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REPORT TO THE CONGRESS

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

New Interstate Truckers Should Be Granted Temporary Operating Authority More Readily

The Interstate Commerce Commission controls entry to interstate trucking to assure adequate service and protect regulated truckers from excessive competition. Although the majority of applications for temporary authority are approved, the process often perpetuates inadequate service and overly protects regulated truckers. This policy should be changed.

To make the temporary authority process more equitable to applicant truckers and provide better service to shippers, changes in legislation as well as Commission policy, guidelines, and operating practices are needed. Granting more temporary authorities would ease entry into regulated trucking and stimulate competition--issues of concern to the Congress as well as the Commission.



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

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To the President of the Senate and the
Speaker of the House of Representatives

This is our report on how the Interstate Commerce Commission can improve its process of granting temporary operating authorities. The report discusses the Commission's policies and procedures for issuing temporary operating authorities and the problems shippers encounter as a result of Commission decisions.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Acting Director, Office of Management and Budget, and the Chairman, Interstate Commerce Commission.

A handwritten signature in cursive script, reading "Thomas B. Steels".

Comptroller General
of the United States

TROLLER GENERAL'S
REPORT TO THE CONGRESS

NEW INTERSTATE TRUCKERS
SHOULD BE GRANTED TEMPORARY
OPERATING AUTHORITY MORE READILY

D I G E S T

Currently the law governing the granting of temporary authority, in effect, provides that regulated interstate truckers must get all new business in their areas before additional truckers are authorized. This policy, once needed to prevent destructive competition, is no longer appropriate, especially considering its effect on small truckers.

Therefore, the Congress should amend the Interstate Commerce Act so that where new traffic is involved or has been moving by means other than regulated truckers, the Interstate Commerce Commission can grant more temporary authorities to new truckers.

Moreover, the current process for granting temporary operating authorities does not always give shippers the service they want, while overly protecting regulated truckers from competition.

Generally the Commission denies applications for temporary authority if authorized truckers are available to handle the traffic, even when traffic is new or previously moved by other means and they would not lose business. (See p. 13.)

The Commission also denies applications for temporary authority when an applicant fails to meet the strict burden of proof that authorized truckers have not met or cannot meet a shipper's needs. At the same time, authorized truckers protesting an application are not required to demonstrate that they are actually meeting or could meet a shipper's specific needs. (See p. 14.)

IMPORTANCE OF TEMPORARY AUTHORITIES

Temporary authority applications are important because they give shippers a way to satisfy their needs and truckers, especially small ones, a chance to begin operations and stay solvent during the 1 to 2 years

required to process a permanent authority application.

The Commission's denial of temporary authority applications caused many shippers to lose sales and customers and/or forced them to use less satisfactory transportation, such as more expensive energy-inefficient private trucking operations. The denials also caused applicants to stop trying to obtain permanent authority and forced some out of the trucking business.

In many cases, the denials unnecessarily protected authorized truckers from losing business because the traffic had previously moved in the shipper's own truck or in other modes.

IMPROVEMENTS NEEDED

The Commission should improve its process for granting temporary authorities and make it more equitable by:

- Requiring protesting regulated truckers to demonstrate that they can meet the specific needs of shippers who are supporting the applications.
- Providing guidelines to applicant truckers and supporting shippers which specify the kinds of information needed for Commission decisions.
- Providing guidelines to its field staff on how to interpret the application criteria and how to handle late or inadequate protests.
- Taking action to see that field staffers have the experience needed to adequately evaluate applications, have reasonable workloads which do not take away from their ability to handle applications fairly, and report the basis for their recommendations.
- Retaining staff evaluations and recommendations on applications for temporary authorities to facilitate internal review of policy implementation. (See p. 26.)

GUIDELINES AND OTHER ACTIONS NEEDED

The Commission has not provided adequate guidelines to shippers on what is necessary to adequately support a trucker's application for temporary authority nor to its staff on the criteria for evaluating applications and protests. (See p. 17.)

Because Commission guidelines for evaluating applications and protests are too general, staff members can interpret them differently, resulting in conflicting recommendations for similar cases. (See p. 19.)

The practices of Commission field staff varied greatly. Time spent on evaluating authority applications varied with the workload at each field office. In fiscal year 1976, the number of applications evaluated by a single staff member ranged from 6 to 281. (See p. 22.)

The thoroughness of field reports reviewed also varied greatly, making it difficult to evaluate how the Commission is implementing policies on applications for temporary authority. Some consisted of a brief sentence or two which was considered useless by Commission headquarters staff. (See p. 23.)

COMMISSION ACTIONS

Although the Commission did not believe that the cases studied by GAO were representative, it agreed with GAO's recommendations and has begun corrective actions. (See p. 27.)

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ABBREVIATIONS

GAO General Accounting Office
ICC Interstate Commerce Commission

CHAPTER 1

INTRODUCTION

The Interstate Commerce Commission (ICC) was established in 1887 to regulate interstate railroad transportation. Since then, ICC's authority has been broadened to include the regulation of almost all interstate surface transportation.

The regulation of trucking began in 1935. The Interstate Commerce Act (49 U.S.C. §§ 1 et seq. (1970)), as amended, exempts from ICC regulation (1) intrastate shipments, (2) transportation of unprocessed agricultural commodities, (3) transportation around most metropolitan centers even if interstate, and (4) trucking done by a company for its own needs. All other truckers offering interstate transportation for hire are regulated in terms of entry into the industry and the type and scope of services they can provide.

ICC controls entry and service levels by granting operating authority only to truckers who show that their service is needed by shippers and by limiting the truckers' authority to carrying specific commodities in geographic areas. ICC's objective is to assure a high quality trucking system that meets the needs of the shipping public, while at the same time protects regulated truckers from excessive competition.

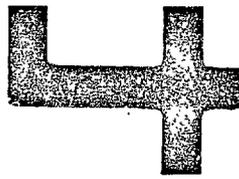
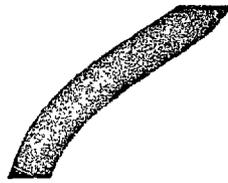
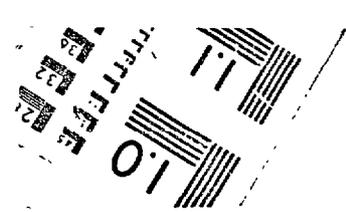
ICC believes that controlling competition by limiting entry is necessary to assure industry stability. This position is a fundamental part of the national debate over proposed regulatory reform. Proponents of reform say ICC regulations are too restrictive and uneconomical. ICC, however, believes that there are intangible benefits and that regulation should be continued.

ICC and the Congress, however, are also looking at entry restrictions and their impact on competition. The Congress is also concerned about the relationship of the small independent trucker to ICC and the regulated trucking industry.

Our review did not specifically address the issues of regulatory reform. Rather, it was directed at determining what effect ICC's policies and practices for granting or denying certain operating authorities have had on meeting shippers' needs. We also considered the effects of denials on applicant truckers.

APPLICATIONS FOR OPERATING AUTHORITY

Truckers can request ICC approval to engage in interstate for-hire transportation by filing for any of three types of ICC authority.



<u>Type of authority</u>	<u>Approval criteria</u>	<u>Duration of authority (note a)</u>	<u>Average ICC processing time</u>
Emergency temporary authority	Immediate and actual emergency	Up to 30 days	About 9 days
Temporary authority	Immediate and urgent need	Up to 180 days	2 months
Permanent authority	Public convenience and necessity	Permanent	1 to 2 years

a/Emergency and temporary authorities may be extended pending disposition of corresponding temporary or permanent authorities.

Emergency temporary authority

Emergency temporary authority applications are intended to meet "immediate and actual emergencies" where existing regulated truckers are not capable of providing the needed service. Examples include elimination or disruption of service by the existing authorized truckers and disasters requiring transportation to meet public health, safety, and welfare needs.

Emergency temporary authority applications are filed at 1 of ICC's 79 field offices having jurisdiction over the applicant trucker. The field office telephones truckers already authorized to provide the service being applied for to determine if they wish to protest the application. The field office then forwards the application to ICC headquarters, together with its field report containing an analysis and recommendation to grant full or partial authority or deny the application.

At ICC headquarters, the application is assigned to 1 of about 12 staff members, called adjudicators, who make another analysis and recommendation. The application and both recommendations are submitted to the three-member Motor Carrier Board, which makes the initial decision on the application.

ICC processing of emergency temporary authority applications require an average of about 9 days. In extreme

Emergency temporary authority is usually granted for up to 30 days, but can be extended to 90 days or more pending disposition of a corresponding application for temporary authority. Any interested party may petition ICC to reconsider the Motor Carrier Board's initial decision. However, an authority initially granted is effective while ICC considers petitions.

Temporary authority

Temporary authority applications are intended to meet "immediate and urgent needs" for service "which reasonably cannot be met" by existing authorized truckers. These situations are not as urgent as the actual emergencies discussed above and may involve such things as a new or relocated plant, new or unusual commodities, or a desire for a different method of distribution, such as switching from rail to truck service.

Temporary authority applications are filed at ICC field offices in the same manner as emergency temporary authority applications. However, notice of filing is provided to authorized truckers through publication in the Federal Register, and written protests may be submitted to the field office within 15 days of the Federal Register's publication. The field office evaluates the application and any protests received and forwards the information to ICC headquarters along with its recommendation. ICC headquarters reviews the material and makes its decision. The process takes an average of about 2 months.

While temporary authority is normally effective for up to 180 days, it can be extended indefinitely pending disposition of any corresponding application for permanent authority. As with an emergency temporary authority, interested parties may petition ICC to reconsider, but an authority initially granted remains in effect while ICC considers petitions.

Permanent authority

Permanent authority applications are intended to meet shippers' needs expected to last for extended or indefinite periods. In a permanent authority application, the trucker must show that "the present and future public convenience and necessity" requires the service. Under the "public convenience and necessity" criteria, ICC has granted permanent authority in a broader range of situations than under the limited "immediate and urgent need" criteria applied

ICC needs; provide more detailed guidelines to its staff on criteria to apply in determining what situations constitute "immediate and urgent need" and "reasonable" service by

Permanent authority applications are filed at ICC headquarters and do not involve adjudicators or the Motor Carrier Board. The permanent authority applications are processed under either an oral procedure involving hearings before an administrative law judge or a "modified" formal procedure requiring only submission of written evidence. In recent years, use of the modified procedure has increased--85 percent of applications in fiscal year 1977. The oral procedure is used only for applications involving many protests from authorized truckers, significant economic impact, or legal precedents.

In fiscal year 1976, application processing time averaged 1 year for the modified procedure. Oral procedure cases decided by the initial administrative law judge's ruling averaged 14 months for processing, while those appealed averaged 23 months.

IMPORTANCE OF TEMPORARY AUTHORITY

Shippers in need of service are usually unwilling to wait a year or more for a trucker to obtain permanent authority. Therefore, most truckers apply for temporary authority to begin operations while their permanent authority application is pending. Also some applicants, particularly small truckers, are unable or unwilling to spend the large amounts for legal fees, often a minimum of \$10,000, for a permanent authority application without first obtaining corresponding temporary authority. Such temporary authority not only provides the trucker with the opportunity to earn income while the permanent authority application is pending but also indicates to the trucker that permanent authority is more likely to be approved.

Historically, ICC did not summarize data on temporary authority applications. In 1976, for the first time, they attempted to compile this data. At the time of our review, ICC's data was incomplete but indicated that, nationally, most applications were approved but about 1,200, or 31 percent, of applications filed in 1976 were denied. The data also indicated that this denial rate ranged from a low of 8 percent to about 53 percent in various States. ^{1/}

In approving or denying applications for temporary authority, ICC has a potentially major impact on shippers' ability to meet their transportation needs in a timely fashion, as well as on applicant truckers' ability to

^{1/}Eight States were omitted because of the small number of applications (under 10).

continue operations while awaiting decisions on their permanent authority applications.

In July 1977, an ICC task force issued a report, "Improving Motor Carrier Entry Regulation," which made some recommendations for making it easier and less expensive for the small businessman to enter into ICC-regulated trucking. The 39 recommendations of the task force, however, were directed primarily at the permanent authority process. ICC appointed a special ad hoc committee to further review the three recommendations which related to temporary authorities. The committee's report will be evaluated by ICC.

SCOPE OF REVIEW

Because of the importance of temporary authorities, we directed our review at determining whether ICC's policies and practices for granting or denying temporary authority assure that shippers' needs for trucking service are met in an efficient, effective manner.

ICC grants the majority of applications for temporary authority but had not evaluated the impact on service because of denials. Therefore, we examined denied applications.

Of approximately 1,200 temporary authority applications filed in 1976 and denied by ICC, we analyzed 217 applications. Our objective was to identify cases where it appeared, based on the limited application data, that a denial could present major problems to the shipper. We then followed up on 51 applications with the applicant truckers and/or supporting shippers in 17 States--Arkansas, California, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, Nebraska, New York, Ohio, Oregon, Texas, Washington, Wisconsin, and Wyoming.

We reviewed other documents and discussed policies and practices for granting authority with officials at ICC's headquarters in Washington, D.C., and at 14 ICC field offices. We also reviewed applicable laws and regulations dealing with the granting of operating authorities.

CHAPTER 2

APPLICATIONS FOR TEMPORARY AUTHORITY DENIED EVEN THOUGH EXISTING SERVICE WAS INADEQUATE

ICC attempts to meet shippers' needs by granting new trucking authority, where necessary, while at the same time limiting such authority to protect authorized truckers from excessive competition. However, we found many instances in which ICC denied temporary authority applications even though existing authorized truckers were unable or unwilling to adequately meet the shippers' needs. In some cases, the authorized truckers were not handling the traffic and therefore would not have lost any revenue if the application had been granted.

ICC's denials caused shippers problems, including inability to market some of their products, loss of sales, unwanted initiation or expansion of their own expensive private trucking operations, and use of other transportation modes which they considered less satisfactory. The denials also caused some truckers to give up their attempts to obtain permanent authority and forced them out of business.

The following sections of this chapter contain illustrations of the problems encountered when ICC denied temporary authority applications. Reasons for ICC denials on each case are not readily available because the Motor Carrier Board does not record the basis for the thousands of decisions it issues annually. Also, in many of the cases we reviewed, both the field staff's and adjudicator's analyses and recommendations had been destroyed because they were not part of the public record which was retained. Chapter 3, however, generally discusses reasons for denial as we were able to ascertain through discussions with ICC personnel.

Although shippers' needs varied greatly in terms of commodities to be shipped as well as geographic areas to be served, in 42 of the 51 temporary authority applications we followed up on, we were able to classify them on the basis of a need for:

- Special trucking equipment and/or special handling not adequately available from authorized truckers (27 cases).
- More truck service on low-value commodities because authorized truckers' were reluctant to haul such items (5 cases).

--Better service because they were located in rural or remote areas and were dependent on a limited number of authorized truckers (10 cases).

SPECIAL EQUIPMENT AND/OR SPECIAL HANDLING
NOT AVAILABLE

In 27 cases there was a need for special equipment and/or special handling not adequately available from authorized truckers. Yet, ICC denied these applications. For example, a shipper of fresh meat needed specialized trailers with rails for hanging beef carcasses and well-maintained interior walls to meet U.S. Department of Agriculture requirements. In supporting a trucker's temporary authority application, the shipper cited examples of an existing authorized trucker's failure to provide equipment capable of passing Agriculture's inspections. In protesting, the authorized trucker complained of infrequent calls for his service which, in his view, did not warrant stationing specialized equipment near the shipper. In an attempt to resolve the situation, the ICC field office conducted a test agreed to by the shipper and authorized trucker. During the test, the authorized trucker did not provide equipment which could pass Agriculture's inspection, so the field office recommended approval of the request for temporary authority.

ICC's denial of the application forced the shipper to rely on its own trucking equipment for much of its shipping. The shipper had hoped to reduce or eliminate the use of private equipment because it was more costly than for-hire service. Meanwhile, the applicant trucker's specialized equipment was underutilized, and he told us he might be forced out of business if ICC also denied his application for corresponding permanent authority.

Subsequent to our visit, the temporary authority was granted on August 17, 1977, to expire on February 14, 1978. In December 1977, ICC said that, while the permanent authority application was still pending, the temporary authority will presumably be extended indefinitely, pending disposition of the permanent authority application.

Another shipper needed special high-temperature bulk trailers for transporting a chemical solution. An authorized trucker had provided service, but his equipment could not maintain the required temperature, and as a result the shipper lost two major customers. In an effort to regain their business, the shipper supported another trucker's temporary authority application, and the ICC field office recommended approval.

As a result of ICC's denial of the application, the shipper was unable to reestablish sales to one customer even though the trucker's corresponding application for permanent authority was granted about 11 months later. The shipper said that other potential customers may also have avoided buying from him because of his poor delivery service and that, while he could not estimate the value of lost sales, it was "very substantial." At the same time, the applicant trucker was unable to use his specially-designed trailers and estimated he lost about \$44,000 in revenues before he was granted permanent authority.

In another case, two distributors of beer and wine had acquired their own trucks because they needed expedited delivery not provided by the authorized trucker. However, the shippers found private trucking too expensive and jointly supported a new applicant for temporary authority. The shippers cited several service failures on the part of the authorized trucker, including slow delivery of keg beer in unrefrigerated equipment which endangered product quality, long delays in shipments causing product shortages, and deliveries during nonwork hours. The existing authorized trucker protested but made no attempt to refute the cited service failures. ICC's field office, however, concluded that existing services were not proven to be unsatisfactory and recommended denial of the application.

As a result of ICC's denial, the shippers searched for other transportation alternatives and obtained service under a new truck/rail operation initiation shortly after the application was denied. However, the shippers said they would still prefer the applicant trucker's service because of shorter delivery time and less product damage. Because the applicant trucker was unable to continue the costly process of applying for authority, he went out of business.

Another shipper, a farmers' marketing cooperative, needed closely-coordinated delivery to supermarkets which purchase its juice products. The shipper said some supermarkets would not accept the unpredictable delivery authorized truckers had provided, and, as a result, they had to divert potential direct shipments to a central warehouse for subsequent redistribution at appointed delivery times. In hopes of reducing use of the warehouse, the shipper supported the temporary authority application of a local trucker who could provide the direct delivery needed.

ICC's denial of the application prevented the shipper from reducing use of the central warehouse until about a year later when ICC granted authority to another trucker

o could provide timed deliveries to supermarkets. The
pper estimated that during this period it cost about
2,000 for extra storage and redistribution.

Finally, a large commercial bank needed expedited han-
ing of checks shipped from smaller banks in neighboring
ates. Because of required changes in handling by Federal
serve banks, delivery of the checks had to meet specific
adlines to avoid loss of revenue.

The existing authorized trucker in the area could not
nsistently meet the deadlines. The bank supported an
plicant trucker who agreed to provide expedited handling
d also cited examples of the existing authorized trucker's
ilure to meet deadlines and resulting loss of revenues.

Because of ICC's denial, the bank continued using the
thorized trucker at an estimated rcvenue loss of about
00,000 a year. A bank official said that, if such losses
ntinued, the bank would have to start charging all or part
the loss to the smaller banks. He said that the bank had
ready lost the accounts of several small banks because of
e slow service, and he feared the loss of more accounts if
ch charges were passed along. As of August 1977, the
plicant trucker's request for permanent authority was
nding.

SERVICE ON LOW-VALUE COMMODITIES NOT AVAILABLE

In five cases we found that shippers were having diffi-
-ty meeting their needs for transportation service because
isting authorized truckers were reluctant to haul at rates
mmensurate with the low-value products involved. For
ample, two shippers of fertilizer wanted to divert ship-
nts from rail to truck in order to deliver directly to
rm sites in neighboring States. According to one of the
ippers, the few authorized truckers in the area had set
e interstate rates at more than twice the level of intra-
ate rates for comparable snipments on a per-mile basis.
e shipper said the rates were too high to move the low-value
ertilizer and that the authorized truckers refused to nego-
ate because the authorized truckers were only interested
hauling higher-value chemicals. The shippers supported
e temporary authority application of a local trucker who
s willing to contract for hauling at the intrastate rate,
ich the local trucker had found profitable during 20 years
operation. Although the two authorized truckers were not
uling fertilizer and would not offer appropriate rates, the
thorized truckers protested the application on the basis
at they should be given the opportunity before a new trucker
s authorized.

As a result of ICC's denial of the application, the shipper obtained and operated his own trucking equipment, which was more expensive than the applicant trucker's proposed service. Also because the shipper could not obtain as much equipment as needed, his deliveries backed up, resulting in the cancellation of \$150,000 worth of initial customer orders during a 3-month period in the peak shipping season. At the same time, the applicant trucker had low equipment utilization due to the seasonal nature of his intrastate hauling of other commodities. The applicant trucker said he was losing at least \$500,000 and possibly up to \$2 million in potential annual revenues because of ICC's denial. As of August 1977, his application for corresponding permanent authority was pending.

In another case, a shipper of wood chips wanted to stop using his own equipment and switch to a for-hire trucker. The authorized trucker in the area, however, had established the interstate rate at a level which exceeded the value of the wood chips. In an effort to obtain for-hire service at reasonable cost, the shipper supported the temporary authority application of a local trucker who said that, based on his experience operating under a previous emergency temporary authority, he could make a profit at a much lower rate. The authorized trucker protested the application even though he had never solicited or handled the shipment of wood chips and refused to negotiate an acceptable rate.

ICC's denial forced the shipper to continue using his uneconomical private equipment. The applicant trucker said he believed that there was little chance that a permanent authority application would be approved, so he did not file one. He also said the denial had restricted his growth--he abandoned plans to buy 7 more trucks, resulting in the loss of at least \$50,000 in potential annual revenues.

As a final example, a shipper of treated lumber products found demand rapidly growing for his products and had problems in obtaining transportation service without long delays while waiting for authorized truckers to provide enough equipment. A major cause of this lack of service was the reluctance of authorized truckers to haul lower revenue freight such as lumber when higher paying loads were available. The shipper had started using his own trucks to supplement the authorized service but did not want to continue in the hauling business because of the extra expense. To replace some of the shipper's private trucks, he supported the temporary authority application of an intrastate trucker who had served the shipper but lacked interstate authority.

ICC's denial prevented the shipper from reducing his own truck use. The shipper said he would support other local truckers for temporary authority in hopes of eventually eliminating his private fleet but that ICC's decision in this case made him doubtful of the final outcome. As of August 1977, the applicant trucker's request for permanent authority was pending.

SERVICE TO RURAL AND REMOTE
AREAS NOT ADEQUATE

In ten cases, shippers in rural and remote areas were dependent on the service of a limited number of authorized truckers which the shippers considered inadequate. For example, shippers located in several small rural communities in two areas of a Western State were dependent on one, or in some cases two, authorized truckers for all their interstate transportation needs. The shippers considered the authorized truckers' service inadequate because of freight damages, delays of up to 2 weeks in delivery to or from major cities in adjoining States, and high rates on small shipments.

In an effort to obtain better service, 92 shippers supported a local trucker's application for temporary authority. ICC's denial of the application, however, forced most of the shippers to continue using the existing authorized truckers, while others bought or continued using their own trucks rather than rely on inadequate service. The applicant trucker also applied for permanent authority, which was pending as of August 1977. He said he could afford the sizable costs involved only because of other nontrucking income.

ICC's analysis of this case showed that, although three carriers were authorized to serve the area, only one protested the applicant's request for temporary authority. One third of the supporting shippers had contended that this carrier provided inadequate service. Also, ICC's District supervisor determined that the carrier's service resulted in circuitous routing of freight. As a result, the District supervisor recommended approval. The Motor Carrier Board, however, denied the application because "no immediate and urgent need was shown."

Another case involved a number of manufacturers and shippers of carpeting who were located in several small communities in remote areas of a Southern State. These shippers did not have adequate authorized service and so some were using their own trucks to haul their products to two cities in the State where they were transferred to truckers for shipment to other States. The shippers supported a trucker's application for temporary authority to provide the needed service.

ICC's denial meant that the shippers had to use the existing authorized truckers or their own trucks. The shippers we talked to said the authorized truckers did not provide much of the needed service; therefore, the shippers continued using their own trucks. The shippers said this was expensive but they had no alternative.

Because of the denial, the applicant trucker believed there was little chance of obtaining permanent authority and did not file an application.

THE EFFECTS OF NOT MEETING SERVICE NEEDS

The preceding examples indicate problems caused by ICC's denial of temporary authority in situations where shippers believed currently authorized service was inadequate to meet their needs. The problems described by shippers included loss of current or potential customers and revenues, increased costs of operation, and the use of less desirable alternative transportation such as their own trucks. At the same time, applicant truckers were prevented from entering the industry in a timely manner and faced problems of underutilized equipment, high costs of filing petitions, and the inability to remain solvent. Some applicant truckers went out of business following ICC denials.

While each of the problems resulting from denials of authority is significant, the effect of the denials on private trucking is of special concern. Private and exempt trucking account for about 56 percent of total intercity ton miles. In commenting on a previous GAO report, ^{1/} ICC said the growing incidence of unregulated transportation in this country has long been a matter of concern at ICC.

Statistics show that private trucking runs counter to national energy conservation goals. Since only the shipper's goods or unprocessed agricultural commodities which are exempt from ICC regulation may be carried, private trucking more often results in empty return trips and wasted fuel.

Although ICC has been concerned about the extensive use of private trucks, its denial of temporary authority applications in many cases has helped perpetuate this trend. Some shippers were forced to begin using private trucks while others were forced to continue using them at increased expense and inconvenience because they felt existing for-hire trucks would not or could not meet their transportation needs.

^{1/}"Energy Conservation Competes with Regulatory Objectives for Truckers," CED-77-79, July 8, 1977.

CHAPTER 3

CHANGES NEEDED IN PROCESSING

APPLICATIONS FOR TEMPORARY AUTHORITY

ICC has denied temporary authority in many instances where authorized truckers were unable or unwilling to provide service considered adequate by shippers. Many of these denials appear to result from provisions of law which give authorized truckers the right to all the freight they can handle and ICC policy which places the burden on the applicant to show that authorized truckers are not providing the needed service. Some denials also appear to result from inconsistent field staff practices and from inadequate guidelines to shippers for supporting applications and to ICC staff evaluating applications and protests.

LAW ENCOURAGES SOME DENIALS

In many cases, denial of temporary authority applications has the effect of preventing shippers from obtaining needed service. This appeared to result from the application of the Interstate Commerce Act, which provides that temporary authority will be granted:

"To enable the provision of service for which there is an immediate and urgent need to a point or points within a territory having no carrier service capable of meeting such need * * *" [Underscoring supplied.] [49 U.S.C. 310a (a) (1970)]

Under this criteria, authorized truckers have a right to all freight they can handle, and applications are generally granted if there are authorized truckers available to adequately handle the traffic involved. This general policy is applied even when new freight or freight previously moving over other means is involved in the application and authorized truckers would lose nothing if the proposed service were authorized. In 1935 when Federal trucking regulation began, its policy of controlled entry was needed to combat widespread destructive competition in an industry trying to grow.

Today, this is particularly a problem in situations where a shipper has long relied on his own trucks or other transportation modes, such as rail, but wants to switch to foreign trucking. In cases where the shipper wants to use a contract carrier--a regulated trucker who dedicates equipment to the shipper--the shipper must clearly show that the protesting authorized truckers who serve the public and do not dedicate equipment cannot meet his need. In most cases, the shipper must show that he has actually given all protestors a recent opportunity to handle the traffic and that they have failed.

The shipper may be using his own trucks or other transportation modes because in the past he found the service of authorized truckers inadequate, although he has no current examples of their failures. Or, the shipper may have initiated private trucking without ever attempting to use authorized truckers because he was convinced they could not provide the specialized services he needs. In both cases, shippers are understandably reluctant to terminate use of their own trucks or other modes and use truckers they feel cannot handle their needs in an effort to prove that existing service is inadequate. When they will not do so, the application is often denied, forcing them to continue using the private service they had hoped to eliminate. Meanwhile, the protesting truckers gain no traffic and the applicant trucker is prevented from operating.

We noted that, in some instances where private trucking or other modes are involved, applicant truckers file for permanent authority despite denial of their temporary authority applications. Even though the permanent authority may be granted, this often requires a year or more and raises a question as to the appropriateness of forcing the shipper to continue using expensive, energy-inefficient private trucking or other less desirable modes in the interim. Also, in some of these situations where we followed up on temporary authority denials, we found that either the shipper or applicant trucker had given up and corresponding permanent authority was not applied for.

POLICY LEADS TO SOME DENIALS

An ICC policy covering temporary authority applications puts the burden of proving lack of authorized service on the applicant trucker and shippers who support him. An ICC official told us that the applicant must show conclusively that there is an immediate and urgent need for service that authorized truckers are not capable of meeting. Generally, this involves showing that all authorized truckers have failed to provide service in specific instances or that the specialized needs of the shipper place the proposed service beyond their capabilities.

Meanwhile, protesting authorized truckers are not required to demonstrate that they actually are or could meet the shippers' needs. This apparent unequal burden of proof is demonstrated by the "protest game," the "proposed service problem," and the "benefit of the doubt" problem.

The "protest game"

Shippers, applicant truckers, and ICC officials told us that there are a number of authorized truckers who play what

may be termed the "protest game." That is, the protesting truckers file a protest to each and every temporary authority application which might relate in any way to their authority, with no regard for either their ability to meet the shipper's needs or their interest in the particular traffic involved. An ICC official told us that these truckers' main objective is to keep all applicants from getting a "foothold" of authority which might ultimately divert some of their current or potential traffic.

In our initial review of 217 cases, we noted that protestors frequently submitted "form" or "boilerplate" protests using the same language in each case. The generalized form of these protests often did not adequately incorporate one or more of the following requirements which, according to ICC's Field Staff Manual, all protests should include:

- A description of the authority on which the protest is based and an exact copy of the specific authority documents issued by ICC.
- A description of the amount and type of equipment the protestant can make available to render the proposed service.
- A statement of the protestant's willingness and ability to furnish the proposed service.
- A statement of whether service has been requested by or offered to the supporting shipper.

ICC staff told us they tend to give less weight to form protests which fail to include the type of information listed in the manual, but as discussed later in this chapter, they differed considerably over which information was really needed. In the 51 cases we followed up on, we noted 9 cases where such form protests apparently carried enough weight to result in denial of the application. For example, in the case on page 9 involving bank checks, the authorized trucker's protest employed generalized language identical to that used in his protests to another temporary authority application we reviewed. He failed to describe the amount and type of equipment that he had available in the shipper's specific area and did not mention his willingness to render service to the specific shipper.

The field staff member who reviewed this application told us ICC regulations only require that a protest be "specific as to the service which such protestant can and will offer," and that protestors are not bound by the Field Staff Manual guidelines. Therefore, the staff member gives some

weight to protests even though they may lack some of the information listed in the manual.

The "proposed service" problem

Another result of the limited burden of proof placed on protestors is that the protesting truckers need only respond to the "proposed service" published in the Federal Register and not to the specific service needs expressed by the shipper in his supporting statement. The Federal Register describes the proposed service only in terms of commodities, geographic service areas, and any major restrictions, such as service limited to one shipper. The shipper's support statement, on the other hand, often explains particular features of the needed service, such as multiple stop delivery or specialized equipment needed. The support statement may also list examples of problems the shipper has had in getting the needed service from regulated truckers.

Some ICC officials said that it would be desirable if all protests were based on a reading of the shipper support statements rather than just the Federal Register notice. An ICC official stated that this is not required since copies of the statement are available only at ICC headquarters and the field office where the application was filed, whereas the protesting truckers may be located in other parts of the Nation. ICC officials further pointed out, however, that it is feasible for most truckers to have their representatives review the statement in either location or at least to call the field office and have the ICC staff read or summarize the statement for them.

ICC officials told us they tend to give less weight to protests which do not respond to the specific shipper needs and alleged problems with existing service detailed in shipper support statements. Of the 51 cases we followed up on, we found 22 cases which included such protests. Because of the general lack of information discussed on page 6, it was not possible to determine what effect, if any, these protests had on the denial. Examples of such protests included:

--In the case cited on page 7 involving a high-temperature chemical solution, the protesting trucker failed to respond to the shipper's claims that it had not maintained proper temperatures enroute.

--In the case cited on page 8 dealing with shipments of beer and wine, the authorized trucker made no

who may already have other service available to them.

The "benefit of the doubt" problem

A final aspect of the differing burden of proof is that the benefit of the doubt often appears to go to the protesting trucker. This occurs in many instances where there is an inconsistency or disagreement between the shipper support statement and the protest statement.

Some ICC field staff told us that the main goal of the temporary authority process is to meet shippers' needs and that in "grey area" cases, it would be better to grant authority when it might not be needed than to risk denying shippers the needed service. However, ICC headquarters staff and some field staff expressed the opposite view--that temporary authority applications should be denied when there is any doubt, since the applicant can always petition for reconsideration. We found that some applicants--particularly small truckers without legal counsel or with counsel unexperienced in ICC proceedings--are not familiar with the petition process and/or are reluctant to spend more time and money in petitioning when authority has already been denied.

The case cited on page 7 involving meat shipments demonstrates the tendency to give the benefit of the doubt to the protesting carrier. Even though the ICC field staff tried to resolve the case by setting up a test period, the authorized carrier's allegations that he had been "set up" for failure by sporadic service requests apparently raised enough doubt to result in denial.

INADEQUATE GUIDELINES AND INCONSISTENT PRACTICES CAUSE SOME DENIALS

ICC guidelines and staff practices are also a factor in the denial of temporary authority applications. It appears that some denials result from:

- Inadequate ICC guidelines to shippers for preparing support statements.
- Inadequate guidelines to ICC staff for evaluating applications.
- Inconsistent practices of ICC staff involved in the application process.

Inadequate shipper guidelines

shippers, ICC guidelines for preparing shipper support statements must be effective in generating the kinds of information ICC needs to make reasonable decisions. However, ICC field staff comments and our review of applications indicate that shippers often fail to submit data needed for decisionmaking.

ICC field staff stated that some of the data requested on the shipper support section of the application form does not correspond to the information ICC Field Staff Manual says it needs. For example, many applications hinge on data provided about the shipper's efforts to obtain service from authorized truckers. The application form in use during the period of our review requested the information as follows:

NAME OF CARRIER	EXHIBIT NO., SUB. NO., SUB NO. TA; "R" No.	FILING DATE	ACTION	DATE OF ACTION
1.			<input type="checkbox"/> GRANT <input type="checkbox"/> DENY	
			<input type="checkbox"/> GRANT <input type="checkbox"/> DENY	
2.			<input type="checkbox"/> GRANT <input type="checkbox"/> DENY	
			<input type="checkbox"/> GRANT <input type="checkbox"/> DENY	
3.			<input type="checkbox"/> GRANT <input type="checkbox"/> DENY	

An ICC official stated that many shippers, particularly those who lack experience in preparing support statements, will simply fill in the five lines and assume they have adequately responded, even though a footnote at the end of the form indicates additional sheets may be attached. In contrast, ICC's Field Staff Manual says that the proper response should be a list of a representative number of service failures. What constitutes a representative number is not defined. Yet we noted instances where ICC headquarters staff recommended denial of application because they considered the number of failures shown was insignificant when compared to the shipper's volume of traffic.

Another weakness of the application form is that it fails to request information ICC considers important. According to the Field Staff Manual, the proper response

Our review showed that the Field Staff Manual is provided only to ICC field staff and is not normally available to supporting shippers and that they very seldom provide this type of information. We also found that some applications were denied when ICC staff questioned the shipper's need for service since this data was not included. In July 1977, ICC partially corrected this situation by modifying the form so that it specifically requests information on "when and by whom load moved."

As discussed later on page 22 even though the ICC field staffs recognize deficiencies in applications submitted to them, they often fail to follow up with the applicant.

Many members of ICC field staffs told us that additional guidance should be provided to applicant truckers and supporting shippers on the kinds of information needed to properly evaluate temporary authority applications. This guidance could be incorporated in a handbook for applicants designed to eliminate the need for costly legal assistance.

Inadequate staff guidelines

More than 100 ICC field staff and 12 ICC headquarters staff are involved in making evaluations and recommendations to the Motor Carrier Board, which renders initial decisions on temporary authority applications. In our opinion, with this many people involved, adequate guidelines for evaluating applications are essential to help assure some uniformity in decisionmaking. This is particularly important since the three board members told us that due to the thousands of applications they handle annually, they must rely heavily on staff recommendations and seldom make more than surface evaluations themselves.

We noted several areas where lack of adequate guidelines resulted in differing criteria being applied by staff in similar or identical situations, such as

- what situations constitute "immediate and urgent need,"
- what is "reasonable service" on the part of existing truckers, and
- how protest should be handled and evaluated.

Immediate and urgent need

The only written guidance available to ICC staff concerning situations that constitute immediate and urgent need is included in the Code of Federal Regulations:

"An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve [1] a new or relocated plant, [2] different method of distribution, [3] new or unusual commodities, [4] an origin or destination not presently served by carriers, [5] a discontinuance of existing service, [6] failure of existing carriers to provide service, or [7] comparable situations which require new motor carrier service before an application for permanent authority can be filed and processed."

We found that ICC staffs differed greatly in their interpretation and application of this paragraph. Some interpreted it very narrowly, assuming that only the first six types of situations listed met the criteria for an application. Some staff interpreted it broadly, assuming that "comparable situations" can include almost anything that has changed the shippers' needs in the short term.

The differing interpretations of ICC staff were clearly demonstrated at three field offices. In each of these offices, there were two staff members responsible for evaluating applications. When we raised the question of whether a shipper's desire to reduce or eliminate use of private trucks was appropriate for a temporary authority application, one staff member in each office said "yes" and the other said "no."

The staff members who said "no" stated that elimination of private trucking is not appropriate for a temporary authority application--this should only be handled under the permanent authority process. They said they would recommend denial of such applications in most circumstances, even if for-hire service is unavailable. In discussing the beer distributor case on page 8 with one of these staff members, he said that this was his only basis for recommending denial, although he did not mention this fact on his report accompanying the application.

The Motor Carrier Board members told us that a shipper's desire to reduce or eliminate use of private trucking is

appropriate for a temporary authority application. However, the board members said that the shipper should explain why his need cannot wait until a permanent authority can be granted.

Reasonable service

There is even less written guidance available to ICC staff on the meaning of the phrase "need which reasonably cannot be met by existing carrier service." Again, we found that ICC staff differed in their views of what constitutes reasonable service, particularly in cases where authorized truckers are serving the shipper, but the shipper alleges that their service is inadequate.

Some ICC staff said that only examples of actual refusal or inability to provide equipment carry much weight in their evaluation. Others said that such factors as delays in providing service, excessive transit time, mishandling and damage to freight, and slow payment of claims can show that existing service is not adequate.

Referring to the preceding section on the ICC guidelines provided to shippers, it should be noted that information on factors other than service refusals is not even requested from the shipper to support a trucker's application, even though ICC staff said they consider such factors in making their recommendations.

Protests

Finally, ICC staff either lack adequate guidelines or fail to follow guidelines on handling and evaluating protests received from authorized truckers. The Field Staff Manual states that protests must be filed within 15 calendar days after the notice of temporary authority application is published in the Federal Register. To some field staff this implies that protests received after 15 days are late and unacceptable. However, the manual also states that protests received after submission of the field report will be returned to the protestor with a notice of rejection.

We found that, while some ICC field staffs return all protests received after the 15-day period, others accept them if the field report has not yet been submitted. Additionally, some ICC staffs said they will hold up their reports a few days to accept late protests if the protestor calls ahead to tell them that the protest will be late. Others said they do not always note in their report that the protest was late. We noted instances where late protests were accepted and used as a basis for denying temporary

authority applications. In one case, the only protests involved were received late.

The Field Staff Manual guidelines on information that should be included in protests were outlined earlier. (See p. 15.) However, the manual does not mention how protests which lack this data should be evaluated. We noted considerable differences among ICC staffers as to the weight assigned to protests that failed to include appropriate information. For example, some ICC staffers:

- Considered an authorized trucker's statement of his total equipment operated nationally sufficient protest evidence, whereas others wanted to know what specific equipment was available locally to meet the shippers' need.
- Would accept a statement that the protestor had appropriate authority to provide the service, but others required that a copy of the authority be attached to the protest and applicable sections noted.

Inconsistent staff practices

The practices of ICC field staffers varied greatly in terms of the time spent in evaluating applications and in following up with applicant truckers and the thoroughness of field reports submitted to ICC headquarters.

The time spent by field staff in evaluating and following up on authority applications depended on the number of applications processed and the number of other duties assigned. In fiscal year 1976, the number of emergency temporary authority and temporary authority applications processed by a single staff member ranged from 6 to 281. This variation in workload appears to result from the geographical arrangement of ICC's 79 field offices. While 6 offices processed more than 250 emergency or temporary authority applications during fiscal year 1976, 10 offices processed fewer than 25 such applications.

In some cases, there were wide variations between offices located in the same State. For example, 1 office in Wisconsin processed 281 applications during the year, while another office in that State processed only 36. These offices were less than 80 miles apart.

Some field staffers responsible for evaluating authority applications had a number of other duties assigned. These varied with the level of staff involved but included handling

complaints, processing trucker insurance forms, office administration, and compliance activities, such as inspecting trucker operations.

Some field staffers said their application workloads and other duties did not allow them enough time to evaluate and follow up all applications as completely as needed. Some mentioned lack of time to try and resolve discrepancies and conflicts between statements of protestors and supporting shippers. They also said that while the Field Staff Manual requires them to advise truckers when application data falls short of the proper responses, this is impractical with the time available. They said that, if they consistently followed the requirement, it could create backlogs and cause neglect of other duties. Yet, lack of proper responses was a major factor in denial of many applications we reviewed. In several of these cases, the field staffers did not contact the applicant to advise him of the deficiencies.

Several field staffers said that time was not available to make visits to shippers who supported temporary authority applications. They said such visits could be helpful in evaluating situations where shippers allege special problems or needs.

The thoroughness of the field reports we reviewed also varied greatly. Many consisted of a few brief sentences which failed to adequately cover the facts of the case, incorporate local knowledge of the situation, or explain the basis for recommendations. For example, one field report consisted of one line, "Duplicate application (sic) previously filed were all denied." ICC headquarters staffers said that such field reports were virtually useless to them. We agree. The example noted failed to explain the current situation and give headquarters the benefit of the field's knowledge. The reasons for previous denials may also have been inappropriate and a reevaluation of the facts in the new application may have resulted in approval.

CONCLUSIONS

The Interstate Commerce Act and ICC's policies and procedures for deciding to grant or deny temporary authority applications may unduly favor authorized truckers by

- providing them the right to handle all traffic, even though it may be new or may have previously moved by other means,
- placing the burden of proof primarily on the applicant trucker and his supporting shipper(s), and

--providing inadequate guidelines to shippers for supporting applications.

Because of the time and expense involved in an application for permanent authority--1 to 2 years and often \$10,000 minimum--truckers, especially small truckers, often use the temporary authority procedure as a stepping stone to a permanent authority. If their temporary authority application is denied, they often do not pursue a permanent authority because they (1) may have needed the temporary authority to stay solvent while the application for permanent authority was being considered or (2) believe that denial of the temporary authority was an indication that the permanent authority would also be denied. We found that the latter may not be true, but some truckers--particularly the small or inexperienced ones--did not know this.

ICC implementation of the Interstate Commerce Act has the effect of requiring that authorized truckers be allowed to handle all the traffic they are capable of handling before additional temporary authority is granted. This barrier to entry of new truckers seems questionable when the traffic involved is new or has moved by other means for long periods of time and authorized truckers would suffer no harm if additional authority were granted. While unnecessarily protecting authorized truckers, the policy often prevents shippers from reducing or eliminating use of expensive and energy-inefficient private trucking.

The Congress, during hearings on the problems of small truckers, and ICC in its July 1977 task force report both expressed concern that small truckers should be allowed to more easily enter into ICC regulated trucking. Granting authority to new truckers, where authorized truckers would not be harmed, could be one means of providing better service to the shipping public and more entry. However, just as authorized truckers are now overly protected, all new business should not automatically be given to new truckers. Instead, ICC should be allowed to decide on the merits of each case. For example, ICC should consider (1) shipper's specific needs, (2) past performance of the authorized trucker, (3) financial condition of the authorized trucker, (4) capabilities of the new trucker, and (5) the potential effect of increased competition.

ICC places a heavy burden on the applicant trucker and his supporting shipper(s) to show that authorized truckers are incapable of providing the needed service. Meanwhile, authorized truckers are not required to clearly demonstrate their willingness and ability to meet the specific needs of the shipper(s). In many cases, authorized truckers

protest applications without reading the shipper's support statement to determine what the needs are and whether or not they really have the desire and ability to meet them. Some authorized truckers try to block all applicants by issuing "form" protests which not only fail to address specific shipper needs but often lack more general information which ICC says protests should include. Form protests and others which did not address specific needs were involved in many denials which created problems for shippers. ICC should modify its policy to place an equal burden of proof on applicants and protesting authorized truckers.

ICC guidelines to shippers on what is adequate to support a trucker's application for temporary authority do not specify what is needed. For example, we found that application denials can be based on inadequate shipper support, even though the shipper correctly used the guidelines provided. ICC should provide guidelines which clearly specify the type and extent of information needed to adequately support an application.

ICC also only provides general guidelines to its staff on how to review and evaluate applications and protests. We found that staffers' interpretations of these guidelines differed and similar cases could be recommended either for approval or denial based on the individual staff member's interpretation of the guidelines. In many cases, the field staff's recommendation was reversed by the headquarter's adjudicator. We could only generalize about the reasons for both the field recommendation and the adjudicator's reversal since neither routinely maintained data showing the basis for their actions. More detailed guidelines, especially addressing such specific issues as a shipper's desire to switch from private to regulated trucking, should be provided to ICC staff.

The time available to field staff for evaluating and following up on temporary authority applications varies with the wide variation in workloads and duties of the staff. Some staff lacked adequate time to follow up on all applications as directed in ICC's Field Staff Manual. The thoroughness of field reports also varied greatly; some were so brief as to be useless to ICC headquarters. ICC should reduce the variance in workloads and take other necessary actions to assure adequate time for evaluation, followup, and preparation of thorough field reports.

Finally, field reports and adjudicator's analyses of applications are not retained at ICC headquarters. A retention policy should be established to permit internal review of staff actions and the basis for staff recommendations.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend the Interstate Commerce Act so that where the traffic involved is new or has been moving by means other than regulated truckers, ICC can grant more temporary authorities to new truckers. A draft legislative change is included as appendix II.

RECOMMENDATIONS TO ICC

To better assure that its decisions to grant or deny temporary authority help to meet the needs of shippers, we recommend that the Chairman, ICC:

- Require that protestors demonstrate specifically how they are meeting or could meet the individual needs of shippers supporting their temporary authority applications.
- Provide guidelines to applicant truckers and supporting shippers which specify the kinds of information ICC needs in temporary authority applications in order to make reasonable and consistent decisions.
- Provide more detailed guidelines to its staff on criteria to apply in determining what situations constitute "immediate and urgent need" and "reasonable service" by authorized truckers and on handling late protests and evaluating protests which fail to include adequate information.
- Take actions needed to see that field staffers have sufficient time to fully evaluate applications, follow up on deficient applications and discrepancies in support statements and protests, and prepare thorough reports which fully explain the bases for recommendations.
- Retain staff evaluations and recommendations on applications for temporary authority to facilitate internal review of policy implementation, adherence to guidelines, and thoroughness of evaluation and reporting.

AGENCY COMMENTS AND OUR EVALUATION

ICC basically agreed with our recommendations to improve the temporary authority process and began some corrective actions. However, ICC did take issue with the fact we examined only denials and the particular cases quoted in our report. ICC said that it did not believe the cases were representative of the overall temporary authority and emergency temporary authority process.

ICC stated that, since it grants most of the temporary and emergency temporary applications received, selection of denials immediately distorts the overall universe of actions taken on these types of applications. ICC does grant most of the temporary authority and emergency temporary applications received, but ICC has not evaluated its application process to determine what effect denials of temporary authority applications have on providing shippers adequate, efficient service. Our objective was to review temporary authority applications to determine what problems, if any, were encountered by shippers and carriers when ICC had denied applications. We agree that the cases reviewed may not be representative but they do demonstrate that problems exist.

ICC agreed that a legislative change may be necessary to meet the objective of granting more temporary authority to new truckers where the traffic involved is new or has been moving by means other than regulated truckers. In any event, ICC instituted a rulemaking proceeding ^{1/} to investigate the feasibility of permitting motor carriers to serve newly opened plantsites without the necessity of going through the formal application procedures presently required. This proceeding is a step in the right direction but will not help shippers in situations where they have long relied on their own trucks or other transportation modes, such as rail, but want to switch to for-hire trucking.

ICC stated that it agrees with our recommendation that protestors demonstrate specifically how they are meeting or could meet the individual needs of shippers supporting temporary authority applications. ICC is currently addressing the subject of protest standards for permanent authority applications as a result of a recommendation of its task force on motor carrier entry. This should be expanded to include temporary authorities.

ICC concurs in our recommendations to provide better guidelines to (1) applicant truckers and supporting shippers

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

in preparing temporary authority applications and (2) its field staff on criteria to use in evaluating temporary authority applications. ICC established a task force to develop an easy to read pamphlet which will provide guidance in these areas. The estimated date for publication of the pamphlet is March 1978. ICC also plans to establish a formal training program to assure that field staff are well versed in these guidelines.

ICC supports our recommendation that field staff assigned to evaluating authority applications have sufficient time to fully evaluate applications, follow up on deficient applications and discrepancies in support statements and protests, and prepare thorough reports which fully explain the basis for recommendations. ICC has established a Section of Performance Review to evaluate workload and performance of all facets of ICC staff. Also ICC reduced its headquarters staff to provide additional field resources.

Regarding our recommendation on staff evaluations and recommendations, ICC stated that it now requires them to be retained. According to ICC, a review of the procedures will be made to guarantee staff compliance with this requirement. On its own initiative ICC also intends to make these evaluations and recommendations available to the public.

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

DEC 2 1977

Mr. Henry Eschwege
Director
Community and Economic
Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

Subject: Draft Report Titled "The Interstate Commerce Commission Should Allow More Truckers To Operate Interstate To Provide Shippers Better Service" [See GAO note 1, p. 34.]

Thank you for the opportunity to comment on your draft report. We recognize that there is room for improvement in the handling of temporary authorities (TA's) and emergency temporary authorities (ETA's). The Commission has firmly established written procedures for the staff to follow, but these procedures and guidelines to the staff are under active review. Changes necessary to assure consistent handling will be made. Training in the processing of TA's and ETA's will be intensified, particularly with newer employees. Both the Commission staff and the public should certainly have a clear understanding of the application requirements.

The Commission is aware of the strong public interest in the control of entry into the trucking business. A Staff Task Force was established on June 2, 1977, to recommend ways to improve Motor Carrier Entry Regulation. The staff report of July 6, 1977, provided 39 recommendations. Many divergent points of view exist regarding the recommendations and the Commission decided to hold public hearings in Washington, D. C. and also six major metropolitan centers to listen to these views. A report on the testimony from these hearings will be published shortly. The Commission has actively addressed the 39 staff panel recommendations. A copy of the most recent status report prepared for the Commission is provided as Attachment I. Numbers 19, 26, and 27 relate directly to the TA and ETA processes; a clear indication of the Commission's awareness of the importance of these areas. The Commission appointed a special ad hoc committee to further review these items and a copy of the report of that committee is provided as Attachment II. The report will be evaluated by the Commission.

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Although our comments are favorable to the specific recommendations of the draft report, the Commission has serious reservations about many of the statements and conclusions. The title of the draft draws a conclusion which is not strongly related to the recommendations. The draft report is limited to a review of ETA and TA processes, but the title deals with overall entry control philosophy and draws a very broad conclusion. Furthermore, the sample selected for detailed review is quite suspect. Approximately 31 percent of all ETA and TA applications were denied in 1976. Yet the selection of cases to be analyzed is limited to denials. Two hundred seventeen of these denials (18 percent) were reviewed and 51 (4 percent) were selected for detailed analysis. This represents an extremely small number of our total cases. This suspect sample was then reviewed in depth by talking only to those parties against whom the Commission found. No effort was made to assess the potential economic impact upon protestants if the applications were granted. It has been our experience that the loser in a case generally feels that the decision was bad and that unsupported estimates of loss of potential revenue are not reliable statistically.

The table below provides information about the Commission's actions on Temporary and Emergency Temporary Authority Applications for the first nine months of Calendar Year 1977.

<u>January - September 1977</u>	<u>Grants</u>	<u>Denials</u>	<u>Percentage of Grants</u>
Regular ETA's	2,705	799	77
Board Call ETA's	1,684	0	100
Regular TA's	2,739	835	76
Totals	7,128	1,634	84

For Fiscal Year 1977, approximately 8,000 permanent authority applications have been received. 6,038 permanent authority applications were granted in full or in part, 934 were denied, and 826 were dismissed or withdrawn. Of course, some of these applications were filed previous to the 1977 Fiscal Year.

The Commission's interest in considering applications for new authority, whether temporary or permanent, is clearly demonstrated by these statistics.

The particular cases quoted in the draft GAO report are not believed representative of the overall TA, ETA process, and in some cases the analysis conducted was incomplete. The Commission's analysis of each of the cases described is provided in Attachment III to these comments.

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There are also overtones in the report that imply the Commission is merely concerned with protecting existing carriers. Our primary concern is to assure the provision of adequate service. Many potential ETA's and TA's are never filed because the Commission staff is able to locate an authorized carrier able and willing to provide needed service. The Commission's policy statement on compliance, issued in October 1976, emphasizes the priority to be placed on meeting the service obligations.

Concern for small businesses, particularly shippers, is one of the bases for the Commission's continuing emphasis on the provision of service. Small shippers, whose economic leverage is limited, must receive the same quality of service as large shippers. The Commission has recently established a Small Business Assistance Office which is designed to assist small shippers to obtain needed service, as well as to help small carriers or potential carriers to properly apply for authority. This Office complements the work of the field staff in assisting applicants and also supports the TA/ETA specialist "ombudsman." The "ombudsman" is available to answer questions about the status of ETA and TA cases and also to provide guidance to applicants on how to best present their case. Although improvements are always possible, the Commission has taken these strong, positive steps to attempt to provide information and guidance to both carriers and shippers. In spite of our disagreements with the tone and method of the report, the following comments are offered to the specific recommendations.

Recommendation to Congress

"We recommend that the Congress amend the Interstate Commerce Act so ICC can grant more temporary authorities to new truckers where the traffic involved is new or had been moving by means other than regulated truckers."

Although a legislative change may be necessary to meet the objectives of this recommendation, the Commission has instituted a rulemaking proceeding (Ex Parte No. MC-110 titled "Service at New Plantsites") to investigate the feasibility of permitting motor carriers to serve newly opened plantsites without the necessity of going through formal application procedures presently required. Attachment IV is a copy of the notice of this proceeding which was served on October 9, 1977.

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Recommendations to the Commission

1. "require that protestors demonstrate specifically how they are meeting, or could meet, the individual needs of shippers supporting temporary authority applications;"

The Commission is presently addressing the subject of protest standards as a result of recommendation number 2 of the Motor Carrier Task Force. Our Federal Register publications on Motor Carrier Temporary Authority Applications contain the following statement:

"The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information."

This statement reflects the Commission's overall policy. However, because of the "immediate and urgent need" situation involved in dealing with TA's and ETA's, decisions must be made based upon information available at the time.

2. "provide guidelines to applicant truckers and supporting shippers which specify the kinds of information ICC needs in temporary authority applications in order to make reasonable and consistent decisions;"

The Commission supports this recommendation. A Task Force of the Commission's Bureau of Operations, Office of Proceedings, and Small Business Assistance Office has been assigned to develop an easy to read pamphlet which will provide these guidelines. The target date for publication is March 1978.

Moreover, one of the functions of the Commission's field offices has been to help prospective applicants in the preparation of their application. Our permanent application form (OP-OR-9) includes an extensive summary of the kind of evidence that is needed to prosecute an application successfully.

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3. "provide more detailed guidelines to its staff on criteria to apply in determining what situations constitute "immediate and urgent need" and "reasonable service" by authorized truckers, and on handling late protests and evaluating protests which fail to include adequate information;"

The Commission concurs but also feels that this information should be provided to shippers and carriers. This will be included in the pamphlet described in response to recommendation number 2. A formal training program is necessary to assure that field staff personnel are well versed in these guidelines. This program will be established.

4. "take actions needed to assure that field staff assigned to evaluation of authority applications have sufficient time to fully evaluate applications, follow-up on deficient applications and discrepancies in support statements and protests, and prepare thorough reports which fully explain the basis for recommendations;"

The Commission supports this recommendation. The resource requirements for implementing this are obvious. However, action is proceeding on two fronts. First, the Commission has established a Section of Performance Review. The purpose of this unit will be to evaluate workload and performance of all facets of the Commission staff. A quantitative assessment of requirements coupled with an analysis of priorities should permit the reassignment of some responsibilities. In its Fiscal Year 1979 budget request, the Commission recognized the probable nonavailability of additional resources and, therefore, reluctantly reduced the Headquarters staff in order to provide additional field resources within current staffing levels. However, further personnel resources may well be needed.

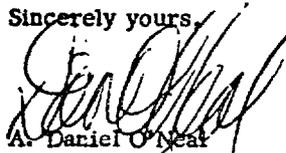
5. "retain staff evaluations and recommendations on applications for temporary authority to facilitate internal review of policy implementation, adherence to guidelines, and thoroughness of evaluation and reporting."

Staff evaluations and recommendations must now be retained. A review of procedures will be made to guarantee staff compliance with this requirement. Furthermore, the Commission intends to make these evaluations and recommendations available to the public. This determination arose as a result of discussing recommendations of the Motor Carrier Task Force and is one of the recommendations contained in Attachment II.

APPENDIX I

In summary, although the Commission basically agrees with the recommendations contained in the draft report, the analysis leading to the conclusion does not seem to consider any of the actions already taken. Further, the GAO draft does not address sufficiently the need for common carriers to provide adequate service. Control of entry into the motor carrier business has been, and will continue to be, a very complicated and controversial subject. The Commission will continue its review of all facets of entry control. The improvements currently being instituted should overcome some of the problems identified in the draft report. Standards, guidelines, and emphasis upon public service missions should help to obtain the most benefit from our limited resources.

Sincerely yours,



A. Daniel O'Neal
Chairman

Enclosures (4) [See GAO note 2, below.]

- GAC notes:
1. Title of draft report was subsequently changed.
 2. The enclosures to this letter are not included due to their length.

APPENDIX II

APPENDIX II

DRAFT AMENDMENT TO

THE INTERSTATE COMMERCE ACT

49 U.S.C. 310 a (a) (1970)

(a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be; provided that the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority in situations involving a new or relocated plant-site or a shipper changing its mode of transportation to regulated trucking without regard to the capabilities of existing carriers and immediate and urgent needs for service to a point or points within a territory. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify but for not more than an aggregate of one hundred and eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

APPENDIX III

APPENDIX III

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

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
CHAIRMAN:		
A. Daniel O'Neal	Apr. 1977	Present
George M. Stafford	Jan. 1970	Apr. 1977
DIRECTOR, OFFICE OF PROCEEDINGS:		
Robert J. Brooks	Mar. 1974	Present
Vacant	Dec. 1973	Mar. 1974
Sheldon Silverman	Mar. 1970	Dec. 1973
DIRECTOR, BUREAU OF OPERATIONS:		
Joel E. Burns	Sept. 1976	Present
Lewis R. Teepale (acting)	Dec. 1975	Sept. 1976
Robert D. Pfahler	May 1967	Dec. 1975