
REPORT BY THE U.S.

General Accounting Office

The Interstate Commerce Commission Can Better Manage Its Enforcement Program

The Interstate Commerce Commission (ICC) is responsible for ensuring that interstate carriers comply with appropriate statutes and ICC's rules and regulations by investigating alleged violations and taking various enforcement actions

GAO found that (1) the Commission has not developed clear and consistent program goals in light of policy changes resulting from the regulatory reform legislation of 1980 and 1982 and (2) the enforcement program is oriented toward responding to complaints which together with staff cut-backs limit the ability of regional enforcement officials to direct resources toward higher priority or more serious violation areas and deter industry-wide violations

GAO recommends that ICC identify appropriate goals for its enforcement program and establish priorities to improve the allocation of program resources. GAO also makes recommendations to improve the management of other aspects of the ICC's enforcement program



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES COMMUNITY
AND ECONOMIC DEVELOPMENT
DIVISION

B-214613

The Honorable Reese H. Taylor, Jr.
Chairman, Interstate Commerce Commission

Dear Mr. Taylor, Jr.:

In a letter dated August 3, 1983, the Chairman, Subcommittee on Transportation, House Committee on Appropriations, requested that we (1) review the management of the Interstate Commerce Commission's (ICC's) enforcement program as it relates to motor carriers and (2) examine to a limited degree the feasibility of transferring ICC enforcement activities to other organizations. On February 22, 1984, we testified on our findings before the Subcommittee and were requested to submit our recommendations to you.

This report summarizes our findings for the ICC's enforcement program and makes recommendations to improve program management. Our objectives, scope, and methodology and findings are described in more detail in appendix I. Also appendix I discusses the results of our review of the feasibility of transferring ICC enforcement activities to other organizations.

OBJECTIVES, SCOPE, AND METHODOLOGY

To evaluate how ICC manages its enforcement program as it relates to motor carriers, we reviewed how the Commission¹ established its goals, objectives, and priorities for its enforcement program. We also reviewed how ICC allocates its enforcement resources, which violation areas receive priority attention, and how ICC evaluates and measures the success of its program.

We developed information in three ICC regional offices-- Boston, Philadelphia, and San Francisco. We met with the regional directors and enforcement officials in these regions as well as the Director and other officials in the Office of Compliance and Consumer Assistance in the Washington Headquarters.

¹Generally, we refer to the Commission when discussing the activities of the body of Commissioners, and we refer to ICC when discussing more generally the activities of the agency.

We reviewed the data on all enforcement cases closed in fiscal years 1982 and 1983 from ICC's data systems. We used the data to develop information on the results of the program and the resources spent in various enforcement areas. We tested the accuracy and completeness of the data we used but did not trace the accuracy of all entries back to original source documents. Where we found the data base to be inaccurate or incomplete and when more precision was required for our analyses, we reviewed individual case files.

To identify and assess the feasibility of transferring ICC enforcement areas to other enforcement organizations, we met with officials of the Department of Justice, the Bureau of Motor Carrier Safety in the Department of Transportation, the Federal Trade Commission, and seven state regulatory agencies for transportation as well as state enforcement agencies. The states included in our review were Rhode Island, Massachusetts, Virginia, Maryland, California, Arizona, and Nevada. While our sample of states was not scientifically selected, we did attempt to develop a sample that provided a national scope.

ICC'S ENFORCEMENT PROGRAM

To ensure that carriers comply with ICC's statutes, rules, and regulations, ICC investigates alleged violations and takes various enforcement actions including assessing civil penalties, taking injunctive actions, and recommending civil or criminal actions to the Department of Justice.

ICC's Office of Compliance and Consumer Assistance is primarily responsible for the enforcement program and ICC's compliance monitoring and consumer complaint activities, which operate through six regional offices. Compliance monitoring activities encompass ICC-initiated surveys performed at carriers' plants as well as road checks of truckers in transit. The consumer complaint activity includes receiving and processing complaints and inquiries from shippers, receivers, carriers, truck owner-operators, and the general public. These activities--complaint processing, compliance surveys, and road checks--have historically been used to identify potential violations for investigation.

PROGRAM GOALS AND PRIORITIES HAVE NOT BEEN ESTABLISHED

The Commission and the Director of the Office of Compliance and Consumer Assistance--in charge of ICC's enforcement program--have issued several different forms of guidance on program goals that were confusing, somewhat contradictory, and did not adequately address changes in new legislation.

Various forms of guidance included the following. At the request of the House Committee on Appropriations in 1982, ICC provided a list of high priority and lower priority areas. Subsequently, the Director issued separate guidance outlining regional enforcement objectives for fiscal year 1983. Later, the Commission held a conference in October 1982 with all the senior enforcement officials and issued summary guidance in 15 enforcement areas discussed at the conference.

Regional officials told us that the guidance the Commission and the Director issued has been too broad, somewhat confusing, and at times contradictory. The degree of confusion is illustrated by regional officials' understanding that the most current guidance as reflected in the summary of 15 enforcement areas was the direction that they should follow during fiscal year 1983 and that the prior documents were, in effect, invalidated by this guidance. While the Director agreed that the Commission's guidance had been broad and potentially confusing, he told us that he believed all of the guidance documents were still in effect for fiscal year 1983.

The apparent contradiction in guidance is illustrated by varying Commission statements regarding the importance of competition for the enforcement program. In one statement, the Commission indicated that enhancement of competition was one of the primary objectives of the enforcement program. Yet in other guidance, the Commission did not emphasize this objective.

We believe the Commission has not developed clear and consistent program goals in light of the policy changes resulting from the regulatory reform legislation of 1980 and 1982--the Motor Carrier Act, the Household Goods Transportation Act, and the Bus Regulatory Reform Act. A recent report by the President's Private Sector Survey on Cost Control noted the same basic problem throughout ICC, stating that the Commission has been unable to agree on the ICC's fundamental course and that "no explicit plan for moving into a period of limited regulation, as required by the 1980 legislation, has been developed."

THE PROGRAM IS ORIENTED
TOWARD RESPONDING TO COMPLAINTS

While overall program goals have not been made clear, the Director maintains that the Commission did instruct regional officials during the October 1982 conference that they were not to perform proactive-type activities, such as self-initiated compliance surveys, develop informants, or monitor carrier activities. Instead, regional enforcement activities were to react to specific shipper, carrier, and consumer complaints.

According to regional officials, self-initiated compliance surveys--called general compliance surveys--are one of their most

important proactive-type activities, and ICC has historically relied upon these surveys to evaluate whether carriers' operations are violating ICC laws and regulations.

Another factor limiting the ability of the regions to perform general compliance surveys is a large cut in staffing levels since the passage of reform legislation in 1980. Between fiscal years 1981 and 1984, the Office of Compliance and Consumer Assistance has been cut almost in half, with a further 18 percent cut being projected for fiscal year 1985.

ICC's approach of reacting to complaints may hinder detection and prosecution of some serious, unlawful activities. According to a regional counsel, complaints tend to result in small, inconsequential cases, which seek to resolve an immediate problem often caused by one carrier and affecting only one or two people. This counsel stated that many of the cases arising from complaints have little deterrent effect and do not make a meaningful, far-reaching impact throughout the industry. For example, ICC frequently receives complaints from individuals shipping their household goods, alleging violations of ICC regulations by specific household goods carriers.

In a reactive environment, regional enforcement officials have limited flexibility in selecting the types of cases being investigated. The nature of complaints received dictates to a great extent the violation areas being investigated and the areas in which ICC is spending its enforcement resources.

At our request, ICC developed data on investigations begun in fiscal year 1983--the first year of the reactive policy--in the three regions we visited. We found that 8 percent to 17 percent of the investigations started in fiscal year 1983 were categorized as self-initiated. We also learned that information which led to the opening of these cases, generally was identified while performing complaint-generated investigations. Data on the percent of investigations begun as self-initiated in prior years were not readily available. However, regional enforcement officials stated that a greater proportion of their workload was self-initiated before the 1980 reforms, the subsequent cuts in staffing levels, and the Commission's guidance emphasizing a reactive approach.

We believe that the Commission's direction restricting regional enforcement staff from initiating compliance activities together with staff cutbacks limit the ability of regional enforcement officials to direct resources to higher priority or more serious violation areas and deter industry-wide violations.

ICC ENFORCEMENT HAS BEEN CONCENTRATED
IN A FEW VIOLATION AREAS

We found the preponderance of the program's activities were concentrated in a few violation areas--such as unauthorized transportation, owner-operator violations, lumping violations,² rate integrity cases,³ and insurance. For example, 61 percent of the investigations closed in fiscal year 1983 were in three violation areas--unauthorized transportation, owner-operator violations, and rate integrity cases--and 64 percent of the staff hours spent in that year was in the same three areas. Appendix III defines these enforcement areas.

We looked at the consistency of this allocation of caseload and resources with existing legislation. The Motor Carrier Act of 1980, while aimed at reducing the regulatory burden on motor carriers, does not specifically identify priorities for ICC's enforcement program. The Director, Office of Compliance and Consumer Assistance, informed us that he was unaware of any congressional direction as to priorities or intent in the current legislation. Although the legislation did not set forth priorities, the House Committee on Appropriations, in its 1982 report (House Report 97-783), identified five violation areas as more serious unlawful activities which ICC should pursue to a greater extent. These areas are kickbacks,⁴ antitrust violations, discrimination,⁵ overcharges, and lumping. We found that all five "more serious" violation areas made up about 15 percent of all cases and 12 percent to 13 percent of the staff hours expended on cases closed during fiscal years 1982 and 1983.

Only one violation area--lumping--out of the five violations identified by this Committee appears in the top five violations areas by number of cases or resources spent for the 2 fiscal

²A lumping violation can occur when a trucker is forced to accept and pay for the loading or unloading of his truck. See appendix III for a more detailed explanation.

³Rate integrity violations can occur when a shipper is charged rates that differ from an ICC-approved tariff.

⁴Kickbacks are secret payments made by a carrier to an employee(s) of a shipper generally in return for selecting the carrier to transport the shipper's property.

⁵Discrimination (unreasonable) can involve either price or service: (1) refusing to serve a particular shipper and generally serving his competition and (2) charging one shipper higher rates than another shipper when not justified by economic factors.

years. Lumping cases represent about 9 percent of the cases in both years and 7 percent and 3 percent of the resources in fiscal years 1982 and 1983, respectively.

However, these lumping violations, which appeared to receive priority, merit further explanation. Our review of 45 lumping cases in Regions 1 and 2 shows that the regions opened these lumping investigations on the basis of headquarter's suggestions but with little indication that a potential lumping violation existed. In all but two cases the initial inquiry found no illegal lumping activities, and most of the cases have been closed. As of February 1984, none of the cases had resulted in any enforcement action.

MAINTENANCE AND USE OF ENFORCEMENT DATA
IN ICC DATA SYSTEMS COULD BE IMPROVED

Although extensive data are available in its data systems, ICC provided to the House Committee on Appropriations limited enforcement data that could be misleading. ICC is not maintaining or using available data to assess the effectiveness of its enforcement program nor has ICC developed standards to measure program effectiveness. ICC is developing a new enforcement data system but could not demonstrate how data will be used to assess the enforcement program's effectiveness.

ICC previously developed data on its enforcement activities for the House Committee on Appropriations, summarizing the number of investigations closed in fiscal years 1980, 1981, and 1982 by violation areas. We believe, however, that this information could be misleading in that available information was not provided on the results of these investigations, the results of any prosecutions, or the resources used in these areas. In addition, the listing of cases by violation areas included cases for which the data system showed no investigations were performed. We found that about 12 percent of the reported closed cases for the fiscal years 1982 and 1983 were coded as being closed without an investigation.

Although valuable data are available within ICC's data systems, we found that ICC's data base is neither adequately maintained nor used to assess the effectiveness of various types of investigations. We experienced difficulty in using ICC data because of inconsistently applied or incomplete data in its data system. For example, some regional offices were incorrectly coding investigations that were closed with administrative action, requiring us to review individual case files for correct data.

ICC is considering a new data system; the essential data for analyzing the program, such as the type of violation, resources

We also recommend that the Chairman improve the maintenance and use of data to clarify how program resources are actually being applied and what results are being achieved relating to the program goals and priorities.

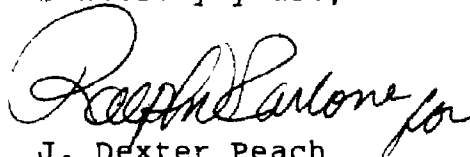
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At the Subcommittee Chairman's request, we did not obtain comments from ICC. However, we did discuss matters presented in this report with the full Commission in January 1984. There was no agreement among the Commissioners on the matters we discussed. The Commission's views are discussed further on page 15 of appendix I.

As you know, 31 U.S.C. §720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs no later than 60 days after the date of our report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Director, Office of Management and Budget; ICC's Acting Managing Director, and the Director of ICC's Office of Compliance and Consumer Assistance; and other interested parties.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Dexter Peach for".

J. Dexter Peach
Director

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ABBREVIATIONS

FTC	Federal Trade Commission
GAO	General Accounting Office
ICC	Interstate Commerce Commission

THE INTERSTATE COMMERCE COMMISSIONCAN BETTER MANAGEITS ENFORCEMENT PROGRAM

The Chairman of the Subcommittee on Transportation, House Committee on Appropriations, requested us on August 3, 1983, to review how the Interstate Commerce Commission (ICC) manages its enforcement program. Specifically, we were requested to review ICC's establishment of enforcement priorities, the standards ICC used to measure the effectiveness of its enforcement effort, the procedures ICC used in allocating enforcement resources, and if ICC's priorities are consistent with existing legislation.

We were also requested to identify and assess the feasibility of transferring ICC's enforcement responsibilities to other enforcement organizations, such as other federal or state agencies.

ICC AND ITS ENFORCEMENT PROGRAM

ICC is an independent federal regulatory commission and has, historically, been responsible for regulating interstate surface transportation in the United States. ICC regulates some 25,000 for-hire companies including railroads, trucking companies and bus companies; performing such functions as approving operating authority, rates charged, issuances of securities, and changes in ownership.

To ensure that motor carriers comply with its statutes and all of its rules and regulations, ICC investigates alleged violations and takes various enforcement actions including assessing civil penalties, taking injunctive actions, and recommending civil or criminal actions to the Department of Justice.

ICC's Office of Compliance and Consumer Assistance has primary responsibility for the enforcement program and ICC's compliance monitoring and consumer complaint activities, which operate through six regional offices. Compliance monitoring activities encompass ICC-initiated surveys performed at carriers' plants as well as road checks of truckers in transit to determine whether the carriers' operations are being conducted in compliance with ICC's statutes, rules, and regulations. The consumer complaint activity includes receiving and processing complaints and inquiries from shippers, receivers, carriers, truck operators, and the general public.

These activities--complaint processing, compliance surveys, and road checks--have historically been used to identify potential violations and have provided the basis for investigations and subsequent administrative or litigative enforcement actions as necessary.

THE EFFECT OF REGULATORY
REFORM LEGISLATION ON ICC'S
ENFORCEMENT PROGRAM

In 1980, the Congress enacted three major statutes reforming ICC's regulation of the trucking (motor carriers of property) and rail industries--the Motor Carrier Act, the Staggers Rail Act, and the Household Goods Transportation Act. Household goods movers are a type of motor carriers of property. In 1982, the Congress did the same for the bus industry by enacting the Bus Regulatory Reform Act.

The major purpose of the legislation was to stimulate competition within these industries by generally (1) reducing restrictions on new firms entering into the market and on existing firms expanding their operations and (2) allowing carriers increase flexibility in setting and changing their rates charged for various transportation services. However, these reforms provided for only partial deregulation. The legislation left in place most of the historic mechanisms requiring carriers to obtain operating authority and file rates with ICC.

For example, even though it is now easier to obtain operating authority from ICC, it is still illegal to carry regulated commodities without ICC authority. As a result, ICC is still responsible for ensuring that carriers hauling regulated goods are authorized by ICC. The Commission indicated that the primary purpose of cases involving unauthorized transportation is not to bar new entrants or competitors, as in the past, but rather to ensure firms maintain the required amounts of insurance. Many other requirements and prohibitions less directly tied to the economic regulatory structure were also left in place, each of which continued to imply the need for enforcement efforts. Examples of these requirements are the regulations designed to protect household goods shippers and the leasing regulations that are designed to protect owner-operators.

The Director of the Office of Compliance and Consumer Assistance told us that the regulatory reform legislation has not significantly altered the Commission's enforcement responsibilities in the motor carrier area. He noted that the penalty provisions of the earlier statutes were not eliminated and, in fact, new penalty provisions were added. For example, the legislation provides more severe penalties for household goods movers who fraudulently increase the weight of shipments in order to charge the shipper more. This violation is called weight bumping. In the rail area, however, segments of the industry have been exempted from economic regulation, which has resulted in some reductions in ICC's rail enforcement responsibilities.

OBJECTIVES, SCOPE, AND METHODOLOGY

To evaluate how the ICC manages its resources related to its motor carrier enforcement responsibilities, we reviewed how

ICC established its goals, objectives, and priorities. We reviewed how ICC allocates its resources, which violation areas receive priority attention, and how ICC evaluates and measures the success of its program. In addition, we briefly considered whether the enforcement program's allocation of caseload and resources was consistent with congressional intent.

Our review was not directed at the Commission's overall policies in implementing the new legislation, but focused instead on the management of the enforcement program. It is appropriate to note that our observations are not the same as many carrier associations, shippers, and unions who contend that the Commission has failed to implement the motor carrier laws as amended in 1980 and 1982. Much of their criticism concerning the Commission's failure to enforce the law is mainly directed at numerous policy decisions of the Commission.

We developed information in three of ICC's six regional offices--Region 1 in Boston, Region 2 in Philadelphia, and Region 6 in San Francisco. We selected the regions to be representative of the shifts in the workloads of the various regions, and also to provide some representation of various regions of the country. We met with the Regional Directors and enforcement officials in these regions as well as the Director and other officials in the Office of Compliance and Consumer Assistance in the Washington Headquarters.

We reviewed the data on all enforcement cases closed in fiscal years 1982 and 1983 from ICC's case tracking system and its uniform reporting system which accumulates staff hours spent. We used the data to develop information on the results of the program and the resources spent in various enforcement areas. We tested the accuracy and completeness of the data we used but did not trace the accuracy of all entries back to original source documents. Where we found the data base to be inaccurate or incomplete and when more precision was required for our analyses, we reviewed individual case files.

We identified and assessed the feasibility of other options available to the Congress for ensuring proper enforcement of ICC statutes and rules and regulations--specifically, what enforcement areas might be transferred to other enforcement organizations, such as other federal or state agencies. For this purpose, we identified and categorized the major ICC enforcement areas, as shown in appendix III. We discussed these areas with various officials of the Department of Justice, the Bureau of Motor Carrier Safety of the Department of Transportation, the Federal Trade Commission (FTC), and seven state regulatory agencies for transportation as well as state enforcement agencies. The states included in our review were Rhode Island, Massachusetts, Virginia, Maryland, California, Arizona, and Nevada. While our sample of states was not scientifically selected, we did attempt to develop a sample that provided a national scope.

We also discussed ICC's enforcement activities with some industry associations, such as the National Small Shipment Traffic Conference, the Regular Common Carrier Conference of the American Trucking Associations, Inc., and the National Industrial Transportation League.

At the Subcommittee Chairman's request we did not obtain comments from the ICC. However, at the conclusion of our review, we met with the full Commission to discuss matters presented in this report. Comments by the Commissioners are presented later in this appendix.

Our review was performed from August 1983 to February 1984 in accordance with generally accepted government auditing standards.

PROGRAM GOALS AND PRIORITIES
HAVE NOT BEEN ESTABLISHED

The Commission and the Director of the Office of Compliance and Consumer Assistance have issued several different forms of guidance on program goals which were confusing, somewhat contradictory, and did not address changes in the new legislation. The major forms of guidance issued are as follows. At the request of the House Appropriations Committee in 1982, ICC was asked to provide the Commission's priorities for the enforcement program. As a result, ICC sent to the Committee a list of 22 areas of high priority and 18 lower priority areas. In March of 1982, the Director sent this list to all regional offices noting that the Commission had not adopted a formal statement of policy on priorities. The priorities were apparently developed by headquarters officials, but it was unclear whether the present Commissioners agreed with these priorities.

During 1982, the Office of Compliance and Consumer Assistance in conjunction with regional officials developed a number of broad objectives for its fiscal year 1983 activities. These objectives were issued in a document called "expectations" and included the responsibilities of the headquarters and regions in meeting these objectives. The expectations document did not identify the amount of resources that each region should allocate to each objective nor how to measure the success of any effort by the regions.

After the expectations document was developed, the Commissioners held a conference on enforcement policy in October 1982. The Commissioners met with the Director of the Office of Compliance and Consumer Assistance and the regional directors to provide some verbal guidance on ICC's various enforcement areas. ICC issued the full text of the Commissioners' comments in a transcript.

On October 25, 1982, the Commissioners issued a statement based on the conference. The Commission indicated that all

enforcement activity should be evaluated in terms of its relationship to (1) public interest, (2) enhanced competition, and (3) a specific congressional directive. In addition, the Commission provided to the House Appropriations Committee a summary of the Commissioners' verbal guidance in the 15 major enforcement areas that were discussed by the Commissioners at the conference. This summary was also transmitted to the regional offices.

Regional officials indicated that various forms of guidance the Commission and the Director issued have been too broad, somewhat confusing, and at times contradictory. The degree of confusion is illustrated by regional officials' understanding that the most current guidance as reflected in the summary of 15 enforcement areas was the direction they should follow during fiscal year 1983 and that the prior documents were, in effect, invalidated by this guidance. While the Director agreed that the Commission's guidance had been broad and potentially confusing, he told us that he believed all of the guidance documents were still in effect for fiscal year 1983.

An illustration of an apparent contradiction in Commission guidance is the differing messages in the statement based on the conference and the guidance on 15 enforcement areas. The Commission's statement indicates that enhancement of competition is one of three important objectives of its enforcement program. In contrast, in the guidance on the 15 areas, the Commission did not emphasize this objective. The principal reason cited for this lack of emphasis was that the ICC does not have sufficient resources to seek out every violation.

Regional and headquarters officials disagreed on the relevancy of the various documents and on how regions should use such guidance to manage their enforcement resources. In general, regional officials we met with believe that the Commission has not developed any meaningful and uniform strategy with the necessary goals and priorities that regions could use to manage and allocate their enforcement resources.

By contrast, in our discussions with officials of the Federal Bureau of Investigations and the Customs Service, we found that these organizations had established priority systems to allocate their enforcement resources. These organizations have targeted certain types of cases as more important than other types. In addition, work in the field offices is monitored to assess whether the higher priority areas are being given adequate attention.

Based on our review, we believe the Commission has not developed clear and consistent program goals in light of the policy changes resulting from the regulatory reforms in 1980 and 1982. A recent report by the President's Private Sector Survey on Cost Control noted the same basic problem throughout ICC, stating that the Commission has been unable to agree on the

fundamental course the ICC should pursue and that "no explicit plan for moving into a period of limited regulation, as required by the 1980 legislation, has been developed."

THE PROGRAM IS ORIENTED TOWARD
RESPONDING TO COMPLAINTS

While overall program goals have not been made clear, the Director maintains that the Commission did instruct regional officials that they were not to perform proactive-type activities, such as self-initiated compliance surveys, develop informants, or monitor carriers' activities. Instead, regional enforcement activities were to react to specific shipper, carrier, and consumer complaints.

According to regional officials, self-initiated general compliance surveys are one of their most important proactive-type activities, and ICC has historically relied upon these surveys to evaluate whether carriers are violating ICC laws and regulations. Such surveys would be initiated without the need for identifying potential violations from complaints.

In the opinion of the Director, the Commission directed a reactive policy during its October 1982 conference. In detailing some specifics, the Director referred to the Commissioner's comments in the October conference that enforcement investigators should not be out "snooping" around and that regional enforcement teams were too aggressive in looking for violations. The Director stated that his opinion was further reinforced in subsequent communication with the Commission as exemplified by a directive issued on agricultural cooperatives.

In October 1982, the Director of the Office of Compliance and Consumer Assistance issued a directive to initiate a nationwide proactive effort to evaluate compliance by agricultural cooperatives with new provisions of the Motor Carrier Act and to halt unauthorized transportation by such cooperatives. According to the Director, the effort to investigate and monitor agricultural cooperatives was initiated to carry out the new ICC authority in the act, as well as to respond to numerous complaints concerning unauthorized transportation violations by agricultural cooperatives or their agents. The Director stated that he was ordered by an ICC Commissioner to cancel the directive because its proactive nature did not comport with the Commission's complaint-driven policy. The Director canceled this effort on November 30, 1982, and issued revised guidelines which emphasized that only potential violations identified in complaints would be investigated.

Staffing cuts limit flexibility
to initiate general compliance surveys

Another factor limiting the ability of the regions to perform general compliance surveys is a large cut in staffing levels of the Office of Compliance and Consumer Assistance since

the passage of reform legislation in 1980. This Office has been reduced from a fiscal year 1981 level of 623 to a fiscal year 1984 level estimated at 340, with a further 18 percent cut being projected for fiscal year 1985.

As provided by the Office of Compliance and Consumer Assistance, table 1 shows the change in the number of personnel actually engaged in compliance, investigatory, and litigative activities in ICC's regional offices from fiscal years 1980 to 1985.

Table 1

Personnel Directly Engaged in Compliance,
Investigatory, and Litigative Activities

<u>Beginning of fiscal year</u>	<u>Transportation industry analysts</u>	<u>Investigators</u>	<u>Attorneys</u>	<u>Total</u>	<u>Accumulative percent of change</u>
1980	168	69	35	272	-
1981	157	62	33	252	7
1982	154	59	32	245	10
1983	126	40	25	191	30
1984 (est)	100	40 ^a	25 ^a	165	39
1985 (est) ^b	83	35	22	140	49

^aInvestigators and attorneys (enforcement program) for fiscal year 1984 were not reduced because the Congress provided greater funding for enforcement than requested by the Administration.

^bFigures are estimates as included in the President's fiscal year 1985 budget.

From fiscal years 1980 to 1984, ICC's compliance, investigative, and litigative personnel have dropped 39 percent and, based on the current staffing level for ICC in the President's budget, further cuts in fiscal year 1985 will result in a 49-percent drop from the fiscal year 1980 level.

Effects of a complaint-driven policy

ICC's approach of reacting to complaints may preclude regional officials from directing resources into higher priority areas, and therefore, hinder detection and prosecution of some serious unlawful activities.

Regional enforcement officials believe general compliance surveys provide a valuable source for discovering potential violations since, in the course of these surveys, the staff may review carriers' operations for compliance in many potential violation areas rather than only in the area of a complaint. In a reactive environment, regional enforcement officials have limited flexibility in selecting the types of cases being investigated.

The nature of complaints received dictates to a great extent the violation areas investigated and the areas in which ICC is spending its enforcement resources.

One regional enforcement official indicated that although complaints can result in significant investigations, adherence to a strict reactive policy generally produces many more insignificant cases. According to a regional counsel, complaints generally result in small inconsequential cases, which seek to resolve an immediate problem often caused by one carrier and affecting only one or two people. This counsel stated that many of the cases which result from complaints have little deterrent effect and do not make a meaningful, far-reaching impact throughout the industry. For example, ICC frequently receives complaints from individuals shipping their household goods, alleging violations of ICC regulations by specific household goods carriers.

At our request, ICC regions developed the following data on the origination of investigations begun in fiscal year 1983--the first year of the reactive policy--in the three regions we visited.

Table 2

Origination of Investigations
in Fiscal Year 1983

<u>Origination</u>	<u>Region 1</u>		<u>Region 2</u>		<u>Region 6</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Complaints	57	46	62	45	77	82
Road checks	5	4	20	14	-	-
Headquarters	51	41	34	24	1	1
Other agencies	1	1	4	3	-	-
Self-initiated	<u>10</u>	<u>8</u>	<u>20</u>	<u>14</u>	<u>16</u>	<u>17</u>
Total	<u>124</u>	<u>100</u>	<u>140</u>	<u>100</u>	<u>94</u>	<u>100</u>

As table 2 shows, the regions categorized between 8 percent and 17 percent of their investigations as self-initiated in fiscal year 1983. However, enforcement officials in the regions stated that these cases are the results of leads developed during the investigations of complaints and could be considered extensions of complaint-generated cases. Data on the percent of investigations begun as self-initiated in prior years were not readily available. However, regional enforcement officials stated that a greater proportion of their workload was self-initiated before the 1980 reforms, the subsequent cuts in staffing levels, and the Commission's guidance emphasizing a reactive approach.

Specifically regarding complaint-generated investigations, we found that most fall into four categories--unauthorized transportation, owner-operator abuses, household goods abuses, and

rate integrity violations. Table 3 shows that from 78 percent to 87 percent of cases were in these four categories for the three regions included in our review.

Table 3

Distribution of Complaint-Generated Investigations
for Fiscal Year 1983

<u>Region</u>	<u>Selected violation categories</u>					<u>Total cases</u>	<u>Percent of selected violation cases to total</u>
	<u>Unau- thorized transpor- tation</u>	<u>Owner- oper- ator</u>	<u>House- hold goods</u>	<u>Rates</u>	<u>All others</u>		
1	16	15	6	10	10	57	82
2	36	9	5	4	8	62	87
6	19	29	3	9	17	77	78

In sum, the Commission's direction restricting regional enforcement staff from initiating compliance activities together with staff cutbacks combine to limit the ability of regional enforcement officials to direct resources into higher priority or more serious violation areas and deter industry-wide violations.

ICC ENFORCEMENT HAS BEEN CONCENTRATED
IN A FEW VIOLATION AREAS

We found the preponderance of the program's activities is concentrated in a few violation areas. On the basis of the number of investigations and the number of hours spent, the enforcement program has concentrated on the areas of unauthorized transportation, owner-operator violations, lumping violations, rate integrity, insurance, freight claims, and reporting/accounting.¹

In assessing where the enforcement program effort was directed, we used information in ICC's data systems on investigations closed in fiscal years 1982 and 1983. We excluded the cases initiated prior to fiscal year 1981 because investigative resource data were generally incomplete, and also excluded all of those cases from the data base where no investigative hours were noted.

In table 4 we show the five largest areas by percentage of investigations or caseload, and in table 5 we show the five largest areas by percent of staff hours or resources for cases closed in fiscal years 1982 and 1983. As shown in table 4, 85 percent and 80 percent of the investigations closed during fiscal years

¹A description of the major enforcement areas of ICC's enforcement program is included as appendix III.

1982 and 1983 were in the same five violation areas. Staff hours spent in fiscal years 1982 and 1983 are also concentrated in four violation areas in both years.

Many violation areas appear in both tables showing both a concentration of caseload and resources in these areas. For example, 61 percent of the investigations closed in fiscal year 1983 were in three violation areas--unauthorized transportation, owner-operator violations, and rate integrity cases--and 64 percent of the staff-hours spent in that year was in the same three areas.

Table 4

Five Largest Violation Areas as a Percent
of Investigations for Fiscal Years 1982 and 1983

<u>Violation areas</u>	Percent of investigations	
	<u>1982</u>	<u>1983</u>
Unauthorized transportation	41	37
Owner-operator	17	16
Lumping	10	9
Rate integrity	9	8
Insurance	<u>8</u>	<u>10</u>
	85	80

Table 5

Five Largest Violation Areas as a Percent
of Staff Hours for Fiscal Years 1982 and 1983

<u>Violation areas</u>	Percent of staff hours	
	<u>1982</u>	<u>1983</u>
Unauthorized transportation	36	29
Owner-operator	18	23
Rate integrity	11	12
Lumping	7	(a)
Freight claims	5	5
Reporting/accounting	<u>(a)</u>	<u>4</u>
	77	73

^aReporting/accounting violations in 1982 and lumping violations in 1983 were not among the top five categories in terms of staff hours.

At the request of the Subcommittee on Transportation of the House Appropriations Committee, we briefly considered whether the allocation of caseload and resources was consistent with congressional intent. The Motor Carrier Act of 1980, while aimed

at reducing the regulatory burden on motor carriers, does not specifically identify priorities for ICC's enforcement program. The Director, Office of Compliance and Consumer Assistance, informed us that he was unaware of any congressional direction as to priorities or intent in the current legislation.

The House Appropriations Committee in House Report 97-783 of August 19, 1982, identified five violation areas it considered as more serious unlawful activities ICC should pursue to a greater extent. These violation areas are kickbacks, antitrust violations, discrimination, overcharges, and lumping. As shown in table 6, all five "more serious" violation areas made up about 15 percent of all cases and 12 percent to 13 percent of the staff hours expended on cases closed during fiscal years 1982 and 1983.

Table 6
Percent of Cases and Hours in the
Five Violation Areas
Identified by the House Appropriations Committee

<u>Violation areas</u>	<u>Fiscal year 1982</u>		<u>Fiscal year 1983</u>	
	<u>Percent of cases</u>	<u>Percent of hours</u>	<u>Percent of cases</u>	<u>Percent of hours</u>
Kickbacks	0.9	1.1	1.7	3.4
Antitrust violations	0.3	0.1	0.9	1.3
Discrimination	1.3	0.8	2.5	4.0
Overcharges	2.8	4.3	-	-
Lumping	<u>9.7</u>	<u>6.9</u>	<u>9.3</u>	<u>3.4</u>
Total	<u>15.0</u>	<u>13.2</u>	<u>14.4</u>	<u>12.1</u>

The information in table 6 reflects investigations closed by ICC in fiscal years 1982 and 1983 as indicated in ICC's data systems. Again, because investigation resource data for cases initiated prior to fiscal year 1981 was generally incomplete, we eliminated all of these cases as well as any other cases for which no investigative hours were noted.

Because we built on the data ICC had previously presented to the Subcommittee, the data shown in table 6 represent cases closed in each fiscal year rather than those opened. We believe cases opened would be a better indicator of changes in the program's emphasis and responsiveness to the Committee's request to emphasize some areas to a greater extent. For example, the data for fiscal year 1982 in table 6 represent investigations initiated in that fiscal year as well as prior years. Thus, we do not believe that the data in table 6 can be used to compare shifts in emphasis between fiscal years 1982 and 1983.

Only one violation area--lumping--out of the five violations that the Committee identified appears in the list of top

five violation areas by number of cases or hours spent for the two fiscal years (see tables 4 and 5). As shown in table 6, lumping cases represent about 9 percent of the cases in both years and about 7 percent and 3 percent of the resources in fiscal years 1982 and 1983, respectively.

Even that one violation area, which appeared to receive priority, merits further explanation. Our review of 45 lumping cases in Region 1 and 2 shows that the regions opened these lumping investigations on the basis of headquarters suggestions with little indication that a potential lumping violation existed. As a result, in all but two cases the initial inquiry found no illegal lumping activities; follow up inquiries for the two cases did not identify any illegal activities. As of February 1984, none of the cases have resulted in any enforcement action.

MAINTENANCE AND USE OF ENFORCEMENT
DATA IN ICC DATA SYSTEMS COULD
BE IMPROVED

Although extensive data are available in its data systems, ICC provided to the House Committee on Appropriations limited enforcement data that could be misleading. ICC is not maintaining or using available data to assess the effectiveness of its enforcement program nor has ICC developed standards to measure program effectiveness. ICC is developing a new enforcement data system but could not demonstrate how data will be used to assess the enforcement program's effectiveness.

ICC developed data on its enforcement activities for the House Appropriations Committee summarizing the number of investigations closed in fiscal years 1980, 1981, and 1982 by violation areas. We believe that this information could be misleading in that available information was not provided on the results of these investigations, the results of any prosecutions, or the resources used in these cases.

In addition, we found that the listing of closed cases included those for which the data system showed no investigations were performed. These cases are ones in which ICC planned an investigation but, due to additional information being made available prior to beginning the investigation, the case is closed without investigation. ICC accumulated similar data for fiscal year 1983 and again included cases in its summary where no investigations were performed. We found that about 12 percent of the reported closed cases for the fiscal years 1982 and 1983 were coded as being closed without an investigation.

We found that ICC does not adequately maintain nor use its data bases to assess the effectiveness of various types of investigations or the overall enforcement program.

We experienced difficulty in using ICC data in our analyses because of inconsistently applied or incomplete data in its data systems. For example, some regional offices were incorrectly

coding cases as closed with administrative action, such as issuance of a warning letter, when no action had been taken. As a result, to develop data on various categories of nonprosecutable cases, we had to review individual case files. Table 7 shows a breakdown of the results for cases closed in fiscal year 1983 in ICC's Regions 2 and 6.

Table 7

Results for Cases
Closed in Fiscal Year 1983

<u>Region</u>	<u>Cases closed</u>	<u>Prosecuted cases</u>	<u>Nonprosecutable cases</u>			<u>Total</u>
			<u>Administrative actions</u>	<u>Violation not proven</u>	<u>No investigations</u>	
6	113	34	33	24	22	79
2	<u>152</u>	<u>42</u>	<u>14</u>	<u>83</u>	<u>13</u>	<u>110</u>
Total	265	76	47	107	35	189
	====	===	===	====	==	====

As shown above, of the nonprosecutable cases that were actually investigated, about two-thirds of the cases resulted in no violation proven. The reason for the large difference in "violations not proven" between the regions is that Region 2 was following a headquarters directed policy of going directly into a final investigation based on an allegation whereas Region 6 did some preliminary investigative work prior to opening a final investigation. As a result, many allegations were resolved prior to opening a final investigation. In comparing the above data, Region 6 appears to be more successful in proving violations. However, because each region followed a different policy for opening final investigations, the data are misleading and are not useful for comparing the relative success of the two regions.

As an additional facet of the problem regarding use of its data base, we found that ICC has not developed any standards to track or measure the success of its enforcement effort. Neither headquarters nor regional officials had developed any standards to measure the success or effectiveness of its program.

We recognize that many problems exist in attempting to directly measure the degree of compliance or noncompliance among ICC-regulated carriers. Similarly, we acknowledge that more program-specific standards, such as percent of cases prosecuted or share of resources expended, do not provide simple formulas for evaluating the productivity of the program. However, we believe some measures to approximate the success and impact of the program would be helpful to both ICC and the Congress in evaluating the program.

ICC is considering a new data system; the essential data for analyzing the program, such as type of violation, resources used, and the results, appear to be included. None of the information

provided to us shows how the system will be used to evaluate the effectiveness of the program. According to an official of the Office of Compliance and Consumer Assistance, procedures for analyzing or evaluating data in the new system had not been addressed as of December 1983. Also, no information has been developed on how the accuracy, completeness, and consistency of the data will be assured.

ICC STAFFING LEVELS

Because ICC has not established clear and consistent program goals and priorities, or periodically tracked and assessed the outcome of its enforcement effort, the Commission has a questionable basis for assessing its enforcement staffing requirements.

The Commission has attempted to justify its reduced staffing requirements primarily on the basis of anticipated workload reductions due to regulatory reform. For example, in ICC's budget justification for fiscal year 1984, the Commission noted that the staff years devoted to enforcement would decrease by 38 percent between fiscal year 1982 and 1984. The justification was that "as deregulation of the motor carrier and rail industries continue to progress . . ., the need for and scope of the Commission's enforcement activities will decrease."

The Commission also cites the reduction in the number of complaints it received as evidence of both a high level of compliance as well as the need for fewer staff. However, there are also other reasons for reductions in the number of complaints ICC has been receiving, none of which would necessarily support the view that compliance is increasing and the need for enforcement is declining. For example, ICC no longer records nonjurisdictional complaints and has discontinued its nationwide toll-free hotline.

CONCLUSIONS

The various forms of guidance that the Commission and the Director issued have caused confusion at the regional level. The regions have not been provided meaningful and uniform goals and priorities by which enforcement resources can be managed and properly allocated. The Commission needs to develop clear and consistent program goals in light of the new policy initiatives of the regulatory reform legislation.

In addition, the Commission has prevented the regions from allocating their enforcement resources to the more serious violation areas by establishing a complaint-driven policy and reducing staffing levels for compliance, investigative, and litigative personnel about 49 percent from fiscal year 1980 to fiscal year 1985.

We found that most of ICC's enforcement caseload and staff resources are concentrated in a few violation areas. Only one

area overlaps with the list of serious violation areas identified by the House Appropriations Committee and in that area--lumping violations--we found that ICC's lumping investigations did not identify lumping violations.

Although ICC has developed enforcement data systems with valuable, evaluative data, ICC has not adequately maintained the systems nor used the data to assess the effectiveness of the program.

Not having clear and consistent program goals nor monitoring and assessing the results of its enforcement effort, ICC has a questionable basis for justifying its reductions in staffing levels.

RECOMMENDATIONS TO THE CHAIRMAN, ICC

To better manage its enforcement program and develop a sounder basis for its staffing projections, we recommend that the Chairman in conjunction with the full Commission:

- Determine the proper role for its enforcement activities as a result of the new legislation by (1) identifying appropriate goals for the program and (2) establishing meaningful priorities to assist in allocating resources to accomplish these goals.
- Provide its enforcement staff adequate flexibility to initiate compliance surveys to ensure designated priority areas are addressed.

We also recommend that the Chairman improve the maintenance and use of data to assess how program resources are actually being applied and what results are being achieved in relation to the program goals and priorities.

AGENCY VIEWS

At the Subcommittee Chairman's request, we did not obtain comments from ICC. However, on January 24, 1984, we met with the full Commission to discuss our findings. Generally, the Commissioners differed in their opinions concerning our findings. Some Commissioners agreeing, other disagreeing with the various findings.

The ICC Chairman noted that the Commission never intended to limit the enforcement program to reacting to complaints only. However, one commissioner specifically stated that he wants the program to react only to complaints.

The Chairman restated his disagreement to the need to establish priorities for the program. However, another commissioner noted that he had suggested that priorities were needed 15 months earlier.

The Chairman agreed that ICC needed to develop evaluative data on the enforcement program. He noted that the Director of the Office of Compliance and Consumer Assistance was developing resource information by violation area as we had done. The other commissioners did not comment on this matter.

OPTIONS FOR TRANSFERRING ICC
ENFORCEMENT TO OTHER AGENCIES

To address the potential transfer of ICC enforcement areas to others, we considered two general options: (1) transfer essentially all ICC enforcement areas to the states and (2) transfer selected ICC enforcement areas to other federal and/or state agencies. Our review was not limited to enforcement areas that would exist after total deregulation of the motor carrier industry but included areas under present legislation. We should note that major legislative changes would be necessary to implement either of these options.

In examining the feasibility of transferring ICC's enforcement responsibilities to other agencies, we found that although certain ICC violation areas might be enforceable by other agencies or through other legal remedies, certain obstacles may weaken enforcement:

- Lack of uniformity and the question of constitutionality of state enforcement.
- The impact of current deregulatory changes occurring at the state and federal levels.
- Loss of ICC's expertise and manpower to investigate violations.
- Loss of assistance to consumers and others.
- Loss of ICC oversight of carriers' compliance with insurance requirements.

Federal and state agencies are engaged in enforcement functions that appear to be related or similar to functions carried out by ICC. We sought to determine whether transfer of ICC enforcement functions to such agencies might be feasible. The major ICC motor carrier enforcement areas we addressed are described in appendix III. Our information was based primarily on the views of officials of appropriate federal and state agencies, but their views were not necessarily the official views of the agencies they represented. Information on state activities was based on seven selected states which were not selected so as to be scientifically representative of all states but were selected to provide a national scope.

The first option would transfer essentially all of ICC's enforcement areas to state agencies regulating intrastate motor

carriers. While these agencies generally have no authority over interstate carriers, these agencies appear to be those whose enforcement activities would most closely resemble ICC's activities.

State officials told us that these agencies generally are in a position to carry out ICC enforcement activities and, given proper authority and resources, could absorb their activities. We were told that most states have entered into cooperative enforcement agreements with ICC and were already involved in interstate carrier enforcement under state laws requiring state registration of a carrier's ICC operating authority.

A major obstacle to state enforcement of ICC regulations would be the difficulty in achieving uniform enforcement and the consequent burden on interstate carriers in dealing with 50 different agencies.

In addition, the impact of current and future deregulatory actions at both the state and federal levels also represents an obstacle. We were told a number of states have already deregulated intrastate motor carrier activity and have dropped their enforcement activities. Other states have taken various steps toward reducing regulation, which could affect their enforcement requirements. A pending Senate bill (S. 2038) and a recent proposal by the Department of Transportation would totally deregulate interstate motor carriers and thus would eliminate most federal enforcement requirements.

ICC officials believe that, because of such obstacles, state assumption of ICC enforcement functions was the least attractive option. ICC officials were concerned that such a transfer may not be constitutional.

The other option would be to continue with ICC enforcement in certain regulatory areas but shift enforcement of others to other agencies.

ICC's enforcement activities include (1) the economic regulation of motor carriers relating to the granting of authority to operate and the approval of rates charged and (2) other regulations generally aimed at protecting those doing business with carriers--household goods consumers, owner-operators and shippers. ICC also monitors carriers with ICC operating authority to ensure their compliance with federal insurance requirements. Enforcement of ICC's economic regulations requires expertise in motor carrier rate setting and other related activities which other agencies might not have. While recent deregulatory actions have given motor carriers greater freedom and flexibility in their economic operations, they also have increasingly limited carrier immunity from federal antitrust laws. As a result, ICC's antitrust enforcement responsibility has taken on new significance.

According to Justice officials, ICC's expertise and enforcement capacity are particularly important during the deregulatory transition period to monitor carriers' compliance with the federal antitrust laws. Although both Justice and FTC have broad antitrust enforcement responsibilities covering interstate commerce in general, Justice and FTC officials told us that neither has ICC's capacity to carry out ongoing compliance monitoring activities.

On the other hand, ICC's enforcement areas related to protecting those doing business with carriers may be less dependent on motor carrier expertise and therefore more readily enforceable by other agencies or through other legal remedies. Both the FTC and the states conduct broad enforcement activities aimed at protecting consumers from various unfair business practices. Although FTC's authority excludes motor carriers, we were told that with proper authority and resources FTC could assume enforcement of ICC's household goods regulations. However, the FTC and state officials told us that their responsibilities cover a broad range of consumer activities, and enforcement of household goods matters would normally be subject to their overall enforcement priorities and thus may receive less attention.

In addition, we were told by FTC and state officials that their enforcement activities were oriented primarily toward addressing broader consumer problems and issues rather than responding to individual consumer complaints. Therefore, instead of being able to turn to ICC to obtain assistance with problems, consumers might have to resort to private legal action against carriers, under appropriate state laws.

In the area of assisting owner-operators and shipping firms, there appeared to be no appropriate federal or state agency to assume enforcement responsibilities. Both FTC and state consumer protection agencies indicated that their activities were primarily concerned with consumers as a group, and therefore protection of owner-operators and shipping firms appears to go beyond their basic mission. FTC and state officials told us that owner-operators and such shippers would probably need to take private legal action under appropriate state laws to obtain assistance with problems.

Under ICC laws, weight bumping and lumping violations can be criminal acts, subject to general enforcement by Justice as well as ICC. Justice officials told us, however, that Justice's enforcement role was limited primarily to prosecution of federal violations, in accordance with its prosecutorial priorities and discretion, and that Justice does not have the capacity to monitor carriers' activities to identify and investigate potential violations of federal laws related to ICC and its regulations.

Like household goods regulations, we were told by state officials that weight bumping victims could probably take private legal action under appropriate state laws. Also, they said

that lumping violations might be enforceable under state extortion or other laws, but enforcement would generally be subject to local enforcement priorities and discretion.

ICC's enforcement of carrier insurance requirements could be picked up by the Bureau of Motor Carrier Safety in the Department of Transportation, which already has broad responsibility for prescribing and enforcing both federal motor carrier safety and insurance requirements. Although the Bureau may be in a position to assume this ICC function, unlike ICC, the Bureau does not require motor carriers to submit evidence of insurance. While the Bureau would do much less than ICC, we were told by a Bureau official that a recent Bureau study indicated that such ongoing insurance surveillance was not warranted.

In summary, while there are available alternatives to ICC enforcement, it appears that ICC's enforcement expertise and capacity may offer a better potential for proper enforcement. Also, it may not be prudent to consider dispersing ICC's enforcement functions while its areas of enforcement activity are changing as a result of further legislative and administrative deregulatory actions currently pending. Accordingly, it may be preferable to defer any transfer of ICC's major enforcement responsibilities until the status of motor carrier legislation and regulation is more stabilized.

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Congress of the United States
 House of Representatives
 Committee on Appropriations
 Washington, D.C. 20515

August 3, 1983

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Honorable Charles A. Bowsher
 Comptroller General of the United States
 U.S. General Accounting Office
 Washington, D.C.

Dear Mr. Bowsher:

As you know, the Interstate Commerce Commission has had responsibility to enforce federal statutes governing motor carrier, railroad, and other transportation related industries since 1887. During the past several years, with passage of landmark deregulation legislation, we have witnessed probably the most significant restructuring of ICC responsibilities since that time.

One of the areas the Transportation Appropriations Subcommittee has been concerned with is how deregulation has affected the Commission's enforcement responsibilities. Although the deregulation act changed the Commission's enforcement role, they did not eliminate it.

In our view, the Commission appears to be floundering with the question of how to restructure and manage its enforcement program in light of deregulation. During recent appropriation hearings, the ICC was unable to satisfactorily explain its enforcement objectives and priorities, or to give us adequate assurances that its enforcement efforts are having a meaningful impact on uncovering and deterring serious unlawful activities. This makes it difficult for the Subcommittee to justify a funding level for this activity and gives us concern that federal statutes are not being adequately enforced.

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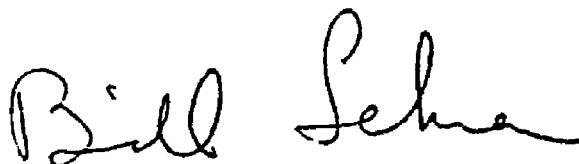
Honorable Charles A. Bowsher

The Subcommittee requests the General Accounting Office to evaluate the ICC's effectiveness in carrying out its enforcement program. Specifically, we request the GAO to determine which activities receive enforcement priority, the standards ICC uses to measure its effectiveness, how those standards are established, and the procedures used to allocate its enforcement resources to meet its goals. We would also like GAO to assess whether the ICC's enforcement priorities are consistent with what the Congress had intended, and whether the ICC enforcement program has been effective in enforcing those priorities. The emphasis of your efforts should be on motor carrier enforcement activities and should compare ICC management practices with those of federal law enforcement organizations with similar responsibilities.

I also request that you identify and assess the feasibility of other options available to the Congress for ensuring proper enforcement of federal statutes in this area. Such options could include transferring ICC enforcement responsibilities to other law enforcement organizations, such as the FBI, state regulatory agencies, and local police.

I would like your staff to brief the Subcommittee on the results of your work by mid-December. At that time, agreement will be reached on additional reporting needs. The Subcommittee looks forward to working with your office on this important and timely issue.

Sincerely,



William Lehman
Chairman
Subcommittee on Transportation
Appropriations

GAO CATEGORIZATION OF MAJOR ICC ENFORCEMENT AREASLOSS AND DAMAGE, OVERCHARGES, AND
DUPLICATE PAYMENTS, ETC.

Transportation of property sometimes results in loss and damage to property, overcharges or duplicate payments for such transportation, and nonremittance of C.O.D. collections. The ICC laws and regulations require carriers to establish procedures for handling claims for losses and damages, and for payments of overcharges, duplicate payments and C.O.D. collections, and that such transactions be processed and settled within specified periods of time.

HOUSEHOLD GOODS ABUSES

Shippers of household goods are often victims of abuses by carriers relating to improper charges, untimely delivery, poor service, etc. ICC's regulations impose various requirements on carriers related to weighing of goods, complaint handling, delivery dates, notifications of delivery dates, documentation, etc. ICC regulations also impose conditions on carriers who choose to make binding cost estimates. Under ICC laws, civil penalties may be imposed on carriers for violating household goods regulations and falsifying documents or charging for unnecessary services or services not performed.

WEIGHT-BUMPING

Some carriers, using various techniques, falsely inflate the weight of goods moved in order to increase moving charges. This practice can be a criminal act under ICC law, subject to criminal penalties.

OWNER-OPERATORS

Independent truckers (owner-operators), not regulated by ICC, often lease their trucks and operators to carriers for transporting property and engage in other arrangements. To protect owner-operators against abuses by carriers, ICC laws and regulations require, among other things, that leases specify carriers' responsibility relating to such things as timely reimbursement of compensations, costs incurred, insurance, handling of escrow funds, etc.

LUMPING

Transported property is generally loaded/unloaded under mutual arrangements between the carrier and shipper. In some cases, independent truckers, who prefer to load/unload themselves, are forced by shippers, labor groups, and others, often under threat of violence, to accept and pay for loading/unloading services even when not performed (referred to as lumping). This practice can be a criminal act under ICC laws and is subject to both civil and criminal penalties.

UNAUTHORIZED TRANSPORTATION; INSURANCE
REQUIREMENTS

Under ICC laws, interstate carriers of passengers and property are required to obtain authority from ICC to engage in transportation. In addition, such carriers are required to maintain certain levels of passenger, property, bodily injury, and public liability insurance.

RATE INTEGRITY AND KICKBACKS

Although under recent deregulation measures carriers were given greater flexibility to set rates, ICC laws still prohibit discounts, rebates, concessions, and rate discrimination, which in effect result in charging certain customers rates different from the ICC approved tariff, regardless of the impact on competition. Under ICC laws, such deviations from approved tariffs are subject to civil and criminal penalties. Also prohibited are secret payments made by carriers to employees of shippers, generally in return for selecting the carrier to transport the shipper's property (kickbacks). Collective ratemaking, when approved by ICC, is exempt from antitrust laws.

MERGERS, CONSOLIDATIONS, POOLING

Under ICC laws, carriers are required to obtain ICC approval to merge or consolidate with or acquire property or control of other carriers. ICC approval is also required where carriers agree to pool or divide traffic. Such transactions, when approved by ICC, are exempt from state authority and antitrust laws. ICC generally takes enforcement action when it appears a carrier has gained or is attempting to gain control of another carrier without ICC approval.

ANTITRUST

Under antitrust laws, ICC has authority to enforce antitrust prohibitions against carrier activities resulting in restraint of trade--specifically price discrimination, boycotting other carriers services, acquiring controlling stock in other carriers and purchases between carriers with interlocking relationships. These laws call for civil and criminal penalties for violations. ICC may issue cease and desist orders to achieve compliance. ICC also has responsibilities to prohibit antitrust practices in general.

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used, and the results, appear to be included. However, we found that neither headquarters nor regional officials have developed standards for evaluating the effectiveness of the program. Also, none of the information provided to us has demonstrated how the data system will be used to evaluate the effectiveness of the program against any defined standards. According to an official of the Office of Compliance and Consumer Assistance, procedures for analyzing or evaluating data in the new system had not been addressed as of December 1983.

ICC STAFFING LEVELS

Because the ICC has not established clear and consistent program goals and priorities or periodically tracked and assessed the outcome of its enforcement effort, the Commission has a questionable basis for assessing its enforcement staffing requirements.

The Commission has attempted to justify its staffing requirements primarily on the basis of anticipated workload reductions due to regulatory reform. For example, in ICC's budget justification for fiscal year 1984, the Commission noted that the staff years devoted to enforcement would decrease by 38 percent between fiscal year 1982 and 1984. The justification was that "as deregulation of the motor carrier and rail industries continue to progress . . ., the need for and scope of the Commission's enforcement activities will decrease."

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RECOMMENDATIONS TO THE CHAIRMAN, ICC

To better manage its enforcement program and to develop a sounder basis for its staffing projections, we recommend that the Chairman in conjunction with the full Commission:

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