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**REPORT OF THE
COMPTROLLER GENERAL
OF THE UNITED STATES**

RELEASED



LM101777

**Efficient Railcar Use: An Update
Of The Interstate Commerce
Commission's Compliance And
Enforcement Program**

The Interstate Commerce Commission periodically inspects railroads to make sure they comply with Commission rules and railroad procedures which promote efficient handling of railcars. In 1974 GAO reviewed the Commission's compliance and enforcement program for railcar use and found that improvements were needed.

The Commission recognized many of the shortcomings noted and was taking positive steps to remedy them. GAO has reviewed these actions and has found that, while improvements have been made, the railcar compliance and enforcement program could be further improved.

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

B-139052

The Honorable John E. Moss, Chairman
Subcommittee on Oversight and
Investigations
Committee on Interstate and
Foreign Commerce
House of Representatives

Dear Mr. Chairman:

Pursuant to your request of June 17, 1976, we updated the findings in our 1974 review concerning improvements needed in the Interstate Commerce Commission's railcar compliance and enforcement programs.

As requested by your office, we did not obtain written comments from the Commission on the matters discussed in this report.

We invite your attention to the fact that this report contains recommendations to the Chairman of the Interstate Commerce Commission which are set forth on page 20. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the 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 will be in touch with your office in the near future to arrange for release of the report so that the requirements of section 236 can be set in motion.

Sincerely yours

A handwritten signature in black ink, appearing to read "Thomas A. Stebbins".

Comptroller General
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
ICC	Interstate Commerce Commission

CHAPTER 1

INTRODUCTION

The Interstate Commerce Commission (ICC) was created in 1887 to protect the public from monopolistic railroad practices. Its authority has been strengthened and the scope of its jurisdiction broadened so that it now has overall responsibility to regulate interstate common carriers and help implement the Congress national transportation policy, which is to develop, coordinate, and preserve a national transportation system.

ICC is comprised of 11 members who are appointed by the President and confirmed by the Senate. The Chairman is designated by the President and the Vice-Chairman is elected annually by the other nine commissioners. The Commission has a staff of about 2,100, of which three-quarters are in its Washington, D.C., headquarters. There are 6 regions, each headed by a regional director, with 79 field offices throughout the country. (See app. I.)

ICC oversees railroad industry financing, reviews track abandonment proposals, regulates freight rates, and also works to make sure that the Nation's railcar fleet is used efficiently. Whenever an equipment shortage, traffic congestion, or other emergency occurs, ICC tries to improve the situation by issuing car service orders governing the use, control, supply, movement, and distribution of railroad equipment. The Interstate Commerce Act (49 U.S.C. 1 et. seq.) explicitly requires railroads to obey ICC directives on railcar use.

For example, when the United States sold 422 million bushels of grain to the Soviet Union in August 1972, ICC issued a number of car service orders to speed the movement of railcars and to equitably distribute cars to all shippers. One such order required railroads to get cars to shippers for loading and forward them to their destination within 24 hours. Further, when traffic at gulf ports became congested, ICC imposed embargoes against accepting grain or moving it to these ports until conditions improved.

Such action is intended to alleviate railcar utilization problems. Despite these actions, ICC has continually faced the problem of freight car shortages--periods when railroads are unable to meet shippers' demands for freight cars. Association of American Railroad 1974 statistics showed an average freight car moved, loaded or empty, only about 12 percent of its time and a total distance of 57 miles

a day. The remainder of the time is consumed by loading and unloading operations, in-terminal movement, train assembly, or standing idle. We believe a small increase in car handling efficiency could help to alleviate car shortages.

COMPLIANCE AND ENFORCEMENT

Compliance

ICC's Bureau of Operations is responsible for compliance activities. Operations (1) initiates and administers the rules and regulations involving railcar service and (2) inspects railroad operations and records to determine compliance with applicable laws and regulations. In fiscal year 1976 Operations had 74 field staff assigned to investigations (64 car service agents and 10 transportation specialists) whose functions include monitoring railroad operations.

Car service agents play an important role in promoting railcar handling efficiency. They periodically inspect railroad facilities and records to determine whether railroads comply with (1) their own service rules and practices, (2) ICC service orders and embargoes, and (3) ICC rules and regulations on demurrage. 1/ These inspections are ICC's primary means of determining whether railroads handle railcars efficiently.

Enforcement

ICC's Bureau of Enforcement staff of 84 is responsible for enforcing actions when Operations field staff detect violations. The Director of Enforcement has been given full authority to decide what sanctions should be imposed. Enforcement generally negotiates a monetary settlement with the violators or seeks civil or criminal prosecution. Before October 1974 all enforcement actions against railroads were handled by headquarters staff and regional counsels handled actions against motor carriers. Although regional counsels began handling some enforcement actions against railroads after 1974, proposed settlements were not made until headquarters concurred.

1/ The penalty charged a shipper for detaining a freight car.

SCOPE OF REVIEW

In 1974 we reviewed ICC's railcar service compliance and enforcement program and found that improvements were needed. In March 1975 ICC told us that they recognized the problems and that corrective action was underway or would be taken. Because of ICC's reply, we decided to monitor the actions and not issue a report.

ICC cited our 1974 findings in its own report on compliance discussed during congressional hearings in February 1976. As a result, in June 1976 the Chairman of the House Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, requested that we report on (1) what we found in 1974, (2) ICC action since 1974, and (3) the current status of the railcar compliance and enforcement program.

During our 1974 review we examined railroad compliance and enforcement records and statistics and reviewed policy and operating practices at ICC headquarters in Washington, D.C., and in three of its six regions--region 2 (Philadelphia, Pennsylvania), region 4 (Chicago, Illinois), and region 5 (Fort Worth, Texas). We met with the executive director of the Association of American Railroads, ICC officials, and officials of rail and shipping firms. Also, we accompanied ICC car service agents on compliance inspections in Illinois, Michigan, Minnesota, Ohio, Pennsylvania, Texas, and Wisconsin. During this update we again reviewed the information available at ICC headquarters and held discussions with ICC officials. We also accompanied a car service agent on a Maryland compliance inspection.

CHAPTER 2

PROBLEMS IDENTIFIED IN 1974

In 1974 we found problems with the Interstate Commerce Commission's compliance and enforcement programs. Railroad operations were not effectively monitored because there were not enough car service agents and because compliance activities were not adequately planned and supervised. Fines assessed against violators were often only fractions of the maximum penalties allowed by the Interstate Commerce Act, and many violations resulted in no enforcement action at all.

ADDITIONAL CAR SERVICE AGENTS MAY BE NEEDED

In 1974 we found that additional car service agents may have been needed if ICC was to maintain a satisfactory inspection program. We found that although car shortages increased, the number of staff ICC had working on the problem decreased and that car service agents were unable to complete the number of inspections determined necessary.

ICC saw a need for additional car service agents, but its efforts to obtain them were not always approved by the Office of Management and Budget. Office of Management and Budget actions on ICC requests for additional agents for fiscal years 1972-75 are shown below.

	<u>Fiscal year</u>			
	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>
Additional car service agents requested	20	18	8	8
Positions allowed by Office of Management and Budget	0	13	7	0

During 1970 congressional hearings the Chairman of ICC pointed out that in 1960 when the average daily freight car shortage was about 1,500 cars, it had 74 car service agents. Throughout the 1960s the car shortage consistently exceeded 1,500 cars--reaching over 10,000 cars a day in 1969--but the number of car service agents declined to 49. During fiscal year 1971, the shortage sometimes rose to more than 15,000 cars a day, and in 1973 the shortage was the most severe in history, reaching over 42,000 cars. ICC began to increase the number of car service agents during fiscal year 1973, but by the end of fiscal year 1974 it still had only 66 agents.

Car service agents improve railcar use primarily through compliance inspections at railroads. Each car service agent is assigned to periodically inspect a group of railroad agency (where billing and accounting functions occur) and yard locations. The car service agent assigns an inspection frequency to each location based on his assessment of the locations' overall importance.

As shown below, in the 3 regions we visited in 1974, only 32 percent of 6,531 locations had been inspected in accordance with established frequencies. Inspections were delinquent at 39 percent and for 29 percent the records were insufficient for evaluating compliance with the inspection schedule.

	<u>Region 2</u>	<u>Region 4</u>	<u>Region 5</u>	<u>Total</u>	
				<u>Number</u>	<u>Percent</u>
Locations in- spected accord- ing to schedule:					
Annual in- spections	92	167	482	741	11
1- to 4-year interval inspections	<u>289</u>	<u>384</u>	<u>701</u>	<u>1,374</u>	<u>21</u>
	<u>381</u>	<u>551</u>	<u>1,183</u>	<u>2,115</u>	<u>32</u>
Locations delinquent by under two years:					
Annual inspec- tions	180	240	506	926	14
2-4 year in- terval in- spections	<u>126</u>	<u>164</u>	<u>248</u>	<u>538</u>	<u>8</u>
	<u>306</u>	<u>404</u>	<u>754</u>	<u>1,464</u>	<u>22</u>
Locations delinquent 2 or more years:					
Annual inspec- tions	270	264	110	644	10
2-4 year in- terval in- spections	<u>164</u>	<u>133</u>	<u>125</u>	<u>422</u>	<u>7</u>
	<u>434</u>	<u>397</u>	<u>235</u>	<u>1,066</u>	<u>17</u>
Insufficient records	<u>411</u>	<u>1,242</u>	<u>233</u>	<u>1,886</u>	<u>29</u>
Total	<u>1,532</u>	<u>2,594</u>	<u>2,405</u>	<u>6,531</u>	<u>100</u>

At the beginning of each fiscal year, the Bureau of Operations prepared a work program showing the number of compliance inspections each region was expected to complete during the year. The program was based on staff available rather than on the frequency schedules prepared by the car service agents. In 1974 agents at the locations we visited were able to complete only 63 percent of the programmed inspections for fiscal years 1971-74. Even if all programmed work had been completed, two of the three regions would still not have completed all of the inspections required by the frequency schedules.

More frequent inspections needed

In 1974 we (1) observed car service agents making routine compliance inspections and (2) reviewed reports of inspections being processed. On the basis of this review, we concluded that more frequent inspections were needed.

The Gulf Port of Houston had extreme railcar congestion throughout 1973, much of which was caused by unloading delays at grain elevators. As a result, elevator firms at Houston and the neighboring Ports of Galveston and Texas City were assessed \$11.2 million in demurrage penalties. Car service agents at Houston, however, were unable to investigate whether demurrage charges were paid because of an unusually large volume of rail traffic in the Houston area which significantly increased their workloads. In May 1974 we found that these firms had not paid about \$5 million of the penalties because they contended that the railroads had contributed to the unloading delays. An important part of compliance inspections is to ascertain that demurrage is accurately assessed and promptly collected--otherwise it cannot improve car handling efficiency.

As of January 1974, 26 of the 30 required inspections had not been made in the Detroit, Michigan, area, 17 of which were delinquent for 4 or more years. In March 1974 we observed an inspection at one of these locations, a rail agency serving the automobile industry. Although the agency had been scheduled for annual inspections, the last inspections were in March 1969 and May 1965. The March 1969 inspection report described several practices contributing to inefficient car use, such as 3-1/2 month delays in developing demurrage records, errors in computing demurrage, and delays in filling car orders.' Commenting on the seriousness of the deficiencies found in 1969 and the length of time since the last ICC inspection, the service agent reported:

"It was particularly significant that nearly 4 years has elapsed since the last agency check at

this prominent freight office in inter-Detroit, Michigan. Without question some of the shortcomings noted in this report might have well been corrected had investigations been made on a more frequent basis."

Yet it was still 5 years before another inspection was made, and any corrective action taken since the 1969 inspection was not lasting because inspectors found similar problems in March 1974. The agent found that the carrier was about 3 months behind in preparing demurrage records, some demurrage and storage charges were understated, and about 30 percent of the 142 cars used by smaller industries during March were excessively delayed. As a result, ICC conducted a full-field investigation and in October 1974 the carrier paid a \$15,000 fine under the Federal Claims Collection Act (31 U.S.C. 951).

COMPLIANCE ACTIVITIES NEED BETTER PLANNING AND SUPERVISION

In 1974 ICC relied on each car service agent to independently plan and execute his assignments. Agents received little direct supervision and were evaluated only annually. Agents were not uniform in their inspections and did not always do the work required by Bureau of Operations' guidelines. Agents also were not adequately maintaining the required records to show the status of their inspections.

Need for increased evaluation of agents' activities

Agents' completed assignments were only evaluated annually during a 2- to 3-day period. Agents often did not follow inspection guidelines and were not uniform in their amount of work and inspection methods. Regional officials did not review the inspection frequencies assigned by car service agents and did not evaluate agents' decisions, such as selecting assignment priorities.

Besides the annual inspection, supervision by regional officials was limited to reviewing inspection reports. Inspection reports, however, did not disclose information on the scope or type of work and included only matters the agents chose to report.

For example, we observed inspections by 9 agents at 11 locations in 1974. At one location the car service agent could not evaluate compliance with car service orders because the records were incomplete, even though this same deficiency was disclosed during an inspection made 1 year

earlier. At the conclusion of the 1974 inspection, local railroad officials verbally assured the agent that complete records would be prepared, but the agent did not seek written assurances or notify higher railroad management officials. At a minimum, written assurances seemed warranted because of the seriousness of the deficiency and prior non-compliance.

The scope of agents' inspections and practices used often differed. Additionally, work required by Operations' guidelines was sometimes abbreviated or omitted. We found that:

- In five cases violations of car service orders were not discussed with railroad officials because the agents felt the number of violations were not sufficient to warrant formal enforcement action.
- In six cases the agents did not follow up to see if previously disclosed deficiencies had been corrected.
- In eight cases the agents did not test the accuracy of manually prepared demurrage records against source documents.
- In only six cases did agents verify that demurrage charges had been properly billed, and only two agents verified that the demurrage charges were collected.
- In only four cases did agents coordinate examinations of their records with physical inspections of cars being handled.
- In four cases the agents did not determine if railroad agency officials knew of current ICC car service orders.
- In eight cases the agents did not evaluate the efficiency of car repair or cleaning. Service orders require that light repair or cleaning be done within 24 hours after cars are placed on repair or cleaning tracks.
- In five cases the agents did not evaluate compliance with rules that require cars to be returned to the owning carriers.

Operations' guidelines provided that inspection frequencies were to be 1 to 4 years, based on the responsible car service agent's judgment. In setting the frequencies, agents were to consider several factors, such as volume of traffic, prior performance, and other characteristics that might cause inefficient car use. As mentioned earlier no supervisory review was made of the inspection frequencies. Since the agents generally did not provide the regional offices with the rationale for frequencies, adequate data was not available at the regional offices to make such reviews.

As shown below the only data generally available at the regional offices was on volume of traffic handled at each location.

<u>Region</u>	<u>Location</u>	<u>Monthly volume of cars handled</u>	<u>Inspection frequency</u> (years)
2	Lima, OH	142	1
	Aberdeen, MD	52	1
	Portsmouth, VA	240	1
	Reading, PA	1,211	3
4	Aurora, IL	1,356	4
	Muncie, IN	33	1
	Logansport, IN	125	1
	Roseport, MN	559	4
5	Gutherie, OK	132	1
	Festus, MO	108	1
	Lincoln, NE	690	2

A location with a very small volume of cars handled would not seem to warrant an annual inspection. However, it may be that other location characteristics, such as switching requirements, may justify the inspection frequency. Since the frequencies provide the basis for the workloads of the car service agents, regional officials should have reviewed them.

Assignment records were not updated

Each car service agent was required to maintain a current control record of his assignments to show each location for which he was responsible, the recommended inspection frequency, and the dates of the last inspections. Copies of the control records were furnished to the regional directors. If these records were current, the workload of each car service agent could be readily appraised. However, as shown below, the records were not being adequately maintained.

	<u>Region 2</u>	<u>Region 4</u>	<u>Region 5</u>
Total inspection locations	1,532	2,594	2,405
Locations not included on records	121	177	2
Locations for which date of last inspection was incorrect or missing	402	339	65
Locations listed which were no longer operational	-	115	-

Current control records are needed so agents can monitor their own workloads as well as provide information for supervisory evaluations.

Need for data on time needed for inspections

The actual time devoted to compliance inspections was not available because car service agents did not report how they spent their time. In preparing work programs, ICC used a time standard of 10 hours per inspection, but none of the regions reviewed completed the programmed number of inspections. For example, region 2 completed only 1,819 of 4,120 programmed inspections (44 percent), and region 4 completed 1,871 of 3,191 (59 percent).

Functional time reporting would also have provided ICC with information on inspection time actually used, thereby enabling it to more realistically program inspections and assess regional programs in other areas. For example, each year some car service agents must submit information on the start and expected intensity of grain harvests in their areas. ICC anticipated that this would require only a nominal amount of time, but some agents devoted extensive time by visiting grain fields, attending meetings, and talking with farmers and grain elevator personnel. Without functional time reporting, the amount of effort spent by individual car service agents on this task could not be determined.

ENFORCEMENT AUTHORITY NOT FULLY USED

In 1974 we found that fines assessed by the Bureau of Enforcement were typically only a fraction of the maximum penalties allowed by the Interstate Commerce Act. Also,

many violations resulted in no fines at all. This was inconsistent with ICC policy, which maintained that to be effective, a railroad car service order must be vigorously and properly enforced and include substantial penalties for violations.

The act stipulates that violators of car service orders are subject to civil penalties of \$100 to \$500 for each violation and \$50 for every day the violation continues. Examples of violations include railroad failure to:

- Forward empty freight cars either directly to the owning railroad or in its direction.
- Load and unload railcars within the required time.
- Remove empty cars after they have been released by consignees.
- Arrange for the timely repair of damaged cars.

Penalties assessed for many violations were less than maximum

When a sufficient number of service order violations have been detected and reported by the service agents the matter was referred to the Bureau of Enforcement which assessed a civil penalty against the railroad. If the railroad disagreed with the penalty, Enforcement attempted to compromise the penalty under the Federal Claims Collection Act of 1966, which authorizes agencies to settle claims under various circumstances, including when such action would advance the objectives of an agency's enforcement program. If Enforcement could not reach a settlement with the railroad, it resorted to prosecution in the courts through the Department of Justice. Enforcement's policy, however, was to seek the maximum penalties a railroad was willing to pay without going to court.

During fiscal years 1969-74, ICC collected about \$2.5 million for car service order violations and settled an average of about 15 cases a year. The settlements reached in the cases, however, were a small fraction of the maximum penalties that could have been assessed. For example, an Enforcement analysis of 30 cases settled during fiscal years 1971-74 showed the

- average settlement was \$238 per violation,

--maximum penalty of \$500 per violation was not used in any of the cases, and

--\$50-a-day continuation penalty was never imposed.

In all cases, imposing the continuation penalty would have substantially increased the railroads' penalties.

The Directors of the Bureaus of Enforcement and Operations told us they believed the settlements were substantial and proper for the extent of the violations committed and had resulted in improved compliance with car service orders. The Director of Enforcement said the \$500 maximum penalty per violation and the \$50-a-day continuation penalty were not normally imposed because the penalties would be more than the railroads were willing to pay. He stated that if Enforcement had to resort to court action the penalties the courts imposed on the railroads would be nominal.

Penalties not assessed
for many violations

The objective of all car service orders is to improve use of railcars, and ICC considered each car not handled in accordance with an order as a separate violation. The extent of each violation was measured by the number of days the car had been handled improperly.

Beginning in April 1970, car service agents were directed by Operations to file reports of violations only when 5 percent or more of all railcars checked were in violation. Further, the agents were only to report the details of serious violations--cars in violation for 4 or more days--and attempt to obtain corrective action on all other violations through discussions with local railroad officials.

In 1974 Bureaus of Operations and Enforcement officials told us that these changes were made because (1) they were inundated with numerous reports--many dealing with few violations--which made their workloads unmanageable and (2) eliminating violations of less than 4 days would result in more solid cases that would be less subject to challenge by the railroads and easier to prosecute, if necessary.

We believed that allowing railroads to hold cars 3 days longer than necessary, without fear of penalty, was inconsistent with the purposes of the car service order and with ICC's stated desire to enforce service orders vigorously.

CHAPTER 3

ACTIONS TAKEN BY ICC SINCE 1974

In our 1974 draft report we made several recommendations to the Interstate Commerce Commission on improvements needed in its compliance and enforcement programs. ICC has generally acted in accordance with these recommendations. Improvements still needed are discussed in chapter 4.

SUPERVISION OF AGENTS' ACTIVITIES

1974 draft report recommendation:

Car service agents' activities need closer supervision. Agents should be required to report the details of work done and completed assignments should be reviewed and evaluated. If excessive workloads exist, the agents should be guided in selecting the workload warranting the greatest priority.

Because service agents work independently, close personal supervision is difficult. However, since 1974 ICC has taken steps to provide the service agent with more supervision. Also, ICC began an operational review program whereby management teams were sent to all regional offices to inspect and evaluate their programs. These teams helped regional directors develop skills necessary to better supervise service agents. ICC plans to continue the operational reviews.

ICC also improved the supervision of railroad agents somewhat by filling an assistant regional director position with a person with a railroad background. In two other regions, where the directorate have motor carrier backgrounds, an experienced railroad person supervises the car service agents. Bureau of Operations personnel told us that while they were not fully satisfied with progress in supervision, it was probably as good as possible with the current staffing.

ICC also appointed a 10-man team from Operations to submit recommendations on policies and procedures they believed should be adopted as standard inspection guidelines, including (1) improved investigative and reporting techniques and (2) a checklist for use by agents to insure uniform inspections and provide better means to evaluate agents' work and railroad performance. As a result ICC implemented a new checklist for railroad agencies and initiated development of a checklist for railroad yards.

ICC continues to gather information on field work by

means of a monthly reporting system. The system keeps Operations informed on the number of tasks performed but not the time taken for each task. Such information is included on each inspection report but not used in the monthly report. Information on the time used for agent's other tasks is not compiled.

ICC also planned to have all service agents attend a 3-week training course covering all aspects of investigative techniques. We were told that about half of the service agents completed this course. Because of a planned change in ICC's enforcement program, service agents may no longer be required to make investigations; 1/ therefore, additional agents would not take the course.

1974 draft report recommendation:

Require car service agents to present data considered in establishing the inspection frequencies for rail and yard locations. Regional officials should evaluate frequency determinations.

In 1976 ICC started a new system of setting inspection frequencies. Agencies and yards are grouped into three categories, those

- locations normally requiring 2 or more days to inspect are inspected at least annually,
- locations normally requiring 1 day to inspect are done at least every 2 years, and
- locations normally requiring about half a day to inspect are done every 3 years.

Known trouble points receive first priority. Previously, inspections were made at 1-, 2-, and 4-year intervals, the frequency determined primarily by the number of railcars being handled.

The agents usually determine frequencies. using Operation's Field Staff Manual criteria, and their supervisors evaluate the schedules.

1/ Investigations are those inquiries involved with or anticipating an enforcement action. Inspections are used synonymously with checks--the routine inspection.

FOLLOWUP ON VIOLATIONS

1974 draft report recommendation:

Develop a better followup system to insure that deficiencies found during inspections are resolved. Rail officials should be provided with a written report of inspection findings and recommendations, including minor violations of car service orders and should be asked to respond in writing after deficiencies have been resolved.

Operation's Field Staff Manual requires that service agents' reports to ICC headquarters show all inspection deficiencies and actions taken or planned by the railroads. Minor deficiencies do not have to be formally reported to the railroad if satisfactory corrections can be made through the service agent's own action. If, in the agent's judgment, deficiencies are serious--such as service order violations--or the agent does not believe the railroad can correct a minor problem, his report explains the problem in detail and recommends what further action is needed. Headquarters' officials told us that if they also believe the deficiencies are serious, a formal letter is sent to the railroad. Railroads must then respond in writing to these letters.

EVALUATION OF ENFORCEMENT POLICY

1974 draft report recommendation:

ICC should evaluate the activities of the Bureau of Enforcement; also, where ICC's enforcement policy is not consistent with that of its staff, ICC should give Enforcement sufficient policy guidance to enable it to carry out the enforcement program in the expected manner.

Since 1975 ICC has evaluated its compliance and enforcement problem and in October 1976 outlined a revitalized program and organizational change to implement it.

In June 1975 the Chairman requested a comprehensive study of ICC's compliance program. This study concluded in October 1975 that:

"There exists an almost total lack of central policy development and coordination with respect to the compliance program * * *."

* * * * *

"The principal weaknesses that we have found in the Commission's compliance program and the organizational units are similar in many respects to those identified in the earlier studies and more recently by the General Accounting Office [refers to our 1974 draft]. We have concluded that these fundamental weaknesses can be corrected only if all compliance functions [which would include enforcement] are lodged in one organization."

ICC, however, did not take any action. During its February 1976 appropriation hearings the Chairman stated that he had appointed the Vice Chairman to look into the matter and report what he thinks ICC's next steps should be.

The Vice Chairman reported in August 1976 that:

"In most respects, as it happens, in basic thrust it [his report] parallels closely the recommendations of the Staff Panel on Regulatory Reform (Fitzwater Report) and earlier surveys or investigations. * * * it emphasizes the need for consolidating authority both in the field and at headquarters and urges that the Bureaus of Enforcement and Operations be merged in a single office of Inquiry and Compliance."

In October 1976 ICC outlined a revitalized compliance program which would combine the investigative and enforcement functions into a new Bureau of Investigations and Enforcement and emphasize, among other things, enforcement of railcar service orders. ICC stated that:

"The compliance policy should result in the concentration of regulatory effort on the more significant matters. To achieve this objective, the Commission will emphasize the following [8] areas:"

* * * * *

"3) Violations of law relating to inadequate railcar service or service orders."

In December 1976 the new Bureau of Investigations and Enforcement was established.

CHAPTER 4

STATUS OF PROBLEMS IDENTIFIED IN 1974:

IMPROVEMENTS STILL NEEDED

Although the Interstate Commerce Commission has improved its compliance and enforcement program, not all the problems have been corrected. Assignment staffing and supervision need to be better managed, and the enforcement program should be evaluated to determine if penalties should be increased.

COMPLIANCE ASSIGNMENT STAFFING AND SUPERVISION

Since the new inspection frequency schedule has just been implemented, we did not evaluate its effectiveness. However, we are concerned that ICC might not be able to accomplish all of the scheduled inspections.

Our 1974 review demonstrated a need for additional car service agents because the number of agents decreased, even though car shortages had increased, and agents were unable to complete their scheduled inspections. Since 1974 railcar shortages have decreased. In fiscal year 1973 the highest daily car shortage was 42,534, while in fiscal year 1976 it was 11,168; in fact, a general surplus of railcars existed in fiscal year 1976. We were told the decrease is attributable to a decline in the Nation's economy rather than to increased efficiency by the railroads and car service agents. When the economy revives, more cars will be needed and the shortage will probably increase, reemphasizing the need for more agents.

The new frequency schedule has a minimum inspection frequency of every 3 years instead of the 4. Unless there is also a decrease in the number of locations that will need the more frequent inspections, it appears that more staff-time will be needed to keep up with the new schedule.

Commission officials told us that if their staff cannot complete inspections on schedule, staff time would be prorated so that a balance of large, medium, and small locations are inspected. Known trouble points would continue to receive first priority. ICC considers the schedule to be only a guideline, and we found that some agents give priority to other assignments. For example, two agents in one region had only completed 14 and 33 percent of their assigned inspections on schedule partly because they were given other assignments.

As shown below, as of September 1976 3 regions had completed only 45 percent of the inspections scheduled for 1976. Twenty percent of scheduled inspections were more than 2 years behind the required inspection date. This situation has not materially improved since 1974. Inspections made according to the schedule increased from 32 to 45 percent, but the number of locations delinquent in their inspections stayed at about 40 percent. The number of locations for which insufficient records were available for us to evaluate decreased from 29 to 15 percent.

Comparison of Inspection Status
For Commission Regions 2, 4, 5 in
1974 and 1976

	<u>1974</u>		<u>1976</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Locations inspected according to schedule:				
Annual inspections	741	11	1,064	20
2- to 4-year interval inspections	<u>1,374</u>	<u>21</u>	<u>1,365</u>	<u>25</u>
	<u>2,115</u>	<u>32</u>	<u>2,429</u>	<u>45</u>
Locations delinquent by under 2 years:				
Annual inspections	926	14	741	14
2- to 4-year interval inspections	<u>538</u>	<u>8</u>	<u>334</u>	<u>6</u>
	<u>1,464</u>	<u>22</u>	<u>1,075</u>	<u>20</u>
Locations delinquent 2 or more years:				
Annual inspections	644	10	553	10
2- to 4-year interval inspections	<u>422</u>	<u>7</u>	<u>548</u>	<u>10</u>
	<u>1,066</u>	<u>17</u>	<u>1,101</u>	<u>20</u>
Insufficient records:	<u>1,886</u>	<u>29</u>	<u>833</u>	<u>15</u>
Total	<u>6,531</u>	<u>100</u>	<u>5,438</u>	<u>100</u>

ICC does not have a reporting system which shows how much time an agent needs to do certain tasks. Such information on how time is used should be compiled and used by ICC as a management tool to evaluate, plan, and use staff resources.

ENFORCEMENT PENALTIES FOR RAILCAR SERVICE ORDER VIOLATIONS

As discussed earlier, ICC, in October 1976, outlined a revitalized compliance program which will emphasize, among other things, enforcement of railcar service orders. The fines being levied, however, are still much less than the maximum available.

We analyzed enforcement cases for service order violations in fiscal years 1975-76 and compared them with the Bureau of Enforcement's analysis of previous cases. The fines levied were still typically much lower than the maximum penalties provided by the Interstate Commerce Act.

During fiscal years 1975-76, ICC collected \$362,525 in penalties from service order violation cases. Our analysis showed the

- average settlement was \$268 a violation.
- \$50-a-day continuation penalty was never imposed, and
- average amount per settlement was \$19,080.

Enforcement originally notified railroads that they were liable for at least \$752,500 in these cases. The \$362,525 collected after negotiations was only 48 percent of the maximum penalties (excluding any continuation penalty). We were told the \$50-a-day continuation penalty was not imposed, but Enforcement used it as a negotiating tool.

We were also told that these out-of-court settlements are more economical. ICC, however, has not taken a car service violation case to court since 1968. Court cases involving service orders showed that for fiscal years 1966-68 the average fine was \$115 per violation and the maximum court-imposed penalty per case was \$6,000. An average court case is estimated to cost about \$5,000.

Bureau of Operations still sets criteria on the number and extent of violations allowed before service agents are required to file a report. Enforcement believes that this eliminates workload caused by minor cases.

CONCLUSIONS

ICC has taken some corrective actions in response to weaknesses identified in our 1974 draft report but more needs to be done. ICC cannot achieve the objectives of its revitalized compliance program for railcar service orders unless current practices are improved.

Better management and supervision of the inspection program of car service agents is needed. Although it started accumulating information on time spent on some assignments, ICC still does not have a functional time reporting system to determine the amount of agent time spent on all assignments. Therefore, because the effect of other assignments is unknown there is no way to determine if existing staff can complete the scheduled inspections. As of September 1976, only 45 percent of the current schedule for 1976 had been completed on time.

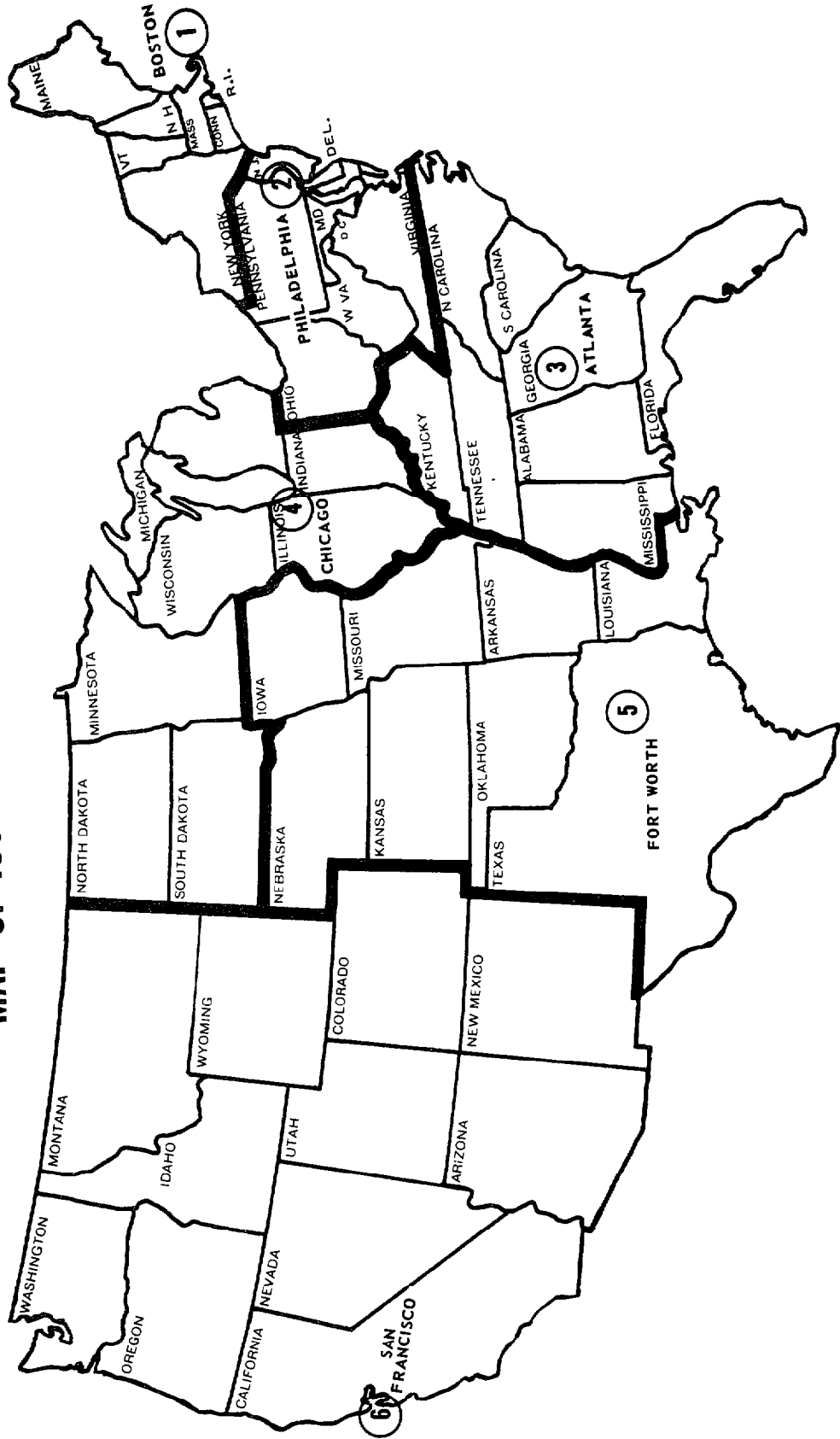
ICC is not assessing the full amount of penalties allowed by law for car service order violations. Because ICC believes settlements, under the Federal Claims Collection Act of 1966, have been successful, no service order cases have been sent to the Department of Justice since 1968.

RECOMMENDATIONS

We recommend that the Chairman of ICC:

- Evaluate the inspection frequency for railroads in terms of staff needed and available.
- Establish a functional time-reporting system for car service agents for use as a managerial tool for reviewing and planning regional workloads.
- Evaluate the effect of the amount of fines being assessed under the enforcement program on service order compliance.

MAP OF ICC'S REGIONAL AREAS



PRINCIPAL OFFICIALS OF THE INTERSTATE
COMMERCE COMMISSION RESPONSIBLE FOR
ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
CHAIRMAN:		
George M. Stafford	Jan. 1970	Present
DIRECTOR BUREAU OF ENFORCEMENT		
(note a):		
Robert S. Turkington (acting)	Nov. 1976	Present
Bernard A. Gould	Jan. 1967	Nov. 1976
DIRECTOR BUREAU OF OPERATIONS:		
Joel E. Burns	Sept. 1976	Present
Lewis P. Teeple	Dec. 1975	Sept. 1976
Robert D. Pfahler	May 1967	Dec. 1975

a/ On December 5, 1976, the Bureau of Enforcement was re-organized to the Bureau of Investigations and Enforcement.

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