STUDY BY THE STAFF OF THE U.S.

General Accounting Office

Issues In Regulating Interstate Motor Carriers

The Interstate Commerce Commission's regulation of motor carriers, especially trucks, is a subject of widespread interest. Although numerous studies have been made on the effects of motor carrier regulations, there are sharp differences of opinion as to whether the current regulatory system should be changed and, if so, how.

This staff study discusses the basis for motor carrier regulation which began in 1935, changes in the regulatory environment since then, and issues that should be considered in changing trucking regulations.

CED-78-106
JUNE 20, 1978

FOREWARD

Federal regulation of interstate motor carriers, trucks, and buses began in the mid-1930s mainly because of the Government's concern over the undesirable effects of competition between the regulated railroads and the unregulated motor carrier industry.

Since 1970, public debate over economic regulation of trucking has become persistent and widespread. Critics claim that there is less public need for regulation today because both the Nation and the trucking industry have changed over the past 43 years. They say that under current conditions trucking regulation benefits the regulated, not the general public, and that such regulation is in fact a hinderance to technological progress in the trucking industry. Indeed, some critics claim that regulation should not have been extended to include trucks in the first place. Regulation proponents argue that regulation has provided the Nation a stable surface transportation system and, while improvements are possible, the basic regulatory structure should not be changed.

This study presents a summary source of information on the trucking regulation issues and includes information from previous GAO reports and various articles, papers, and studies on trucking regulation. GAO traces the development of Federal trucking regulation and briefly discusses changes in the Nation as well as the trucking industry since regulation began. Pertinent issues that should be considered in any changes to the current regulatory system are highlighted.

The President, in his written January 20, 1978, State of the Union message, stated that "Forty years of tight government control have not done enough to bring us competitive prices, good service and efficient use of fuel," and that "we will consider measures to bring more competition into the motor carrier area." The President's statement indicates that the administration will be taking some action on trucking regulation.

GAO concludes that analysis of recent actions by the Interstate Commerce Commission, plus the results of other studies completed or underway, should help in providing a much better basis on which the Federal Government's role in regulating motor carrier transportation can be determined. GAO hopes that this study will contribute to a better understanding of trucking regulation and its issues. It was

developed by the Community and Economic Development Division, and questions should be directed to Frank V. Zubalusky, Assistant Director, on (202) 426-1777.

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Director

SUMMARY

After 43 years of Federal regulation of interstate motor carriers, there are sharp differences of opinion as to whether the present regulatory system should be changed, and if so, how.

Issues considered in the controversy should include the

--overall cost or benefits of regulation,

--effect that regulation has on competition within the trucking industry and between trucking and other transportation industries,

--impact of regulation on service and rates,

--impact of regulation on the level of motor carrier efficiency in terms of energy, and

--justification for certain exemptions from regulation.

WHY FEDERAL REGULATION?

Four major problems led to Federal regulation, beginning in 1935, of motor carriers:

--The States' inability to regulate interstate commerce.

--The financial difficulty of railroads.

--The vigorous competition between motor carriers.

--The Great Depression.

The motor transportation industry grew tremendously during the 1920s. Truck and bus operations began to extend beyond State boundaries and were confronted with regulatory conflicts over highway use, routes, and load limits. As a result, carriers asked the courts to define the States' jurisdictional authority and in 1925 the Supreme Court ruled that only the Federal Government could regulate interstate commerce.

The emergence of trucking increased competition in the freight market and caused a decrease in rail traffic for which high rates had been maintained. As the trucking industry grew, the railroads suffered serious financial problems.

Between 1926 and 1932 the Interstate Commerce Commission (ICC) conducted two extensive studies of the motor carrier industry and found that anyone, regardless of background, expertise, or financial condition, could enter the trucking industry. As a result, thousands of small truckers, many poorly trained and financially irresponsible, were competing for business. Many truckers did not know their operating costs, and shippers encouraged truckers to cut rates to levels returning little or no profit.

Although all these factors caused problems, 37 legislative bills proposing to regulate motor carriers failed, until the mid-1930s, when the effects of the Great Depression seemed to be the final factor that led to regulation.

43 YEARS LATER

The conditions in the economy and in the motor carrier industry that prompted regulation have changed. The Nation's economy is much stronger now than it was in the 1930s, and the trucking industry has grown primarily from a local shiping business to include many coast-to-coast companies. This is partially due to improvements in truck and highway technology. Also, the size of the companies and the number of trucks they operate have increased. (See p. 10.)

REGULATION ISSUES

Estimates of the cost or benefits of regulation are not exact; they vary depending on the assumptions used. Opponents argue that regulation imposes large net costs on society from inefficiencies and higher rates. Proponents and ICC argue that the assessments do not account for the benefits of regulation. While imposing some costs, it results in net social benefits. (See p. 17.)

Another issue in the debate is whether there should be free or restricted entry. Proponents of entry control say it is needed to prevent destructive competition and insure adequate service. Critics believe that the economics of the trucking industry would approximate the classic example of perfect competition if there were no entry restrictions. They say that entry controls lead to detailed and restricted operating authorities and protect those in the industry from additional competition. (See p. 19.)

The regulated trucking industry collectively sets rates through rate bureaus which are exempt from Federal antitrust laws. Rate bureau proponents argue that the bureaus perform

a valuable service because they allow truckers to develop better cost data on which to base rates and allow for non-discriminatory rates. Critics contend that the bureaus' method of setting rates results in higher freight rates and reduced services to customers. (See p. 31.)

Although certain motor carrier operations are exempt from ICC regulation, the agricultural exemption and the commercial zone exemption have posed special problems for ICC. (See p. 46.)

ICC has taken a number of steps to help improve the motor carrier industry. It is presently considering the results of its study to liberalize many of the entry restrictions placed on motor carriers and is also examining operations of rate bureaus. A number of other studies which address major issues of motor carrier regulation are underway. These efforts, in GAO's view, coupled with the results of previous studies, will be invaluable in helping to formulate a basis for making appropriate changes in motor carrier regulations. (See p. 50.)

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ABBREVIATIONS

GAO	General Accounting Office
ICC	Interstate Commerce Commission

CHAPTER 1
BIRTH OF MOTOR CARRIER REGULATION

Historically, the Federal Government has intervened in the free market system when circumstances, such as natural business monopolies or destructive competition seemed to warrant regulation. The surface transportation industry, one of the Nation's most vital public service industries, has been subject to extensive Federal and State regulation. For example, the Interstate Commerce Commission's (ICC's) regulation began with railroads in 1887 and was later extended to oil pipelines, motor carriers, and barges. The States pioneered motor carrier regulation in 1913, and Federal regulation began in 1935.

EVENTS LEADING TO THE REGULATION OF MOTOR CARRIERS

The Motor Carrier Act of 1935 (49 U.S.C. §§ 301 et seq. (1970)) as amended, extended ICC regulation to cover interstate trucks and buses. The infant motor carrier industry was growing rapidly and, by the 1930s, there was vigorous competition both within the trucking and bus industries and between trucks and railroads. The competition had become so severe that bankruptcies threatened and occurred in both the motor carrier and railroad industries. The State governments, which regulated intrastate motor carriers, could not cope with the problems of the interstate motor carrier industry. Finally, by the mid-1930s, the severe economic depression, combined with the financial difficulties of both the motor carrier and rail industries resulted in Federal Government action to regulate interstate motor carriers.

States' inability to regulate interstate commerce

The States regulated intrastate shipments but could not regulate shipments that traveled between States As each State experimented with regulation, it developed seemingly appropriate laws to control the carriers which operated within its borders. As a result, State laws varied; some regulations were similar, but most were not and often conflicted.

As motor transportation grew in the 1920s, truck and bus operations extended beyond State boundaries. Many States were unsure of their legal authority to regulate interstate traffic, but most of them assumed that, in the absence of Federal regulation, they could regulate both intrastate and interstate motor carriers.

Interstate motor carriers, however, did not want to be regulated by the States. The industry was young and trying to grow; and, as the carriers traveled from State to State, they were confronted with regulatory conflicts over highway use, routes, and load limits. As a result, the carriers asked the courts to define the States' jurisdictional authority. In March 1925, the Supreme Court ruled that the States had authority to regulate highway safety and maintenance within their boundaries but only the Federal Government could regulate interstate commerce.1/

Railroad problems

After the 1925 Supreme Court decision, the railroad industry began extensive public relations campaigns and lobbying efforts to extend Federal regulation to interstate motor carriers. Rail carriers, who were under Federal regulation, were being seriously threatened by motor carrier competition.

At the core of the railroads' problem was the traditional pricing method, known as value of service pricing, which was used by the railroads and sanctioned by ICC. Under value of service pricing, the railroads charged a higher rate for high-value, low-volume goods, such as manufactured items, than for low-value bulk goods, such as agricultural products or minerals. This system was satisfactory so long as railroads were the dominant transportation mode.

With the advent of trucks, the railroads faced competition, especially for high-value manufactured goods. Generally, the common carrier truckers merely matched the rail rates. Because of the superiority of their service (greater speed and door-to-door delivery, without need for intermediate loading and unloading), they were able to take away most of this valuable business. Since truckers were skimming high-value traffic from the railroads, the rail carriers were left with mostly low-value bulk goods with their low rates per ton-mile.

Until this time, the railroads had generally ignored motor carriers and had taken few measures to compete with them. In fact, while the motor carrier industry was beginning to grow, the railroad industry was suffering serious financial difficulties. In 1915, the railroad industry was declining and about 8 percent of its track was in receivership. During World War I, the industry started to prosper,

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1/Buck V. Kuykendall, 267 U.S. 307.
Bush & Sons Co. V. Maloy, 267 U.S. 317.

but competition between rail carriers, their failure to coordinate activities, and their rapidly escalating rates resulted in a Federal Government takeover in 1917. The railroads earned a "guaranteed profit," but their rates had increased 25 percent, costs had escalated even more rapidly, and the Federal Government was subsidizing the railroads. The Transportation Act of 1920 helped to increase railroads' profitability during the 1920s, but the future of the railroads were at best uncertain. The railroads were beginning to realize the seriousness of motor carrier competition, and they began to campaign for motor carrier regulation.

ICC made two extensive studies of the problem and concluded that many factors, such as motor carrier and water carrier competition, changing distribution patterns, and a depressed national economy were causing the railroads' financial problems. ICC noted that trucks were carrying freight previously carried by the railroads, but it could not determine how much freight had been diverted to trucks. The railroads were also losing passenger traffic, but about 70 percent of this was due to the growing popularity of automobiles.

In 1932, when ICC completed its second study, the railroads were facing even more severe financial problems. Their earnings, along with ton miles hauled, were falling and some went bankrupt. Besides being affected by motor carrier competition and the depression, the railroads were also competing among themselves. Rail lines were privately owned and independently managed, and as a result, a large amount of duplicated facilities and services existed and railroads battled each other for passenger and freight traffic.

Neither ICC nor the railroads knew whether motor carrier competition or the Great Depression had the greatest impact on the railroads' financial situation. Nevertheless, ICC's study concluded that interstate motor carriers should be regulated to help equalize competition between the railroads and the motor carriers. Subsequently, the Emergency Transportation Act of 1933 provided for the appointment of a Federal Transportation Coordinator to investigate and consider ways to improve transportation. The Coordinator, Mr. Joseph B. Eastman, an ICC Commissioner, conducted extensive investigations of the railroad and motor carrier industries and his conclusions agreed with ICC's position. He said railroads were being hurt by motor carrier competition, but he could not determine how much. He recommended that motor carriers be regulated to equalize competition between the interstate motor carrier and railroad industries and to promote coordination among surface transportation modes.

Problems within the motor carrier industry

When ICC and the Federal Coordinator recommended motor carrier regulation, they were not only concerned about competition between motor carriers and railroads but also about competition between motor carriers.

ICC found that bus operators, especially those who had begun operations after the Supreme Court ruling, had (1) poor accounting records, (2) no uniform basis for setting rates, (3) no accident and liability insurance, and (4) little responsiblity for loss and damage claims. Bus operators also engaged in false advertising, rate cutting and rate wars, used unsafe equipment, and were financially irresponsible.

In 1920, ICC recommended immediate Federal regulation of interstate buses. According to ICC the trucking industry, which had not been operating as long as buses, did not need regulation.

However, in 1930 when ICC began its second motor carrier study, the trucking industry was more chaotic. ICC concluded that trucks should be regulated, and the Federal Coordinator later agreed.

ICC had found that anyone, regardless of background, expertise, or financial condition, could enter the trucking industry. As a result, thousands of small truckers came into the industry and were competing with each other. Many were poorly trained, inadequately financed, and irresponsible. Some used unsafe equipment, drove long hours, and kept inadequate records.

Rates especially were a problem. Many truckers had little or no knowledge of costs and no uniform basis for rate setting, and wild rate fluctuations, rebating, and rate wars were common practices.

Shippers and truck manufacturers were also allegedly responsible for some of the adverse conditions. Many shippers encouraged truckers to cut their rates to levels returning little or no profit while others played truckers against each other to obtain the lowest possible rates. In addition, sales representatives of truck manufacturers were exploiting poor, inexperienced small truckers. The small operators were induced to buy trucks on the installment plan by high pressure salesmen who misrepresented future prospects in the trucking industry.

Economic depression

From 1925 to 1935, 37 legislative bills proposing to regulate motor carriers failed. By 1934, however, the depressed U.S. economy guaranteed economic regulation of motor carriers.

The national economy had collapsed, business failures were numerous, unemployment was extremely high, prices were declining, and profits were minimal. Economists stated that the Congress and the public temporarily lost faith in competition and the free enterprise system. The trucking industry became a haven for the unemployed and chaos was increasing. Truck manufacturers, faced with excess inventory, were eager to offer credit to anyone wishing to enter the trucking industry.

By 1935, some large truckers, bus operators, and shippers joined the campaign to regulate motor carriers. The Congress agreed that motor carrier regulation was needed and quickly passed the Motor Carrier Act, which the President signed in August 1935.

MOTOR CARRIER ACT OF 1935
LEGISLATIVE HISTORY

The Motor Carrier Act of 1935, based on a draft bill submitted by the Federal Coordinator, relied heavily on regulation used by many foreign countries and most of the States.

ICC and the Federal Coordinator had developed some data on motor carriers, but not enough was known to develop special interstate regulation. The Federal Coordinator believed that intrastate regulations had generally been successful in stabilizing and improving intrastate operations; therefore, he recommended, and the Congress agreed, that interstate motor carrier regulation should follow on the States' experiences.

Purposes of the act

The major purposes of the Motor Carrier Act were to extend Federal regulation to interstate motor carriers and to regulate motor transportation to foster sound conditions among all modes of transportation.

Other purposes were to

--preserve the inherent advantages of motor transportation,

--promote adequate and efficient motor carrier service

at reasonable rates, and

--facilitate cooperation between Federal and State regulatory authorities.

Provisions of the act

The Motor Carrier Act considered the four classes of motor carriers commonly used by the States:

--Common carriers serving the general public, for compensation, and traveling along specific routes or in designated territories.

--Contract carriers serving, for compensation, one or more shippers through a contract or written agreement.

--Private carriers carrying their own products, in their own vehicles.

--Brokers, who were acting as principals or agents to obtain regulated motor carrier service for others, were also put under Federal regulation.

Since common and contract carriers performed "for hire" services, they were subject to ICC economic and safety regulation.1/ Brokers were subject to partial economic regulation, and private carriers only to safety regulation.

The Congress decided that the regulation of both common and contract carriers was essential; otherwise, a common carrier could enter into numerous contracts with shippers and term its operations as "contract carriage."

The Motor Carrier Act of 1935 specified that common carriers were to receive "certificates of public convenience and necessity," contract carriers were to receive "permits," and brokers were to receive "licenses."

The act exempted from Federal regulation (1) school buses, taxicabs, newspaper vehicles, hotel and railroad shuttle vehicles, and national park vehicles, (2) motor vehicles owned and operated by farmers and used to carry their agricultural commodities, (3) motor vehicles owned and operated by agricultural cooperatives, (4) motor vehicles used exclusively to carry certain agricultural products, (5) the transportation of

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1/ Operational safety, originally vested with ICC, was transferred to the Department of Transportation in April 1967.

passengers and products wholly within or between contiguous municipal zones, and (6) casual, occasional, or reciprocal transportation being done by anyone not in the transportation business.1/

Carriers hauling agricultural products

The Congress had some difficulty deciding who should or should not be subject to interstate regulation. An important concern related to carriers hauling agricultural products.

The Congress exempted the transportation of agricultural products from regulation because (1) the States exempted agricultural shipments and (2) the Congress wanted to give special aid to the farmers.

Because farmers usually transported their own and their neighbors' agricultural products to market places or to truckers' terminals, they feared that they would be subject to Federal regulation. When they were not carrying their own products, farmers used contract carriers who provided specialized services for agricultural products.

The Congress wanted to assist the farmers and allowed agricultural exemptions. Exempted were motor vehicles owned and operated by farmers and agricultural cooperatives when used to carry their own agricultural commodities. The exemption for occasional, reciprocal transportation allowed farmers to continue carrying their neighbors' goods without fear of regulation. Finally, the exemption for transporting unprocessed agricultural commodities helped keep truckers serving the farmers free of ICC-enforced operating limitations and rate minimums.

Regulation of entry, service, and rates

Although the Motor Carrier Act of 1935 extended regulation to entry, service, rates, accounting practices, common control of more than one carrier, and issuance of stocks and securities, the entry, service, and rate provisions were the most critical.

1/ Two additional exemptions were later added to the act: (1) an incidental-to-air exemption was added in June 1938 and (2) the transportation of accidentally wrecked or disabled motor vehicles by towing exemption was added in December 1953.

Entry and service controls

The Motor Carrier Act gave ICC broad authority to restrict entry into interstate motor transportation and to control the services of carriers once they had entered. Entry and service regulation had been accepted and used by most of the States to protect the public interest.

State regulations differed slightly for common and contract carriers. Since contract carriers did not serve the general public, States specified that they only had to apply for "permits" and show that their proposed operations were consistent with the public interest. Common carriers, however, had to apply for an "operating certificate" and prove that their proposed services were required by present or future "public convenience and necessity." Both classes of carriers also had to prove they were "fit, willing, and able" to provide the proposed service.

States, however, never developed criteria for "public convenience and necessity" or "fitness, willingness, and ability." Instead they interpreted entry and service regulations on a case-by-case basis and used wide latitude in determining whether a proposed operation was in the public interest. States frequently denied certificates and permits for routes or territories that were being served by other carriers, even if existing service was unsatisfactory. The States believed the established carrier should first have an opportunity to supply adequate and proper service.

ICC and the Federal Coordinator believed that State entry controls had stabilized and improved intrastate operations. Therefore, they recommended them for interstate motor carriers. ICC said these controls were necessary to (1) prevent duplicate, unnecessary services, (2) protect the public by preventing irresponsible services, and (3) provide existing regulated carriers protection against destructive competition.

The Congress agreed and established certificates of public convenience and necessity as essential to (1) achieve conformity with existing State regulation, (2) provide proper public service, and (3) establish and maintain stability within the motor carrier industry. The Congress also gave interstate carriers who were in "bona fide" operations before June 1, 1935, "grandfather" authority over the route or routes or within the territory for which their application was made. The Congress believed that these carriers were entitled to grants of authority to prevent unscrupulous speculation and to protect pioneers of the industry. States had provided similar grants when they began controlling entry.

Rates

The Motor Carrier Act of 1935 gave ICC authority to investigate, prescribe, and/or suspend motor carrier rates. ICC could, upon complaint or on its own initiative, suspend proposed changes in rates, fares, or regulations for a period not to exceed 180 days. In addition, the act required common carriers to give ICC 30 days' notice for all rate and fare changes, although ICC could permit rate changes on less notice.

ICC's authority to prescribe rates or charges varied for common and contract carriers; both of which could set their own rates. Whenever ICC found common carrier rates or fares to be unreasonable or unlawful, it had the power to prescribe the minimum, maximum, or actual rate to be charged. However, ICC could only prescribe minimum rates for contract carriers.

ICC FUNCTIONS UNDER THE MOTOR CARRIER ACT

Since ICC already had jurisdiction over railroads, oil pipelines, and joint operations of railroad and water lines, the Congress appointed it to regulate interstate motor carriers.

Those opposing ICC as the regulator said ICC (1) was overloaded with work and could not efficiently handle additional duties, (2) was "railroad-minded" and incapable of dealing objectively with the problems of other transportation modes, (3) would base motor carrier rates on railroads experiences without considering special problems of motor carriers, and (4) was too bureaucratic, rigid and cumbersome for effective regulation.

The Federal Coordinator disagreed. He said ICC was the natural and logical agency to establish unified regulation for all transportation modes. He argued that ICC was well organized, its work load had gone down, and it was not biased toward the railroads. He said if ICC was reorganized and new departments were created, it could handle motor carrier regulation. The Congress agreed with this view.

CHAPTER 2
43 YEARS LATER--CHANGES IN THE REGULATORY ENVIRONMENT

Federal economic regulation of motor carriers began during a severe economic crisis when the motor carrier industry was young, chaotic, and struggling. During the past 43 years, some of the conditions that gave rise to motor carrier regulation have changed, and motor carriers are now operating in a different environment.

NATIONAL CHANGES

Since motor carrier regulation began, motor carriers have had to meet changed transportation needs. Changes that have affected the motor carrier industry can generally be discussed in terms of

--economic changes,

--development of a highway system, and

--farming changes.

Economic changes

Over the years, the U.S. economy has changed radically. Since World War II, the economy has generally maintained consistent, high levels of output and employment, and has experienced the longest sustained and most rapid overall growth in U.S. history. The motor carrier industry has shared in this growth and has become one of the most important industries in the Nation.

The locations, sizes, and operations of American businesses have changed considerably. Before the growth of the trucking industry, businesses were located near rivers, waterways, and rail lines where they were assured of transportation services. In the 1920s and 1930s, when truck operations began, service was more flexible, but overall it was still confined to cities and local areas.

Over the years industries, attracted by good highways, have spread over larger areas. Communities which in the past were considered insignificant as producing centers have acquired new manufacturing plants partially because of their proximity to good highways. The location of industries was not hampered by a need to be near fixed transportation, since trucks could go wherever there were good highways.

Business operations have also changed. In the past, most businesses operated in local or regional areas. Today, however, many firms distribute and market their products nationwide. Even regional businesses have changed. Retail outlets of inner city stores now locate near suburban residential areas and are supplied daily, and sometimes hourly, by truck deliveries from central warehouses or manufacturers' plants. In effect, the trucks act as warehouses on wheels, and the retailers can reduce their space and inventory requirements.

Development of highway system

The Nation's public roads and highways have been expanded and greatly improved over the past 43 years. In 1921, when the motor carrier industry was beginning, there were 3.2 million miles of roadways--only 14 percent of which were surfaced. The Congress, recognizing the need for better roads, started subsidizing the States to develop a nationwide road system.

Since then highway miles have increased only 20 percent to 3.8 million miles, but about 80 percent of roadways are paved. In addition, roads have been widened, better surfaced, and improved in other ways.

Motor carriers, especially interstate truckers, now travel faster and more efficiently on interstate highways. The interstate highway system--about 40,000 miles of uninterrupted superhighways that link population and production areas nationwide--are limited access, divided highways of four or more lanes. The highway's fewer curves, less steep grades, wider lanes, and durable surfacing allow truckers to use larger, longer, and heavier equipment and to move traffic at higher speeds, with greater safety, less driver fatigue, better fuel economy, and lower maintenance requirements.

Farming changes

Historically, farming has always been an important industry in the United States. In 1935, farms were numerous and about one third to one fourth of all motor vehicles in the country were farm-owned and operated.

The number of farms in the Nation has steadily declined. In 1950, there were 5.6 million farms; in 1960, there were 3.9 million; and in 1977, there were only 2.8 million. At the same time, farms are getting larger, more efficient, and more specialized.

Despite the decline in the number of farms, agriculture is by far the largest single user of trucks in the country. One out of every five trucks in the Nation is used for agricultural purposes.

CHANGES IN THE MOTOR CARRIER INDUSTRY

The motor carrier industry has changed substantially since 1935. Changes in the trucking industry will be discussed in terms of carrier characteristics and technological improvements in trucks.

Carrier characteristics

Statistical comparisons of the motor carrier industry over a 43-year period are difficult to make. Before and during the early years of Federal motor carrier regulation, motor carrier statistical data could only be estimated. Since then, public and private organizations have compiled data, but because of differing data bases, it cannot always be compared.

In 1935, there were 3 million to 3.5 million trucks in the United States. About 800,000 - 900,000 were farm-owned and operated, and an even larger number were used in local operations. The number of trucks engaged in interstate operations was unknown, but only 100,000 to 200,000 trucks were estimated to be engaged in interstate for-hire operations.1/ It is these trucks which came under ICC regulation in 1935.

The trucking industry consisted primarily of owner operators--about 82 percent of truckers had only 1 vehicle and less than 1 percent had over 10 vehicles. Similarly, 82 percent of firms had only 1 employee and less than 1 percent had over 50 employees.

Most truckers operated in cities or local areas; only a small number carried goods long distances. Truckers were thought to be carrying somewhat less than 10 percent of intercity freight.

Today, the motor carrier industry still includes thousands of small carriers, but some have grown greatly. By 1968, an estimated 26 percent of interstate carriers had more than 10 vehicles and the average number of vehicles per regulated carrier was 43. Of the more than 16,000 regulated carriers, many have become nationwide

1/The United States Bureau of Public Roads estimated that in 1932 there were about 107,000 contract carriers with about 1.5 trucks each and 10,000 common carriers with 4 trucks each.

operators, and some are publicly held companies with their stocks listed on regional and national stock exchanges. In 1975, truckers carried 22 percent of all intercity freight measured in ton-miles. Of this amount, regulated truckers carried 44 percent and non-regulated truckers carried 56 percent.

In 1977, 16,606 trucking firms were under ICC regulation. Of these, (1) 1,052 had revenues of $3 million or more, (2) 3,101 had revenues between $500,000 and $3 million and (3) 12,453 had revenues under $500,000.

Although the exact number of unregulated or exempt truckers is unknown, they are an important part of the trucking industry. Private carriers are not primarily engaged in transportation and do not offer their services for hire. These carriers are estimated to number between 113,000 to 150,000, thus outnumbering regulated carriers by more than 9 to 1. The remaining portion of the exempt segment of the industry--for-hire carriers who haul commodities exempt from ICC regulation--is dominated by owner-operators.

Owner-operators own and operate their own trucks for hire, usually in one of two ways; they work entirely in the exempt commodities market through brokers or direct contact with shippers, or they enter into lease arrangements as a contractor to an ICC regulated carrier. However, owner-operators are unregulated only when transporting exempt commodities. In 1973, there were an estimated 100,000 owner-operators in the country; about 60,000 were operating under lease arrangements with ICC-regulated carriers.

Technological improvements in trucks

During the post war years, improvements in truck design and equipment have greatly increased the trucking industry's ability to carry more revenue-producing freight per dollar of invested capital and per staff-hour of labor.

Truck body lengths have increased about 50 percent in 17 years. In 1946, trailers were 22 to 30 feet long, but by 1974 they were 40 to 45 feet long. Also, truck carrying capacity has increased about 40 percent in the period 1945-46 primarily because of stronger and lighter truck metals and twin trailer combinations.

Over the past 22 years, several specialized trucks have been developed to handle certain commodities. For example, tank trucks are used extensively for transporting liquid products, particularly petroleum and chemicals. In addition,

special trucks carry dry bulk products such as flour, grain, cement, and fertilizer and refrigerated trucks carry various types of foods and drugs without spoilage.

Finally, many trucking companies are using "sleeper cabs," which are tractor units with small sleeping berths behind the driver. These allow two drivers to remain on the road all day, by alternating between driving and sleeping. For motor carriers, the use of "sleeper cabs" has many advantages. For example, terminal handling delays can be avoided, more direct routes can be used, and the arrival and departure times of staff and trucks can be better coordinated.

CHANGES IN MOTOR CARRIER LEGISLATION

The Motor Carrier Act has been amended several times since 1935. Most of the changes have been relatively minor reactions to specific problems of the times. Examples of some of the amendments are as follows:

--The Transportation Act of 1940.

--The Reed-Bulwinkle Act of 1948.

--The Transportation Act of 1958.

--The Department of Transportation Act of 1966.

The Transportation Act of 1940

The Transportation Act of 1940 amended the Interstate Commerce Act and was primarily to improve the national transportation system. The act declared a national transportation policy which required ICC to regulate rail, pipeline, barge, and motor transport to preserve the inherent advantages of each mode. The act also put interstate water carriers under ICC regulation and amended some motor carrier regulations.

The Reed-Bulwinkle Act of 1948

The Reed-Bulwinkle Act of 1948 was to resolve conflicts between antitrust laws and the national transportation policy of the Interstate Commerce Act.

The act granted antitrust immunity to carriers who organized rate bureaus for ratemaking purposes, but the bureaus' proposed rates and methods has to be approved by ICC. The act also specifically guaranteed each carrier the right to take independent action regardless of a rate bureau's policy. (See p. 31.)

The Transportation Act of 1958

The Transportation Act of 1958 revised the exemption for agricultural commodities by (1) including cooked fish and shellfish, and (2) re-regulating certain other agricultural commodities. The act then froze the scope of the agricultural exemption. However, any trucker who, on June 1, 1958, was transporting the agricultural commodities that were returned to regulation was entitled to receive an ICC operating authority to continue hauling the commodities.

The Congress enacted this amendment to help regulated truckers regain lost agricultural traffic. The agricultural exemption was originally passed to help farmers move their products from the production point to market, processing, or storage points. Over the years, however, a series of administrative and judicial decisions extended the exemption to various partially processed commodities. As a result, exempt carriers were able to carry certain agricultural commodities that were previously under ICC regulation.

The Transportation Act of 1958 also amended the definition of a "private carrier" by providing that they cannot transport property in interstate commerce unless the transportation is incidental to, or in furtherance of, a primary business enterprise.

This amendment was passed to protect regulated truckers who were allegedly losing business to bogus private carriers. The Congress and ICC said that many private carriers were conducting for-hire transportation under the guise of private carriage. As a result, the private carriers were competing with regulated truckers and evading economic regulation and Federal excise taxes.

Department of Transportation Act of 1966

This act created the Department of Transportation and transferred the regulatory safety authority over surface transportation from ICC to the Department. The act also provided that the Secretary of Transportation could intervene in cases before ICC.

The basic regulatory system which the Congress set up for motor carriers differed from the railroads, and ICC could use its discretion in developing motor carrier rules and regulations.

For a few years after 1935, ICC primarily worked at processing more than 89,000 "grandfather" applications for common carrier certificates and contract carrier permits. Then, on a case-by-case basis and through rulemaking proceedings, ICC developed its major carrier rules and regulations.

ICC has applied different degrees of regulation and obligation on each type of motor carrier. In addition, ICC adopted a detailed approach to regulation by specifying commodity and route restrictions for common carriers.

Over the years, ICC has interpreted its mandate for motor carrier regulation mainly in terms of protecting and preserving common carriers. ICC has recognized an obligation to protect existing carriers, and in numerous cases has asserted that "existing carriers are entitled to transport all of the traffic which they can handle adequately, efficiently, and economically without the competition of new services." ICC has long believed that existing regulated carriers are entitled to protection in return for their public service.

ICC has also modified its interpretation of the Motor Carrier Act and has changed some of its procedural rules and regulations. Its policies do not bar grants of authority to provide improved carrier service or to intensify productive competition. ICC, particularly in recent years, has issued certificates for operations that are likely to improve competition or service or be more efficient than existing service, even if the existing service is adequate. For example, in a 1976 decision, ICC stated:

> "We agree with the protestant's contention and the review board's implied conclusion that the evidence fails to establish protestant's service as inadequate. We do not believe, however, that the ultimate decision turns mechanically upon whether or not a competing service is adequate. It should be kept firmly in mind that the term 'inadequacy of existing service' is not interchangeable with the statutory standards of 'public convenience and necessity', for it has long been established that the inadequacy of a protestant's service is only one element to be considered in arriving at the broader determination of public convenience and necessity. Indeed, in many instances such as this the existence of a satisfactory existing service is not the most important element in our ultimate determination of public need."1/

1/Ace Freight Line, Inc., Ext.--Canned Goods, 124 M.C.C. 799, 802 (1976).

CHAPTER 3
MOTOR CARRIER REGULATION ISSUES

During the past 3 years there has been considerable discussion about trucking regulation. Opponents believe that current trucking regulation is excessive and needs fundamental changes. Indeed, some critics of truck regulation claim that regulation should not have extended to include trucks in the first place. Proponents, however, feel that regulation has provided the Nation a stable trucking industry, and that not much should be changed.

In October 1977, the Senate Judiciary Subcommittee on Antitrust and Monopoly began examining the pricing practices of the Nation's trucking industry. The Chairman stated:

> "These hearings mark the beginning of a sustained and comprehensive effort to insure that both the motor carrier industry and its regulatory overseers operate in the best interest of the American people. They afford an opportunity to reaffirm those aspects of our transportation policies which are beneficial, and to change those which are not."

Through our previous work on ICC regulatory activities and our continuing reassessment of the various regulatory reform arguments, we identified several major issues which should be considered in examining the justifications for and against trucking regulation. These issues, stated in their broadest form, include:

--What is the overall cost/benefit of economic regulation?

--What is the effect of regulation on competition among motor carriers and between trucking and other transportation modes? Specifically, what is the impact of regulation on rates and service?

--What is the impact of truck regulation on energy efficiency?

--How valid are the exemptions which are currently allowed under the Interstate Commerce Act?

COST/BENEFIT OF REGULATION IS UNCERTAIN

Over the past 5 years, there have been several cost/benefit analyses of ICC regulation. Cost/benefit analyses are not exact and vary depending on assumptions used. While the costs or benefits are uncertain, many people believe that the cost of regulation exceeds the benefits. The most publicized estimate of the cost of regulation is that of

Dr. Thomas Gale Moore, a Stanford University professor, who places net social costs between $6.5 billion and $15.2 billion annually (in 1975 dollars). 1/ This estimate was made on the basis of a 1958 Department of Agriculture study of a court ordered deregulation of fresh and frozen poultry and frozen fruits and vegetables. The validity of the Agriculture study has been questioned because it (1) did not indicate whether the rates quoted were actual rates for actual movements, (2) did not account for changes in the market conditions, (3) did not consider a recession in poultry which could have affected rates, and (4) contained arithmetic errors. This study is also questionable because it assumed that the transportation of poultry, fruits, and vegetables is typical of all commodities transported by trucks.

In November 1976, ICC's Bureau of Economics completed an economic analysis directed at refuting allegations that regulation places a cost burden on the American economy.2/ ICC said that, without a review of benefits, a comprehensive assessment of how well regulation achieves what it is intended to is impossible. ICC quantified some of the benefits, such as stability, lower motor carrier capital costs, lower inventory costs, and less loss and damage and concluded that ICC regulation (rail and motor carrier) resulted in net societal benefits of as much as $4.4 billion. In quantifying the benefits of regulation, ICC assumed that the absence of regulation would result in higher rates. When ICC issued its study, it said, "The report should not be viewed as a definitive study, but rather as a catalyst to encourage further indepth analysis and consideration of both the costs and benefits of surface transportation regulation to the economy."

In January 1977, the Council on Wage and Price Stability criticized ICC's cost/benefit study because the methodology used to estimate the costs of regulation merely took Dr. Moore's approach and changed the assumptions. The Council also concluded that the current system of regulation creates enormous inefficiencies and inequities that can and should be addressed. For example, the Council's study criticized the ICC study for failing to distinguish between net societal benefits with transfers of income from one group to another. The Council's study stated that ICC's analysis

1/This estimate was published in 1972 in a study entitled "Deregulation of Surface Freight Transportation." Originally, the cost estimates, expressed in 1968 dollars, were $3.2 to $8.9 billion annually.

2/Statement No. 76-1, "A Cost and Benefit Evaluation of Surface Transportation Regulation," Bureau of Economics, Interstate Commerce Commission.

"* * * repeatedly refers to the benefits of redistributing income through cross-subsidy but fails to point out that some pay, for what others receive. That such income redistribution is a benefit to society is no more than a subjective judgment."

Although both ICC and the Council on Wage and Price Stability see the need for further cost/benefit analysis of regulation, ICC says they know of no analysis underway. In January 1978, however, we were asked by a Senate subcommittee to determine the feasibility of identifying and examining the major effects of ICC regulation, especially annual excess costs, on consumers, shippers, industry employees, and the transportation industry.1/ As of May 1978, this work was underway.

COMPETITION IN THE MOTOR FIELD

Free competition versus restricted entry in the motor carrier industry has been and is currently being discussed and studied by the Federal Government, industry groups, and others.

Proponents of entry control say it is needed to prevent destructive competition and insure adequate service. Critics of entry control believe, however, that the economics of the motor carrier industry would approximate the classic example of perfect competition if there were no entry restrictions. They say that entry controls (1) lead to detailed and restricted operating authorities, (2) protect established firms from competitive pressure, (3) restrict the growth of innovative and efficient motor carriers, (4) result in monopoly profits for the regulated motor carrier industry, and (5) prevent small businessmen and minorities from entering the industry.

Discussed below are a number of issues surrounding competition and regulation in the motor carrier industry. These include:

--ICC's views on the effect of regulation on competition.

--Pros and cons of operating certificates and entry restrictions.

--Regulation and small or remote shippers.

1/Letter dated Jan. 30, 1978, from Senator Kennedy, Chairman, Subcommittee on Antitrust and Monopoly, Senate Committee on the Judiciary.

--Ford administration's view that price and service options are limited.

ICC views on the effect of regulation on competition

In 1975, the President met with heads of 10 regulatory agencies to discuss regulatory reform. At this meeting former ICC Chairman Stafford explained ICC's views on the potential effect of free competition and the benefits of regulation. He said:

"In transportation at least, free competition has two apparently antithetical results. Too much competition depresses rates and causes limited quantities of freight to be spread among too many carriers. The result is bankruptcy and instability. Another result of free market independence is ultimate elimination of competition which causes higher prices and poorer service.

"Regulation benefits shippers, passengers, and other consumers; it also benefits the public by providing for healthy, dependable carriers. Rate regulation prohibits undue discrimination among shippers, cities and even territories. It prevents low rates designed to destroy competition, and it prevents high rates designed to exploit captive traffic. Rate regulation promotes an adequate transportation service at a fair price, and seeks to assure carriers of a reasonable return on their investment. Nevertheless, interference with management initiative is surprisingly infrequent. Our regulations serve, however, as a valuable device to avoid carrier excesses, and actually promote competition among transportation users.

"Entry control also has mutual benefits for users and providers of transportation. The licensing process extends a privilege, but it also imposes a burden by obligating carriers to meet the needs of the shipping and travelling public. The concept of limited entry control promotes private enterprise and increases carrier investment--essential factors if that industry is to grow and replenish its facilities on a regular basis. By any standard, our licensing has been liberal. In the trucking industry there are 17,000 competitors; a high percentage of the applications are granted, and more than 500 new carriers enter the industry each year."

While ICC believes that the current mix of entry and rate regulation has helped produce a stable and reliable motor carrier system, it is seeking ways to improve the current regulatory framework. As stated on page 16, ICC has considered competitive factors in issuing operating authorities.

In June 1977, ICC Chairman A. Daniel O'Neal established a task force to study ways for improving motor carrier entry regulation. In July 1977 the task force presented a report1/ to the Chairman containing 39 recommendations.

The recommendations ranged from procedural changes to "fine tune" the existing entry system to suggestions to change the basic regulatory system. Some proposals questioned what role market competition forces should play in a regulated industry. Other proposals asked whether there are areas in which regulation is no longer needed or is needed only to a limited degree.

The task force suggested that ICC establish a public forum where new ideas on regulation could be generated and old ones discussed and improved. As a result, during September to November 1977 informal conferences on motor carrier regulation were held in seven cities to solicit information from all interested parties. A majority of the participants supported the recommendations calling for further study or for procedural reforms to speed up and simplify the licensing process. However, those recommendations, which would make it easier to obtain operating authority or would remove certain motor carrier transportation from regulatory control, were hotly debated. The debate centered on the question of whether or not there should be deregulation of the motor carrier industry.

The task force recommendations and their status as of April 1978 are included as appendixes I and II.

Pros and cons of operating certificates and entry restrictions

ICC's implementation of the Interstate Commerce Act has resulted in detailed, restrictive grants of operating authority. The act provided that authority for proposed service be granted if it "is or will be required by the present or future public convenience and necessity." But the act provided no specific guidance as to what

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1/"Improving Motor Carrier Entry Regulation: Report and Recommendations of a Staff Task Force," Interstate Commerce Commission, July 6, 1977.

transportation services are required by the public convenience and necessity. The act also contained a mandatory provision that all carriers who were actually operating as common carriers on June 1, 1935, were to be issued "grandfather" operating certificates.

In approving these grandfather applications, ICC adopted a philosophy of tight entry control by granting operating authority only for the applicants' actual operations before ICC regulation. This led to detailed restrictions and limitations such as the areas served, the commodities carried, and the direction of service or routes.

These initial restrictions have affected the content of new certificates because of the need to determine public convenience and necessity in an industry with thousands of carriers having numerous operating restrictions. For example, a trucker with a restricted grandfather certificate would usually protest if an applicant asked for authority which would be more liberal or would compete with his existing authority.

Opponents of entry control believe restrictions in operating certificates not only restrict competition in the industry, but they also can restrict improved carrier service and efficiency.

Value of operating certificates

Operating certificates are frequently sold, independent of any physical assets, for large sums of money. Proponents of deregulation say that the values of ICC operating certificates are an indication of "monopoly profits" in the industry. According to one estimate, certificates are worth about 15 to 20 percent of the annual sales of trucking firms. The total value of all certificates may be about $3 billion to $4 billion.1/

In January 1977, Secretary of Transportation Coleman said:

"Because the ICC has constrained entry into the motor carrier industry to a greater extent than market forces, the right to serve has become valuable and certificates of Public Convenience and Necessity issued by the ICC have become assets that can be purchased and sold for large sums of money. Freight rates reflect the values

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1/Snow, John W. and Sobotka, Stephen S., "Certificate Values" in MacAvoy, Paul W. and Snow, John W., eds., Regulation of Entry and Pricing in Truck Transportation (Washington: AEI, 1977).

of these certificates and also cover the costs of providing transportation services. Regulatory reform would reduce freight rates by reducing certificate values and by improving the efficiency of the motor carrier industry.

In June 1977, the Council on Wage and Price Stability also concluded that the large sums paid for operating certificates have contributed to excessive freight rates.1/

Concerning the value of operating certificates, ICC's task force (see p. 62) recommended that ICC determine:

--Whether certificates and permits should be transferable only at the actual cost to the initial holder.

--Whether operating certificates should be transferable only as part of a going trucking business along with vehicles, terminals, other physical assets, and good will.

--Whether the transfer of a portion of a trucker's operating authority should be prohibited.

These issues are complex since some of the proposed changes would have a large impact on certificate value. Truckers who have purchased operating certificates at high prices will be unwilling to see those certificates decreased in value.

As of May 1978, ICC had not yet made any of these determinations. ICC's Bureau of Economics is also performing a study on the value of operating rights. The study will specify and estimate the relative importance of operational and economic variables in explaining the operating rights values. Estimated completion date of the study is June 1978.

Entry control protects existing carriers from competition

Restrictions on the freedom to enter the regulated motor carrier industry protect those in the industry from additional competition. The Congress thought it desirable to control entry into the motor carrier industry; therefore, conditions were established under which carriers would be granted authority to enter into interstate operations, and ICC has recognized an obligation to protect existing carriers. In an early case2/ ICC said:

1/Council on Wage and Price Stability, "The Value of Motor Carrier Operating Authorities," June 1977.

2/Clark Common Carrier Application, 1 M.C.C. 445 (1937), citing C&D Oil Company Contract Carrier Application, 1 M.C.C. 329 (1936).

"* * * the maintenance of sound economic conditions in the motor carrier industry would be jeopardized by allowing new operators to enter a field in competition with existing carriers who are furnishing adequate, efficient and economical service."

In numerous cases, ICC has stated that existing carriers are entitled to transport all of the traffic which they can handle adequately, efficiently, and economically without competition from new carriers. However, ICC is currently investigating the feasibility of permitting motor carriers to serve newly opened plantsites without the necessity of going through the formal application procedures presently required.1/

Deregulation proponents believe that entry control and rate regulation stifle competition between carriers and create unnatural monopolies. The Executive Office of the President Task Force On Railroad Productivity concluded that by regulating the trucking industry, ICC is restraining competition and creating a local monopoly.2/ "The irony," the task force report says, "is that trucking which by nature of its technology should be highly competitive, is led by regulation to create monopolies akin to those found in railroading."

In a previous report we summarized the economic argument against entry control.3/

"* * * restrictions on entry, such as in civil aviation and trucking, eliminate an important market mechanism which operates to insure that least-cost production methods are used. Free entry to an industry guarantees that inefficient firms will either reduce their production costs or be replaced by new more efficient firms. This valuable mechanism of forced efficiency has been abandoned by regulation that restricts entry. This regulation protects both the inefficient producer and the firm earning excess profits."

1/Ex Parte MC-110, "Service at New Plantsites," 42 Fed. Reg. 54846, October 11, 1977.

2/"Improving Railroad Productivity, Final Report of the Task Force on Railroad Productivity," November 1973.

3/"Government Regulatory Activity: Justifications, Processes, Impacts, and Alternatives," PAD-77-34, June 3, 1977.

Ford administration proposal to ease entry restrictions

In November 1975, the Ford administration stated that entry restrictions barred qualified individuals from entering the motor carrier industry. Applicants were denied certificates not because of any failing on their part but to protect existi firms. According to the Ford administration, this infring ment on individual initiative may be more serious than the economic efficiencies caused by limited competition. As a result, the administration submitted to the Congress a proposed Motor Carrier Reform Act that would have made it easier for new carriers to enter the industry.1/ The proposed bill would have required ICC:

--To weigh in favor of an applicant if new service would result in lower costs, greater efficiency or better service, or would satisfy a shipper's preference for different combinations of service and rates.

--To grant entry if the applicant was fit, willing, and able, and the revenue of the proposed service would cover the costs of the carrier for the particular service.

Department of Justice views on entry control

The Department of Justice has advocated freer entry into the trucking business. Justice states that the current law and ICC requirements provide barriers to entry because the applicant must prove not only that he is fit, willing, and able but also that existing service is inadequate.

Historically ICC has prohibited applicants from justifying their proposed service on the basis of lower projected rates. Such a scheme, Justice says, seeks to protect the profits of established carriers to the detriment of new entrants, especially minority enterpreneurs.

In addition to these entry obstacles, Justice states there are delays and expenses in the application process and that the burden falls most heavily on a small businessman.

In 1977, ICC established a Small Business Assistance Office to aid small businessmen and minority enterpreneurs seeking to enter the trucking industry.

1/H.R. 10909; S. 2929, 94th Congress.

In February 1978, ICC published a notice of proposed rulemaking to examine whether rates should be an issue in motor carrier operating rights application proceedings.1/

GAO report on temporary authorities

In February 1978, we reported on ICC's policies and practices for granting or denying temporary authority applications.2/ Temporary authorities are intended to meet "immediate and urgent needs" for service "which reasonably cannot be met" by existing regulated truckers. We found that ICC's process for granting temporary operating authorities does not always provide shippers the service they desire and often protects regulated truckers from competition.

Temporary authority applications offer shippers a way to meet their needs and truckers, especially small ones, a chance to begin operations and stay solvent during the 1 to 2 years required for processing a permanent authority application. Although ICC grants most of the temporary authority applications received, it has not evaluated its application process to determine what effect denials of temporary authority applications have on the adequacy or efficiency of service. We reviewed temporary authority applications to determine what problems, if any, were encountered by shippers and carriers when ICC had denied applications.

We found that ICC's denial of temporary authority applications caused many shippers to lose current or potential sales and customers, and/or forced them to use less satisfactory transportation services, such as more expensive energy-inefficient private trucking operations. The denials also caused some applicant truckers to give up their attempts to obtain permanent authority and forced them out of business.

We recommended that the Congress amend the Interstate Commerce Act so ICC can grant more temporary authorities to new truckers where the traffic involved is new or had been moving by means other than regulated truckers. ICC agreed that a legislative change may be necessary to meet this objective but it initiated a rulemaking proceeding to investigate the feasibility of permitting motor carriers to serve newly opened plantsites without going through the formal

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1/Ex Parte MC-116, "Consideration of Rates in Operating Rights Application Proceedings," 43 Fed. Reg. 7675, Feb. 24, 1978.

2/"New Interstate Truckers Should Be Granted Temporary Operating Authority More Readily," CED-78-32, Feb. 24, 1978.

application procedures presently required.1/ We believe this proceeding is a step in the right direction, but ICC may need to take more action.

We also found that there was an "unequal burden of proof" in which applicants had to prove that existing service was inadequate, but protesting existing carriers did not have to prove that they could meet the needs of the shippers who supported the new applicant. Some regulated truckers try to block all applicants by issuing "form" protests which not only fail to address specific shipper needs but often lack more general information which ICC states protests should include. ICC is currently looking into protest standards for permanent authority applications, but we believe this should be expanded to include temporary authorities.

To make the temporary authority process more equitable to applicant truckers and to provide better service to shippers ICC, as of December 1977, was taking these actions in response to our recommendations:

--Establishing a task force to develop an easy-to-read pamphlet providing guidance to shippers and carriers preparing temporary authority applications.

--Planning to establish a formal training program to assure that field staff are well versed in the criteria used in evaluating temporary authority applications.

--Planning to review procedures to guarantee that ICC staff members will have enough time to fully evaluate temporary authority applications and meet other administrative requirements.

IMPACT OF REGULATION ON SERVICE AND RATES

Opponents of regulation say that it fails to adequately consider the costs of providing service and limits flexibility. Proponents argue that without regulation, service to small and remote shippers would become very expensive or stop completely.

1/ Ex Parte MC-110, "Service at New Plantsites," 42 Fed. Reg. 54846, October 11, 1977.

Regulation and small or remote shippers

One of the most important social implications of deregulation is its effect on the level of service to small communities. One of ICC's major objectives, required by law, is to make sure that regulated truckers provide adequate, reasonably priced service to all shippers. Therefore, many interested parties fear that the consequences of deregulation will be truckers' abandonment of service to rural and small urban towns. Similarly, truckers are concerned that deregulation may be inequitable by permitting entry but prohibiting exit, that is, abandoning unprofitable routes. These truckers see new carriers taking the most profitable routes by offering low prices while established carriers will still have the social responsibilities imposed by regulation. As in the case with most aspects of the trucking regulation/deregulation issue, there is little quantitative or empirical evidence for either of the arguments offered.

Opponents of deregulation argue that in a deregulated or free market environment small shippers and shippers in remote areas would pay much higher prices. They argue it each carrier was free to come and go, to select traffic, to decide whether and when he would serve particular locations, self-interest would dictate that rates be raised to high cost customers, while competition would force rates down to low cost customers. It is generally recognized that regulation currently provides for a cross-subsidization between more profitable volume shipments and small and infrequent shipments.

Deregulation proponents admit that some price increases may result from deregulation, but they also argue that transportation services can and should be provided in a competitive free market environment like other industries, and not be an instrument of social policies, such as cross-subsidies.

The cross-subsidy issue involves the current ICC policy of allowing regulated truckers to subsidize relatively low rates on low-density, unprofitable routes by earning some excess profit on high density routes. While policy makers may wish to subsidize small and remote shippers, economists have argued that it is inefficient to do so by means of cross-subsidies. Generally, economists have argued that it is more efficient to accomplish social goals directly in a taxation and government subsidy than indirectly through cross-subsidization of one group by another.

A Senate Committee on Agriculture and Forestry study[1/] concluded:

> "The question of equity between large and small shippers requires more study...We need additional evidence on how shippers of various sizes are affected by proposed changes in the transportation system."

In April 1976, a national shipper organization stated that the small, low volume shipper has difficulty getting prompt, regular service. It also said that carriers often delay delivery until they think they have accumulated enough volume to justify delivery in low-volume areas.

In 1976, we studied the service provided the small shipper[2/] and found that some truckers are reluctant to carry small shipments because they believe rates do not cover costs. Therefore, truckers have tended to assign their equipment to larger profitable shipments. As a result, shippers of small quantities of freight, especially occasional shippers or shippers in a remote area, sometimes find shipping difficult or service inadequate.

Our report on the small shipment problem noted that the costs of making different size shipments are unknown. Some truckers consider small shipments undesirable because they believe the revenue derived does not equal the costs of providing the service.

Small shipments cost proportionately more than large shipments for several reasons. Separate handling, especially at carrier terminals, costs relatively more for small shipments. Truckload shipments can normally be picked up from the shipper and transported directly to the receiver, thereby avoiding terminal handling.

Other factors also make small shipments expensive. Pickup and delivery costs are basically the same regardless of shipment size and, thus are usually a higher percentage of the total cost for a small shipment. Overhead and paperwork costs, such as billing and documentation, usually vary with the number of shipments, not

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1/"Prelude to Legislation to Solve the Growing Crisis in Rural Transportation," 1975.

2/"Improved Service to the Small Shipper Is Needed," CED-77-14, Dec. 22, 1976.

weight. Higher loss and damage costs are another characteristic of small shipments because small packages are easy to identify, take, and resell. Reaction to this combination of cost factors has been to seek larger rate increases on small shipments than on truckload shipments.

In 1969-70 ICC conducted a study which showed that small shipments required more platform handling per hundred pounds than large shipments. The study was criticized by shipper groups which believed the results were unreliable because scientific sampling techniques were not used to choose the carriers for study. To overcome this criticism, ICC directed its Bureau of Accounts, in May 1976, to conduct a new study, employing specific sampling techniques. The new study was started in August 1976 with an estimated completion date of March 1979.

We also found that the data collected by ICC on small shipment complaints was inadequate and unreliable. We recommended that ICC, within its regulatory capacity, could further improve service to the small shipper by

--collecting more reliable data on complaints,

--emphasizing the formal investigation of small shipper complaints as the basis for ICC action, and

--determining whether authority to impose civil penalties would help combat the problems.

In April 1977, ICC revised its system for recording complaints and for providing more meaningful and detailed information. ICC also now gives greater consideration to the fitness of the carrier, as measured by its record of compliance, before granting new or extended operating authorities. ICC agreed that civil penalties should be available for all violations and was drafting proposed legislation to justify this need. As of May 1978, ICC had not submitted the proposed legislation to the Congress.

In anticipation of legislation to reduce trucking regulation, the Senate Commerce Committee, in July 1977, authorized a study of the impact that various modifications of the current regulatory system would have on small communities. The study, awarded to Policy and Management Associates, Inc., will profile 30 to 50 small communities, their trucking needs and services, and the hypothetical impact certain changes would have on their transportation system. The estimated completion date for the study is

June 1978.

Ford administration view that price and service options are limited

The Ford administration stated that ICC regulation severely limits the range of price and service options available to shippers. Carriers cannot adjust their rates to provide a requested service for a customer without requesting a rate change. Usually this involves going through their rate bureaus. Therefore, the administration believed that shippers who want either high cost premium service or lower cost service must turn to operating their own trucks. To encourage price competition, the Ford administration proposed in its Motor Carrier Reform Act that:

--Rates above variable cost could not be ruled unlawful because they are too low.

--Rate changes within certain specified ranges could not be suspended by ICC.

--Standards for suspending rates would be similar to those used in the civil courts for obtaining temporary restraining orders.

--ICC could continue to declare a rate unlawful because it is too high, discriminatory, or preferential.

RATE BUREAU ISSUE

The regulated trucking industry is allowed to collectively set rates. This is accomplished through rate bureaus which were exempted from Federal antitrust laws by the Reed-Bulwinkle Act (49 U.S.C. 5a). Critics of rate bureaus contend that the bureaus' method of setting rates results in higher freight rates and reduced services to customers. Rate bureau proponents argue that the bureaus perform a valuable service of providing a forum for the orderly formulation of rates and rules for the transportation of almost every conceivable type of commodity.

What are the rate bureaus

Before Federal trucking regulation, rates were established on a day-to-day and sometimes hour-to-hour basis and were usually based on what the traffic would bear. Beginning in 1935, however, all motor carrier rates had to be filed with ICC.

To expedite rate filings, motor carriers organized regional rate bureaus to process and publish rates for its members. During the 1940s, the Department of Justice, considering the antitrust laws, began to question the legality of these cooperative actions. As a result of several indictments and court cases, the Congress, in June 1948, amended the Interstate Commerce Act with the Reed-Bulwinkle Act, to provide that

--carriers be required to file their rate agreements with ICC for approval,

--each bureau be required to retain and submit various records and reports,

--each party to an agreement be free to take independent action,

--ICC be authorized to investigate any approved agreement, and

--parties to an agreement be exempt from antitrust laws.

ICC has said that rate bureaus perform five valuable functions; they (1) serve as mediums through which shippers express their views on rate proposals, (2) act as shipper information bureaus to provide notice of proposed rate changes, (3) publish tariffs for all their members, (4) increase the ability of the carriers to comply with statutory rate standards by allowing the carriers to exchange information, and (5) simplify ICC's task by enabling it to deal with a few bureaus rather than individual carriers.

Rate bureau reform

Over the last few years there has been concern over collective ratemaking, and various actions have been directed at modifying the process.

Collective ratemaking evolved from historical statutory conflicts, regulatory laws, and the economic characteristics of the railroad industry. Antitrust immunity is predicated on the public goal of achieving a system of uniform and stable rates within the regulated segment of the industry. This immunity, however, is tempered by requirements intended to prevent monopolistic control. Statutory requisites include a trucker's free and unrestrained right to engage in independent action and a shipper's right to participate in the ratemaking process. Violations of the Reed-Bulwinkle Act constitute grounds for stopping a bureau's activities for not being consistent with national transportation policy and the Interstate Commerce Act.

In spite of the attempts of the Reed-Bulwinkle Act to maintain the freedom of individual truckers and some degree of rate competition, we concluded in a previous report that the current state of regulation.

> "* * *fosters collusion by conferring on firms in these industries, such as trucking and shipping companies, an exemption from antitrust prosecution allowing them to form rate bureaus. The resulting collusively determined regulated prices are too high and there is a loss to society. In the absence of regulation, a higher level of services would be produced at a lower price and society's resources would be more efficiently used."1/

In January 1976, ICC completed a 2 year investigation of rate bureau operations.2/ The investigation covered 28 specific areas and ICC ultimately took action on 12 aspects of bureau operations.

- --Rate bureaus are required to keep formal minutes of all rate committee proceedings and maintain such minutes for ICC inspection.
- --Rate bureaus are prohibited from investing in another commercial business.
- --Rate bureaus are prohibited from acquiring other rate bureaus without prior ICC approval.

1/"Government Regulatory Activity: Justifications, Processes, Impacts, and Alternatives," PAD-77-34, June 3, 1977.

2/Ex Parte No. 297, "Rate Bureau Investigation," 351 I.C.C. 437 (1976).

--Rate bureaus may not be profitmaking enterprises.

--Bureau carrier members, affiliated with a shipper in any way, are prohibited from serving on a bureau ratemaking committee without prior ICC approval.

--A maximum period of 120 days is prescribed for processing rate proposals to final disposition.

--Individual rate proposals cannot be broadened in territorial or commodity scope without adequate public notice.

--Section 22 rate quotations dealing with the transportation of Government goods at reduced rates require special bureau notification procedures.

--Rate bureaus cannot protest rate proposals of member carriers.

--Rate bureaus cannot discourage member carriers from publishing individual tariffs.

--Rate bureaus cannot discourage independent action on rate proposals.

--Member carriers of rate bureaus have 120 days to file appropriate amendments to their rate agreements.

Three of the 12 changes to motor carrier rate bureau regulations were challenged in court:

--The prohibition against rate bureaus protesting independent actions by its members.

--The prohibition against shipper-affiliated carriers serving on the bureaus' boards of directors or rate committees without prior ICC approval.

--The prohibition against profit making by rate bureaus.

In July 1977, a three judge panel issued an order sustaining ICC's regulations. The prohibition against rate bureaus protesting independent actions by its members and the prohibition against shipper-affiliated carriers serving on the bureaus' boards of directors have been appealed to the Supreme Court. As of May 1978, the case was still pending.

Senate hearings on economic regulation of the trucking industry

In October 1977, the Subcommittee on Antitrust and Monopoly, Senate Judiciary Committee began examining pricing in the trucking industry. The Department of Justice and ICC were among those who testified on antitrust immunity for rate bureaus. The Department of Justice spokesman stated that motor carrier rate bureaus and their "price fixing with antitrust immunity" must be eliminated or substantially limited. The Department advocated considerably more freedom for truckers to raise or lower freight rates. The Department believes there is no justification for Government limitations on price changes in a competitive industry. The Department also urged that antitrust immunity be lifted from rate bureau functions, or at least that rate bureau powers be substantially trimmed.

The Chairman, ICC, testified that motor carrier rate bureaus "by no means have a complete hold on ratemaking in that industry and there exists considerable overlapping of jurisdiction among bureaus and in some cases competition exists between bureaus." He stated that ICC is reexamining how much antitrust authority is needed by rate bureaus. The process, according to the Chairman, will take at least 1 year to complete. The Chairman also warned of the peril to small shippers of a free marketplace. He said:

> "Certain shippers command substantial and sometimes overwhelmingly superior bargaining power stemming from a number of factors. These include financial strength, amounts of freight service purchased, varied mixes of 'controlled traffic', creative and aggressive management of logistics and traffic functions, geographically diverse alternative locations for the procurement of raw materials and production and sale of outputs, and participation in intercorporate collective efforts involving certain aspects of shippers' relationships with carriers.
>
> "The existence of this power could mean that in a free market situation, shippers dominating transport markets could force the level of rates down to where a shortfall could exist between carriers' total revenues and total costs. Carriers in turn, would attempt to increase rates on traffic of other shippers. Small shippers would no doubt bear the brunt of these increases."

ICC is taking another look at rate bureaus

On January 6, 1978, ICC started two proceedings to (1) reexamine all rate bureaus in terms of their potential anti-competitive effects and (2) determine if prohibitions on railroad rate bureaus, as established by the Railroad Revitalization and Regulatory Reform Act of 1976, should also be applied to other transportation modes.1/

In reexamining all approved rate bureau agreements, ICC said deficiencies in their agreements had been discovered and newly submitted agreements did not satisfy the requirements of the Interstate Commerce Act. ICC said rate bureau agreements can be approved if they further the national transportation policy, but

> "* * * the question is not simply whether the activities to be carried out under the agreement will further the National Transportation Policy but assuming that they will, whether the benefits of the agreement from the standpoint of the National Transportation Policy outweigh its disadvantages from the standpoint of national antitrust policies * * *."

ICC also stated that the act provides for an exemption to the antitrust laws, but it must be construed as narrowly as possible to be seen as favoring competition.

In examining the relationship of restrictions on railroad rate bureaus to restrictions on other transportation modes, ICC said it has observed that, in accordance with the intent of the Congress, modifications of railroad rate bureaus

> " * * * should in fact have the effect of modernizing and clarifying the functions of rate bureaus and fostering rail competition. The Commission believes that these goals are consistent with the National Transportation Policy, and have as much relevance to the motor carrier and water carrier and freight forwarder industries as they do to the railroad industry in promoting the interests of the carriers, shippers and ultimately consumers."

1/Ex Parte No. 297 (Sub No. 3), "Modified Terms and Conditions for Approval of Collective Ratemaking Agreements Under Section 5a of the Interstate Commerce Act" and Ex Parte No. 297 (Sub No. 4), "Reopening of Section 5a Application Proceedings to Take Additional Evidence."

As of May 1978, these two proceedings were still in process.

IMPACT OF REGULATION ON EFFICIENCY

With regulation the Nation has had a stable transportation system, but proponents of deregulation say that it has also had an adverse effect on efficiency. ICC regulation is alleged by many to induce both energy and economic inefficiencies. Indeed, these two types of inefficiencies are closely linked, since certain ICC regulations prevent truckers and shippers from using the least costly, or most fuel efficient method of transportation. Two efficiency issues concern the impact of regulation on empty mileage and intermodal shipments.

Empty mileage

There has been much controversy in recent years over the empty mileage or "empty backhaul" problem. Empty miles are those miles traveled by a truck when it is hauling no cargo. Regulated motor carriers and supporters of the present regulatory system claim that empty mileage results primarily from geographical freight imbalances, not regulation. However, many private and exempt carriers and proponents of deregulation argue that regulatory restrictions on (1) commodities that can be handled, (2) route authorities, and (3) backhaul leasing result in both energy and economic inefficiencies.

In a previous report we discussed the economic losses due to regulation-induced empty backhauls. The study stated:

> "Excess capacity is another example of regulation-induced inefficiency. ICC's regulation of motor freight is alleged to have produced substantial excess trucking capacity. Route certificates have required circuitous routes, excluded service to intermediate points, and in essence promoted empty backhauls by limiting the commodities (and their destinations) each firm is allowed to carry. These limitations on truck utilization increase the number of trucks in service and the amount of capital needed by the industry.1/

The empty backhaul problem not only affects regulated carriers, but private and exempt carriers are also restricted from carrying regulated commodities.

1/"Government Regulatory Activity: Justifications, Processes, Impacts and Alternatives," PAD-77-34, June 3, 1977.

Amount of empty mileage

Estimates of empty mileage vary greatly. For example, one study states:

> "Virtually any transportation system is going to face an 'empty backhaul' problem....The ICC in its effort to restrict the supply of service through route and commodity restriction, however, has exacerbated this backhaul problem. The consequence is that regulated vehicles return empty about 38 percent of the time and private vehicles return empty more than 62 percent of the time."1/

Because previous studies were criticized, ICC, in January 1976, began a 1-year study to determine the extent that trucks travel empty. ICC found that for 1976 the average percentage of empty truck miles was 20.4. The average percent of empty truck miles ranged a great deal, however, for different classes; such as, regulated or private, and types of trucks, such as, van or tank.2/

1/Jones, Norman H., Jr., "On Removing Operating and Backhaul Restrictions."

2/ICC Bureaus of Economics and Operations, "Empty Loaded Truck Miles on Interstate Highways During 1976," April 1977.

Category	Percentage of empty truck miles	
	Average	Range (note a)
Regulated (ICC authority)	16.2	14.8 - 17.7
Exempt	21.2	18.6 - 23.8
Private	27.3	26.0 - 28.6
Interstate	17.6	16.4 - 18.8
Intrastate	32.9	29.8 - 35.9
Owner operator (long-term lease)	18.1	15.5 - 20.6
Owner operator (short-term lease)	7.6	[illegible].9 - 11.2
Nonowner operator	21.5	20.6 - 22.3
Van	18.1	16.7 - 19.5
Refrigerated van	14.8	12.9 - 16.7
Flat or lowboy	18.9	16.0 - 21.7
Tank	38.0	33.4 - 42.5
Bulk	39.3	33.9 - 44.7
Other	30.7	26.1 - 35.3

Note a: There is 90-percent confidence that the percent of all empty truck miles lies within the ranges.

ICC and GAO studies of reasons for and costs of empty mileage

ICC's study was not designed to determine the causes of empty mileage, but it did attempt some analysis of the problem.

We reviewed the problem of energy conservation in the trucking industry and recommended to ICC that it determine the reasons for empty mileage and the impact on competition and service to the public.1/ The Federal Energy Administration, in commenting on a draft of our report, agreed that the collection and analysis of data is necessary to determine the effects of proposed regulatory actions on energy conservation.

1/"Energy Conservation Competes With Regulatory Objectives for Truckers," CED-77-79, July 8, 1977.

Subsequently, as of May 1978, ICC received and was evaluating a proposal from a transportation consulting company to evaluate the reasons and possible solutions to empty mileage in selected traffic corridors.

Suggestions to reduce empty mileage

There have been several suggestions by ICC, other Government agencies, and the private sector to reduce the empty mileage problem, but the effect of these proposals on the regulatory system and regulated truckers is unknown. One study done for ICC concluded:

> "* * * A large proportion of the empty miles are a result of unavoidable operating practices, equipment limitations, and traffic imbalances. In fact, inherent trade imbalances between areas probably constitute the single most important factor contributing to the empty miles."1/

In our report on trucking energy conservation, we found that promotion of energy conservation could compete with established legislative objectives for regulation. Therefore, we recommended that the Congress enact legislation which (1) shows whether energy conservation or traditional regulatory objectives are more important and (2) allows ICC to modify its regulations to authorize changes if it agrees with the national priorities established.

A study for the Federal Energy Administration similarly recognized the problem of competing objectives.2/ It said:

> "Existing evidence indicates that certain changes in Federal regulation of truck transportation will have beneficial energy consequences. However, energy savings should be considered as only one of the benefits to be derived from the recommended changes, and regulatory policy must incorporate other policy objectives as well."

1/Bisselle, C. Anthony, "A Preliminary Assessment of Empty Miles Traveled by Selected Regulated Motor Carriers," MITRE Corporation, January 1976.

2/"Potential Fuel Conservation Measures by Motor Carriers in the Intercity Freight Market," March 1977.

The report also concluded that:

> "Regular route common carriers suffer fuel inefficiencies from being constrained by routes. Such inefficiencies could be offset by allowing regular route common carriers to deviate from their routes and by facilitating grants of authority for operating convenience only. Restrictions on private carriers are unnecessarily harsh and should be relaxed. Private carriers are in the market in spite of their relative inefficiency for service or rate considerations. The removal of some constraints could improve their fuel usage, but would be partly to the economic detriment of common carriage."

At least two regulatory changes have been proposed to reduce the empty mileage problem.

--Modify restrictions on intercorporate transportation.

--Allow more trip leasing.

Modify restrictions on intercorporate transportation

A company whose primary business is not transportation, such as a manufacturer or retailer, may transport its own goods in its own trucks without ICC operating authority. This is considered private transportation by the Interstate Commerce Act and is exempted from regulation. According to ICC's interpretation of its regulatory authority, however, compensated transportation among companies, even related corporations,1/ is not, by statute, private transportation, but is considered regulated transportation and requires ICC operating authority.

The prohibition against private carriers hauling for corporate subsidiaries or affiliates has its roots in many court and ICC decisions defining the nature of private carriage in relation to regulated carriage. According to ICC, the basic principle it operates under in this area is that private carriage undermines the strength of the for-hire carrier industry, and, in so doing, injures the public which is largely dependent upon regulated for-hire carriage to meet its transportation requirements.

1/Related corporations include transportation done by a parent company for a subsidiary or a subsidiary for another subsidiary of the same parent.

This restriction on intercorporate transportation has been criticized by many, including the Council on Wage and Price Stability and the Department of Transportation. ICC believes, however, that intercorporate transportation would result in a diversion of cargo from regulated truckers to private truckers and that this may have a detrimental effect on the regulated truckers' services and rates for small shippers.

In commenting on ICC's denial of a petition to allow intercorporate transportation, one Commissioner said that to have allowed intercorporate transportation

> "* * * would have been contemptuous of numerous Federal court decisions, including several by the Supreme Court. To do so, finally, would have unlawfully ignored the clear and unambiguous language contained in our statutory mandate.
>
> "The hard and simple fact is that there is no statutory basis for piercing the corporate veil in intercorporate hauling situations.* * * For better or for worse, the law on intercorporate hauling has been solidified by many years of litigation. The lines of distinction by now have been finely drawn and there remains little room for the regulator to create internal change in this area.
>
> "That may seem an unhappy state of affairs for those of you who are not in agreement with what the Congress, the Commission, and the courts have done, but if you are still looking for an exemption for intercorporate private carriage, I doubt that you will find it under the existing statutory framework."

Therefore, in our report on trucking and energy conservation, we recommended that the Congress consider allowing intercorporate transportation. As of May 1978, the Congress had taken no action on this recommendation. However, in February 1978, the ICC directed its Policy Review Office to draw up a study plan on the effects of reversing its 1975 decision to allow intercorporate transportation.

Allow more trip leasing

Trip leasing is one way of solving the problems nonregulated truckers frequently find when they return empty after delivering their cargo. Trip leasing is the leasing of equipment for one trip only. ICC regulations require that they can only haul a return load if (1) they are in the transportation-for-hire business and (2) have the required ICC operating authority for the return trip.

In the case of private truckers, they can carry cargo on their return trip if they "lease" their trucks to a regulated trucker who has the ICC operating authority for the trip. ICC requires, however, that such leases be for at least 30 days. Therefore, leasing is unattractive to the private trucker. Trip leasing would allow private truckers to haul cargo for one trip at a time.

In 1975, the Department of Transportation proposed amending the Interstate Commerce Act to allow trip leasing, and ICC supported the proposal. There was opposition, however, from regulated truckers who said that the return load of the private truckers would have been regulated truckers' "front hauls." Therefore, trip leasing would hurt regulated truckers whose empty mileage would increase. No action was taken on the proposal.

ICC concluded that it lacked data on which to make a decision about trip leasing. Therefore, in June 1976, it appointed a task force to study trip leasing with a report expected in May 1978.

ICC is now considering a plan for conducting an experimental program to study the feasibility of permitting private carriers to trip lease their equipment to regulated carriers to relieve empty backhaul movements. The experiment would attempt to determine the extent to which private carriers would be interested in trip leasing, the circumstances under which it could be used, the problems encountered--whether operational, legal, or regulatory--and the benefits that might occur if it is permitted.

Truckers hauling agricultural commodities also usually have an empty return trip because agricultural commodities are not usually hauled into areas which produce them. Trip leasing is already allowed for nonregulated truckers hauling agricultural commodities, and in November 1977, ICC proposed through a rulemaking proceeding that a complete

revision be made in its leasing regulations (49 CFR 1057).1/ As of May 1978, no changes had been made.

Are intermodal shipments hampered by regulation?

Intermodal shipments (the use of two or more transportation modes to handle one shipment) could provide more efficient transportation service. Current regulations, however, do not always promote intermodal shipments and may even hamper them.

Combined truck/rail transportation

Piggyback, the transporting of truck trailers and containers on rail flatcars, is one intermodal service. While the use of piggyback has grown during the last decade it is clearly a long way from achieving its full potential.

The advantages of piggyback have been acclaimed for some time. In 1965, Edwin Mansfield reported that railroad management hailed piggyback as one of the most important rail innovations for the next decade. In 1969, Ann F. Friedlaender noted:

> "* * * The potential importance of piggybacking operations to the railroads should be evident. * * * The railroads should concentrate their efforts on the introduction and utilization of piggybacking operations. * * * However, if piggybacking is to be effective, the restrictions associated with its use must be removed."2/

We studied why piggyback has not grown more and concluded that the primary force for more growth must come from the railroads. However, ICC regulations also inhibit railroads and truckers from increased use of piggyback.3/

1/Ex Parte No. MC-43 (Sub. No. 7), "Lease and Interchange of Vehicles," 42 Fed. Reg. 59985.

2/Friedlaender, Ann F., The Dilemma of Freight Transport Regulation (Washington, D.C., The Brookings Institution, 1969).

3/"Combined Truck/Rail Transportation Service: Action Needed to Enhance Effectiveness," CED-78-3, Dec. 2, 1977.

Trucks usually offer cost and service advantages for short hauls, principally pickup and delivery; railroads offer fuel efficiency and cost advantages for longer hauls. Piggyback, the combination of the two, offers, in principle, the most efficient use of both at a time when saving energy has become increasingly important to the Nation.

Regulatory changes could increase piggyback use

ICC studied the need for circuity limitations on the use of piggyback and, in November 1977, removed circuity restrictions.1/

ICC could further encourage piggyback growth by changing some of its other regulations. For example, it should eliminate or modify its regulations which restrict

--rail-owned truck companies so they can perform piggyback more effectively and

--trucker's use of piggyback.

Because it was concerned about the competitive advantages that truck companies owned by railroads could have over other truckers and railroads, ICC generally restricted their operations. This, in turn, limited the railroads' ability to perform piggyback. Modification of these restrictions would eliminate the dependence some railroads have on truckers for providing piggyback service.

Truckers wanting to specialize in piggyback are prevented in some cases because ICC will not grant operating authority if regulated truckers are already serving an area adequately.

Although truckers without authority can lease their equipment, with ICC approval, to a regulated trucker so it can provide piggyback service, the lease fee can range from 13 to 20 percent of revenue. This probably increases piggyback cost.

In July 1975, an ICC internal study panel recommended

1/Ex Parte 230 (Sub 4), "Investigation to Consider Further Modification of the Piggyback Service Regulations," 355 ICC 841 (1977).

that special operating authority be granted to truckers wanting to specialize in piggyback, thus enabling shippers to take advantage of long-distance railroad economies. ICC, however, rejected the proposal because it believed existing regulated truck service was adequate.

In commenting on our report, ICC said we correctly pointed out that there are many interrelated factors inhibiting the growth of piggyback service. In September 1977, ICC said it was directing task forces to study

--key point restrictions,

--unrestricted motor carrier certification, and

--Interstate Commerce Act restrictions relating to rail-owned truckers.

EXEMPTIONS

The Interstate Commerce Act exempts certain motor carrier operations from ICC regulation. Two exemptions--the agricultural exemption including agricultural cooperatives and the commercial zone exemption--have posed special problems for ICC.

Agricultural exemptions

Interstate truck transportation of unprocessed agricultural commodities is exempt from ICC regulation. Truckers hauling exempt agricultural commodities exclusively are generally known as exempt carriers and can operate in any area and negotiate any rates.

Truckers subject to ICC regulation when hauling regulated commodities are also free from regulation when hauling agricultural commodities as long as there is no mixing of exempt and nonexempt freight.

Those favoring the agricultural exemption say that exempt truckers provide flexibility which is needed for many agricultural shipments. Agricultural commodities are highly seasonal and perishable, exhibit wide fluctuations among markets during the harvest season, and require rapid delivery. Because exempt truckers can move freely from one area to another, they can respond to seasonal demands. These were the arguments employed in establishing the exemptions. As in any competitive market, higher rates bring exempt truckers into areas needing service. Shippers in the peak demand areas pay for this reserve capacity.

Opponents of the agricultural exemption argue that the open competition for hauling exempt goods has maintained the chaos and instability of the 1930s among exempt carriers. A study prepared for the Department of Agriculture in 1975 concluded that the exempt portion of the trucking industry was not significantly less stable than several other competitive industries.1/

The ICC entry task force recognized that the agricultural exemption has caused problems for shippers. The task force, in its July 1977 report, recommended an overhaul of the agricultural exemption. In particular, the task force recommended that regulated truckers be allowed to mix regulated and exempt agricultural commodities and that ICC's administrative ruling on what is exempt be replaced by a short simple statement of what can be transported without ICC authority as "unprocessed" agricultural commodities.

The complexity of what is and what is not exempt led ICC's Bureau of Operations in January 1977 to publish a booklet on exemptions.2/ The booklet contains 27 pages of detailed information which shows how a small change in a commodity changes its status. For example, the excerpt on forest products states that wooden, untreated poles are exempt, but preassorted, preventative-treated poles are regulated commodities.

The recommendation concerning unprocessed agricultural commodities is still being considered by ICC as of May 1978. Shippers of agricultural products strongly support it; however, some carriers, non-agricultural shippers, and the U.S. Department of Agriculture expressed reservations about some or all of the proposals included in the recommendations.

Agricultural cooperative association exemption

The agricultural cooperative association exemption allows agricultural cooperatives to transport regulated commodities to a limited extent to help balance their operations. In other words, the exemption allows

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1/Miklius, Walter and Casavant, Kenneth L., "Stability of Motor Carriers Operating Under the Agricultural Exemption."

2/"Can They Do That? Hot or Exempt," Interstate Commerce Commission, Bureau of Operations.

agricultural cooperative associations,1/under certain conditions, to compete with regulated carriers for regulated traffic without seeking a license. Also, there are no regulatory restrictions placed on the rates they charge for such transportation.

The history of the agricultural cooperative exemption provides another interesting example of exempt carriers trying to compete with regulated carriers. The exemption was originally designed to help farmers save on transportation costs, but a loophole in the law did not prohibit cooperative-owned trucks from hauling non-agricultural goods. In the mid-1960s ICC attempted to close this loophole after cooperatives began handling significant amounts of regulated commodities. After ICC lost a court battle, advertisements soon appeared in various business journals in which agricultural cooperatives offered their services to haul goods of all kinds at reduced rates.

In 1968, the Congress passed legislation on restricting operations of these cooperatives.2/ They are now allowed to carry regulated commodities on their return trips, as long as they do not exceed 15 percent of the shipments.

ICC investigations have shown that a significant amount of tonnage, normally handled by regulated rail and motor carriers, has been diverted to agricultural organizations claiming the exemption. To investigate the potential abuses of the exemption, ICC began a rulemaking proceeding in November 1976, and in January 1978 issued its final decision which among other things:

--Prohibited truckers from trip leasing their vehicles to agricultural cooperatives for noncooperative, nonfarm transportation.

--Required cooperatives to keep certain records of their transportation activities.3/

1/Agricultural cooperative associations are associations in which farmers act togetner for specified purposes and for mutual benefit of the members.

2/Public Law 90-433.

3/Ex Parte Number MC-75 (Sub. No. 1), "Agricultural Cooperative Transportation Exemption (Modification of Regulations)."

Commercial zone exemption

The Interstate Commerce Act exempts from regulation the transportation of persons and property in interstate or foreign commerce when it is "* * * wholly within a municipality or between contiguous municipalities with a zone adjacent to and commercially a part of any such municipality * * *."1/ However, when the local transportation is part of or incidental to a linehaul service2/ the partial exemption of this section does not apply. To correct this deficiency, the Interstate Commerce Act was amended in 1940 and 1942 to add "terminal areas," which excludes from direct economic regulation the transfer, collection, and delivery performed within the terminal areas of linehaul carriers in connection with linehaul services. The Congress did not specify the boundaries of the commercial zone exemption. Therefore, in 1946 ICC passed general rules for determining the limits of the commercial zone exemption. In 1976, ICC revised the limits of the commercial zones to better reflect the business and industrial activity of a city. The revision touched off a controversy, including a court suit, against the desirability and legitimacy of ICC's revision. In March 1978, the court affirmed ICC's decision to expand commercial zones. The new boundaries went into effect on April 9, 1977.

Truckers are now free to operate, without ICC regulation, in larger areas around cities. In some cases this change increased the "free" area around large cities from a 5-mile radius to 20-mile radius.

Proponents of the expansion see it as a step towards improving the quality of service to shippers. They anticipate reduced rates, more frequent and faster service, and reduced loss and damage. Opponents state that the expansion is the first step toward total deregulation of the trucking industry which they predict will result in cutthroat competition and, as a result, motor carriers will suffer serious financial harm.

We are currently studying the commercial zone expansion with the objectives of examining and documenting the transportation changes that have resulted, and analyzing the changes in terms of their potential effect on the current trucking regulatory system. Estimated completion of the study is June 1978.

1/49 U.S.C. 303 (b) (8).

2/Movement of freight between cities, excluding pickup and delivery service.

CHAPTER 4
OBSERVATIONS

After 43 years of Federally regulated interstate motor carrier experience and numerous studies of the effects of motor carrier regulation, there are still sharp differences of opinion as to whether the current regulatory system should be changed, and if so, how it should be modified or reformed. There is considerable concern about the amount of Federal regulation, not only in connection with interstate motor carriers, but in areas from airlines to occupational safety.

While we recognize that in this staff study we have not covered every issue surrounding this highly controversial subject, we have identified and discussed many of the key matters which should be considered in evaluating the arguments for or against trucking regulation. The issues include the impact that regulation has on entry into the trucking industry, trucking rates, costs, level of efficiency, service, and the impact on energy aspects associated with the industry. In our previously issued reports, addressed to the Congress, we have reported areas needing improvements and made recommendations dealing with such critical factors as small shippers, energy, piggyback regulations, and the granting of temporary authorities. We are pleased to report that ICC generally has either taken action or initiated specific steps to insure that our recommendations will be adopted and, as a result, the administration of the program should be improved.

ICC, within the purview of its existing authority, has taken a number of steps to help improve its regulation of the motor carrier industry. For example, it has extended the areas of commercial zones around cities which are free from regulation. It has established an Office of Policy Review and a Section of Performance Review to help insure better planning and more thorough evaluation of its future policy changes. It is also considering the results of its study to liberalize many of the entry restrictions and is reexamining operations of rate bureaus.

There are a number of studies under way which further address major issue areas. These include:

--Results of expanded deregulated commercial zones. We are studying this area and plan to issue a report in June 1978.

--Impact of proposed regulatory changes on transportation in small communities. This is being studied for the Senate Commerce Committee by

Policy and Mangement Associates, Inc. Estimated completion is June 1978.

--Impact and cost of ICC regulation. In response to a request by the Chairman, Subcommittee on Antitrust and Monopoly, Senate Judiciary Committee we have started a study.

--Collective ratemaking and rate bureaus being studied by ICC and the Subcommittee on Antitrust and Monopoly, Senate Judiciary Committee.

--Regulation affecting cost of food. We are studying this area.

A considerable amount of effort has been devoted to the subject of Federal regulation of the motor carrier industry. ICC's actions, such as those associated with the current rulemaking examining whether to grant authority to provide service at new plant sites, and the expansion of commercial zones, are most valuable in helping to answer many of the questions associated with the subject of how much regulation is necessary. These efforts, in our view, along with the results of previous studies and those currently under way--if completed in a timely and effective manner--will be invaluable in helping to formulate a basis for making appropriate changes in motor carrier regulation. Part of ICC's current effort should include a continuing evaluation of the impact of the changes that it has already made.

It is our view that the analysis of recent action by ICC, plus the results of studies completed and those under way, should provide a much better basis upon which the Federal Government's role in regulating motor carrier transportation can be determined.

ICC TASK FORCE RECOMMENDATIONS FOR IMPROVING MOTOR CARRIER ENTRY REGULATION

1. SUMMARY GRANT PROCEDURES

The Task Force recommended the adoption of certain new procedures, designed to deal more expeditiously with unopposed motor carrier applications and with applications in which the protests filed did not conform to the new protest standards set forth in Recommendation 2. It was also recommended that an applicant be required to submit with its application some evidence of its fitness, willingness, and ability to provide the proposed service and that a shipper filing a certificate of support be required to disclose the manner in which its traffic is now moving, the amount of traffic that would be tendered to the applicant, and, perhaps, the inadequacies in existing service and the advantages in applicant's proposal.

2. PROTEST STANDARDS

The Task Force recommended the adoption, by a formal rule-making proceeding, of new standards to be applied to protestants to motor carrier authority applications. The new standards would give standing to protest only to carriers "actually participating in the involved traffic during the 2-year period preceding the filing of the application."

3. COST/PRICE EVIDENCE IN APPLICATION CASES

The Task Force recommended that the Commission develop and adopt a procedure, with clear evidentiary guidelines, pursuant to which cost and price evidence could be introduced in, and be considered as one of the factors in determining motor-carrier application proceedings. The Task Force noted that, in implementing this recommendation, it would be necessary to consider how best to assure that the applicant obtaining a grant of authority based on cost evidence fulfills its commitment to price its service at a level commensurate with the demonstrated costs.

4. PROCEDURES TO PROMOTE EFFECTIVE COMPETITION

The Task Force recommended that the Commission develop procedures for identifying and dealing with situations where there is a shortage of motor carrier competition. Instances where such a situation has resulted in a shortage of service, poor service, unreasonably high rates, or other problems associated with monopoly or oligopoly could be brought to the attention of the Commission by shippers, Federal departments

and agencies, State and local governments, Commission staff, and other interested persons; the Commission could institute an investigation; and, if necessary, it could entertain applications from interested motor carriers to provide additional service to the area.

5. CONCURRENT TREATMENT OF SIMILAR APPLICATIONS

The Task Force recommended that the Commission develop procedures for identifying and dealing with situations which result in the generation of a significant number of applications for motor carrier authority to perform the same or similar services or to serve basically the same markets. It was recommended that the Commission should be alert for applications which appear to herald a new trend in product distribution and prepared to institute special procedures to handle such applications. Among the special procedures to be considered should be the institution of broad-based proceedings which would encompass a large number of similar applications which could be disposed of largely on the basis of general evidence concerning the characteristics of the particular traffic movement involved.

6. COMMODITY DESCRIPTIONS

Noting that the complexity and multiplicity of commodity descriptions used in granting motor carrier operating authorities often leads to confusing and sometimes incomprehensible descriptions, the Task Force recommended that the Commission continue and intensify its efforts to standardize and rationalize commodity descriptions.

7. GENERAL EXEMPTION AUTHORITY

The Task Force recommended that the Commission place the highest priority on seeking amendment of the Interstate Commerce Act to provide it with authority to exempt from regulation motor carrier operations found not to be of major significance in carrying out the national transportation policy.

8. EXEMPTING TRANSPORTATION RATHER THAN VEHICLES

The Task Force recommended the Commission request the Congress to amend section 203 (b) of the Interstate Commerce Act so its exemption would apply to specific classes of transportation generally rather than vehicles used exclusively for the performance of certain types of transportation.

In support of its recommendation, the Task Force stated that administration of the provisions would be simplified and inefficient vehicle use would be avoided.

9. THE AGRICULTURAL EXEMPTION

The Task Force recommended that consideration be given to a complete overhaul of the so-called agricultural exemption of section 203 (b) (6) of the Interstate Commerce Act. In particular, the Task Force recommended that the "nonmixing" provision be eliminated and that the lengthy and detailed administrative ruling of the Commission incorporated in the section be replaced by a short and simple statement of what can be transported without ICC authority as "unprocessed" agricultural commodities.

10. DEREGULATION OF SELECTED COMMODITIES

In order to reduce, and if possible to eliminate, the number of motor carrier authority applications involving the transportation of items of no significance to the national transportation system, the Task Force recommended that the Commission take the following action. First, if successful in achieving passage of general exemption legislation (see Recommendation 7), the Commission should move promptly to exempt these commodities and services. Second, the Commission should recommend to the Congress, as an alternative to the general exemption power, that these commodities and services be specifically exempted from regulation. Third, the Commission should utilize the "prospective licensing" mechanism to exempt the issuance of authority to transport these commodities from its formal application procedures. In addition, the Task Force recommended that the Commission make a continuing effort to identify commodities which would be good candidates for the selective exemption process, and a preliminary list of such commodities was provided.

11. APPLICATIONS IN WHICH THE RIGHT TO PROTEST MIGHT BE LIMITED

The Task Force proposed that the Commission conduct an analysis of motor carrier authority application decisions to establish what types of applications normally are or should be granted even in the face of opposition. The Task Force also identified three types of applications which might qualify (1) follow-the-traffic applications by which an applicant already serving a shipper at one location seeks to transport the same commodities for the same shipper from a different location; (2) applications by which a carrier seeks expanded

commodity, but not territorial authority to enable it to handle new or additional traffic for a shipper it already serves; and (3) applications by which a carrier seeks to provide single-line service at points it has served through an interline connection and where the former interlining carrier raises an objection. The Commission could then issue decisions in "leading cases" involving situations such as these, establishing clearly the reasons why grants of authority are justified, despite opposition. In subsequent decisions, these cases could be cited; most if not all protests could be rejected; and summary decisions could be rendered in most instances.

12. APPLICATIONS TO SERVE NEW PLANT SITES

The Task Force recommended that regulated common carriers be allowed to serve new plant sites without the necessity of going through a formal application proceeding if: (1) the carrier holds commodity authority suitable for transporting all or part of the commodities to be shipped from or received at a new plant site, and (2) such carrier also holds territorial authority, under the applicable commodity authority which allows it to originate or deliver traffic at points or in a territory located within some appropriate distance from the new plant site. It was recommended that the Commission conduct a formal rulemaking proceeding to implement this recommendation and a list of questions was set forth to be included in that proceeding.

13. EXPANDING THE REGULAR ROUTE CARRIERS' SERVICE CORRIDOR

Noting that this recommendation had been made by a previous study panel, the Task Force recommended that the Commission act promptly to institute a rulemaking proceeding looking toward the expansion of the territory adjoining an authorized route which may be served incidentally to regular-route motor-carrier authority.

14. SINGLE-STATE EX-WATER OPERATIONS

In order to eliminate, at least in part, inconsistency in the present law by equalizing the treatment of pick-up and delivery service performed for maritime carriers with that performed for rail, water, and motor carriers subject to ICC regulation, the Task Force recommended that the Commission adopt regulations to exempt from Commission regulation motor movements which (1) take place within that portion of the commercial zone of a port city not extending beyond the boundaries of the State in which the port city is located; (2) involve

traffic having a prior or subsequent movement by a maritime carrier, and (3) are performed by a motor carrier operating solely within the State where the port city is located.

15. ENCOURAGING INTERMODAL TRANSPORTATION

The Task Force recommended that the Commission consider whether motor-carrier transportation of shipments having a prior or subsequent movement by rail or water should be relieved from entry control regulation in some manner. The exemption provisions of section 204 (a) (4a) could be utilized to provide a broader exemption than that proposed in Recommendation 14 by allowing motor carriers operating within a single State to transport ex-water and ex-rail traffic anywhere within that State. Relieving the transportation of such shipments moving beyond the borders of a single State from entry regulation could be accomplished by statutory change or by prospective licensing.

16. SINGLE-SHIPPER CONTRACT CARRIER PERMITS

The Task Force recommended that the Commission make it a practice to grant, without regard to opposition, a limited use contract carrier permit to contract carriers serving only a single shipper or affiliated shippers. The permit would be conditioned to terminate should the holder obtain from the Commission any other authority, either common or contract, under which it could provide service for any other shipper. The Task Force suggested that "affiliated shippers" be defined to mean those which are at least 50 percent commonly owned. The single shipper permit would authorize the transportation of general commodities, without exceptions, between all points in the United States, and it would limit service to that performed under contract with a named shipper or named affiliated shippers. There were a large number of comments in response to this recommendation, and there was considerable disagreement over what would result from its implementation.

17. LIMITED-USE AUTHORITIES FOR GOVERNMENT TRAFFIC

The Task Force recommended that the Commission request legislation to exempt regular movements of government controlled traffic. In the interim, the Task Force recommended institution of a prospective licensing type proceeding looking toward the making of a finding that unrestricted competition in the bidding for the Federal Government's transportation business is consistent with the public interest and the national transportation policy. A limited use permit, which

would authorize transportation only where the traffic moves on government billing and where the carrier has been a successful bidder for the traffic, would be issued upon a showing of fitness only.

18. DUAL OPERATIONS

The Task Force recommended that the Commission, in a proceeding analogous to prospective licensing rulemakings, issue a general finding that the holding of dual authority is consistent with the public interest absent a specific showing that abuses are likely to result. Certificates or permits issued to holders of dual authority could still contain a provision reserving jurisdiction to the Commission to impose appropriate conditions in the future if circumstances were found to require it. For the longer term, the Task Force recommended that the Commission seek legislation repealing section 210, stating the belief that the Commission would retain adequate authority to take any enforcement action needed in this area.

19. BLANKET GRANTS OF TEMPORARY AUTHORITY

The Task Force recommended that the Commission increase its use of general orders authorizing the wholesale granting of temporary or emergency temporary authorities to meet widespread emergency situations, such as those caused by strikes in the transportation industry. In particular, the Task Force recommended that, pending implementation of the recommendation (Recommendation 10) that the transportation of salt and salt mixtures be completely exempted from regulation, a general temporary authority order be adopted which would permit the field offices, by telephone, to grant authority to haul these commodities in snow emergencies.

20. BROKER ENTRY

In order to eliminate a long court battle over the Commission's rules governing broker entry, the Task Force recommended that the Commission seek a legislative modification of section 211 (b) of the Act to eliminate the "need" clause.

21. ADMINISTRATIVE APPEALS

Noting that section 17 of the Act insofar as it applies to all non-rail proceedings, mandates a cumbersome appellate process resulting in repetitious reviews, the Task Force recommended that the Commission give high priority to pressing for the passage of amendments to section 17. For the sake of uniformity the Task Force suggested that the Commission propose procedures paralleling those now applicable to rail cases under section 17(9) except that statutory time limits for each case processing step should be strongly resisted (see Recommendation 23). This would mean that there would be an initial decision, one appeal (on exceptions) as a matter of right, and a further appeal only upon a finding by the Commission of general transportation importance, new evidence or changed circumstances. In addition, the Task Force also recommended that the Commission should have the authority to assign to an employee board the authority to make the first, and administratively final, appellate review.

22. STANDARDS FOR DETERMINING APPEALS

The Task Force recommended that the Commission adopt and publicize internal guidelines which would make it clear that, when the Commission itself, a Division, a board, or an individual Commissioner is acting in an appellate capacity, the appellate decision will be based on considerations similar to those applicable to the Federal appellate courts. That is, it would accord substantial weight to the decision below; it would not substitute its judgement for that of the Commissioner, Administrative Law Judge, Division, or board making the initial decision; and decisions below would be reversed or modified only where they are not supported by facts of record, are erroneous as a matter of law, or incorrectly apply clearly stated Commission policy.

23. TIME LIMITS APPLICATION PROCEEDINGS

The Task Force recommended that target time periods for determining motor-carrier operating rights proceedings, which have been recommended for adoption by the Commission's Managing Director, should be put into effect as soon as possible. The fact that the Commission is operating under internally adopted time limits, and the results of its compliance with the adopted time limits, should be made public. The Task Force also recommended that goals be set for reducing the established time limits as the motor-carrier applications docket is reduced to a more manageable size.

24. SINGLE COMMISSIONER ACTION ON SELECTED PETITIONS FOR RECONSIDERATION

Noting that single Commissioner action is authorized in section 17 (2) of the Act and is presently utilized when disposing of petitions for leave to intervene and in orders directing modified procedure, the Task Force recommended that petitions for reconsideration in temporary and emergency temporary authority cases be assigned to only one Commissioner for appellate action. The Task Force stated that this recommendation would reduce paperwork processing at all levels, would eliminate delays caused by notation voting, and would significantly reduce the workload of Commissioners and their staffs. The Task Force also recommended consideration of this procedure for all other Motor Carrier Board Proceedings as well.

25. EMERGENCY TEMPORARY AUTHORITY APPLICATIONS

The Task Force recommended that employee boards, with authority to decide emergency temporary authority applications (ETA's), should be established in each regional office. The Regional Manager, Regional Director, and District Supervisors would be designated as members. Each regional board would be responsible for all ETA's to originate traffic within its region, regardless of the applicant's domicile. Appeals from ETA decisions would be reviewed in the same manner as those of the Motor Carrier Board. In addition, the Task Force recommended that the Commission issue a series of guidelines to insure that the individual boards treat applications uniformly. It was also recommended that provisions be made for implementing policy directly from the Commission when National emergency situations arise.

26. TEMPORARY AUTHORITY APPLICATIONS

The Task Force recommended that applications for temporary authority (TA's) be filed in Washington in order to speed up their processing and to avoid a lot of wasted time and effort.

27. FILING FEES

After noting that the present filing fee of $350 can represent a barrier that makes it more difficult for individuals or firms to enter regulated carriage, the Task Force recommended that there be no application filing fee for the first application for permanent interstate operating authority filed by a potential carrier. For subsequent applications, the Task Force recommended a bi-level fee: $200 for existing carriers who have annual gross revenues of less than $3 million and $500 for carriers which have annual gross revenues of $3 million or more. As an alternative to the bi-level fee, the Task Force suggested that the fee be eliminated altogether for the smaller regulated carriers and retained only for Class I carriers. In addition, the Task Force recommended that filing fees for petitions for modification be set at the same level as the application filing fees, in order to curtail what the Task Force identified as an increasing trend by carriers to file petitions for modification rather than more suitable applications for new operating authority.

28. NAME CHANGES OF CARRIERS AND SHIPPERS

The Task Force recommended that the Commission adopt an informal procedure for handling requests for changes in the names of carriers and shippers.

29. SERVICE OF APPLICATIONS ON STATE BOARDS

The Task Force recommended that States be polled as to whether or not they wish to continue to be served with copies of applications of operating authority. If it appears that there is little or no interest on the States' part in receiving copies of motor carrier applications, the Task Force recommended that the Commission seek amendment of section 205 (e) of the Act. In the meantime, the Task Force recommended that the Commission consider whether it would be legal and practicable to obtain a waiver of compliance with this statutory filing requirement from individual States and inform applicants that they need not serve copies on those States.

30. INSTRUCTION FOR THE FIELD STAFF

The Task Force recommended that a training program be established to instruct field staffers on procedural and substantive matters regarding motor carrier authority applications so that they might provide better assistance to applicants.

31. TIME LIMITS IN RULEMAKING PROCEEDINGS

Stating that the Commission will have to make greater use of rulemaking in the future to meet its growing caseload and responsibilities, the Task Force recommended that the Commission adopt self-imposed limits applicable to rulemaking cases. Where time limits could not be met, an explanation of the delay, together with a status report would be published in the Federal Register.

32. EXPRESS COMPANIES

The Task Force noted that, with the demise of REA Express, Inc., there are no longer any express companies in operation, and it recommended that the Interstate Commerce Act be modified to reflect this fact by deletion of all references to express companies.

33. THE LEASING REGULATIONS

The Task Force recommended that the Commission undertake promptly a complete rewriting and revision to the Leasing Regulations (49 CFR 1057) and, as a first step, that the present regulations be translated into understandable English. The Task Force specified five matters that should be considered in revising the regulations:

(1) What revisions could be made which would allow independent truckers (owner-operators) more readily and more equitably to lease their equipment to regulated carriers on both a long-term and trip-lease basis.
(2) Whether independent truckers should be allowed to lease their equipment to private carriers, either on a long-term basis or on a trip-lease basis.
(3) What are reasonable, workable, and enforceable documentation and vehicle inspection requirements for trip leasing.
(4) What kind and degree of regulation of trip leasing is required to give reasonable assurance that trip-leased vehicles will be operated safely.

(5) Whether private carriers should be given more freedom to trip lease their vehicles on backhaul movements.

34. POOLING

The Task Force recommended that the Commission adopt a policy which would give added weight to energy conservation in deciding whether to approve or disapprove a pooling agreement. Noting that information about the impact of pooling of motor carrier services is virtually nonexistent, the Task Force also recommended that follow-up studies be performed to determine whether liberalized treatment of pooling results in increased or decreased service levels, monopolistic abuses, or significant fuel savings.

35. VALUE OF OPERATING AUTHORITIES

Noting that public attention had recently been drawn to the fact that operating authorities granted by the Commission are frequently sold for very substantial sums, the Task Force recommended that the Commission re-examine its policies respecting the transfer of operating authorities with a view toward determining:

1. Whether certificates and permits should be transferable only at the actual cost to the initial holder of obtaining them.

2. Whether operating authorities should be transferable only as part and parcel of, and not independently of a going trucking business, along with vehicles, terminals, other physical assets and good will.

3. Whether the transfer of a portion of a holder's complete operating authority should be prohibited.

4. Whether there exists a widespread "trafficking" in recently granted operating rights, and whether the ready saleability of operating rights encourages the filing of unnecessary applications for motor-carrier authority.

36. PRICE COMPETITION AMONG PRACTITIONERS

In view of the recent findings of the Supreme Court in Bates v. Arizona State Bar, No. 76-316, that attorneys have a constitutional right to advertise the fees they will

charge, the Task Force recommended that the Commission's Canons of Ethics for Practitioners (49 CFR 1100, Appendix A, Item 32) be amended to allow fee advertising for services rendered in practicing before the Commission.

37. THE INDEPENDENT TRUCKER

The Task Force noted that little reliable information about the independent trucker is available, and, without more knowledge of the scope of his operations, his costs and revenues, the freight he hauls, and his safety record, effective and informed regulatory decisionmaking will be impeded. Therefore, the Task Force recommended that priority be given to a major study of the independent trucker segment of the motor carrier industry with a view to determining, ultimately, how these operators can become stable, financially healthy, and efficient contributors to the national transportation system.

38. CONTINUING ANALYSIS OF MOTOR CARRIER APPLICATIONS

Noting that the Commission presently collects no statistics as to types of commodities being applied for, the classes of carriers applying, the types of service proposed or the regions where the authorities would be exercised, the Task Force recommended that the Commission conduct a continuing analysis of applications for permanent authority. The information to be obtained from such an analysis would not only be useful for evaluating entry control alternatives, but could also be used for alerting the Commission to important trends indicating e overall condition of the industry. With such information, the Task Force stated that the Commission could take positive actions affecting the entry of certain types of carriers or the overall number of carriers in certain regions in order to insure the stability of service and maintain adequate competition.

39. A COMPREHENSIVE STUDY OF MOTOR CARRIER ENTRY

The Task Force recommended that the Commission conduct a general and comprehensive study of motor carrier entry and that the study address, among other issues, the following broad questions:

1. Are the concepts of public convenience and necessity and consistency with the public interest ripe for redefinition? Should the "need" requirements which are a prerequisite for the issuance of certificates and permits be changed? Should they be significantly reduced or eliminated?

2. Are there areas, communities, or classes of traffic which now receive less than adequate motor carrier service? Is lack of competition a factor in areas where service deficiencies exist?

3. Is it in the public interest to continue a regulatory scheme in which most "common carriers" are actually highly specialized operators limited--either by their choice or by regulatory constraints--to serving only very limited segments of the public?

4. Should entry controls be eliminated or relaxed with respect to: (a) carriers which, because of their limited size, have a limited effect upon interstate commerce? (b) traffic moving only limited distances? (c) certain types of shipments, such as those weighing less than a set minimum?

5. What effects would any proposed changes in motor carrier regulations have on: (a) the adequacy of service to small and rural communities and the shipping public? (b) competition between transportation modes and within the motor carrier industry? (c) the finances of (1) motor carriers and (2) railroads? (d) employment? (e) rate levels? (f) highway and street congestion? (g) energy consumption? (h) environmental considerations? and (i) intermodal transportation?

In addition, the Task Force recommended further study of the following more limited questions:

1. What impact, if any, does the fact that there are many dormant operating rights outstanding have upon the motor carrier industry and the administration of regulatory policy? Should a major effort be undertaken to identify and perhaps cancel unused certificates and permits?

2. Does the fact that certain regulated carriers own no equipment but rely solely upon the services of owner-operators affect their ability to provide reasonably adequate service? Is the failure to own equipment a relevant factor in determining a carrier's standing to protest a motor carrier application?

3. Is the distinction between regular and irregular route motor carrier service still a valid one, or should it be eliminated from ICC certificates?

4. Should the present restrictions on the number of shippers served and the type of service performed by contract carriers be made more or less stringent? Do contract carriers divert valuable traffic from common carriers, or do they normally attract freight that would otherwise move in private carriage?

5. Should intercorporate hauling be allowed between or among companies that are 100 percent commonly controlled? Some lesser degree of control?

6. Should the limitations on ownership or control of motor carriers by railroads be relaxed or eliminated?

7. Would the availability of detailed commodity flow information assist in providing the Commission a firmer base for evaluating entry control applications? If so, how detailed should this information be and how might it be collected? For what other purposed could this information be used by the Commission?

APPENDIX II

STATUS OF MOTOR CARRIER TASK FORCE RECOMMENDATIONS
April 21, 1978

1. Summary grant procedures

   Ex Parte No. 55 (Sub-No. 25), Revision of Application Procedures.
   Final rules published December 13, 1977.
   Effective date: April 1, 1978.

2. Protest standards

   Ex Parte No. 55 (Sub-No. 26), Motor Carrier Application Proceedings.
   Proposed rules published April 21, 1978.
   Comments due May 29, 1978.

3. Cost/price evidence in application cases

   Ex Parte No. MC-116, Consideration of Rates in Operating Rights Application Proceedings.
   Advance notice of proposed rulemaking published February 24, 1978.
   Comments due April 25, 1978.

4. Procedures to promote effective competition

   Before proceeding with this, the staff believes that more information is needed. Questions of the degree of competition in the trucking industry arise not only here but in connection with rate bureau regulation. Further information is expected to be developed in the rate bureau investigation which will be pertinent to this proposal. Recommendation: that action be deferred.

5. Concurrent treatment of similar applications

Office of Proceedings believes that adequate steps are now taken to consolidate pending proceedings. Recommendation: That the questions whether present procedures are adequate and, if not, how they can be improved, be considered in the Recommendation 39 study.

6. Commodity descriptions

RSPO is working on this, and plans to deal with it separately from the Recommendation 39 study.

7. General exemption authority

Draft bill submitted and introduced as S. 2269 on October 13, 1977.

8. Exempting transportation rather than vehicles

Draft legislation submitted to Congress February 10, 1978, (item 13 in the list of "harmonization" amendments submitted pursuant to section 312 of the 4-R Act).

9. The agricultural exemption

Recommendation: That no action be taken at present.

10. Deregulation of selected commodities

Recommendation: That action be deferred pending the results of the Commission's legislative request for general exemption authority and for further study of the effect upon the Commission's workload which implementation of the various aspects of this proposal might have.

11. Applications in which the right to protest might be limited

(1) Follow-the-traffic cases)
(2) Expanded commodity authority for an existing shipper)

Recommendation: That action be deferred until more information can be gathered concerning the number of proceedings falling into these categories, concerning the issues involved in those proceedings, and whether these cases fall into some identifiable types of patterns.

(3) Substitution of single-line for joint-line service

Ex Parte No. MC-109, Applications Seeking Substitution of Single-Line Service for Existing Joint-Line Operations, published October 14, 1977.
Comments due December 14, 1977.

12. Applications to serve new plantsites

Ex Parte No. MC-110, Service at New Plantsites, published October 6, 1977.
Comments due December 5, 1977.

13. Expanding the regular route service corridor

Ex Parte No. MC-106, Investigation to Consider Modification of Administrative Ruling No. 84, published July 22, 1977.
Comments due September 29, 1977.

14. Single-state ex-water operations

Recommendation: That the staff circulate a draft notice of proposed rulemaking to the Commission.

15. Encouraging intermodal transportation

Recommendation: That action be deferred pending a decision on the proposal in Recommendation 14 and pending staff review of the possible impacts of implementation.

16. Single-shipper contract carrier permits

Draft notice of proposed rulemaking under consideration by the Commission.

17. Limited use authorities for government traffic

Recommendation: Hold for consideration following Commission action on Ex Parte No. MC-107, Motor Carrier Licensing of Economically Disadvantaged Persons.

18. Dual operations

Ex Parte No. 55 (Sub-No. 27), Dual Operations of Motor Carriers.
Notice of proposed rulemaking published October 11, 1977.
Final rules published April 7, 1978.
Effective date: June 1, 1978.

19. Blanket grants of temporary authority

Previously discussed by Commission. Recommendation: That proposal be implemented as needed on an ad hoc basis.

20. Broker entry

Recommendation: That no action be taken at this time.

21. Administrative appeals

Draft bill submitted and introduced as S. 2374 on December 12, 1977.

22. Standards for determining appeals

Considered by the Commission at regular conference, September 6, 1977. No further action planned.

23. Time limits in application proceedings

Implemented October 1, 1977.

24. Single Commissioner action on selected petitions for reconsideration

Recommendation: That the Commission consider and implement this recommendation in connection with its forthcoming review of the Organization Minutes.

25. Emergency temporary authority applications)
26. Temporary authority applications)

Recommendations of a special staff committee appointed by the Chairman are being reviewed for possible implementation.

27. Filing fees

The staff will prepare for the Commission's consideration a draft notice of proposed rulemaking which would waive filing fees for first-time applicants.

28. Name changes of carriers and shippers

Approved by Commission September 6, 1977.
Notice published September 12, 1977; effective October 1, 1977.

29. Service of applications on State boards

Ex Parte No. MC-100 (Sub-No. 2), Revision of Procedures Requiring Service of Applications on State Officials, published October 4, 1977.
Comments due November 3, 1977.
Final regulations published January 26, 1978.
Effective date: April 1, 1978.

30. Instruction for field staff

It is believed that this recommendation is in the course of being implemented by the Chairman, the Managing Director, and the directors of affected bureaus.

31. Time limits in rulemaking proceedings

Considered by Commission at regular conference, September 6, 1977. Implementation to be on ad hoc basis.

32. Express companies

Recommendation: That legislation be included in a supplemental submission in connection with the "harmonization" amendments.

33. The leasing regulations

Ex Parte No. MC-43 (Sub-No. 7), Lease and Interchange of Vehicles, published November 23, 1977.
Comments due January 23, 1978.
Published January 6, 1978 -- comment date extended to February 22, 1978.

34. Pooling

Recommendation: That this proposal be considered in conjunction with the Energy Task Force's recommendations.

35. Value of operating authorities

Economics is doing a study. Recommendation: Defer action for the present time.

36. Price competition among practitioners

Ex Parte No. 55 (Sub-No. 30), Price Competition Among Practitioners, published February 10, 1978.
Comments due April 10, 1978.

37. The independent trucker

Numerous initiatives under active consideration.

38. Continuing analysis of motor carrier applications

Study plan being developed. Bureau of Economics and Office of Proceedings are involved.

39. A major study of motor carrier entry

Study plan to be submitted to Commission by RSPO following the completion of the report on the field hearings.

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