of the applications for modifications were filed by the two largest pineapple companies. Apparently, these two companies have been filing modification applications (while others were not) because they were once caught violating the requirements. Being large companies with better than normal internal operating procedures they probably established formal steps within the companies to prevent a recurrence of the problem. However, it appears that the companies were at one point encountering economic difficulties, and a decision appears to have been made not to require the companies to pay the vehicle modification fees because of that. Of course, there is no justification for this; worse, the decision was made to extend the exemption to all private carriers. The agency agrees that this practice should cease and has indicated that it will take steps to halt it.

Table 14.5  
 Selected Samples of Trucks and Combinations with Tare Weights of 7500 Lbs. or More  
 Determined at the Municipal Scales/ During the Period June 1, 1973 Through November 30, 1973  
 Indicating Vehicles Which Probably Should Have Received Major Modification Approval by the PUC

Type of vehicle	Total no. of sample vehicles	Percent of total sample	Distribution of Vehicles by tare weight (pounds) ranges		Some approximate <sup>5</sup> GVW ranges for truck and trailer with tare weight ranges		
			7,500 - 10,499	10,500 - 25,000 or more	7,500 - 10,499	10,500 - over 25,500	
Flatbed trucks . . . . .	63	19%	47	16	15,000 - 36,000	37,000 - 51,000	
Flatbed dump trucks . . . . .	18	5	13	5	15,000 - 36,000	37,000 - 51,000	
Dump trucks . . . . .	35	10	11	24	15,000 - 36,000	37,000 - 51,000	
Delivery vans and trucks . . . . .	42	12	30	12		6	
Cement mixer trucks . . . . .	21	6	-	21	-	44,000 - 51,000 <sup>7</sup>	
Tanker trucks . . . . .	17	5	2	15			
Refuse trucks . . . . .	10	3	-	10	-	35,000 - 51,000	
Other trucks (less than 10 each) <sup>2</sup> . .	27	8	7	20		6	
Subtotal - trucks . . . . .	233	69%	110	123			
Combination vehicles							
Truck tractors . . . . .	59	17%	10	49		8	
Trailers <sup>3</sup> . . . . .	47	14	20	27	32,000 - 48,000	48,000 - 58,000	
Subtotal - combinations . . . .	106	31%	30	76			
Total - trucks and combinations <sup>4</sup> . .	339	100%	140	199			

Note 1: PUC and weights and measures division authorities indicate that trucks weighing 7500 or more pounds (tare weights) have GVW over 10,000 pounds.

Note 2: Of all the trucks and combinations listed, dealers and truck body builders indicated that almost all of the flatbed trucks are completed in the State. (Cab and chassis are brought into the State; the rest is completed in the State.)

<sup>1</sup>This sample shows all of the trucks and combinations weighed by the division of licenses, department of finance, city and county of Honolulu, during this period. Licenses are not issued by the division until the registered owner shows proof that the vehicle has been inspected by an authorized PUC safety check station and that the weight has been determined through the manufacturer's rating sheet at the division or by the municipal scales.

<sup>2</sup>"Other trucks" or trucks with less than ten in the category include 8 utility trucks; 5 reefer vans; 2 service or maintenance trucks; 2 feed trucks and 1 each of the following—tow wagon, crane; sweeper; fire crash, cargo rig; 1964 Ford; shop-made dolly; shop-made sugar vehicle; and an ex-dump truck.

<sup>3</sup>Three of the 45 trailers shown above are semi-trailers. Also included within the 7500 - 10,499 pound range are 7 container chassis trailers with tare weights ranging from 5,000 to 7,499 pounds.

<sup>4</sup>Excluded from the sample were 33 buses with tare weights ranging from 10,000 pounds to 30,000 pounds.

<sup>5</sup>The ranges shown are approximations of the GVW for the trucks. Data on length and number of axles were not available.

<sup>6</sup>Variances in GVW's are too wide to give any approximation.

<sup>7</sup>Cement mixer trucks with 4 axles have GVW up to 62,000 pounds.

<sup>8</sup>Truck tractors have no GVW.

**Recommendation. We recommend that:**

1. *The office of the highway safety coordinator develop comprehensive, up-to-date regulations governing the modification of motor carrier vehicles. These regulations should extend to the shops where vehicles are modified and should require the display of suitable identifying marks on all vehicles modified according to regulations.*

2. *The county police department enforce all regulations established by the office of the highway safety coordinator. This enforcement program should be integrated with the vehicle registration, inspection, and weighing programs.*

### **Motor Carrier Safety Equipment**

A substantial part of the PUC rules is devoted to equipment, parts, and accessories deemed necessary for the safe operation of motor carrier vehicles. The rules prescribe in detail the types of safety equipment required on all regulated vehicles and cover such items as lights, electrical wiring, brakes, windows, windshields, emergency exits, fuel systems, coupling devices and towing methods, tires, rear-vision mirrors, horns, floors, wheels, mudguards, and emergency equipment (fire extinguishers, flares, etc.).

Such extensive rules would seem to indicate that regulation of safety equipment is of prime concern to the public utilities agency. In fact, however, this is not the case; the agency almost totally ignores this area of its responsibility. This is clearly evidenced by: (1) the fact that the agency has failed completely to keep pace with changes taking place in this field and the improvements that are being made in the safety of motor carrier equipment and has not amended its rules accordingly, and (2) the fact that the agency devotes almost no effort at all to enforcement activities in this field.

**Failure to keep pace with changes.** The rules on safety equipment were originally

adopted in 1961. They have been amended only modestly since 1961, and not at all since 1966. Originally, the rules were patterned very closely after comparable provisions of the federal motor carrier safety regulations in effect at the time. Since 1961, however, dramatic shifts have occurred in public attitudes, concerns, and priorities regarding highway and vehicle safety, and a great deal of attention has been focused upon improving the engineering and safety features of motor vehicles. The federal motor carrier safety rules have been revised and amended significantly as a result. The PUC rules have not.

Among the provisions of the PUC rules which have remained unchanged despite more stringent federal rules are those relating to glazing, window construction, and emergency exits from vehicles; the safety of vehicle fuel systems; coupling devices and towing methods; and protective devices against shifting loads and falling cargo. In addition, the PUC rules are still silent on the subject of seat belts and other protective restraining devices, although the federal government has put mandatory requirements into effect in this area.

In short, the PUC rules as now constituted are not fully relevant to current conditions, and they are sadly deficient in many respects. This situation is likely to remain as long as current attitudes and approaches to motor carrier safety hold sway in the public utilities agency.

**Lack of agency enforcement activity.** Not only has the public utilities agency not kept its rules on safety equipment up-to-date, it also has dismally failed to enforce what rules it has. What little enforcement there has been was provided by the county police. In 1972, of the 555 violations of the PUC rules on safety equipment, 548 (or 99 percent) were issued by the police and only 7 were issued by the staff of the public utilities agency. Moreover, most of the 7 violations cited by the staff came to the staff's attention through police notification or as a result of some other event, such as involvement of a vehicle in an accident.

**Recommendation.** We recommend that the office of the highway safety coordinator establish up-to-date, comprehensive regulations

on safety equipment and the county police departments enforce all such regulations.

## Chapter 15

# REPORTING AND INVESTIGATION OF MOTOR CARRIER ACCIDENTS

The reporting and investigation of traffic accidents is integral to a successful system of highway traffic safety. Reporting and investigation make it possible to determine the frequency, causes, and severity of traffic accidents, and from such information to develop remedial actions. This chapter discusses the manner in which the public utilities commission and the public utilities division presently undertake these activities, and the proper role of motor carrier accident reporting and investigation in the statewide highway traffic safety system.

### Summary of Findings

The public utilities agency does not have an effective mechanism for the reporting and investigation of motor carrier accidents. Thus:

1. Motor carriers are not reporting the accidents in which their vehicles are involved, and, when they do submit accident reports, their reports are often incomplete, inaccurate, and inconsistent.
2. The public utilities agency makes no analysis of accident information as it receives it, conducts no meaningful investigation of accidents, and takes virtually no action on the results of such accident investigations it conducts.

### Generally

**Objectives of accident reporting and investigation.** Safer highways may be achieved by a number of programs, including vehicle safety inspection, driver training, highway design and maintenance, and traffic code enforcement. To evaluate the success of all such programs, however, it is necessary to know the circumstances under which the highway safety system fails—that is, when accidents occur. For this, it is necessary to have a sound system of accident reporting and investigation. If accidents are detected and reported and their causes discovered, it becomes possible for highway safety administrators to take the most appropriate corrective actions. In some cases these may be road improvements designed to eliminate hazardous highway conditions. In others, traffic control may be the best approach, and so on. Without an accident reporting and investigation system that discovers the location, severity, and the probable cause of accidents, however, efforts to improve highway safety will be ill-directed. This is recognized by the federal government, which includes reporting and investigation standards among those with which states must comply.

**Federal standards.** The federal government has established standards governing accident reporting and investigation which all states are supposed to follow. These standards stress a

coordinated, multi-agency, multi-disciplinary approach to such reporting and investigation. Among the requirements are the following:

"A. *Administration.* 1. There shall be a State agency having primary responsibility for administration and supervision of storing and processing accident information, and providing information needed by user agencies.

2. There shall be employed at all levels of government adequate numbers of personnel, properly trained and qualified, to conduct accident investigations and process the resulting information.

...

4. Procedures shall be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of accidents and subsequent processing of resulting data.

5. Each State shall establish procedures for entering accident information into the statewide traffic records system established pursuant to Highway Safety Program Standard No. 10, Traffic Records, and for assuring uniformity and compatibility of this data with the requirements of the system, including as a minimum:

a. Use of uniform definitions and classifications acceptable to the National Highway Traffic Safety Administration and identified in the Highway Safety Program Manual.

b. A standard format for input of data into the statewide traffic records system.

c. Entry into the statewide traffic records system of information gathered and submitted to the responsible State agency.

...

D. *Accident investigation.* Each State shall establish a plan for accident investigation and reporting which shall meet the following criteria:

1. Police investigation shall be conducted of all accidents as identified in section IV.C.2 above. Information gathered shall be consistent with the police mission of detecting and apprehending law violators, . . . .

2. Accident investigation teams shall be established, representing different interest areas, such as police; traffic; highway and automotive engineering; medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining probable causes of accidents, injuries, and deaths. These teams shall conduct investigations of an appropriate sampling of accidents in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, and that have a significantly large or disproportionate number of accidents.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of accidents or injury-producing accidents.

c. Drivers, pedestrians, and vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of motor vehicle traffic accidents or injuries.

d. Accidents in which causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed."

These standards form a suitable yardstick against which to measure the performance of the public utilities agency in the reporting and investigation of motor carrier accidents, especially as the motor carrier law itself contains no specific provisions on the subject.

### PUC Rules

Although the Hawaii Motor Carrier Law charges the PUC with the responsibility for regulating the safety of motor carrier operations, it is generally silent on the specifics of such a safety program. Thus, most of the safety requirements for motor carriers are found in the PUC's rules and regulations.

With respect to accident reporting and investigation, the rules require that the carriers report to the commission all accidents resulting in fatalities, personal injury, or property damage of \$500 or more. Accident reports are to be made on a form prescribed by the commission as soon as possible after the accident, and in no event later than 30 days after the accident. Fatal accidents, however, must be reported within 24 hours. Carriers are required to retain a copy of each accident report submitted to the commission and to cooperate in investigations.

The rules, however, do not prescribe what action, if any, is to occur after the receipt of an accident report. That is to say, the rules do not provide for an investigation of any reported accident. In practice, reports on nonfatal accidents are simply placed on file. In the case of a report on a fatal accident, some sort of followup attention is given. This followup attention, however, may be no more than a review of the police report on the accident or it may include some limited investigation of the

vehicle(s) in question. In either case the result usually is the same: a brief report is submitted to the public utilities commission. The commission in turn files the report in its confidential files.

These rules and the procedure followed obviously do not satisfy the federal highway safety standards' requirements for comprehensive accident reporting and investigation. The specific deficiencies in the PUC's reporting and investigation practices are enumerated below.

### Accident-Reporting Deficiencies

At present, accidents come to the attention of the public utilities agency in several ways. One way is through accident reporting by the carriers as provided in the PUC rules. Another way is through police reports which are sent to the agency. Still another way is through the news media. Regardless of the means of reporting, when a report of an accident comes to the attention of the agency, it is generally, but not always, recorded in a log maintained for this purpose. On the log are recorded the name of the carrier, the date of the accident, the location of the accident, a brief description of the

circumstances, the number and types of vehicles involved, the number of fatalities and injuries, the estimated property damage, violations of the commission rules, the probable cause of the accident, and the date of receipt of carrier's report.

Since the log does not record all accidents and since it contains many errors in information, the log is of questionable value. However, the log and such accident reports as we were able to find provided us with some basis for assessing the adequacy of the motor carrier vehicle accident reporting system. The system generally is grossly deficient.

*First*, motor carriers either are not submitting reports on accidents or, when they do, are not submitting the reports on a timely basis. Tables 15.1 and 15.2 show the number of nonfatal and fatal accidents brought to the attention of the public utilities agency in 1972, the number of these accidents for which reports were filed by the carriers, and the time period within which the carriers' reports were filed. The tables show that in every instance reports on fatal accidents, when filed, were filed late. The longest time between a fatal accident and the filing of the report on the accident was 92 days, although the PUC rules require filing

Table 15.1  
Summary of Reporting of Accidents Involving Non-Fatal Injuries  
Within the Prescribed Limits of 30 Days Following the Accident for the Year 1972

Type of vehicle	No. of non-fatal accidents	No. injured	No. of reports submitted by carriers			No report submitted
			Total	Within 30 days	After 30 days	
Taxis . . . . .	28	35	2	2	—	26
Ambulances . . . . .	2	4	2	2	—	—
Buses . . . . .	32	65	8	5	3	24
Trucks . . . . .	90	80	52	38	14	38
Total . . . . .	152	184*	64	47	17	88

\*In addition, 11 persons were injured in 4 of the 16 fatal accidents included in table 15.2.

**Table 15.2**  
**Summary of Reporting of Fatal Accidents**  
**Within the Prescribed Time Limit**  
**Of 24 Hours Following the**  
**Accident or Fatality**  
**For the Year 1972**

Type of vehicle	No. of fatal accidents	No. of reports submitted by carriers		No report submitted
		Total	Within 24 hrs	
Buses	2	—	—	2
Trucks	14	10	—	4
<b>Total</b>	<b>16</b>	<b>10</b>	<b>—</b>	<b>6</b>

within 24 hours; in six cases no report was filed at all. For nonfatal accidents, required to be reported within 30 days, 11 percent of the accident reports were late (one was filed 142 days after the accident), and no reports were filed for 58 percent of the accidents.

*Second*, carriers' reports, when filed, are often incomplete, at variance with police reports, and, in case of a variance, they either are never reconciled with the police reports or are inconsistently reconciled.

Such shortcomings as these make it impossible to vouch for the soundness of the information on accidents recorded by the PUC. One thing appears reasonably certain. The PUC records grossly understate the number of accidents in which motor carrier vehicles are involved. An indicator of this is the accident statistics reported by the office of the highway safety coordinator. For instance, although compiled upon a different basis, accident statistics reported by the office of the highway safety coordinator for 1972 indicate almost ten times as many bus accidents as are revealed in the accident report records of the PUC for the same year. While some difference might be expected due to differences in reporting requirements, this margin appears exceedingly large and strongly suggests a gross underreporting of bus accidents to the PUC.

#### No Analysis of Accident Statistics

Although the accident reports submitted to the PUC are not complete, to the extent they exist they offer some valuable insights into the causes of accidents and possible measures for preventing them. For 1972, for instance, from

**Table 15.3**  
**Summary of Probable Primary Causes of Motor Carrier Accidents in Hawaii in 1972**  
**By Type of Vehicle**

Type of vehicle	No. of accidents	Probable primary causes of accidents									
		Carrier driver		Carrier vehicle		Other party		Other causes		Causes not indicated	
		No.	% of total	No.	% of total	No.	% of total	No.	% of total	No.	% of total
<b>Passenger carriers:</b>											
Taxicabs . . . .	28	25	15 %	1	1%	—	—	1	1%	1	1%
Ambulances . .	2	2	1	—	—	—	—	—	—	—	—
Buses . . . . .	34	21	13	1	1	3	2%	4	2	5	3
<b>Property carriers:</b>											
Trucks . . . .	104	68	40	14	8	12	7	7	4	3	2
<b>Total . . . .</b>	<b>168</b>	<b>116</b>	<b>69%</b>	<b>16</b>	<b>10%</b>	<b>15</b>	<b>9%</b>	<b>12</b>	<b>7%</b>	<b>9</b>	<b>5%</b>

Table 15.4

Comparison of Accident Records of Passenger Carriers and Property Carriers in Hawaii During 1972

Type of Carrier	No. of Vehicles Registered with PUC	% of Total PUC Registered Vehicles	No. of Accidents	% of Total Accidents	No. of Fatalities	% of Total Fatalities	No. Injured	% of Total Injured	Estimated Amt of Property Damage	% of Total Estimated Property Damage
Passenger carriers:										
Taxis and limousines . . . . .	1,216	8%	28	17%	—	—	35	18%	22,025	7%
Ambulances . . . . .	NA *	—	2	1	—	—	4	2	600	—
Buses . . . . .	662	4	34	20	2	11%	68	35	23,262	7
Subtotal . . . . .	1,878	12%	64	38%	2	11%	107	55%	45,887	14%
Property carriers:										
Trucks and trailers . . . . .	13,725	88%	104	62%	16	89%	88	45%	284,116	86%
TOTAL . . . . .	15,603	100%	168	100%	18	100%	195	100%	330,003	100%

\*Not available.

Table 15.5  
Comparison of Accident Records of Property Carriers in Hawaii in 1972  
By Types of Carriers (Industry) and Vehicles Involved in Accidents

Type of Carrier or Industry	No. of Accidents	Percent of Total	No. of Fatalities	Percent of Total	No. of Injured	Percent of Total	Estimated Amt of Prop Damage	Percent of Total
County and State governments . . . . .	6	6%	3	19%	8	9%	\$ 5,652	2%
Refuse collection . . . . .	6	6	2	13	1	1	3,570	1
Utilities . . . . .	8	8	1	6	11	13	19,333	7
Concrete products . . . . .	5	5	—	—	6	7	33,685	12
Moving and storage . . . . .	6	6	—	—	1	1	19,630	7
Construction industry . . . . .	12	12	3	19	6	7	61,500	22
Pineapple and sugar industries . . . . .	29	28	3	19	32	36	44,851	16
Pineapple and sugar industry related . . . . .	7	7	1	6	9	10	65,075	23
Other . . . . .	25	24	3	19	14	16	30,820	11
Total . . . . .	104	100%	16	100%	88	100%	\$284,116	100%

the information contained in the reports and on file with the public utilities agency, we constructed tables 15.3, 15.4, and 15.5. It appears from the tables that motor carrier drivers were at fault in by far the largest number of accidents; that among taxicab companies, one company had a disproportionately large share of the accidents; that passenger carriers accounted for a disproportionately large share of motor carrier accidents and injuries; and that certain types of property carriers accounted for a disproportionately large share of property carrier accidents and a high proportion of their fatalities, injuries, and property damage.

Even so limited an analysis of data as this, then, suggests the need for better motor carrier driver training and licensing programs, special supervision of passenger carriers, and careful watch over specific carriers and types of carriers as means of reducing traffic deaths, injuries, and damages. Unfortunately, however, the public utilities agency does not undertake any such analysis as this. For a period prior to 1970, there was compilation of data and analysis. But since 1970, there has been no activity of this kind.

### **No Accident Investigations**

Accident investigation should be one of the basic responsibilities of the public utilities agency once accidents have been reported to it. This does not necessarily mean that every single accident must be personally and thoroughly investigated. However, it does mean that there must be some systematic manner in which accidents warranting investigation are identified in order that the causes of the accidents might be pinpointed and remedial actions taken to reduce or eliminate the recurrence of such accidents. The public utilities agency, however, conducts little investigation of motor carrier vehicle accidents.

To begin with, the investigation branch of the PUD has no criteria for determining which accidents to investigate and no standard operating procedure on how accident

investigations should be conducted. As a consequence, investigations of accidents appear to occur strictly on a hit-or-miss basis and without thoroughness and consistency. Note, for example, the situation in 1972.

If we define an investigation as a staff effort that extends beyond reading police and carrier reports to such activities as visiting the scene of the accident, examining the vehicle involved in the accident, and interviewing the driver of the vehicle involved in the accident and the witnesses, the PUD in 1972 appears to have investigated only 31 of 168 accidents brought to the division's attention. Of the accidents investigated, 14 involved fatalities. In all of these investigations, only minimal effort was expended. The staff's worksheets indicate that only two investigators were involved in these investigations and they spent an average of only 2.7 hours on each of the 31 accidents, including time spent traveling and writing reports. This total time expended amounts to only 1.4 percent of the hours worked by the investigation branch during the year.

Not only does the public utilities agency do little on-the-spot investigating, but it also does little in terms of reviewing driver traffic or citation records, checking to determine whether the drivers involved in the accidents were properly licensed, or examining the drivers' physical fitness records. We did some of these things with the 1972 accidents reported to the agency and found that a substantial number of drivers involved in those accidents had records of traffic citations or were improperly licensed. For instance, of the 151 drivers involved, 36 had received traffic citations during the three-year period before the accidents, one driver having received 20 citations during the period and another 12 in 1972 alone.

### **No Corrective Action Taken**

Although accident investigations by the public utilities agency are haphazard and less than thorough, sometimes they reveal problems

that require corrective action. However, in these cases, the agency does little, if anything, to ensure that the problems are remedied. Instances abound. The following are examples.

(1) In 1971, an accident caused six fatalities and two injuries. The accident was attributed to driver inexperience. No action was taken against the carrier except to require that the carrier register its seven trucks which were found in the course of the investigation to be unregistered with the commission. No effort was made to ascertain the correctness of reports that the truck was overloaded at the time of the accident and that the driver of the truck had been carrying unauthorized passengers in the cab of the truck when the accident occurred. This case was routinely closed and placed on file.

(2) A motor carrier engaged in the moving and storage business on one of the neighbor islands reported four accidents during 1972. The same driver was involved in three of these accidents, suggesting there may have been a problem relating to human factors. The police reports, however, also indicated some serious deficiencies regarding the mechanical condition of the vehicles. One police report, for example, noted several worn tires, several flat tires, one cracked tire rim, air brake hoses tied to the back of the truck and not hooked to the tractor trailer as required, and broken couplings. Despite these police reports, no investigation or any other followup action was taken on this case.

(3) A bus accident on one of the neighbor islands injured seven persons. The police report indicated charges were pending the outcome of an inspection of the bus and its braking system to determine if mechanical problems might have been a factor. There is no evidence that any followup action was taken on this matter.

Certainly there was no action taken by the public utilities agency.

(4) An accident involving a 1955 vintage truck belonging to a sugar plantation on one of the neighbor islands resulted in the death of the driver of the truck. Other drivers of the carrier indicated that the vehicle was unsafe. They stated the truck, being an old one, was used only on a standby basis, and that they did not like to drive it because its steering was difficult and because the door on the driver's side sometimes flew open by itself. The plantation shop's records also showed that the truck had been in for repairs several times before the accident for correction of the steering mechanism among other things. Despite all of these factors, the case was closed on the recommendation of staff because "the driver of this one car accident died."

(5) A fatal accident investigation showed the probable cause of the accident as a manufacturer's defect in the design and construction of the truck. However, the only action taken by the agency was to suggest that the carrier examine its other trucks made by the same manufacturer. No action was taken to determine if other carriers in the State had similar trucks and to correct any possible problems on these other trucks. No action was taken to notify federal authorities of the problem so that a national recall program could be instituted if appropriate. Not even any followup action was taken with the carrier involved to ensure that it took proper precautionary measures to avoid a repetition of the problem.

(6) In 1972, there were several accidents involving forklifts being hauled behind trucks. In all of these cases, evidence indicated that inadequate precautions were being taken in towing the forklifts. Nevertheless, the agency did nothing to review the problem of towed

forklifts to determine whether additional safeguards needed to be prescribed or whether stricter enforcement of existing requirements appeared warranted.

In none of the cases above was there any followup action to correct the causes of the accidents, and no citations were issued for seemingly obvious violations of the PUC rules. Indeed, in all of 1972, only two citations were issued (for 168 accidents), and these two citations were for the same accident. Further, even though the citations were issued, the followup action was inadequate.

In this case, the driver of the truck causing a fatality was charged by the police with negligent homicide and leaving the scene of the accident. Upon the request of the police, the public utilities agency checked the truck, and upon this check issued a citation against the carrier for failure to register the truck with the public utilities commission and another for having a defective safety device on the truck. However, this was the end of the matter, except that the carrier, 13 days following the accident, registered a total of eight trucks which it had previously neglected to register with the commission. No followup action was taken on the report that the driver of the truck was emotionally unstable or at least subject to severe emotional strains and was living in his automobile at the time.

## Summary

The PUC-administered system of motor carrier accident reporting and investigation provides few reports, fewer investigations, and still fewer remedies. It does not meet federal standards for accident reporting and investigation.

On the larger scale, in part due to the failure of the PUC-administered system, the State as a whole is not satisfying the federal requirements. However, the failure of the State as a whole to comply fully with the federal

standards is also due to the neglect of this area by other governmental agencies. The police do not as a matter of course supply the public utilities agency with reports on accidents involving motor carrier vehicles. The public utilities agency received police reports on only 111 of the 168 accidents involving motor vehicles in 1972. The office of the highway safety coordinator has not taken upon itself the responsibility to ensure that a proper system is instituted for the reporting and investigation of motor carrier vehicle accidents. Indeed, it has failed even to ensure a coordinated effort between the police and the public utilities agency. This, despite the fact that the office of the highway safety coordinator is the state agency with primary responsibility for ensuring the existence of a viable state program in traffic safety.

*Recommendation. We recommend that the reporting and investigation of motor carrier accidents should be transferred from the public utilities commission to the county police departments under standards and procedures prescribed by the office of the highway safety coordinator. The accident reporting and investigation system should be comprehensive and accurate, should satisfy federal highway safety standards, and should be compatible with accident-reporting and investigation systems developed or being developed for other classes of motor vehicles.*

## Inaccessibility of Motor Carrier Accident Reports

One further point warrants discussion and comment. This is the matter of the confidentiality of all motor carrier accident reports. Section 271-25(e) of the Hawaii Motor Carrier Law provides as follows:

“No report by any motor carrier of any accident arising in the course of the operation of such carriers, made pursuant to any requirement of the commission, and no report by the

commission of any investigation of any accident, shall be admitted as evidence, or used for any other purpose, in any suit or action for damages growing out of any matter mentioned in the report or investigation.”

Pursuant to this statutory provision, the PUC, by rules, treats the accident reports it receives as confidential and will not permit them to be used as evidence in court nor allow any other governmental agency, including the county police departments, to have access to them.

Presumably, the rationale for this prohibition against the disclosure and use of motor carrier accident reports is that it will assure or enhance the full and accurate reporting and collection of information pertaining to motor carrier accidents. Parties involved in an accident might be much more willing to cooperate and supply requested information if such information will not be made public and cannot be used against them in any legal proceedings outside of the PUC.

However, whatever the rationale, this prohibition does not serve the public interest.

Public disclosure of or accessibility to the accident reports can enhance public awareness of both specific and general public safety problems and thereby promote the correction of problems. It can also serve as a strong deterrent to motor carrier operators; they are likely to be more careful about safety matters if any violation or negligence on their part is subject to public exposure. Public disclosure of accident reports can also provide the public with a means of evaluating the effectiveness of the agencies charged with carrying out the accident-reporting and investigation functions and enforcing the various traffic safety and motor carrier safety laws.

It is worth noting in this regard that the federal government’s position is sharply different from that reflected in section 271–25(e) of the Hawaii Motor Carrier Law. The federal laws in both highway safety and occupational safety fields make all accident reports available to the public and admissible in court proceedings.

**Recommendation.** *We recommend that HRS, section 271–25(e), be amended to provide for accessibility of accident reports by the public and for use thereof in the courts, subject to the usual rules of evidence.*

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**PART IV**

**RESPONSES OF THE AFFECTED AGENCIES**

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## COMMENTS ON AGENCY RESPONSES

A preliminary draft of this audit report was transmitted on December 8, 1975 to the public utilities commission, to the departments of regulatory agencies, the attorney general, agriculture, and transportation, to the highway safety coordinator, and to the mayors of the four counties. We asked the agencies and counties for their comments on the relevant findings and recommendations contained in the report.

A copy of the transmittal letter to the public utilities commission is included as attachment 1 of this part. Similar letters were sent to the other parties indicated above. The responses which were received are included as attachments 2 to 8 of this part.

The public utilities commission, and the departments of regulatory agencies, the attorney general, and agriculture are in general agreement with the recommendations directed to them. The county of Kauai had some general comments on the report. No written responses were received from the other counties as of December 24, 1975. Only the responses from the director of transportation and highway safety coordinator require further comment.

### Comments of the Department of Transportation

The department of transportation takes exception to the audit finding that it does not seem to give adequate consideration to safety regulation in its issuance of waivers to exceed statutorily established weight and size limits. In support of this position, the department transmitted a copy of its "Policies and Procedures for Oversize and Overweight Permit Movements on State Highways." This document, which was not made available to us in the course of the audit, has not been officially adopted as required under the Hawaii Administrative Procedure Act. It would appear essential, therefore, that this important first step be taken so that the department's policies and procedures can be administered and enforced as official rules and regulations.

The department's "Policies and Procedures," however, deserves some comments. No attention is directed in the "Policies and Procedures" to the equipment capabilities of the motor vehicles involved in overweight and oversize movements as distinct from the structural capabilities of the highway facilities affected. In some cases, at least, it would seem that an evaluation of equipment capabilities from structural and safety points of view would be necessary to afford proper protection to the public. It appears to be for this reason that the law requires that the design specifications or other evidence of the designed gross weight of vehicles be filed with the public utilities commission and that loads not be allowed to exceed the carrying capacity or designed capacity of the vehicles.

In addition, the “Policies and Procedures” makes reference to requirements relating to the registration of vehicles with the PUC, the safety inspection of vehicles under PUC regulations, and the filing with the PUC of vehicle design specifications or evidence of the designed gross weight of vehicles. As pointed out in this audit report, thousands of vehicles are not being properly registered with the PUC and thousands are not being safety inspected as required by PUC regulations. In addition, no design specifications or evidence of the designed gross weight of vehicles have ever been filed with the PUC. Yet, despite all the special permits issued by the department of transportation, no problem has ever arisen concerning compliance with these PUC requirements—at least to the point of ever bringing them to the attention of or discussing them with the PUC. Surely if all permit applications were being carefully reviewed, such serious deficiencies would have come to light and would be the subject of consultations between the two agencies.

We continue to maintain that the department is overly generous and less than properly cautious in its issuance of special permits to exceed the weight and size limits. As pointed out in this audit report, for a five-year period the number of permits issued averaged more than 5000 per year and included approvals ranging all the way from single movements to continuous operations which might extend up to a year in length. Moreover, departmental personnel indicated that many of these were processed in a matter of minutes.

#### Comments of the Highway Safety Coordinator

The highway safety coordinator maintains that his office has always supported the concept of transferring the PUC’s motor vehicle safety regulation functions to his office. We believe the letter quoted in this audit report indicates to the contrary. In addition, it should be noted that proposed legislation to accomplish this transfer has not been included in the packages of highway safety legislation which the office of highway safety coordinator has submitted to the legislature in the eight years since the creation of the office. Rather, the office of the highway safety coordinator has left this legislation to be proposed and supported by the PUC and the department of regulatory agencies.

The highway safety coordinator also views his office as being much more limited in scope and authority than viewed by this office or what the law seems to provide. He then uses this as the justification for the lack of more effective action in many of the areas covered by the audit report.

With regard to the scope and authority of his office, we believe the provisions of HRS, section 286–3, are quite clear and unequivocal. They read as follows:

“Sec. 286–3 **Powers and duties of the governor.** The governor, in addition to other duties and responsibilities conferred upon him by the Constitution and laws of the State, may contract and *do all other things necessary in behalf of the State to promote traffic safety.* To that end he shall coordinate the activities of the State and its counties.

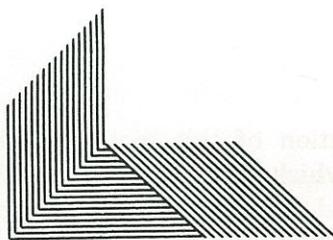
“*The governor may delegate duties and functions conferred upon him by this chapter to the state highway safety coordinator appointed under the authority of section 286–4.*” [Emphasis added]

The coordinator's apparent interpretation of this section is that his office cannot intrude into any areas of traffic safety which have been statutorily assigned to other agencies and also that his office is absolved of any responsibility for the failure of these other agencies to carry out their assigned duties and functions. We disagree. The highway safety coordinator is made a direct arm of the governor and is charged with carrying out the governor's role of doing "all other things necessary in behalf of the State to promote traffic safety." Thus, while it is true that the section does not contemplate the coordinator's office assuming directly the functions and responsibilities assigned to others, there still seems to be at least three very positive jobs assigned to the office—namely, (1) providing for and assuring effective joint action by various agencies when more than one agency may be involved in some aspect of highway traffic safety, (2) seeing that gaps in existing programs and assigned functions are filled, and (3) monitoring the performance of other agencies involved in traffic safety and taking such steps as may be appropriate to ensure adequate performance in any cases where serious deficiencies become apparent. In the area of motor carrier safety, the office of the coordinator has not performed any of these tasks in what might be deemed an adequate manner.

Even if one accepted the coordinator's narrow interpretation of the role of his office, one would still have to conclude that performance has been less than adequate. For example, he cites evaluation as one of the main functions of the office. However, by the office's own admission, it is performing very little, if any, evaluation on a continuing and systematic basis. This is revealed in its reports to the federal government concerning compliance with various federal highway safety standards. For the 18 sets of federal standards, there is a customary requirement at the end of each calling for the establishment and implementation of a regular system of evaluation. Consistently for each of these, the office has had to report noncompliance or only partial compliance with the requirement.

As the coordinator points out, some significant progress has been made in the field of highway traffic safety in Hawaii during the period since the coordinator's office was created. However, if the office is going to claim credit for these achievements, it should also be willing to shoulder some of the blame where deficiencies continue to exist. The numerous and serious shortcomings present in the area of motor carrier safety as brought out in this report provide testimony to the fact that gaping holes still exist in Hawaii's overall approach to highway traffic safety. Even in his letter, the coordinator refers to the "demise of motor carrier safety activities within the PUD." Certainly there is no excuse or justification for the office of the highway safety coordinator to have ignored this situation for so long and to have remained silent and immobilized in the face of the glaringly apparent problems which have existed for so many years.

THE OFFICE OF THE AUDITOR  
STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA  
AUDITOR  
RALPH W. KONDO  
DEPUTY AUDITOR

December 8, 1975

C  
O  
P  
Y

Mr. Lorrin W. Dolim, Chairman  
Public Utilities Commission  
State of Hawaii  
Honolulu, Hawaii

Dear Mr. Dolim:

Enclosed are five copies of our preliminary report on the *Management Audit of the Public Utilities Program, Volume III, The Regulation of Transportation Services*.

The term "preliminary" indicates that the report has not been released for general distribution. Copies of the report have been distributed to the governor, the presiding officers of both houses of the legislature, the director of regulatory agencies, the chairman of the board of agriculture, the director of transportation and highway safety coordinator, and the mayors of the four counties.

The report contains a number of recommendations. I would appreciate receiving your comments on the recommendations directed to your department. Please have your written comments submitted to us by December 22, 1975. Your comments will be incorporated into the report and the report will be finalized and released shortly thereafter.

If you wish to discuss the report with us, we will be pleased to meet with you, at our office, on or before December 15, 1975. Please call our office to fix an appointment. A "no call" will be assumed to mean that a meeting is not required.

We appreciate the assistance and cooperation extended to us during the examination.

Sincerely,

Clinton T. Tanimura  
Legislative Auditor

Enclosure

GEORGE R. ARIYOSHI  
GOVERNOR



WAYNE MINAMI  
DIRECTOR OF REGULATORY AGENCIES

R. DENNIS CHONG  
EXECUTIVE DIRECTOR

STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF REGULATORY AGENCIES

P. O. BOX 541  
HONOLULU, HAWAII 96809

December 22, 1975

RECEIVED

DEC 23 11 33 AM '75

OFF. OF THE AUDITOR  
STATE OF HAWAII

Mr. Clinton T. Tanimura  
Legislative Auditor  
State Capitol  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

The Commission is in receipt of your preliminary report on Volume Three of the Management and Audit of the Public Utilities Program.

Despite the recent heavy hearing schedule of the Commission (Maui Electric rate case and Young Brothers, Limited Rate Increase) commencing December 1, 1975 through December 19, 1975, I have generally reviewed Volume Three and its contents. In general, we concur with your findings and recommendations in Volume Three which was essentially covered in Volume One. As indicated in your report, the primary problems associated with motor vehicle safety has been enforcement responsibility and the corresponding manpower to implement such programs.

Your overview of the deregulation proposal for motor carriers is much more comprehensive in Volume Three and therefore provides some parameters for regulatory review and reform. The problems identified now provides all parties to participate effectively in a review of the regulatory scheme for motor carriers.

We commend you and your personnel for an outstanding critique of our program.

Very truly yours,

Lorrin W. Dolim, Chairman  
Public Utilities Commission

GEORGE R. ARIYOSHI  
GOVERNOR



STATE OF HAWAII  
**OFFICE OF THE DIRECTOR**  
DEPARTMENT OF REGULATORY AGENCIES  
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WAYNE MINAMI  
DIRECTOR  
BANK EXAMINER  
COMMISSIONER OF SECURITIES  
FIRE MARSHAL  
INSURANCE COMMISSIONER  
  
E. JOHN MCCONNELL  
DEPUTY DIRECTOR

December 22, 1975

RECEIVED

DEC 23 8 51 AM '75

OFF. OF THE AUDITOR  
STATE OF HAWAII

Mr. Clinton T. Tanimura  
Legislative Auditor  
State Capitol  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for your letter of December 8, 1975 inviting our comments and recommendations concerning your Report to the Governor and the Legislature entitled, "Management Audit of the Public Utilities Program, Vol. III, The Regulation of Transportation Services."

We concur with the general overviews of the report and recognize many of the deficiencies mentioned therein. Unfortunately, major rate cases and other pressing economic proceedings do not permit the Division to give many of your recommendations the attention they deserve. Priorities necessarily must be established and followed.

We have not addressed ourselves to each specific recommendation in the audit. Instead, we concentrated on recommendations addressed to the Public Utilities Division (hereafter PUD).

Chapter 4 - ECONOMIC REGULATION OF MOTOR CARRIERS

Recommendation:

The motor carriers be deregulated or in the alternative, a limited form of economic regulation be imposed that makes existing competition workable and promotes efficiency in the industry.

Mr. Clinton T. Tanimura  
Page 2  
December 22, 1975

Comment:

The PUD has taken a more active role in evidentiary hearings concerning motor carrier rate increases. The PUD is also investigating the service and load factors of the existing certified carriers. Perhaps most important, the PUD has begun compiling industrywide economic data on the motor carriers. The Division wholeheartedly agrees with your determination that the real economics of the industry are unknown. These in our view should be determined expeditiously.

Chapter 5 - MOTOR CARRIER REGULATION FOR THE PROTECTION OF CONSUMERS

Recommendation:

If the present system of economic regulation is continued, the system be revised to afford greater protection to the individual consumers.

Comment:

The PUD's policy is to vigorously pursue the interests of consumers in public utility matters. It concurs with and will implement this recommendation to the extent possible with present resources for as long as the current economic regulation is maintained. In this regard, the Division has instituted a program for more meaningful review and study of rates under the present system of economic regulation. The PUD is also implementing a program to analyze the quality of service rendered by the transportation carriers and, as noted earlier, is now taking positions on applications for CPCN's.

Recommendation

If motor carriers are deregulated, all motor carriers should be required to file the rates they charge with the Department of Regulatory Agencies.

Comment:

We agree with this recommendation, and recommend that this matter be studied in the context of whether or not the motor carriers are deregulated.

Mr. Clinton T. Tanimura  
Page 3  
December 22, 1975

Chapter 6 - OTHER PROBLEMS IN THE ECONOMIC REGULATION OF  
MOTOR CARRIERS

Recommendation:

If motor carriers remain subject to the economic regulation of the PUC, we recommend that the PUC and the PUD develop a system for the gathering and recording of comprehensive, accurate, and complete economic data on the carriers and that such data be subject to continuing analysis and use in the economic regulation of motor carriers.

Comment:

We concur with the recommendation. As mentioned earlier, the PUD has already started a plan for gathering of data and the use of such data. As stated we wholeheartedly agree that the economics of the industry are unknown. This economic analysis should be done regardless of whether it is ultimately decided to deregulate the motor carriers.

Recommendation:

We recommend that the PUC and the PUD take steps to ensure that the provisions of the statutes and the PUC rules and regulations relating to the effective date of rate proposals are complied with.

Comment:

The PUD will comply with this recommendation.

Recommendation:

We recommend that the PUC and the PUD examine the rate status of the carriers belonging to the Hawaii State Certified Common Carrier Association to ensure that they comply with applicable statutory and rule provisions on rate filings.

Comment:

The PUD will comply with this recommendation.

Mr. Clinton T. Tanimura  
Page 4  
December 22, 1975

Recommendation:

We recommend that the PUC and the PUD devise a system by which to ensure that noncertificated carriers do not operate as common carriers. The system should include a means of monitoring and policing the operations of the carriers. We also recommend that appropriate guidelines and requirements be established for segregating the regulated and nonregulated portions of the business of any carrier engaged in both types of business activity.

Comment:

We will comply with this recommendation.

Recommendation:

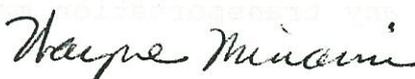
We recommend that the department of the attorney general and the department of regulatory agencies include the motor carrier area in their joint development of a consistent, coherent, and coordinated approach to antitrust matters as recommended for the public utilities field in volume II of this report.

Comment:

We will pursue this recommendation with the Attorney General.

We thank you for the opportunity to offer our comments and suggestions. The PUD faces a tremendous task in implementing many of the recommendations contained in this as well as your two earlier volumes. As I stated in my two earlier responses, the PUD is composed of dedicated public servants who are willing to meet the challenges as best as they can. However, effective regulation of public utilities in Hawaii will not be accomplished with existing resources. This goal necessitates further State commitment.

Very truly yours,

  
Wayne Minami  
Director

ADDRESS REPLY TO  
"THE ATTORNEY GENERAL OF HAWAII"  
AND REFER TO  
INITIALS AND NUMBER

CABLE ADDRESS:  
ATTGEN



WWM:cf

RONALD Y. AMEMIYA  
ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE CAPITOL  
4TH FLOOR  
HONOLULU, HAWAII 96813

December 22, 1975

Mr. Clinton T. Tanimura  
Legislative Auditor  
State Capitol, Room 008  
415 South Beretania Street  
Honolulu, Hawaii 96813

RECEIVED

DEC 22 1975

OFFICE OF THE AUDITOR  
STATE OF HAWAII

Dear Mr. Tanimura:

Thank you for your letter of December 8, 1975 extending an invitation to this department for its written comments on the recommendations set forth in your Report to the Governor and the Legislature of the State of Hawaii regarding the regulation of transportation services.

Relative to the recommendations directed to the Department of the Attorney General, I believe that they could be summarized as follows: The State of Hawaii should develop a coordinated, well-organized and efficient program designed to formulate the State's interstate transportation policies and have the Department of the Attorney General articulate those policies in the best manner before federal regulatory agencies concerned with air, water and land transportation.

I concur.

However, the manner in which this is to be accomplished is complex. The State's transportation policies are presented by deputy attorneys general in these federal regulatory proceedings for two basic reasons. First, the Department of Attorney General represents the State's interest in legal matters; and second, the federal regulatory agencies generally require attorneys to present an interested party's case. However, the Department of Attorney General has not and certainly will not unilaterally determine the State's policy on any transportation matter. Affected departments and

Mr. Clinton T. Tanimura

Page 2

December 22, 1975

agencies and members of private industry which are directly affected are contacted by the deputy attorneys general and are requested to submit relevant data and testimony, including any policy statements by the State's chief executive officer for use in the proceeding.

Although there appears to be broad and strong sentiment for federal deregulation--at least insofar as economic matters are concerned, the present regulatory structure will be with us for some time to come and thus must be dealt with. Realizing this, substantial administrative and personnel changes have been made within this department subsequent to your management audit. These changes have been consistent with your recommendations. For example, the department is now organized along functional lines. One functional area of concern is regulatory law. The number of deputies assigned to the regulation of economic matters has doubled. New deputies assigned to this area either have professional experience in economics or have taken special courses on the mainland which have been funded by the department.

Significantly, sources of information to this department concerning federal regulatory matters have increased by contacts with Washington consultants and with new and better professional and industry publications. Opinions, policies, and testimonies from government and industry have been solicited. The State is presently involved in at least eight proceedings before the Civil Aeronautics Board and seven proceedings before the Federal Maritime Commission.

Under consideration at the present time is a proposal that the State conduct two transportation regulation seminars: The first for persons within the State of Hawaii (State, county and industry); the second to include those same persons along with officials from the staffs of federal regulatory agencies and the federal department of transportation. These seminars would be coordinated by this office in conjunction with the efforts by Hawaii's Congressional delegation. The purpose of the first seminar is to formulate long-term transportation policies for the State; the purpose of the second is to convey that policy to persons directly involved in the formulation of federal regulatory policies.

Mr. Clinton T. Tanimura  
Page 3  
December 22, 1975

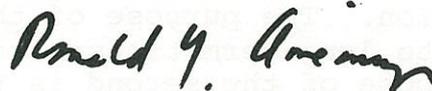
Also being explored are the possibilities of the Department of the Attorney General utilizing (1) the staff of the Public Utilities Division of the Department of Regulatory Agencies and (2) the faculty and graduate students of the University of Hawaii (a) to analyze financial and economic data for the Department and (b) to prepare exhibits and testimony for presentation as evidence in federal proceedings.

Ultimately, the threshold question is "Whether the State should involve itself in a federal regulatory matter, and if so, to what extent and with what resources?" Analysis by economic consultants who specialize in transportation matters is as expensive as it is essential. Retention of special deputy attorneys general is also required on occasion. Consultants, special deputies, and the continuance of the employment of deputies trained in this area of the law necessitates more funds.

Because the federal proceedings are on a case by case basis, with the preparation and presentation of cases the responsibility of the State's representative for legal matters--namely, the Attorney General--the function should remain within the Department of the Attorney General. While policy decisions will continue to be made by the Legislature, executive agencies, state regulatory commissions, and the chief executive himself, the responsibility for the preparation and presentation of those policies must remain with the Attorney General.

In closing, I would like to thank you again for this opportunity to comment on your audit report. As indicated above, several changes have been made since the audit which, hopefully, will result in improvements for which we are mutually desirous. Furthermore, your recommendations will be considered in implementing additional changes to improve my Department's role in the regulation of transportation services. I look forward to working with you, the Legislature, and the executive departments in order to achieve further improvements.

Very truly yours,



RONALD Y. AMEMIYA  
Attorney General

GEORGE R. ARIYOSHI  
GOVERNOR



ATTACHMENT NO. 5

JOHN FARIAS, JR.  
CHAIRMAN, BOARD OF AGRICULTURE

YUKIO KITAGAWA  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE  
1428 SO. KING STREET  
HONOLULU, HAWAII 96814

December 23, 1975

RECEIVED

DEC 23 3 56 PM '75

OFF. OF THE AUDITOR  
STATE OF HAWAII

Clinton T. Tanimura, Auditor  
The Office of the Auditor  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your very comprehensive management audit of the Public Utilities Program as it involves the regulation of transportation services.

Your kind comments regarding our Division of Weights and Measures' role in assisting in the monitoring of truck overloads is also appreciated.

It has become apparent, after reviewing your "preliminary" copy of the audit report, that certain editorializing in the area of maximum allowable gross vehicle weights, occasioned in the main by Federal legislation and controls, established, enacted, interpreted or amended subsequent to your preliminary report publication, would be in order.

Specifically, while alluded to, the 80,000 pound Federal maximum load limit applies only to "Interstate Highways," such as our H-1, H-2, and H-3 and in this application it is not an absolute.

The Federal law "grandfathers" as permissible any maximum load limits, upon interstate highways, that were legally permissible of use within a state prior to the 80,000 pound Federal limit being established. Hawaii law and procedure provides for loads over 80,000 pounds, when carried upon a properly configured motor truck under controlled or (permit) conditions. Such controlled conditions permit the carrying of 140,000 pounds over HS-20 bridges which are among our newer and most substantial, and 92,000 pounds over H-15 bridges, which are at the opposite end of the age-strength spectrum.

In addition Hawaii statute provided three distinct load limit formulae:

- W = 700 (L + 40) for trucks 6 to 13 feet long;
- W = 800 (L + 40) for trucks over 13 feet long;
- W = 900 (L + 40) for trucks which operate on highways along which no structure (bridge or culvert) will be crossed, if such structure is 20 feet or longer; and in addition to these, statute provides a maximum load limit table which may be utilized for trucks having a front to rear axle distance of from 19 thru 51 feet. It is this table, which tended to imply the 73,280 pound maximum load limit. Thus an array of load limits were possible depending upon motor truck configuration.

The important point here is that statute and procedure, established that higher load was permissible.

The major result of this multiplicity of requirements coupled with changing federal regulations tended to confuse the issue as to just what load limits do exist. The two major areas of concern assumably imposed under newly enacted federal legislation were the 80,000 maximum load limit for Federal Interstate System Highways and the avowed threat of federal funding cut-off to States not enforcing their state load limit laws on all other Federal Aid System Highways.

In effect the federal requirements imposed yet another load limit formula:  
 $W = 500 \left( \frac{LN}{N-1} + 12N + 36 \right)$  which being generally more liberal than

state load limits, excluding grandfathered limits, resulted in the imposition of dual standards upon the trucking industry, one set for interstate, and one for Federal Aid System highways, with their attendant problems for regulatory agencies. The problem is particularly acute in our State inasmuch as the H-1, H-2 and H-3 interstate system highways are all on one island. These relatively short, by mainland standard, interstate highways may be utilized for 80,000 pound truck loads but neighbor island truck loads of the same commodity hauled on the same type truck are limited to 73,280 pounds. Clearly making for a disproportionate cost base, and discouraging among others, diversified agriculture on the neighbor islands.

We believe serious consideration should be given to revising the current load limits, so that a single uniform law governs all truck movements upon our highways. This suggestion is based upon several factors not the least being that the territorial legislature in 1941 established the  $W = 800(L + 40)$  load limit formula, which permitted a properly configured motor truck with a front to rear axle distance of 60 feet to carry a gross load of 80,000 pounds, 34 years ago!

The time frame, competitive forces in the market place and little or sporadic enforcement of the 80,000 pound limit gave tacit condonation to ever increasing loads being carried by motor trucks upon our highways.

We are now being asked by the federal government, to "pay the piper" and to enforce the 34 year old law our predecessors chose previously to ignore! This is a problem with no equitable economic solution. To illustrate: (1) If we enforce the old law we effectively roll-back the average truck load revenue producing capability by 10 to 15 thousand pounds, or more! And in the case of Matson seagoing containers by 20-25 thousand pounds or more. However, we do not roll-back the cost factors to 34 years ago! It is most improbable that Matson would have built the Lurline, and designed RoRo units for Hawaii use, or that the Hilo Coast Processing Company would have invested in modern updated transportation equipment capable of 80 to 100,000 pounds gross weight, if they had any idea that they would one day be required to go back in time 34 years! (2) If we don't enforce the old law we stand to lose federal funds; and (3) If we do nothing, everybody loses, including the average motorist who drives an automobile so light, that the highway doesn't know it is being used.

The inescapable consequence of such a unilateral roll back would be economic disaster for many businesses in Hawaii, and assuredly higher prices for everybody in Hawaii.

A more suitable alternative is proposed.

"Consistent with general policy, cost responsibility of the users of the highways should be assigned on some equitable basis related to cost incurred and benefits received. There is so great a margin of benefits over costs that any properly allocated additional tax burden on the heavier trucks that would utilize higher axle-weight limits would still leave them with substantial net benefits." (underscoring ours)  
(Extracted from the Federal Highway Administration Office of Research and Development report Relating to Desirable Uniform Highway Load Limits, as updated through 1974.)

This report generalized the following desirable limits for motor trucks:

- 1) maximum height = 13.5 feet
- 2) " width = 102 inches
- 3) " length =
  - a) all highways 40 feet for single trucks, 55 feet for tractor and semi-trailer and 65 feet for any other combination.
- 4) maximum axle weight = 22/38 kips
- 5) " gross weight = 120,000 pounds

Present Hawaii statute generally adheres to these recommended desirable limits except that our maximum width is 108 inches and our maximum axle weight is 24/32 kips, and our gross weight is 80,000 pounds.

It would appear that after satisfying the safety aspects and given the overloads that have been carried upon our highways for the past 34 years, and the frequency of such overloads, that a compromise between what we're doing and the 120,000 pound suggested desirable limit, would be in order.

Whatever this limit might be, it should be enforced unequivocally, and any motor truck exceeding the limit established should in addition to any penalties imposed be assessed an "excise toll" at an established rate per pound, in excess of the legal limit. Such "excise toll" to be utilized in the county of obligation for the maintenance of its highways.

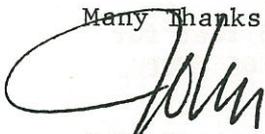
The concept is fundamental--he who abuses, pays! It also follows the Federal Highway Administration concept, and with the established weights and measures reporting system from weighmasters would tend to be somewhat self-enforcing. No trucker would be obliged to overload beyond the newly established legal gross maximum, for economic benefit, because he would now have a presumably more advantageous revenue ton/mile base from which to operate. Any choice to overload would be his, and barring an error in loading, should reflect a management decision to "carry a heavier load and pay an additional excise tax". Such an over simplification of one method of resolving the problem would benefit the transportation industry and let the costs be borne by the user, benefit the State by recognizing the higher loads which have tended to become "common law" by reducing flagrant violators and most of all benefit the consumer of Hawaii by holding a lid on transportation costs.

We firmly support the concept of a "ring of scales" around the State, and believe that such equipment could be financed and maintained by the "excise toll" concept. (There is also a distinct possibility of federal funding for highway scales.)

We have researched these areas, to a degree, and will be pleased to assist in any future plans or their development.

We believe that our division of weights and measures should figure substantially in any such activity. We have no disagreement regarding our areas of involvement in your audit report.

Many Thanks Again,



John Farias, Jr., Chairman  
Board of Agriculture



E. ALVEY WRIGHT  
DIRECTOR

DEPUTY DIRECTORS

WALLACE AOKI  
RYOKICHI HIGASHIONNA  
DOUGLAS S. SAKAMOTO  
CHARLES O. SWANSON

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

December 19, 1975

IN REPLY REFER TO:

DEP-A  
1.383

Mr. Clinton T. Tanimura  
Legislative Auditor  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

The following are comments by Divisions of the State Department of Transportation in response to your letter of December 8, 1975 transmitting the report on the "Management Audit of the Public Utilities Program, Volume III, The Regulation of Transportation Services":

RECEIVED  
DEC 22 3 03 PM '75  
OFC. OF THE AUDITOR  
STATE OF HAWAII

Airports Division (In reference to Chapter 7, Economic Regulation of Air and Water Carriers):

Although the two recommendations on air transportation were directed to the PUC and the Attorney General, it is strongly recommended that the Director of Transportation be represented in formulating programs of representing Hawaii's interest before federal regulatory bodies and in studies in economic regulations of air taxi and commuter service.

For your information, the air taxi and commuter service industry in Hawaii is highly competitive.

Harbors Division (In reference to Chapter 7, Economic Regulation of Air and Water Carriers):

We concur that the PUC, in conjunction with this department and the Department of Planning and Economic Development, should review the entire water carrier area. Because the Attorney General's office has also been involved in hearings between the State and Federal Maritime Commission and with the PUC, the Attorney General's office should also be included in this review.

Mr. Clinton T. Tanimura  
December 19, 1975  
Page 2

DEP-A 1.383

The proposed marine highway study underway by Parsons Brinckerhoff for this department should provide some of the alternatives and information relating to ferry systems which may be helpful in this review process.

We agree that under the present system, vital information on the carriers, conditions and requirements for facilities and cost implications of State-provided facilities on operations are not readily available to this department since they are not an active party to the PUC or the Federal Maritime Commission proceedings. Some improvement in interchange of information of this sort which are critical to the department's decision on whether to provide facilities or not and the impact on shipping rates would be beneficial to all concerned.

Therefore, we agree that some program involving the Attorney General and the PUC representing all State interests in PUC and Federal Maritime Commission hearings and the dissemination of information to affected agencies would be desirable.

Highways Division (In reference to Chapter 14, Motor Carrier Vehicle Size, Weight, Use, and Modification):

Summary of Findings, Item 1 - We take exception to the last sentence which states that this department is issuing permits without much deliberation or consideration of safety implications involved.

Enclosed is a copy of our "Policies and Procedures for Over-size and Overweight Permit Movements on State Highways". You will note on pages marked with paper clips that traffic safety is a primary consideration in issuing permits.

14-2, Statutory base. The federal law has been revised to permit:

single axle weight of 20,000 lbs;  
tandem axle weight of 34,000 lbs; and  
overall gross weight of 80,000 lbs.

Hawaii's statute, by formula, could conceivably permit an overall gross weight of:

81,200 lbs. over bridges and  
91,350 lbs. over roads without bridges,

Mr. Clinton T. Tanimura  
December 19, 1975  
Page 3

DEP-A 1.383

assuming an axle length of 61.5 ft. and overall vehicle length of 65 ft.

14-5, Consequences of no enforcement - Another consequence of unsatisfactory enforcement could be the loss of federal-aid funds for highway construction projects. Refer to Part 658, Title 23, Code of Federal Regulations as amended effective July 9, 1975.

14-1, Footnote 4 - Section 291-35, HRS, does not set the maximum gross weight at 73,280 lbs. The law permits the use of either the formula or table. While the table allows a maximum of 73,280 lbs, higher loads are permissible by using either the 800 (L+40) or the 900 (L+40) formula as noted previously.

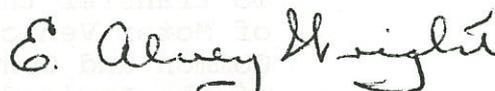
14-11, Recommendation No. 4 - We strongly endorse this recommendation and believe the establishment of state-owned weighing facilities will greatly improve enforcement of the size and weight statutes.

14-13 - Footnote 5 infers that oversize and overweight movements are diverted from interstate highways because federal funds would be jeopardized. This is not so. Permits have been issued on occasions for movements on interstate freeways. However, in most cases, diversion from the freeway is necessary for safety, particularly because in most instances, the permit vehicle cannot maintain minimum freeway speeds. Large differentials in speeds of vehicles are a major factor in the cause of accidents.

For your general information, Highways Division has been meeting with PUC, Division of Weights and Measures, and Honolulu Police Department in an effort to improve enforcement.

Thank you for allowing us to comment on your report. In the event we may be of further assistance, please feel free to contact us.

Sincerely,



E. ALVEY WRIGHT  
Director

Enclosure

GEORGE R. ARIYOSHI  
GOVERNOR



E. ALVEY WRIGHT  
HIGHWAY SAFETY COORDINATOR

LAWRENCE K. HAO  
ASSISTANT HIGHWAY SAFETY  
COORDINATOR

**STATE OF HAWAII**  
**OFFICE OF THE HIGHWAY SAFETY COORDINATOR**  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET, HONOLULU, HAWAII 96813

IN REPLY REFER TO:

HSC 9.5894  
02.01.03

December 17, 1975

Mr. Clinton T. Tanimura  
Legislative Auditor  
Office of the Auditor  
State Capitol  
Honolulu, Hawaii 96813

RECEIVED  
DEC 23 9 17 AM '75  
OFC. OF THE AUDITOR  
STATE OF HAWAII

Dear Mr. Tanimura:

This letter is in reference to your letter of December 8, 1975, requesting the Office of the Highway Safety Coordinator to comment on the preliminary report on the Management Audit of the Public Utilities Program, Volume III, The Regulation of Transportation Services.

Thank you for allowing me this opportunity to respond. Because of a short notice I am making a general response at this time and will comment in detail at a later date.

This office has always supported the concept of transferring the Public Utilities Commission Motor Vehicle Safety Regulation to the Highway Safety Coordinator.

The following statements are from legislative testimony by the Highway Safety Coordinator.

- (1) March 14, 1968, Testified on House Bill No. 138.

To transfer the Administration and Implementation of Motor Vehicle Safety Regulation of Private Common and Contract Carriers under Chapter 106C of the Revised Laws of Hawaii 1955, as amended, from the Public Utilities Commission to the several political subdivisions of the State.

I testified that the "State Highway Safety Coordinator carry out his function of coordinating the operations and development of the various state departments and of the counties through the medium of rules and regulations. Therefore, the proposed shift of this responsibility in Section 3 of House Bill No. 130 is entirely appropriate. The Office of the Coordinator is in full accord with the bill as drafted and recommends its favorable consideration as an urgent measure."

- (2) February 16, 1971, Senate Bill No. 477.

Relating to the Transfer of the Administration and Implementation of Motor Vehicle Safety Regulation of Private, Common and Contract Carriers under Chapter 271, Hawaii Revised Statutes, from the Public Utilities Commission to the several political subdivisions of the State.

I testified that "from a highway safety standpoint, there is little justification for a demarcation between the inspection of private vehicles and vehicle used by carriers. The existing regulations covering the periodic safety inspection of "non-PUC" vehicles adopted by the Highway Safety Coordinator can be readily extended to cover vehicles operated by carriers. The office of the State Highway Safety Coordinator recommends favorable consideration of Senate Bill No. 477."

- (3) January 1973, House Bill No. 305.

Relating to Motor Vehicle Safety Regulations of Private Contract and Common Carriers.

This office prepared testimony in support of House Bill No. 305, but the bill was withdrawn.

The following are some general comments on the report:

1. The report is critical of the Highway Safety Coordinator in that it makes reference to a lack of interest and commitment by the Coordinator in relation to those highway safety activities which are the responsibility of other agencies; particularly in the area of motor carrier safety. The report also finds that the Coordinator has "resisted" the statutory

Mr. Clinton T. Tanimura

Page 3

December 17, 1975

delegation of motor carrier safety responsibilities to the Coordinator. It also finds that there is hostility between the PUC, the DOE (student transportation) and the Coordinator.

Comment:

It appears that the problem has its foundation in a difference in concept of the functions and role of the Coordinator between the Coordinator and the Auditor. While admitting that the Coordinator has limited operational responsibilities (and authority), the Auditor faults the Coordinator for not assuming the responsibilities delegated to other agencies by law; an enigmatic situation.

In the view of the Federal government's position the role of the Coordinator is primarily that of highway safety program planning, monitoring and evaluating. The Federal government has been and is increasingly critical of the Coordinator's involvement in operational activities. Most of these activities have been assigned to the Coordinator because there is a need for these functions at the State level. No other State level agency is assigned the responsibilities in the functional areas of motor vehicles or State police/state highway patrol.

The lack of interest and commitment comments made by the Auditor is difficult to understand. Most of the exemplary activities cited in the report are the direct result of highway safety program activity by the Coordinator. Most of the highway safety enactments by the Legislature in the past years has been either drafted by the Coordinator's staff or introduced by other agencies as a direct result of participation by the Coordinator.

The alleged hostility is considered to be primarily a matter of differences of opinion. Open discussions and exchange of ideas on matter of mutual concern have been consistently maintained without hostility.

2. Almost every recommendation by the Auditor concerning the motor carrier safety area says: (1) assign to the Coordinator (2) enforcement by the police departments and (3) provide resources to the Coordinator.

Mr. Clinton T. Tanimura  
Page 4  
December 17, 1975

Comment:

The report appears to be silent on the cause of the demise of motor carrier safety activities within the PUD. This creates concern that these functions may meet the same fate if assigned to the Coordinator unless the deficiency is identified and corrected.

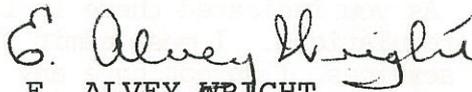
The recommendations, if carried out, are tantamount to the creation of a Division/Department of Motor Vehicles under the Highway Safety Coordinator title. The Coordinator supported a Resolution, introduced in the 1975 Legislature, to conduct a study of the feasibility of establishing a Division/Department of Motor Vehicles within the State organization.

If the highway safety operational responsibilities are to be established within a single State agency, such agency should be created and appropriately named; the highway safety program planning, monitoring, and evaluating responsibilities should continue to be the responsibility of the Coordinator.

The recommendation that the police departments be assigned the enforcement responsibility for all highway safety requirements is not entirely feasible because many of the basic operational requirements are imposed on the police departments. In this and other cases, some type of administrative enforcement procedures should be developed. In those cases which are amenable to enforcement by the police departments appropriate funding must be provided and specifically designated for this kind of activity.

Once again, thank you for allowing us to comment on the document and would like to comment in detail on other positions at an appropriate date.

Sincerely,

  
E. ALVEY WRIGHT  
Director

EDUARDO E. MALAPIT  
MAYOR



OFFICE OF THE MAYOR  
4396 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

ATTACHMENT NO. 8

CAYETANO GERARDO  
ADMINISTRATIVE ASST.

RECEIVED

DEC 24 8 07 AM '75

OFF. OF THE AUDITOR  
STATE OF HAWAII

December 23, 1975

Mr. Clinton T. Tanimura  
Legislative Auditor  
Office of the Auditor  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Sir:

I appreciate receiving your Volume III, The Regulation of Transportation Services, a preliminary report.

Your report is voluminous and detailed. I would not presume to comment in detail on your report. I do wish to make these comments.

1. The State has, as you indicated, shown very little interest in representing the State's interest in air freight hearings. It seems to me that the County of Hawaii indicates a greater concern than the State. It appears that the State's Attorney General's Office should represent the entire state rather than the counties doing a piecemeal representation of each county's concern. Kauai does not have an interstate airport and consequently may not be as directly concerned as Hawaii County, but any increase would also affect Kauai. Why not a single, well financed intervention than Kauai County attempting a Sancho Panza assault on the big airlines.

2. The scheduling of inter-island flights leaves much to be desired. Generally, after five o'clock there is no Honolulu to Kauai flight until 8:00 o'clock p.m. Why must all flights on both airlines be within ten minutes of each other?

3. As you indicated there is little consumer protection in the motor carrier regulations. I must admit that like the infrequent user of common carrier services, I do not have any idea what the rates are nor the fairness of rates. It is disconcerting to read that rates are approved very much as a matter of course.

Mr. Clinton T. Tanimura  
Page Two  
December 23, 1975

I expect to assess your principal contention that motor carrier controls should be deregulated after a more thorough reading of your report.

Very truly yours,

  
EDUARDO E. MALAPIT  
MAYOR, COUNTY OF KAUAI

EEM:cs



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## APPENDICES

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APPENDIX A

Financial and Operating Data on Hawaiian Airlines  
For the Years 1967 Through 1971

	1967	1968	1969	1970	1971
Operating revenue excluding subsidy . . . .	\$15,740,913	\$19,639,855	\$22,575,693	\$27,950,422	\$31,696,002
Operating expenses . . . . .	15,593,567	18,345,966	22,633,230	27,223,411	29,931,283
Operating income before income taxes . .	147,346	1,293,889	[57,537]	727,011	1,764,719
Net income after income taxes . . . . .	\$ [730,080]	\$ 175,692	\$ [1,487,595]	\$ [684,207]	\$ 422,695
Subsidy payments . . . . .	--	--	--	--	--
No. of employees . . . . .	1,042	1,165	1,340	1,200	1,132
Total payroll . . . . .	N/A	N/A	N/A	N/A	N/A
No. of revenue pax carried . . . . .	1,153,391	1,418,076	1,466,294	1,657,034	1,879,430
Revenue plane miles . . . . .	4,563,000	4,928,000	5,252,000	5,076,000	4,619,000
Available seat miles . . . . .	264,016,000	363,400,000	440,539,000	464,921,000	434,019,000
Revenue pax miles . . . . .	158,075,000	191,157,000	196,423,000	224,140,000	253,099,000
Passenger load factor . . . . .	59.9%	52.6%	44.6%	48.2%	58.3%

Source: Hawaii Department of Regulatory Agencies, Public Utilities Division, Audit Branch.

APPENDIX B

Financial and Operating Data on Aloha Airlines  
For the Years 1967 Through 1971

	1967	1968	1969	1970	1971
Operating revenue excluding subsidy . . . .	\$10,546,097	\$10,156,297	\$13,295,958	\$15,434,769	\$17,571,217
Operating expenses . . . . .	10,934,517	12,156,837	16,007,734	16,802,278	17,951,265
Operating income before income taxes . .	[388,420]	[2,000,540]	[2,711,776]	[1,367,509]	[380,048]
Net income after income taxes . . . . .	\$ 256,897	\$ [1,708,713]	\$ [3,320,343]	\$ [2,430,516]	\$ [825,957]
Subsidy payments . . . . .	--	--	--	\$ 789,000	--
No. of employees . . . . .	730	752	814	837	729
Total payroll . . . . .	N/A	N/A	N/A	N/A	N/A
No. of revenue pax carried . . . . .	871,089	825,172	975,670	986,047	1,120,805
Revenue plane miles . . . . .	N/A	N/A	N/A	N/A	N/A
Available seat miles . . . . .	199,988,000	217,029,000	331,746,000	303,864,000	291,961,000
Revenue pax miles . . . . .	116,263,000	110,303,000	130,669,000	130,940,000	147,367,000
Passenger load factor . . . . .	58.1%	50.8%	39.4%	43.1%	50.5%

Source: Hawaii Department of Regulatory Agencies, Public Utilities Division, Audit Branch.

APPENDIX C

Financial and Operating Data  
On Young Brothers, Ltd.  
For the Years 1967 Through 1971

	1967	1968	1969	1970	1971
Gross revenues . . . . .	\$4,772,571	\$5,666,795	\$6,027,766	\$7,283,486	\$7,356,881
Total payments to:					
Hawaii Tug & Barge Service . . . . .	1,535,229	1,699,664	1,900,423	2,315,323	2,305,513
State (wharfage and dockage fees) . . . . .	53,161	50,837	53,337	57,400	65,060
Net profits, before taxes . . . . .	75,083	308,211	257,564	344,962	163,529
Net profits, after taxes . . . . .	44,481	128,056	142,932	130,230	106,594
PUC-calculated rate of return . . . . .	6.61%	5.10%	5.18%	4.24%	3.36%
Number of employees . . . . .	174	172	173	193	184
Total payroll . . . . .	\$1,092,652	\$1,325,678	\$1,519,850	\$1,796,363	\$1,893,657
Capital expenditure . . . . .	157,270	201,664	899,055	342,386	671,159

Source: Hawaii Department of Regulatory Agencies, Public Utilities Division, Research and Statistics and Audit branches.

## PUBLISHED REPORTS OF THE LEGISLATIVE AUDITOR

### AUDIT REPORTS

- 1966 1. Examination of the Office of the Revisor of Statutes, 66 pp. (out of print).
- 1967 1. Overtime in the State Government, 107 pp.  
2. Management Audit of Kula Sanatorium, 136 pp.
- 1968 1. Financial Audit of the Department of Health for the Fiscal Year Ended June 30, 1967, v.p. (out of print).  
2. Financial Audit of the Department of Planning and Economic Development for the Fiscal Year Ended June 30, 1967, v.p. (out of print).  
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