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Selected Views And Issues Related To Regulatory Reform In The Transportation Industry

By

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of the

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Contents

ABBREVIATIONS

CAA	Civil Aeronautics Administration
CAB	Civil Aeronautics Board
FMC	Federal Maritime Commission
GAO	General Accounting Office
IATA	International Air Transport Association
ICC	Interstate Commerce Commission

CHAPTER 1

INTRODUCTION

PURPOSE AND SCOPE

This study of transportation regulatory reform was prepared in response to a request from the Subcommittee on Oversight and Investigation, House Committee on Interstate and Foreign Commerce. The purpose of this study is to:

--State the views of individuals involved in different sectors of the transportation industry.

--Contrast these views with differing views within the industry, the historical development of regulation, and the general arguments for deregulation.

--Raise questions for discussion.

Three Federal agencies are involved in the direct economic regulation of transportation: the Federal Maritime Commission (FMC), the Civil Aeronautics Board (CAB), and the Interstate Commerce Commission (ICC). This report discusses all three agencies in terms of their regulatory impact on the surface, water, and air transport of passengers and goods.

Though the regulatory reform debate encompasses a broad spectrum on regulatory activities, this study is limited by request to a discussion of economic regulation of transportation.

The transportation regulatory debate of recent years has been largely stimulated by persons from both within and outside the industry who advocate major regulatory reform; in essence, deregulation. This position criticizes both the justification for and functioning of transportation regulation, relying on several prime arguments supported principally by economic analysis. To provide a balanced perspective for evaluating the views related in this study, some understanding of this position is necessary. For this reason, chapter 2 briefly analyzes these regulatory reform arguments.

The views within this study were obtained by interviews with approximately 20 individuals involved in various sectors of the transportation industry which are affected by one or more of the three transportation regulatory agencies.

The choice of interviewees was based on three criteria:

1. The individuals were knowledgeable of transportation and regulation and showed an interest through public testimony, through articles, or by participation in interest groups formed to affect transportation regulation.

2. The individuals were representatives of the major trade associations directly involved in one of the major regulated aspects of transportation.

3. Constraints on time and thus on travel made it necessary that most individuals contacted were in the Washington, D.C., area. However, several telephone interviews were conducted with persons outside the immediate area when it was believed they met the other criteria.

Two questions were asked in the interviews:

--What are your perceptions of the regulatory agency which affects your activities; i.e., is it serving a useful purpose and/or is it serving the purpose you feel it was intended to serve?

--What recommendations for change or maintenance of the status quo of the regulatory agency or its functions are desirable?

The interviewees can be classified into two basic categories. The first category, involving the majority of cases, consisted of representatives of special interest groups or trade associations. The second category consisted of knowledgeable individuals who, through their work as transportation lawyers, economists, etc., have gained considerable experience in transportation regulation.

The first category tried to express views representative of a significant portion of their membership. However, because these were consensus views, they cannot be considered inclusive of all members of the group.

The second category were contacted to elicit their personal points of view on regulation. Their suggestions are used largely within this report to clarify and add perspective to other positions as well as present some recommendations for possible change.

A complete listing of organizations and individuals interviewed is provided in appendix I and, whenever pertinent, identified within the body of the report.

Several interviewees discussed some aspects of total deregulation, and additional information was gathered from readings. As mentioned, most arguments for major regulatory reform are based on economic analysis. While the discussion of regulatory reform in chapter 2 cannot be considered representative of the entire school of economic thought concerning deregulation, it does in our judgment, contain the principal issues.

The study covers opinions on the three transportation regulatory bodies from the viewpoints of shippers or users, carriers, and other less easily defined interested parties. Therefore, the number of persons interviewed is not large enough, nor sufficiently random, to constitute a scientific or statistical sampling of the views and recommendations of all persons interested in transportation regulation. Nor can the opinions summarized below be considered an exhaustive list of all possible opinions of those in the industry.

The opinions herein are solely those of the associations or individuals represented and are neither conclusions nor recommendations of GAO or its staff. No attempt was made to verify the facts or motivations which led the interviewees to reach their conclusions and recommendations.

Chapter 2 discusses briefly the unique powers of a regulatory agency and the important arguments for major regulatory reform, or deregulation. Chapter 3 outlines the major perceptions of interviewees on the three regulatory agencies, while chapter 4 presents their recommendations for change. Chapter 5 summarizes the regulatory controversy to the extent it was addressed during the interview and raises some of the questions which are central to resolving that issue.

Appendix I, as mentioned, lists those organizations and individuals contacted. Appendix II outlines the evolution of the three transportation regulatory agencies. It seeks not only to identify when the Commissions were established and what regulatory powers were provided, but also to give the reader some brief understanding of the circumstances which led to the congressional decision to establish the agencies. Appendix III contains the specific details of the legislative evolution. Appendix IV briefly summarizes current regulatory reform activities within the transportation regulatory agencies and as proposed by the administration.

CHAPTER 2

OVERVIEW: THE REGULATORY REFORM DEBATE

This chapter provides an overview of some of the major factors of the current regulatory debate through:

--Providing a brief understanding of the uniqueness of a regulatory agency.

--Outlining some economic arguments which are the basis for most of the major regulatory reform 1/ positions in transportation.

--Presenting two primary approaches toward solving regulatory problems within a framework of major regulatory reform.

The perceptions and recommendations of the persons interviewed, which follow in chapters 3 and 4, should be viewed within this context.

These presentations are, of course, oversimplifications of the arguments for reform and the solutions available. However, they attempt to condense many diverse opinions on major transportation regulatory reform into the primary practical arguments and recommendations which are currently the basis for much of the reform debate.

THE REGULATORY AGENCY

Regulatory agencies are unique organizations in the U.S. Government. Each regulatory agency encompasses some elements of the powers of all three branches of government: legislative, judicial, and executive. Regulatory agencies are subject to less direct control and supervision than other Government agencies, primarily because of limitations on the President's power to remove regulatory officers. The Supreme Court affirmed this position in the Humphrey case 2/ where, invoking the separation of powers doctrine, it found that the President cannot remove officers who are not esentially executive and whose removal has been restricted by the Congress.

1/"Major regulatory reform" in this study refers to decreased economic regulation of transportation, often described simply as deregulation. There are, of course, philosophical and practical arguments for increasing regulation to the point of nationalization and/or strict regulation.

2/295 U.S. 602 (1935).

The Congress has traditionally attempted to establish legislation to regulate industries which either have monopolistic tendencies or provide services deemed essential to the public. Therefore, regulatory agencies, to a varying degree, have been empowered with control over entry and exit (through licensing); ratemaking; and some general business practices, such as consolidation, closures, issuances of stocks and bonds, and discriminatory or improper practices.

FMC, CAB, and ICC generally regulate the carriers of a particular mode. In several instances though, such as with freight forwarders, they regulate businesses not directly involved in carrying passengers or goods.

Chapter 3 briefly describes the major functions of each transportation regulatory agency. The specific economic regulatory agencies, along with major exceptions, are outlined in table 1 on the following page.

THE ARGUMENTS FOR MAJOR REGULATORY REFORM

Support for major modification of Federal transportation regulation, as generally stated, is normally founded in two, not necessarily separate, factors:

A political or social philosophy which advocates minimum government interference in economic matters.

Evidence of significant economic inefficiencies due to the presence of a regulatory structure.

The most practical arguments of those who advocate major regulatory reform in transportation rely primarily on economic analysis. Economic analysis, in the traditional sense, assumes regulation cannot substitute for competition and competition is the most efficient means of allocating resources. Therefore, this reasoning holds that there are two basic conditions where the economic regulation of transportation is justified:

Where the competitive process in a transportation mode or between modes cannot operate in a manner which will effectively allocate resources, such as:

--When there is monopolistic power.

--When there are very large capital investment requirements.

Table 1

Scope of Federal Economic Regulation of

Interstate Transport by Mode

Mode	Authorizing statute	Agency	Functions regulated								Exemptions
			Rates	Carrier agreements	Entry	Service	Exit	Merger	Finance	Reporting	
Railroads	IC Act, Part I	ICC	Max-min-precise	Permitted	PCN 1/	Car service only	PCN, 1/ train discontinued	Controlled	Controlled	Specified	None
Motor trucks	IC Act, Part II	ICC	Do	Do	PCN, 1/ permit	Not controlled	PCN 1/	Do	Do	Do	Agricultural commodities, local transport
Buses	IC Act, Part III	ICC	Do	Do	PCN 1/	Do	Do	Do	Do	Do	None
Domestic water carriers	IC Act, Part III	ICC	Do	Do	PCN, 1/ permit	Do	Do	Do	Do	Do	Bulk commodities
Surface freight forwarders	IC Act, Part IV	ICC	Do	Do	Permit	Do	Not controlled	Do	Do	Do	Shipper associations, minor carrier groups
Petroleum pipelines	IC Act, Part 1	ICC	Do	Do	Not controlled	Do	Do	Not controlled	Do	Do	None
Air carriers:											
Domestic	FA Act	CAB	Do	Not permitted	PCN 1/	Little control	PCN 1/	Controlled	Do	Do	Air taxi, agricultural commodities
International	FA Act	CAB	Not directly controlled	IATA agreement	PCN, 1/ presidential approval	Bilateral agreements	Do	Do	Do	Do	None
Air freight forwarders	FA Act	CAB	Discrimination only	Not permitted	Operating authority	Not controlled	Not controlled	Do	Do	Do	Do
Noncontiguous maritime	Merchant Marine Act 1933	FMC	Max-min-precise	Permitted (limited)	Not controlled	Do	Do	Not controlled	Not controlled	Do	Nonliner services
International maritime	Merchant Marine Act 1916	FMC	Not directly controlled	Permitted	Do	Do	Do	Do	Do	Do	Do
Maritime freight forwarders	Merchant Marine Act 1916	FMC	Do	Do	Licensed	Little controlled	Do	Do	Do	None	None

1/PCN indicates Certificate of Public Convenience and Necessity.

Source: U.S. Department of Transportation, National Transportation Report, 1972, p. 35.

--When two competing systems are not feasible.

--When market powers are such that competition is hindered.

--When the Government decides a noneconomic service should be provided.

Where the economic benefits of the regulatory process imposed upon the mode are maximized in relation to economic cost.

Even if economic regulation is justified by the first condition, the practical effect of the regulatory structure imposed upon the industry must not only have demonstrable benefit, but should maximize economic benefits and minimize economic cost. Sometimes this benefit may be only a reduction of economic waste; i.e., the cost of regulation is less than the cost of letting the system operate without regulation.

Three major supporting arguments are commonly put forth by those who want major regulatory reform; the arguments address the controversy at a practical level where these views are easily understood and applied.

Economic regulation as practiced in the United States today is counterproductive and costly to society.

Conditions within the transportation industry have changed significantly since the initiation of economic regulation, and today's industry, if left alone, would be largely competitive.

The perpetuation of transportation regulatory agencies is due largely to vested interest in the present regulatory structure.

The bases for these positions are briefly outlined below.

Economic regulation is counterproductive.

The support for the position that today's economic regulation of transportation creates waste arises from numerous economic studies, some claiming tremendous amounts of waste while others, in differing modes, concluding lesser but still significant amounts of misallocated resources. For example, James C. Nelson states in "The Changing Economic Case for Surface Regulation" that economic studies have found "* * * up to $10 billion

each year is wastefully spent on freight transportation services because of misallocation of resources heavily influenced by ICC regulation." 1/ Similarly, in the case of CAB, Arthur S. DeVany in "Is Efficient Regulation of Air Transportation Possible"? estimates the waste in 10 competitive air travel markets amounts to $2.3 million per year. 2/

In addition, several "real world" examples are often cited by deregulation advocates as illustrative of the cost of economic regulation. In the area of air transport, for example, Pacific Southwest Airways and Southwest Airways, both intrastate (and thus non-CAB-regulated) airlines, have historically had lower fares then competing interstate (CAB-regulated) carriers. Also cited are the European charter airlines and their low fare structures. Similarly, for purposes of comparison, some ICC motor carrier and rail regulation is often related to the totally or partially deregulated motor carrier and/or rail industries of Canada, Great Britian, and Australia. These examples are claimed by those who seek major regulatory reform as not only showing possible cost savings from less regulation, but also industry stability, an important factor in considering the next argument.

The industry has changed since regulation began.

Analyses of the development of economic regulation in transportation by many economists, such as Nelson and Thomas Gale Moore, have gone into great detail to show why regulation was established, how the conditions have changed, and how continued regulation creates economic waste. ICC, where regulatory authority deals with several different modes, is said to be most evident. The premise is that the majority of regulation was established to cope with railroad problems of past eras and has little relation to today's competitive conditions. The regulatory agency has responded to changing conditions with more regulation. For example, Moore states, "The only

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1/Nelson, James C. "The Changing Economic Case for Surface Transportation Regulation," Perspectives on Federal Transportation Policy, American Enterprise Institute, 1975, p. 20.

2/DeVany, Arthur S., "Is Efficient Regulation of Air Transportation Possible?" Perspectives on Federal Transportation Policy, American Enterprise Institute, 1975, p. 89.

justification ever given for regulating freight forwarders was that they were conspiring with the railroads to erode ICC-approved railroad rates." 1/

Similarly, it is argued that there is no economic justification for the continued economic regulation of air transport since it is now a mature and naturally competitive industry. Regulation is said to induce additional economic cost and promote substantial inefficiencies. The prime inefficiency being the lack of price competition and the limitation of market competition to the area of service quality, mainly flight frequency and inflight service.

Vested interest helps perpetuate regulation.

This argument holds that the perpetuation of transportation regulation is due largely to the existence of vested interest. It maintains that initially the Congress felt that economic regulation was the only way to control railroads and then, gradually, other transportation industries. As time passed these regulated industries, in league with the regulatory agencies, have tried to solve every arising problem with increased regulation. Those who give this argument analyze the positions of interested parties in terms of the parties' motivations to maintain the status quo. These motivations include the capital investment of the scheduled air carriers, the special and high-priced knowledge of the industrial traffic managers, the interests of transportation lawyers and lobbyists who earn their fees because of the system, and many others. The regulatory system, it is claimed, allowed them to develop a protected and economically rewarding niche within the regulatory structure, and deregulation would destroy that protection and cause them to incur real economic loss.

RECOMMENDATIONS FOR MAJOR REGULATORY REFORM

The recommended solutions to the problems of unjustified regulation of transportation, as made by those who seek major regulatory reform, regardless of whether it is unwarranted or inefficient, are divided into two approaches:

1/Moore, Thomas Gale, Freight Transportation Regulation, American Enterprise Institute, Washington, D.C., 1972, p. 90.

Reform the current regulatory structure to provide for more efficient regulatory agencies, modifying both the scope of authority and the process. Eliminate as much authority as practically and/or politically feasible.

Eliminate as much regulatory authority as can be accomplished with a goal of achieving total deregulation.

Though these recommendations are obviously not mutually exclusive, it is desirable to discuss them separately to retain and emphasize their distinct characteristics. Also, because these are not across-the-board recommendations, emphasis would vary with application to the particular transportation agency addressed.

Regulatory reform within the system

The recommendations for reforming the system, though overlapping with some industry recommendations, go a step beyond what most people in the industry would recommend when they speak of regulatory reform. Yet these reform positions do not really call for total deregulation. Instead of modifying the present system on a patchwork basis as those in the transportation industry appear inclined to do, these proposals involved a review of the whole foundation for, and objectives of, transportation regulation to develop fundamental structural reform of the system.

Some exemplary recommendations are summarized below.

Existing regulatory and judicial functions should be separated.

--The regulatory functions (administration of regulation), must be separated from the judicial (hearing) function. An impartial judge cannot be a policymaker at the same time.

--Policy and administration should be handled by one commissioner, probably the chairman, and staff. Other commissioners should serve as judges.

The agencies should modernize their case procedures.

--Everything is handled on a case-by-case basis. This should be changed to management by exception.

--Most routine matters could be handled by rulemaking. Then only the exceptions would need adjudication.

--Introduce more modern management techniques.

Rationalize the responsibilities of regulatory agencies.

--Separate promotional responsibilities from regulatory responsibilities.

--Eliminate overlapping responsibilities of regulatory agencies.

--Logically structure the responsibilities of agencies and reduce segmentation of responsibilities.

Many of these suggestions have been made in whole or in part in reports, such as the report of the Ash Council, 1/ the Hector Report, 2/ the Landis Report. 3/ These reports date from the 1960s, but most of what they recommend has yet to be adopted.

Total deregulation of transportation

The recommendation for total deregulation of transportation generally means the deregulation of entry, exit, and prices. Regulations such as safety standards and certification are considered important and beneficial and they would not be changed. However, some practical and procedural considerations to instituting deregulation would have to be met. Primary emphasis is most often placed on the following areas.

Strengthen antitrust laws and enforcement.

Those advocating total deregulation feel that competition will give the users of transportation an adequate level of service and protection against discrimination. The way to maintain healthy competition is to strengthen antitrust laws and enforcement.

1/President's Advisory Council on Executive Organization, A New Regulatory Framework (the Ash Council) 1971.

2/"Problems of the CAB and the Independent Regulatory Commissions." September 10, 1969, Louis Hector.

3/"A Report on Regulatory Agencies to the President-elect." December 1960, James M. Landis.

Provide for political and practical considerations during any implementation of deregulation, including providing direct or offsetting subsidies to compensate for the economic dislocations which might occur.

Most deregulation advocates recognize that changes in the status quo will produce disruptions and must take account of the current political and economic situation. Examples of their serious considerations of the matter are Moore's conclusion that "some minimal regulation may be * * * justified on economic grounds," 1/ and Edwin M. Zimmerman's notes on the political realities of deregulation:

> "Other considerations undoubtedly help make legislators wary of deregulation. Dislocation of the existing commitments and expectations based on present regulation would be costly to those affected. Deregulation would also disturb the cross-subsidization and the redistribution of income that often accompany regulation. It may appropriately be argued that such functions are incidental to the legitimate purpose of regulation, and that, if desirable, they should be separately articulated and evaluated by the legislature. Nevertheless, since the decision to deregulate may in fact affect such functions, those consequences make the decision that much harder to reach." 2/

These suggestions would emphasize assuring that the regulation necessary for adjustment is minimized and that the economic dislocations which occur are confronted directly. Interim regulations required to provide a stable transfer should be recognized as temporary, and those permanent regulations which are required should be held to an absolute minimum. Economic dislocations are better handled through a subsidy which is recognized as such and is thus controllable. Precedents exist, such as the Trade Act of 1972, which indicate the preferred way to deal with such dislocations.

1/Moore, Thomas Gale, "Deregulation Surface Freight Transportation," Promoting Competition in Regulated Markets, Brookings Institution, 1975, p. 93.

2/Zimmerman, Edwin M., "The Legal Framework of Competitive Policies Toward Regulated Industries," Promoting Competition in Regulated Markets, Brookings Institution, 1975, pp. 374 and 375.

CHAPTER 3

SELECTED PERCEPTIONS OF REGULATORY AGENCIES

This chapter attempts to describe the three transportation regulatory agencies as viewed by the interviewees. They were asked:

> "Do you believe the agencies to be serving the function which they were established to perform or a necessary function, and if so, are they performing adequately and effectively?"

Though separating the views of those interviewed from their recommendations is somewhat artificial, we did this to provide some insight into the interviewees' attitudes concerning the necessity for transportation regulation.

The perceptions are presented as they relate to each agency and transportation mode. More understanding of the reasoning behind these views and their implications for regulatory reform emerge in chapter 4 where the interviewees' specific recommendations for changing the regulatory structure are related.

THE INTERSTATE COMMERCE COMMISSION

ICC, the oldest and most complicated of the regulatory agencies, was established in the late 1800s to regulate railroads, primarily to control discriminatory rates and practices. ICC now has certain regulatory powers over numerous aspects of all surface modes (railroads, motor carriers, and domestic water carriers), as well as certain freight forwarders. 1/

About the same regulatory procedures and controls are applied to each transportation mode. A carrier's rates, charges, and practices must be just and reasonable, and unlawful preference or prejudice is prohibited. In most instances ICC has authority over maximum, minimum, and exact rates; controls entry into service through either permits or requirements for a certificate of public convenience and necessity; controls service exit; controls mergers; and controls certain financial transactions. The exceptions to ICC regulations are mostly in the areas of agriculture, bulk

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1/ICC also regulates petroleum pipelines, a mode of transportation not covered in this report.

commodities, and private carriers. 1/ Appendix II contains additional information on ICC's exact authority.

The degree of control over different modes varies considerably. In terms of ton-miles railroad traffic is completely within ICC jurisdiction. On the other hand, only around one-half of motor carrier traffic and about 10 percent of the inland water traffic is regulated. 2/ Therefore, the agency's impact within each method of transportation, and upon the users and providers of each mode, differs considerably. This difference is partially reflected in the interviewees' comments.

General perceptions of ICC

Most of those interviewed held several basic views of the general regulatory functions of ICC.

ICC is performing a needed function and it, or a similar agency, should continue to exist.

The agency performs certain necessary roles as it is currently structured. Even with less regulation, it would have to perform similar functions to maintain a sound transportation system. The following were expressed as the two major benefits of ICC's activities:

--ICC provides stability in rates and service which otherwise would not exist.

--It protects the shipper from unjust discrimination and the carrier from destructive competition.

There was no consensus as to the exact role that ICC should be performing in transportation regulation.

Practically all those interviewed who deal with the ICC-regulated modes feel that ICC has a duty to "promote the public interest." But due to the vagueness of the term, most people interviewed tend to define "public interest" in terms of their own interest. Those speaking

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1/Private carriers are all carriers, except common carriers, and include both those owned by individuals and companies.

2/Thomas Gale Moore, Freight Transportation Regulation, American Enterprise Institute, Washington, D.C., 1972, pp. 27 and 32.

from a railroad's viewpoint feel it is ICC's duty to maintain a better railroad system. Those addressing the problem from a shipper's viewpoint believe that at least part of ICC's job is to protect and promote those who ship freight. The private freight consolidators, a group of private firms which consolidate their own shipments on a cooperative basis to take advantage of full car/truckload rates, see ICC as protecting the regulated freight forwarders to the detriment of their own efforts.

ICC is operating within the law but the current laws are outdated.

This comment, repeated in one form or another in several interviews, indicates that the problems some shippers and carriers experience in dealing with ICC are sometimes perceived to be founded on something more fundamental than ICC's operational techniques. Several comments exemplify their expression of the problem.

--ICC is not facing the reality of the current situation, telling the Congress what it cannot do under the current legal mandate and asking the Congress for the needed changes.

--ICC is forced to operate under outdated laws and regulate a transportation system significantly different from that which it was established to deal with.

The problem of outdated legislation is addressed indirectly by many of the recommendations in chapter 3, but more often than not, the interviewees were not explicit about the general changes desired. The implication is that regulatory agencies were established to deal with (1) strong railroads possessing monopolistic tendencies, (2) ocean transportation which was of major international importance, or (3) an infant airline industry. Currently, they are not faced with the same challenges and problems. These changes should be evaluated and the legislation altered appropriately.

ICC has several major operational problems and few of those interviewed are content with current operational procedures or attitudes.

There are significant and often repeated criticisms from interviewees who work with ICC regularly that concern difficulties with the current regulatory procedures.

--Too much timelag in making decisions, particularly on rates, entry and exit, and mergers.

--A lack of competence among the Commissioners.

--A Commission concentration on the problems and welfare of the carriers and a lack of concern for "getting the goods to the market."

--The stifling of competition and taking of actions which discourage change.

Of those interviewed, the two who spoke for trucking groups expressed, both in interviews and in written statements, the most content with the current ICC regulatory framework.

Perceptions of ICC's impact on rail transportation

The most specific complaints of those interviewed on ICC practices which affect rail transport emanated from the Association of American Railroads. Its more important comments were normally reiterated by at least one or two other interviewees, including some shippers directly involved in rail transport.

Railroads are treated inequitably compared with other transportation modes.

Because railroad traffic is 100 percent regulated versus about 40 percent for trucks and 10 percent for inland water carriers, it suffers from unequal regulatory control which creates unfair competitive restraints.

The lack of freedom to adjust rates and services, largely caused by delays in decisionmaking and ICC's advocation of the status quo, stifles innovation.

The American Short Line Railroad Association, while not disagreeing with the problems of delay, takes issue with the allegation that ICC stifles innovation. The Short Lines' experience indicates this is a false issue.

On a more specific aspect of rate problems, several parties who deal with the railroads as shippers were particularly disturbed by the "closed door" railroad rate bureau activities and the apparent lack of ICC control over rate bureaus. They feel ICC is not sensitive to, or responsive to, the shipper's needs.

ICC is partially responsible for the failure of the northeast rail system.

The composite view of persons interviewed who stated this opinion based it on their experience with ICC's delayed decisions or total lack of decisions, together with a failure to deeply examine the real problems before making a decision.

Perceptions of ICC's motor carrier regulation

Both the motor carrier representatives interviewed and those interviewees involved in shipping regulated goods via truck expressed largely similar perceptions of ICC's efforts in regulating common motor carriers. These are similar to the general perceptions listed previously and can be summarized in one statement.

ICC is a needed and effective organization in that it brings stability of rates and services to the industry.

The only major qualification came from some of those interviewed who represent shippers. While concurring with the general thrust of the statement, they still see in ICC a lack of concern for the problems of, and/or a lack of desire for the promotion of, motor freight shipping.

The Committee on Modern and Efficient Transportation 1/ consists of a small group of large corporations which use a large amount of motor carrier and rail shipping, including their own fleets, and a trade association. The group aims to modernize economic regulation of surface transportation. This group has specific suggestions for regulatory reform which are included along with other recommendations in chapter 4. It generally perceives ICC as too restrictive in terms of rates and entry and too protective of rate bureaus, both trucking and railroad.

ICC's perceived impacts on water carriers

Those interviewed offered few perceptions regarding ICC's impacts on interstate water carriage, primarily due to the limited ton-miles of shipping which are regulated (approximately 10 percent). Only the water carrier representatives

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1/The Committee members are: Quaker Oats, Sears, Dow, Carnation, General Mills, the National Association of Food Chains, American Paper, DuPont, Whirlpool, and Union Carbide.

and representatives of the railroads related significant opinions. These tended to be opposing opinions; primary interest centered around increasing or decreasing water carrier regulation. Interviewees associated with water carriers expressed the following views.

Water carriers do not want increased regulation. The problems are not with the water carriers and the solutions are not increased regulation.

--ICC protects railroad interest.

--ICC allows the railroads to act in a manner which stifles competition.

--Stronger antitrust laws would allow more competition without increased regulation.

As mentioned, those interviewed who spoke for the railroads see ICC's role in rail-water competition as discriminatory, due to the complete regulation of railroads and the lack of barge regulation. They do not feel favored by ICC and advocate increased water carrier regulation.

THE FEDERAL MARITIME COMMISSION

FMC has regulatory authority over common carriers engaged in the waterborne foreign commerce of the United States. The Commission's primary regulatory impact is through its authority over steamship conferences 1/ which, once approved by FMC, are exempt from antitrust laws. FMC can regulate rates, charges, classifications, etc., established by these conferences as well as certain services, practices, and agreements of and between common carriers.

The Commission possesses some authority over domestic waterborne commerce which is carried on the "high seas" and certain authority over ocean freight forwarders. A more complete description of FMC regulatory authority is contained in appendix II.

Perceptions of FMC

Research limitations for this paper resulted in only one interview expressing significant interest in ocean carriers'

1/A steamship conference is a cartel-like arrangement between a group of common carrier steamship lines for controlling rates and conditions of moving cargo in a "trade," i.e., a special geographic area.

problems. This was the American Institute of Merchant Shipping, a representative of the ocean carrier industry. The shipper representatives viewed ocean shipping as a minor part of their transportation budget; their major concerns were the domestic freight situation where most of their normal shipping dollar is spent. Therefore, they expressed few opinions as to FMC's regulatory effects. The following perceptions and supporting arguments are a mix of these views and, though different points were sometimes emphasized, the perceptions were largely parallel.

FMC lacks real effective authority to regulate ocean shipping and has little impact on ocean transport.

The two major reasons for this are:

--The complexity of international shipping, due largely to the political implications of foreign maritime competition.

--The inability of any nation to exercise legal jurisdiction over foreign shipping conferences or foreign vessels.

More specifically, those interviewed offer the following additional views which often parallel attitudes expressed by other interviewees concerning ICC.

--FMC is not sufficiently effective or aggressive, and provides no real rate stability.

--The agency is impotent, because (1) the law is defective, not giving FMC the powers it needs to carry out its mission and (2) FMC does not have competent personnel.

--FMC acts as a minimum stabilizing force just through its existence (or threat of possible action) and serves as a forum for shipper complaints. There is a need for it or a similar agency to continue to perform this function.

THE CIVIL AERONAUTICS BOARD

Economic regulation of the air transport of goods and passengers by common carriers in the United States is controlled by CAB. It regulates entry into or exit from common carrier transport, routes traveled, and rates charged for carrying passengers and goods. There have been many changes in the names of the agencies which have been responsible for

economic regulation of air transport since it began; however, the basic regulatory authority of the agency has remained unchanged. Appendix II contains more details on the development of CAB and its regulatory authority.

The public has been most affected by and most interested in air passenger travel, while largely ignoring air freight. The perceptions of CAB by some of those involved in air transport reflect this image.

Perceptions of CAB's effects on air transport

Those interviewed who are involved in the air transport industry all maintained one perception.

> Total deregulation of the air transport industry is undesirable. Regulation is necessary to provide the stability required for a viable industry.

However, the interviewees generally agreed on another point.

> CAB is not doing a totally objective or competent job of regulating.

Here much of the similarity of viewpoints ends as with more detailed analyses, each interviewee tended to address the functioning of CAB from his or her own operational perspective.

Representatives of the Air Transport Association (the scheduled carriers) said:

- --CAB is working well. There is no major problem with the basic legislation. The agency has provided the United States with a safe, high quality, low-priced, and technically advanced air transport system.
- --The primary problems are with the attitudes of CAB's administration.
- --There is overregulation, but it comes mainly from the Department of Transportation and other Federal agencies, generally not CAB.

Those interviewed who spoke from the nonscheduled carriers viewpoint said there is overregulation and significant regulatory reform is needed, but feel it is CAB that overregulates.

Shippers of air cargo, as represented by those interviewed, see CAB as serving its purpose well and suggest it should remain much as it is. The National Industrial Traffic League would support air cargo rate bureaus similar to railroad rate bureaus. The Air Freight Forwarders Association disagree, seeing CAB as ignoring air cargo in general and air freight forwarders in particular. They blame this on CAB's preoccupation with passenger traffic and argue that with cargo now an increasingly important part of airline revenues, the Board's attitude should change.

Other individuals interviewed represented viewpoints which could be termed the "general public perspective" in that they advocate positions seen as being beneficial to the public who do not significantly use air transport, due to high cost.

The individuals who represent the public perspective advocate regulatory change which could provide a wider range of air services, in particular more group charters than currently available. In summary, their perspectives are:

--CAB is not responsive to passenger (in the broadest sense) needs.

--The Board has concentrated on keeping the scheduled carriers in business, perhaps to the detriment of general air travel.

--More competition is the natural solution to the current stifling regulatory situation.

Taking exception to much of this "passenger viewpoint" is the position stated by an interviewee at the National Passenger Traffic Association, a representative of the business traveler. The businessman, although feeling discriminated against by the present fare structure and an inability to take advantage of special tariffs, feels he has more to lose through changes in the current system (loss of flight frequency, frills, etc.) than could be gained through regulatory reform.

CHAPTER 4

RECOMMENDATIONS FOR CHANGE

Numerous recommendations for change have been made by the parties interviewed in connection with this project. This chapter describes these proposals as they relate to each regulatory agency and transportation mode.

THE INTERSTATE COMMERCE COMMISSION

Throughout most of the interviews concerning ICC, several general difficulties were reiterated which appear to be very basic problems within the regulatory system. These are listed below along with one or more of the proposals.

The slowness of regulatory action and excess timelag of ICC decisions.

--Eliminate rate suspensions.

--Put a time limit on decisions, with automatic enactment of carrier request if no action occurs. This relates to all matters, including rates and mergers.

--Change formal procedures to require less time and effort.

The lack of knowledgeable people on the Commission and the prevalence of a poor attitude.

--Give the Commission a real job to perform (i.e., concentrate efforts on a more meaningfull role and do away with many minor tasks), and it will draw the needed talent.

--Cut the size of the commission down to five or even three, Commissioners.

--Assign the proper people to the right case to utilize their knowledge and experience.

The Commission stifles initiative and innovation.

--Allow more innovation and experimentation with rates and services.

--Give more freedom to adjust rates promptly.

--Generally reduce regulation to allow increased competition and flexibility.

These concerns are noted more specifically, as they might apply to individual modes, in the following discussion.

Recommended changes in ICC's regulation of railroads

As represented by those interviewed, the railroads' primary concerns appear to be increased profitability and service adjustments, primarily abandonments and rate flexibility.

The railroads must be allowed adequate revenues for a reasonable profit.

Representatives for the Association of American Railroads, in both testimony and during the interview, clearly expressed that the railroads are not allowed adequate revenues to provide reasonable profits. They identified causes attributable to the regulatory problems of rate suspensions and slow ICC decisions. Railroads need freedom to make immediate rate increases based on increased cost.

The representatives interviewed from the American Short Line Railroad Association take exception to this position, saying that increases are basically automatic. They do agree that delay in approval adversely affects revenues.

Increase railroad competitive flexibility through reduced regulation particularly in terms of rate adjustments.

Most of those interviewed who are directly involved in rail transport support some form of rate flexibility and more freedom in allowing the railroads to try innovative services. There were two exceptions:

1. This proposal is opposed by interviewees who assessed the possibility of rate flexibility from the viewpoint of the shippers or competitors (water or motor carriage). The shippers feel that they have some "prior protection" (no rate changes without

approval procedures) under the current system, while the competitors express concerns over discriminatory rates and destructive competitive practices.

2. The Short Line Railroads' representatives feel that the complaints of an inability to innovate is a "red herring." They feel ICC does take adequate action on innovative suggestions within a reasonable time.

Those interviewed who represent shippers support more innovative services. Furthermore, the railroad-connected individuals, along with several other interviewees, generally feel that the only real protection the shipper needs is protection from rate discrimination.

Related to the question of flexible rates are the operations of railroad rate bureaus and similar bureaus within the trucking industry. According to the interviewees, the bureaus are highly secretive in their meetings and in reaching their decisions.

Railroads, as represented by those interviewed, are happy with the current environment of limited public access and strict limits on the actions of bureau members. However, the interviewees who view the situation from the standpoint of shippers strongly object to the rate bureaus' current method of operation. The shippers recommend more access to bureau proceedings and more independent carrier action, particularly in terms of single carrier rates.

Restructure the railroads and allow more entry/exit freedom, particularly more rail abandonments.

Every individual interviewed who voiced an opinion on the current problems of the railroads was explicit on his interest in seeing that the railroads remain in private hands and not become a ward of the Government. Included were those who represented the railroads' competitors. Water and motor carriers favor private ownership, not because an unhealthy railroad might be weaker competition, but because of their need for an efficient interface with the rail system. They believe this can be better accomplished with the railroads in private hands.

A closely related issue is rail abandonments. Interviewees from railroad groups support easier rail abandonments as do those who represent the other, more general transportation interest groups. Furthermore, these individuals saw no reason why railroads should not be allowed to substitute motor carrier service with railroad ownership of the truck lines if necessary, for such abandonments. Motor carrier interests were, of course, an exception to the railroad ownership provisions.

Those representing shippers and motor carriers did not relate a viewpoint about rail abandonments. However, several interest groups in areas where major abandonments are a probability have given considerable congressional testimony on the matter. The Railroad Task Force for the Northeast Region, Inc., the American Farm Bureau Federation, and the New York Pennsylvania Shippers Association, Inc., are examples. 1/

These groups are concerned with losing service during a railroad reorganization, due partially to abandonments and partially to the overwhelming of local rail carriers, by a massive regional rail reorganization. They recommend additional consideration of local problems and of the effects on local carriers, both in the Congress and ICC, during the decisionmaking process.

There were no recommendations to fully deregulate or abolish ICC control over rail transport.

While there was much interest in increasing regulatory flexibility, none of those interviewed (including the railroads' representatives), recommended full deregulation of railroads. Those speaking from a water

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1/Campbell, Hugh L. III, New York Pennsylvania Shippers Association Inc. & Can Do, Inc., before the House Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Commerce, July 22, 1975.

Ehst, Richard A., President and Chairman of the Board, Railroad Task Force for Northeast Region, Inc., before the House Committee on Interstate and Foreign Commerce Subcommittee on Transportation and Commerce, July 22, 1975.

Fields, C. H., Assistant Director, Congressional Relations, "The Transportation Subcommittee of the House Committee on Interstate and Foreign Commerce, July 27, 1975.

carriers' viewpoint feel that ICC is already to amenable to the railroads, allowing so much latitude that rail companies can now frustrate the coordination of rail and water service.

Recommendations regarding ICC regulation of motor carriers

The recommendations of those interviewed for altering ICC's regulation of trucking are few and, in most cases, would not significantly alter the trucking industry.

Do not greatly alter ICC or its regulatory authority over the motor carrier industry.

The interviewees who addressed regulation from the position of motor carriers, both common and private, voiced no desire to greatly change ICC's regulatory structure. The interviewees, who reflect mainly the common motor carriers, recommend leaving the system unaltered since it provides a stability in both rates and service which shippers need.

The private motor carriers recommend changes in regulation to allow the trucking fleets of subsidiaries to be used as part of the fleet of a parent company, thus eliminating the restrictions on the products which subsidiaries may haul for a parent company, and vice versa.

Furthermore, these individuals view empty backhauls 1/ as a problem, while common-carrier-oriented interviewees did not, and would like more ICC effort to eliminate them.

1/Legal restrictions on common motor carriers (as to commodities and routes), plus private and agricultural motor carrier (as to solicitation of commercial traffic), create numerous return trips (backhauls) from the delivery point, during which the motor carrier travels without cargo. Consequently, the carrier earns no revenue on the return trip and must apportion the round trip cost to the initial cargo load. In addition, often another carrier is traveling the reverse route with the same problem. Therefore, sometimes two carriers each make a trip where a single trip by one carrier would have been adequate to carry the same amount of cargo.

Several other interviewed individuals who spoke from the shippers' or competitors' viewpoint made recommendations which could cause major changes in the motor carrier regulatory system.

Reform the rate bureau system to allow shippers to deal with common carriers in an open and businesslike basis, plus have less secrecy and more ICC supervision of rate bureau activities.

Eliminate the entry/exit requirements for trucking.

The latter recommendation was made by a former ICC official as a reform to speed up ICC decisionmaking. He stated that ICC now spends about 85 percent of its time on motor carrier applications, some of which are in consideration for 2 or more years. Eliminating this workload would speed up other, more complicated decisions and allow more important decisions more careful consideration.

Recommendations concerning ICC regulation of water carriers

ICC regulates only a small percentage of inland and coastal water traffic, primarily because of the bulk commodity exemptions. Those interviewed, other than individuals who spoke from their direct connection with water carriers, had few recommendations or comments on regulated inland water traffic. Most of these have been related at previous points in the report. To briefly recap:

Federal subsidization of inland waterways provides an unfair competitive advantage to water traffic over railroads.

More coordination shold be achieved between the modes and the agencies which regulate the separate modes (CAB, ICC, FMC).

The introduction of flexibility into rail rates is effective deregulation of railroads and will lead to destructive competition between rail and water carriers.

The most substantive recommendations on water carriage which emerged from those interviewed were made by individuals associated with the Water Transport Association. These are aimed largely at meeting competitive problems with the railroads and are mostly self-explanatory.

Oppose railroad ownership of barge lines, particularly where railroad and water transport are in competition.

Require railroads to make intermodal services available for water carriers. Railroads are inclined to protect the all-rail shipping alternative to the detriment of intermodal carriage.

Prohibit geographic discrimination (selective pricing) by railroads and "sharpshooting" (selective discriminatory pricing) aimed at destroying water competition on specific routes.

Provide for specified punitive damages similar to those of antitrust, as a deterent to suppression of competition. Presently, a case goes into a long period of litigation, perhaps as much as 10 years, and if won there is no award to the winner nor penalty against the loser.

Control the destructive competitive effects on common water carriers by the private barge (for hire) operations so that both private and common operators are treated equitably.

THE FEDERAL MARITIME COMMISSION

Ocean carriers do not compete with the major portions of the other, mostly inland, modes under discussion and thus, the few recommendations for change came primarily from individuals at the American Institute of Merchant Shipping. Other interviewees had too little contact with the Maritime Commission or its policies to make specific recommendations.

The Federal laws on maritime regulation are defective. They are trying to regulate a transportation system on an international scale and too many factors are not within the control of a U.S. Government agency. They should be changed to reflect this fact.

One suggestion was that an organization be established similar to the International Air Transport Association (IATA), the international air carriers' conference.

The Federal agency which has real power over international merchant shipping is the Department of State. To have effective regulation, there should be more cooperation and coordination between the Departments of State and Justice and FMC in diagnosing and solving maritime problems.

FMC, to be effective, must have the power to control certain activities of foreign flag carriers, particularly those of third countries who enter U.S. trade.

The interviewees stated that the real power controlling maritime industry activities, often to the detriment of better business practices, is the Department of State, where political considerations are paramount. The Commission does have some regulatory controls, but these are of an "all or nothing" nature which results in a reluctance to use them. In other cases, as with the continued existence of rebates (which are illegal), there is a lack of initiative and competence by the Commission staff. Nevertheless, it is felt that a regulatory body such as FMC is needed to act as a restraining influence on carriers and provide a forum for airing shipper grievances.

THE CIVIL AERONAUTICS BOARD

Throughout the growth of the airline industry in the United States, passenger traffic has been the backbone of the air transport industry and thus the major area of regulatory concern. However, in recent years, air freight has become an increasingly important part of the revenues earned by air carriers. In addition, there has been some dissatisfaction with the limited types of passenger service (mostly high quality and regularly scheduled), available to the public. The comments below largely reflect the current debate over these two topics.

Recommendations--CAB and the air passenger

According to those interviewed, the dispute within the industry concerning air passenger travel centers largely around two positions, those who basically want to maintain the status quo and those who want to bring low cost, charter-type travel to air transportation. Representatives of the former group presented the views of the scheduled carriers and the business traveler. Advocates of the latter spoke for the nonscheduled airlines and some public interest groups. To a similar degree, these groups are again divided in their

assessment of the usefulness of CAB and though only a few interviewees recommended total deregulation, all agreed on one point.

The air transportation regulatory system is unsatisfactory and must be improved.

The source and degree of discontent among interviewees was clearly varied. Those interviewed at the Air Transport Association made these recommendations:

--Do not make major or abrupt changes in the system. In particular, do not open the system to free entry and exit or the scheduled carrier system will be destroyed.

--The extremely burdensome CAB bureaucracy with its very costly reporting requirements should be modified.

--Solve regulatory delay problems. The delay in adjusting rates is very costly, particularly as it effects revenues during times of rapid changes in airline cost.

--The tariff system is much too complicated and should be simplified for the good of both the carriers and the public.

--There should be less noneconomic regulation. The industry is overregulated with health, labor, and certain other requirements. Safety regulation remains of prime importance and should not be weakened.

Those interviewed who represented the nonscheduled carriers, the National Air Carriers Association, wanted to increase their ability to compete with scheduled carriers and recommended these actions:

--Reduce economic regulation. Many of the current regulations are to the detriment of the consumer.

--Revise CAB procedures to decrease the time and cost of filings and hearings,

--Increase competition, particularly in the area of rates. Reduce restrictions on the charter industry and allow more innovation in providing service.

--The airlines need more cooperation and support from CAB relative to international competition.

--Eliminate the prohibition against individual ticketing by charter carriers. The need to use agents increases the cost to the customer.

--Permit dual certification of charter carriers (both scheduled and nonscheduled service).

--Take away CAB's power to prescribe rates, both domestic and overseas.

Representatives of consumer groups, while pressuring for an increase in low cost air travel, are not specific in their reform recommendations. They want the airlines to increase low cost charters and would like CAB to permit greater services and rate flexibility. Though CAB is making some reform efforts in this area, these groups feel that legislation is necessary to bring real change.

The Aviation Consumer Action Project took a broader view of the scheduled carrier problem. Stating that air transportation is basically a competitive industry, it recommends complete deregulation. The group also said that if regulation must exist, it should be like that practiced for public utilities, where approval is required for capital expenditures and other expenses. If these are not possible, the group recommends the following specific changes in what it considers the key deficiencies of the system.

--The maintenance of minimum fares protects airline inefficiencies. Carriers tend to raise their cost to the level of prices. There should be real rate competition. This would also require freedom of entry and exit.

--CAB's unwillingness to relax entry and exit sustains the inefficiencies of the system. Though subsidies would probably be needed, other air services should be allowed to replace the scheduled carrier in certain instances.

--CAB should stop using improper financial criteria for fare regulation. Basing the fare structure on rate of return on investment leads to overcapitalization and overdependence on large debt structures.

--CAB does not allow innovative competition. This stifles the industry, eliminates consumer choice, and causes the airlines to miss numerous market "needs." This should be corrected.

Two other important criticisms were emphasized by several of those interviewed, both carrier and consumer oriented.

CAB should show less concern for the scheduled carriers' welfare and more for the public.

The effort to provide consumers with the services they desire and the protection they need (in terms of fares, baggage, etc.) has not been made, even though CAB has the authority.

There is a need to reform the Board's personnel.

Though staff competence has improved, a better qualified staff and more objectivity is still needed.

Recommendations--CAB and air cargo

While those who discussed regulation from a carriers' viewpoint generally ignored air cargo, the persons interviewed from shipper groups and air freight forwarders did not. However, due to what appeared to be a low level of air freight use among those interviewed, recommendations were few.

The only major complaint expressed by those interviewed, other than those of the air freight forwarders, concerned CAB hearing procedures.

CAB hearing review procedures are overly burdensome in terms of paperwork and expense. They should be modified accordingly.

Hearing procedures are felt to be very expensive in terms of time and paperwork and there are complaints about making a final decision at the start of proceedings as to participation or nonparticipation. If a shipper or some other interested party chooses not to be involved in the entire hearing procedure, it needs only to file a statement at the initial meetings. However, once this route is chosen, the party is excluded from participating in later hearings. The alternative is to become a party to the entire proceedings and incur significant ongoing expenses.

The Air Freight Forwarders Association was more explicit in its recommendations which, as with other groups, largely applied to its business interest.

CAB needs an attitude change, paying more attention to air cargo. The Board should promote air cargo and give guidance to the industry instead of continuing to treat it as a stepchild.

Total deregulation of air carriers will have no benefit.

Air freight forwarders should be either completely deregulated or certificated and regulated.

Conditions within the air freight forwarders industry have been unstable, causing the association to recommend that CAB restrict entry/exit as well as rates. Also, CAB should allow forwarders to contract with airlines. As an alternative, forwarders should be totally unregulated. Currently, CAB regulates rates but not entry/exit on routes served.

CHAPTER 5

SUMMARY OF RECOMMENDATIONS AND QUESTIONS RAISED

The recommendations made by those interviewed, along with the positions of those who advocate deregulation, can be simplified into three proposals:

Make only minor changes to the regulatory system which will better accommodate certain transportation modes or interest groups.

Revitalize the regulatory system much within the current structure, but with some deregulation and an alteration of both the regulatory functions and duties of regulatory personnel.

Deregulate the major portion of the transportation industry and allow the natural forces of the marketplace to provide sound and economic transportation.

This is an oversimplification. The spectrum of opinion may range from those who want strict regulation, up to and including nationalization, to those who, as an article of faith, accept no economic interference with the free market system. However, from the interviews, research, and analysis conducted for this report, there is evidence that there are clusters of opinion around these three viewpoints and that the major controversies arising in the current regulatory reform debate are often conflicts between these three basic positions. The three recommendations and their sources follow.

Maintain the current system with only minor changes.

This recommendation was made by most persons interviewed, particularly those who were representatives of groups directly involved in the transportation industry, both shippers and carriers.

Revitalize the system.

Several interviewees indirectly involved with transportation and several former employees of the regulatory agencies made this recommendation.

Deregulate the industry.

Several individuals outside the industry and the majority of eocnomic studies and analyses of economic regulation made this recommendation.

This division among those interviewed and other sources for this study, while not necessarily translatable to the entire universe of people knowledgeable of transportation or economic advocates of deregulation, does raise several broad questions about regulatory reform.

Why is there what appears to be such a dramatic split in the assessment of the need for regulatory agencies between those directly involved in the transportation industry and those advocating deregulation?

Is the perceived need for regulation as expressed by interviewees truly as simple as "vested interest," as those who advocate deregulation say, or does the attitude arise from what the others might say is a more intimate knowledge of "what is possible" in the real world?

Those who advocate transportation deregulation reinforce their primary position with three arguments on the current regulatory system.

It creates economic waste.

The transportation systems have greatly changed since the laws were adopted.

The regulatory structure is at least partially perpetuated because of the vested interest of those involved in the system.

Assuming these arguments to be true, most interviewees agreed that regulation is still needed to prevent rate and service discrimination and instability.

The position of those who desire major regulatory reform is that usually, and over a short period, supply and demand will stabilize prices. Service stability can be obtained by contract as in any other aspect of normal business operations. Prevention of discrimination would be left to strengthened antitrust enforcement. This raises the following question.

Is the control of rate and service discrimination, on a timely, reasonable, and cost effective basis, possible under a deregulated transportation structure where the sole controlling factors would be competition and probably revitalized antitrust laws?

The assumption that deregulation will result in a competitive market raises other questions. This is perhaps best exemplified by the air transport industry, but which also has parallels in the rail, water, and trucking industries.

The air transport industry is one of the industries which those who recommend deregulation see as very competitive and where the immediate consumer benefit would be apparent from regulatory reform. This argument is based on the economic benefits which should emerge from the ensuing competition following deregulation. This competition assumes, as it does for most economic analysis, a world of many buyers and many sellers. It is questionable if this is the real world in transportation, particularly air transport, that is likely to exist under deregulation.

Would the deregulation of most transportation industries result in truely effective competition or could the results be, even with strengthened antitrust enforcement, a consolidation of the industry into several oligopolies?

If an oligopoly structure resulted (which could cut across transportation modes), would the projected benefits of deregulation still accrue to the public?

The necessity of increasing antitrust enforcement and the possible lessening of savings from a marketplace which is not purely competitive could influence the calculation of net economic waste, as discussed by those who advocate deregulation. As exemplified in Edwin Zimmerman's statement in chapter 4, there might also be other wastes due to the elimination of cross-subsidization and income redistribution which now accompany regulation. Thus, another question arises.

Are the economic wastes found by economic analysis of the transportation regulation truely waste, or is this waste a form of transfer payment, which if not made under the current system, would need to be continued from another

source (Federal tax revenues) in order to provide equitable transportation services to the public?

Other questions are raised by the responses of the interviewees within the industry. These largely arise out of their perceptions of the regulatory agencies operations, and do not have the broad scope of the previous questions in terms of the total regulatory reform debate. However, they should be addressed, perhaps before the broader questions, to obtain a clearer understanding of the basis for some of the reform recommendations.

The interviewees expressed, particularly in terms of ICC's role, problems in understanding the purpose of current regulation. Most think the agencies should serve the public interest, but this term had many interpretations, based primarily on individual interest. This raises the following questions.

Why is there an apparent lack of understanding about the purpose of each regulatory agency? Is it due to a lack of legislative definition of the agency's role, or to vacillation by the agency in performing its mission?

Perhaps interconnected with the lack of an understood mission are problems with the functioning of ICC and other regulatory agencies. The point is raised as to whether the slowness in decisionmaking and the lack of objectivity and aggressiveness were the problems, or the symptoms of a greater problem.

Are slowness in decisionmaking and other operational problems symptoms of bad management and poor procedures or are they due to a lack of goals, mission, or an inability to find alternatives to the present situation?

Another general opinion offered by those interviewed is the appropriateness of the original legislation in today's transportation world. This is particularly relevant to ICC and FMC, and with slight alterations, to CAB. The opinions differ, but some suggest the Interstate Commerce Act is outdated; FMC laws need adapting to the real world of ocean shipping; and, while CAB statutes were mostly uncriticized, the functioning of CAB within current laws needs altering.

Are the regulatory statues in need of adaptation to today's transportation systems, and if so, in what areas and to what extent?

Deregulation advocates feel they have addressed this problem and have arrived at an answer, deregulation. However, given the latitude of the normal regulatory agency under current statutes, the interviewees who desire statutory change or updating of current regulation should (and some have) first address a more fundamental question.

> Can the desired changes within the system be made or is statutory impetus necessary to achieve a redirection of the regulatory effort?

Throughout most interviews for all three regulatory agencies, the regulatory body was felt necessary for the proper functioning of a stable transportation industry. With few exceptions, the interviewees who represented segments of the transportation industry and others directly involved in the industry (1) addressed immediate operational regulatory problems, (2) limited recommended changes to factors affecting their businesses interest, and (3) expressed satisfaction with the basic regulatory framework. Yet, at the same time, many were voicing strong complaints and making recommendations to solve the problems of regulatory delay, the lack of knowledgeable and competent people in regulatory agencies, and the stifling of innovation. This raises an important question.

> Why is there satisfaction with a regulatory system which appears to have significant problems, and why are most of the industry-oriented recommendations aimed at solving immediate operational problems rather than those of overall regulatory policy?

As shown in the following sections, some perspectives and recommendations raise numerous, more specific questions concerning the regulatory impact on individual modes.

The major recommendations of the interviewees who address the railroads' problems deal with the railroads' inability to raise adequate revenues under the current regulatory framework. The railroads complain of ICC's regulatory inequities (100 percent railroad traffic regulation versus 40 percent trucking and 10 percent barge), which they feel creates unregulated competition. As a partial solution, they recommend rate flexibility and other additional operational freedoms. It is important to know what role economic regulation has played in the current problems of the railroads.

What is the contribution of economic regulation of railroads to the current financial problems of the rail lines and to what extent would the alteration of the regulatory framework solve these ills?

Are the railroads' problems partially attributable to the inequities of transportation aid and/or to transportation policy outside the scope of regulation?

According to deregulation advocates, the motor carrier industry creates the most obvious economic waste due to restrictive regulation. And yet, the industry gave few major proposals for altering the regulatory system governing them. Even the interviewees representing some private carrier and shipper interests complained little about motor carrier regulation. These positions appear contradictory.

Why, in an industry with purported empty backhauls and other "wasteful" practices, is there such content with ICC's regulated portion of motor carriage?

Is the regulation of motor carriers necessary to provide rate and service stability, the factor seen as the largest regulatory benefit in the trucking industry, and what are the real cost/benefits of this method of maintaining stability?

The inland and coastal water carriers, who have only about 10 percent of their cargo regulated, were represented by the interviewees as being largely unhappy with the competitive aspects of ICC regulation. They felt unjustly treated, compared to railroad and private barge (for hire) competition. Since the railroads and private carriers compete (often unfairly, according to water carriers) with the common water carriers in both regulated and unregulated carriage, the logic of selective regulation of water traffic seems difficult to follow. Those interviewed representing both the railroads and water carriers expressed concerns over the inequities of Federal support between transportation modes. These problems raise the following questions.

How can the railroads, who are 100 percent regulated, engage in discriminatory practices against the largely unregulated water carriers?

Are the problems which need to be addressed concerning the intermodal conflicts which water carriage must face, questions of the equality of Federal support for transportation more than equality of regulatory control?

Those interviewed related the FMC-ocean carriage problem as having an ineffective agency operating under unenforceable laws in an attempt to control international ocean shipping. This is normally handled within a political, rather than commercial, framework. Deregulation advocates largely concur in this assessment of the agency and the industry. The individuals interviewed made recommendations to strengthen FMC's control over maritime shipping. However, several questions should be raised, such as:

What is being accomplished or lost through attempts to regulate the maritime industry? Is it necessary and are there other more practical means to achieve the same benefits?

Are international diplomacy and cartel arrangements hindering effective regulation of ocean freight and if so, should maritime regulation, to the extent possible, not be handled through international political negotiations?

Is it possible, or even desirable, to introduce and maintain competition in the maritime industry, as deregulation advocates recommend, on a unilateral basis, into what is now an industry typified by cartel arrangements?

Almost all interviewees involved in air transport expressed dissatisfaction with CAB. The major exception was the representative of the scheduled carrier organization who voiced fewer and more minor complaints. Many of the recommendations made countered those of the others, with each interviewee attempting to strengthen his own interest. The disagreement largely boils down to one question.

Can and should the market demands for air charter, better air freight, and other new or improved services be met without harming the beneficial aspects of the current system, and if so, how?

This is not necessarily a question of deregulation versus regulation. Here, as in other cases, the needs of the system could be met through both highly regulated or totally unregulated systems with varying costs/benefits.

INTERVIEWEES

Air Freight Forwarders Association
1730 Rhode Island Avenue NW., Suite 607
Washington, D.C.
293-1030
Trade association of regulated air freight consolidators and forwarders.

Air Transport Association
1209 New York Avenue NW.
Washington, D.C.
872-4000
Trade association of the U.S. scheduled air carriers.

American Institute for Shippers Association, Inc.
1730 M Street NW., Suite 502
Washington, D.C.
296-7363
Trade association of private freight consolidators and distributors.

American Institute of Merchant Shipping
1625 K Street NW.
Washington, D.C.
783-6440
Representatives of ocean shipping conferences.

American Trucking Associations, Inc.
1616 P Street NW.
Washington, D.C.
797-5221
Trade association of motor carriers.

American Short Line Railroad Association
2000 Massachusetts Avenue NW.
Washington, D.C.
785-2250
Association of small, limited track, and mostly privately owned railroads.

Association of American Railroads
1920 L Street NW., Room 407
Washington, D.C.
293-4000
Association of the major U.S. railroads.

Aviation Consumer Action Project
1346 Connecticut Avenue NW., Room 1007
Washington, D.C.
223-4498
Public interest aviation study group.

COMET (Committee on Modern Efficient Transportation)
1717 K Street NW., Suite 1200
Washington, D.C.
785-0048
Small group of large corporations which have significant shipping and distribution requirements and mostly own and operate their truck fleets along with a trade association.

Cooperative League of the U.S.A.
1828 L Street NW.
Washington, D.C.
872-0550
Representatives of consumers and a cooperative member interested in specified areas.

Equipment Interchange Association
1625 O Street NW.
Washington, D.C.
797-5273
Association of businesses engaged in interchange of transportation equipment between modes.

Freight Forwarders Institute
2000 K Street NW.
Washington, D.C.
659-8787
Association of freight forwarders.

Lake Carriers Association
614 Superior Avenue NW.
Cleveland, Ohio
(216) 621-1107
Trade association for the Great Lakes carriers, mostly bulk commodity.

National Air Carriers Association
1730 M Street NW., Suite 710
Washington, D.C.
833-8200
Trade association of nonscheduled (charter) air carriers.

National Industrial Traffic League
425 13th Street NW.
Washington, D.C.
393-1693

Organization of shippers; shippers' associations; boards of trade; chambers of commerce; and other entities concerned with rates, traffic, and transportation services of all carrier modes.

National Passenger Traffic Association
909 Third Avenue
New York, New York
(212) 935-1772

Trade association of travel departments of private corporations.

Private Truck Council of America, Inc.
1101 17th Street NW., Suite 1008
Washington, D.C.
785-4900

Association of manufacturers, retailers, etc., who use their own truck fleets to haul their goods.

Public Interest Economics Center
1714 Massachusetts Avenue NW.
Washington, D.C.
872-0313

Public interest economic study group.

Mr. Stanton P. Sender
Transportation Council, Sears, Roebuck and Co.
1211 Connecticut Avenue NW.
Washington, D.C.
223-5840

Transportation law processor and active member of several transportation interest groups.

Transportation Association of America
1100 17th Street NW.
Washington, D.C.
296-2470

National policy organization of transportation users, investors, and carriers.

U.S. Chamber of Commerce
1625 H Street NW.
Washington, D.C.
659-6122

Representatives of U.S. business interest.

Water Transport Association
1200 18th Street NW.
Washington, D.C.
296-3456
Common water carrier national trade association.

Several other organizations and individuals contacted did not have a notable response and have been excluded.

THE EVOLUTION OF REGULATORY AUTHORITY IN TRANSPORTATION

This section provides a chronological discussion of the evolution of the three transportation regulatory agencies: ICC, FMC, and CAB. The discussion states the conditions which led to a congressional interpretation of the problem, and subsequent legislative action to solve it. It deals only with the major legislative and judicial actions which are of historical importance and which aid in understanding the basis for establishing the regulatory agencies and the evolution of their authority. Appendix III contains a detailed extract of the amendments to the acts which founded ICC, FMC, and CAB.

THE INTERSTATE COMMERCE COMMISSION

For about 20 years before the Interstate Commerce Act of 1887, the Congress had been concerned with railroad regulation but could not agree on any legislative action. At that time, the railroads had been increasingly involved in speculative railroad building, and the industry reached a point of considerable excess capacity. There were severe public reactions to the resulting fluctuating and discriminatory rates, the destructive competition, and eventual monopolistic tendencies. Attempting to deal with the problem, the States, particularly the Midwest, established State regulations over the railroads passing within their borders. A prime stimulus behind State regulation was the Granger movement. This organized group of farmers, feeling the brunt of the railroad's discriminations as they shipped their grain to Eastern markets, brought political pressures on Midwestern State governments to take action to protect their interest.

In January 1886 Senator Shelby M. Colburn (Rep.-Ill.) submitted a report to the Congress from the Committee on Interstate Commerce detailing the complaints against the railroad system and outlining the basic provisions of what would later, upon modification, become the Interstate Commerce Act.

One of the major disputes between the House and Senate railroad regulation bills was the Senate's demand for a Federal regulatory commission and the House's insistance that the courts be relied upon for enforcement. The stimulus for compromise and the eventual establishment of the regulatory commission came on October 25, 1886 (Wabash, St. Louis and Pacific Railway Co. v. Illinois 1/), when the Supreme Court found that the regulation of commerce whose destination

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1/118 U.S. 557.

or origin was beyond the boundaries of a State was within Federal jurisdiction.

THE ESTABLISHMENT OF THE INTERSTATE COMMERCE COMMISSION

The Interstate Commerce Act (1887, 24 Stat. 379) has 24 sections, most of which deals with establishing the Commission, the composition and salaries of its members, and its practices and procedures. The Commission was to consist of five members, each serving for 6 years. The provisions which relate to the railroad activities, are listed below.

Section 1: Limits the Act to railroads, except where water is part of continuous rail transport. It also provides that all transportation of passengers and property by or upon a railroad be reasonable and just.

Section 2: Makes it unlawful to show personal favoritism and prohibited discrimination. It also provides for equality of rates for all shippers and prohibited special rates, rebates, drawbacks, and other such devices.

Section 3: First paragraph--Prohibits all discrimination against localities, types of traffic, and persons.

Second paragraph--Requires railroads to furnish to connecting roads reasonable and proper facilities for traffic interchange.

Section 4: Prohibits greater aggregate charges for a shorter haul than longer distances over the same line, in the same direction, and with the same original point of departure.

Section 5: Prohibits pooling of either freight or proceeds.

Section 6: Requires the publication and maintenance for public inspection of rates and charges and the filing of these with the Commission. It also requires 10 days notice of a rate change, and made it unlawful to charge other than the published rates.

Further, the Commission was given authority under sections 12 and 20 to inquire into railroad management and other common carriers, and to obtain information from the carriers, including an annual report from the railroads.

THE LEGAL BASIS FOR REGULATION

The Supreme Court's decision in Munn v. Illinois (94 U.S. 113, 1887) had no direct link to the Interstate Commerce Act or the establishment of the Commission. However, it established the basis upon which Government regulation now rests in the United States.

The railroads challenged the legality of the Granger-instigated State regulation by Government interference with the right of private property. The Court decided in favor of the State, and of regulation, saying that whenever "* * * one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created." 1/

CHANGES IN THE COMMISSION--1887-1906

Removal of Commission from Interior

The original act establishing the Interstate Commerce Commission subjected it to the financial control of the Secretary of the Interior. In 1889 the Congress eliminated this control and made it an independent agency.

The Maximum Rate Case and Alabama Midland Case

Within 10 years of the original act, the Supreme Court handed down two decisions which severely weakened ICC's power to control rates. In the Maximum Rate Case (167 U.S. 479 (1897)), the Court denied the Commission the power to fix rates or prescribe any tariff, stating that it did not have the power to fix a minimum nor establish an absolute rate. The Court then eliminated the long-short haul clause of the Act (Section IV) in ICC v. Alabama Midland Railway Company (168 U.S. 144 (1897)), holding that the clause of the Act related only to traffic over a single road and not to joint rates.

Safety Appliance Act

In 1893 the Safety Appliance Act gave ICC the job of enforcing railroad safety. ICC did this job until the creation of the Department of Transportation in 1966 when all powers related to transportation, except economic regulation, were vested with the new Department.

1/Schwartz, Bernard, The Economic Regulations of Business and Industry, Vol. I, p. 18, New York, 1973.

The Elkins Act

With the weakening of the Commission, rebating, discounting, and secret pricing again grew. This created pressures on the Congress from shippers and some carriers to pass rate stabilization legislation. This resulted in the Elkins Anti-Rebating Act of 1903, which attempted to correct some of these problems through stronger penalties against violators of the Interstate Commerce Act. The Elkins Act (1) made the railroad corporation liable for prosecution (courts had held that only officers, employees, and agents could be prosecuted), (2) made it unlawful for shippers to solicit or receive rebates or favorable treatment, (3) made departure from published rates a misdemeanor, and (4) authorized the courts to enjoin carriers upon proof of such misconduct.

STRENGTHENING THE COMMISSION

The Elkins Act, however, did not solve the problems of ICC's control over the railroad activities. Judicial decisions and railroad actions had so weakened ICC that in its 1897 Annual Report to the Congress ICC concluded that "there is today * * * no effective regulation of interstate carriers." ICC found it did not have the power to directly fix rates and could not take any definitive action. Railroads could set rates as high or low as they wanted, subject only to provisions that they not be unduly discriminatory and that they be published. Enforcement came only with application to the Federal courts and the basic effect was to turn ICC into an agency of only preliminary hearings.

These factors along with an environment of

--continued railroad consolidation;

--sharp increases in railroad freight rates;

--the concentration of control of railroads in a few men;

--disclosures which showed the impact of railroad rate discrimination upon monopoly growth, led to the Hepburn Act of 1906. 1/

The Hepburn Act is considered the key statute in ICC's history. It gave ICC the following major powers and changes:

1/Ibid, p. 594.

--Express authority to prescribe maximum rates.

--The Commission's orders were to be effective immediately and remain so unless set aside by the courts.

--Express power to issue reparation orders if there was an injured party.

--Extension of powers to include express companies, sleeping car companies, and pipeline companies which transport oil.

--A clause prohibiting railroads from transporting any commodities they owned or produced except timber. (This clause was included because of certain abuses of railroad power in West Virginia coal fields. The exception was made because the sole purpose of some Western railroads was to carry their timber out of the mountains.)

--ICC was expanded to seven members, their salaries were increased, and they were given increased powers to obtain information. 1/

ESTABLISHMENT OF PRIMARY JURISDICTION

Probably the most important judicial decision under the Hepburn Act was the case of Texas and Pacific Railway Co. v. Abilene Cotton Oil Co. (204 U.S. 426 (1907)), which established the doctrine of primary jurisdiction. The Court ruled that once an administrative agency was established and vested with jurisdiction over a case, the courts are restricted to judicial review.

Further, the Court said that the necessity for primary jurisdiction being vested in the Commission rested on a practical consideration. Without such jurisdiction, different courts and juries would decide on reasonableness in a variety of cases and, unless they all reached identical decisions, a uniform standard of rates would be impossible. This ruling established the basis for modern administrative power as exercised in administrative law and as practiced by today's regulatory agencies.

ADDITIONAL CONTROL OVER INTERSTATE RATES

Though the Hepburn Act strengthened ICC's powers, complaints continued from both shippers and carriers over system

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1/Ibid, p. 394-5.

deficiencies. To meet these grievances, the Congress passed the Mann-Elkins Act of 1910.

The major provisions of the Mann-Elkins Act were as follows:

--Authorized ICC to suspend proposed rate changes for 120 days. An additional extension of the suspension of up to 6 months may be made until satisfactory review of the proposal was completed.

--Gave ICC control over freight classification.

--Empowered shippers to designate their shipment route.

--Reestablished firm ICC control over long-short haul freight rates.

One provision of the long-short haul clause was that if a carrier reduced rates to compete with water transportation, it could not then increase these rates unless conditions had changed; other than the elimination of water carriers. It was one of the initial congressional efforts to retain intermodal competition.

An interesting, though unimportant part of this Act established the Commerce Court, a special court of judicial review. The court was abolished in 1913 following continued political frictions and conflicts with ICC decisions.

During the debate of this Act, Congressman William Sulzer (Dem.-N.Y.), found the piecemeal approach toward transportation unsatisfactory and, for the first time, called for the creation of a department of transportation.

A CHANGE FROM RESTRICTIVE REGULATION

The Transportation Act of 1920 came in response to many factors which had gripped the railroads before and during World War I. During the period of 1913-16, the rail lines suffered from severe financial problems, and a significant percentage of their total track miles were in receivership. The demand put upon the railroads during the war created enough instability in the industry that President Woodrow Wilson issued a proclamation taking over the railroads on December 26, 1917. The necessity for providing stability following the returning of the railroads to private operation on March 1, 1920, provided the main thrust behind the enactment of this legislation.

The 1920 Act was probably the first positive Government response to transportation problems in that it set out to promote an efficient and economically viable transportation system. Rather than regulating against practices in the industry, its purpose was to insure an adequate transportation service for the public, to create a strong railroad system, and to insure a fair profit to its owners.

The major provisions of the Transportation Act empowered ICC with the following:

--Authority to approve consolidation of existing lines to the extent necessary for establishing a better transportation system.

--Control over the issue of railroad securities toward the goal of maintaining sound financial policies.

--Expanded power over rates, enabling the fixing of minimum as well as maximum rates, and the duty to prescribe rates that would allow the railroads a fair return on investment.

--Authority to supervise car service, including the power to require adequate service and to prevent abuses.

--Authority to increase its size from 9 to 11 with the expressed power to operate in divisions of 3 or more members. 1/

Other provisions dealt with the mechanics of returning the railroads to private ownership with a considerable amount of the debate and legislation being devoted to labor practices.

THE REGULATION OF MOTOR CARRIERS

During the Depression, numerous railroads went bankrupt due to low rates of rail utilization and dwindling rates of return. With the trucking industry growing due to the ease of entry, the railroads were either forced to quote low rates or lose traffic.

1/Ibid, p. 1393.

Regulators, along with some carriers (in particular the railroads), believed there were too many trucks, too many trucking firms, too much irresponsible service, and instability in carriers and rates. The heavy pressure from the carriers, regulatory concerns, and some shippers eventually led to the Motor Carrier Act of 1935.

The Act, for the purpose of regulation, divides the industry into three types of service:

1. Common carriers--Carriers who are available to the public to carry all persons or goods.

   --Required to obtain certificates of convenience and necessity which specify the service to be rendered and the routes over which the carrier is authorized to operate.

   --All rates must be reasonable and not discriminatory.

   --Rates may be suspended for up to 7 months.

   --ICC may prescribe maximum rates, minimum rates, or the actual rate to be charged.

   --The carriers are obligated to provide safe and adequate service.

2. Contract carriers--Carriers that offer specialized service for particular shippers and who tend to deal with only a few shippers.

   --Must obtain a permit, providing that they are fit, willing, and able to perform the contract service which must be consistent with public interest and the national transportation policy.

   --Carriers minimum rates must be publicized. (Amended in 1957 to require publication of actual rates and for carriers to adhere to them.)

3. Exempt carriers--Exempted from regulation were private carriers hauling their owners' goods; motor vehicles owned by railroads, water carriers, or freight forwarders incidental to their business; local carriage; vehicles carrying fish, livestock, or agricultural commodities; trucks exclusively

carrying newspapers; and trucks owned and operated by agricultural cooperatives. 1/

THE REGULATION OF INLAND WATER CARRIERS

Approximately the same forces that urged the passage of the 1935 Motor Carrier Act again joined together, utilizing much the same reasoning, essentially the growing competition of a basically unregulated industry, to help pass the Transportation Act of 1940. The Act established the regulation of certain coastal, intercoastal, and inland water carriers like the 1935 Act regulated motor carriers. The regulation of certain intercoastal shipping had been vested with FMC, (then the United States Shipping Board) under a 1936 act which is discussed below.

Common water carriers were required to hold certificates of convenience and necessity while contract carriers were required to hold permits. Other major provisions were:

--The Commission can prescribe minimum, maximum, and actual rates.

--Rates must be published, adhered to, and free from discrimination.

For contract carriers, the provisions were:

--The Commission may prescribe minimum rates but not maximum, with 30 days notice for lowering.

--Actual rates need not be filed.

The Transportation Act of 1940, however, has considerable exemptions which limits ICC regulation over as much as 90 percent of the total intercity ton-miles of water carriage. 2/ The exemptions include:

--All bulk water carriers, provided not more than three bulk commodities are carried in the same vessel or tow. (Amended in December 1973, Public Law 93-201, to permit the carriage of more than three different commodities.)

1/Moore, Thomas Gale, Freight Transportation Regulation, American Enterprise Institute, Washington, D.C., 1972, p. 27.

2/Ibid, p. 32.

--Liquid cargoes in bulk in tank vessels designed for use exclusively in such service.

--Commodities transported by contract carriers which, by the inherent nature of the commodity, is not actually or substantially competitive with motor carriers, railroads, or other water carriers.

--Private carriage.

--Small craft of not more than 100 tons carrying capacity or not more than 100 horsepower and the movement of any craft within harbors, unless the Commission declares their regulation necessary. 1/

THE REGULATION OF FREIGHT FORWARDERS

ICC recommended regulating freight forwarders as early as 1930 due to the special relationship that existed between forwarders and the railroads. 2/ The railroads were offering expedited services, special facilities, and generally superior treatment to freight forwarders than that given to other shippers. The forwarders provided a major service to both the railroads and the less-than-carload shippers, but the special relationship was viewed as threatening to the stability of the rate structure.

The 1942 Freight Forwarder Act has several major provisions.

--The Commission had the power to determine maximum, minimum, or actual rates.

--Freight forwarders can, under certain conditions, enter into contracts with motor carriers for truckload shipments.

--All rates must be reasonable, nondiscriminating, published, and adhered to.

--Thirty days notice must be given before a rate change.

1/Ibid, p. 31.

2/A freight forwarder consolidates less-than-carload shipments of several carriers into single shipments and arranges the pickup, transportation, and delivery of goods for a shipper, usually through a common carrier.

--Entry requires a permit which is not conditioned upon the new forwarder's effects on competing forwarders. (This clause was changed in 1957 to require permits for new entrants on the condition of the effects on competing forwarders, except for railroads, which are exempt from this requirement.)

--The Act exempts freight forwarding performed by or under the direction of a cooperative association and for shipments of ordinary livestock, fish, agricultural commodities, or used household goods.

THE EXEMPTION OF RATE CONFERENCES FROM ANTITRUST

In 1945 the Supreme Court reaffirmed in the State of Georgia v. The Pennsylvania Railroad (324 U.S. 439 (1945)), that regulated industries are not exempt from antitrust laws. The congressional action which reestablished the legality of rate bureaus and conferences was the Reed-Bulwinkle Act of 1948. The Act grants carriers who organize rate bureaus, provided the rates and methods used by the bureaus are ICC approved, immunity from the antitrust laws. The Act also:

--Guarantees each carrier the right to take action independent of a rate bureau.

--Prohibits intermodal rate bureaus agreements except for joint or through rates.

AN ATTEMPT TO PROMOTE INTERMODAL COMPETITION

The Transportation Act of 1958 was partly enacted to provide guaranteed loans to the troubled rail carriers of the United States. However, the Act included a clause that said rates shall not be held up to a particular level to protect the traffic of any transportation mode, given due consideration to the objectives of the national transportation policy. The effect of this portion of the law is highly disputed, because of considerable disagreement as to whether ICC has actually held rates high to protect specific modes.

THE EVOLUTION OF THE FEDERAL MARITIME COMMISSION

Shipping conferences 1/ have historically been part of maritime carriage, with rate wars emerging as various conferences broke down. Until recently, the United States was the only major maritime nation that maintained statutory regulation of ocean shipping conferences.

The first significant activity concerning U.S. shipping regulations was in 1911 when the Department of Justice brought suit against three shipping conferences, charging agreements and practices in restraint of trade under the Sherman Antitrust Act. The suits all involved German lines and the outbreak of World War I before a final Supreme Court ruling made the question moot.

In partial response to these judicial activities, as well as shipper complaints of discrimination, arbitrary actions, and conferences using monopolistic devices such as deferred rebates and fighting ships, 2/ the House Committee on Merchant Marine and Fisheries investigated shipping combinations in 1912. The final report (known as the Alexander Report for Chairman Joshua W. Alexander of Missouri) was issued in 1914 with the following general conclusions. 3/

--Conferences were a necessary evil.

--They should be allowed to continue under close supervision.

--History has shown that they are necessary to prevent monopolistic conditions.

1/A shipping conference is a cartel type organization of steamship lines which controls rates and other conditions for moving cargo over the group's trade routes, usually within a particular geographic area.

2/A vessel used in a particular trade by a carrier or group of carriers for excluding, preventing, or reducing competition by driving another carrier out of said trade. (39 Stat. 733).

3/Carver, Robert, "Public Policy in the Ocean Freight Industry" Promoting Competition in Regulated Markets, Brookings, pp. 101 and 202.

--Antitrust laws were ineffective in establishing and maintaining control of conferences.

--They provide shippers the benefits of regular service and stable rates.

Shippers cited excessive rates, rate discrimination, lack of published tariffs and classifications, deferred rebates, and system instability as the undesirable effects of the existing conference system. They favored some regulation of the conferences. Generally, the carriers were not greatly opposed to regulatory control.

THE REGULATION OF THE OCEAN FREIGHT INDUSTRY

The net result of the debate was the passage of the Shipping Act of 1916 (39 Stat. 728), which still remains the basic statute on the regulation of ocean shipping. 1/ The Act established the United States Shipping Board with the authority to supervise common carriers operating on regular routes in the foreign commerce of the United States. It recognized the desirability of ocean shipping conferences and specifically exempted them from the antitrust laws, subject to the provisions of the Act. The Act's provisions included:

--Prohibition against the employment of deferred rebates, using fighting ships, retaliating against a shipper by refusing or threating to refuse space accommodations when such accommodations are available, and making unfair or discriminating contracts. (Subsequent amendments empowered the Secretary of Commerce to refuse entry into American ports any foreign carrier who has violated these prohibitions or who denies an American line admission to a conference on equal terms.) 2/

--Requiring carriers to file agreements, modifications, and cancellations with the Shipping Board that fix rates or control competition. The Board could disapprove, cancel, or modify any agreement modification or cancellation it finds discriminatory or which

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1/Three types of services are generally available to maritime shippers: (1) liner services--common carriers operating on regular schedules, (2) tramp services--contract carriers available for hire or charter, and (3) industrial carriers--private carriers moving proprietary cargo. Of these, maritime regulation has only been concerned with common carriers.

2/Stat. 996.

operates to the detriment of U.S. commerce. Approved agreements are exempt from U.S. antitrust laws.

--Requiring water carriers to publish and adhere to tariffs and file maximum rates, fares, and charges, as well as classifications, with the regulatory agency. The Board was given authority to pass upon reasonableness of rates, and could disapprove conference agreements if necessary. The Board was also given authority to require reports and other information from the carriers and the authority to investigate complaints.

The United States Shipping Board has been reorganized four times since its establishment and in all cases, except the most recent, the agency retained promotional as well as regulatory responsibility. The Board became the United States Shipping Board Bureau under the Department of Commerce in 1933 through Executive Order No. 6166, then the United States Maritime Commission through the Merchant Marine Act of 1936, and with the Reorganization Plan No. 21 of 1950, the Federal Maritime Board. Finally, President Kennedy's Reorganization Plan No. 7 in 1961 established the independent FMC and transferred the maritime promotion and subsidy programs to the Maritime Administration and the Maritime Subsidy Board in the Department of Commerce.

The confusion of repeated reorganizations and the dual responsibilities of promotion and regulation was further complicated by the limited regulatory power of the Board under the 1916 Act. Between 1916 and 1959, no penalties were imposed under the Act's provisions. 1/ Direct shipper complaints to the Commission were very limited, because they were passed along by the Commission to the carriers who were the subjects of the complaints.

ADDITIONAL REGULATION OF WATERBORNE COMMERCE

Several acts during the 1920-40 period changed the complexion of U.S. maritime policy but did not considerably alter the maritime regulatory powers of the Shipping Board.

The United States emerged from World War I with an enormous merchant fleet. The fleet was kept busy with a steady demand for its services until about 1920 when the industry found itself with great excess capacity. As part

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1/"Rate Regulation in Ocean Shipping," Harvard Law Review Vol. 78, p. 640.

of the effort to remedy this situation and make permanent some of the temporary war legislation, the Congress passed the Merchant Marine Act of 1920 (41 Stat. 988). The Act provided for the sale of Government-owned ships, offering assistance to purchasers through special Government arrangements. In addition, the Act limited the participation in U.S. coastal trade to American-owned vessels, repealing a 1914 act that had permitted foreign vessels.

Further restrictions were put upon intercoastal commerce by the Intercoastal Shipping Act of 1933 (47 Stat. 1425). The Act provided that common carriers engaged in intercoastal trade file and post their rates, fares, charges, and classifications with the Board, and that the Board could investigate and hold hearings as to the reasonableness of these filings. Most of the intercoastal commerce regulation was transferred to ICC in 1940 under much stricter provisions, with the exception of deep sea shipping engaged in domestic trade to and from Alaska, Hawaii, Puerto Rico, and the Virgin Islands. These provisions are noted under a previous section entitled "The Regulation of Inland Water Carriers."

As previously mentioned, the Merchant Marine Act of 1936 (49 Stat. 1985) changed the organization of the Shipping Board Bureau to the United States Maritime Commission. It did little else which had any impact on the regulatory powers of the Commission. However, the 1936 Act is remembered for initiating support for the United States merchant marine, establishing both direct construction and operating subsidies along with a variety of less important provisions for the promotion of the merchant marine.

THE IMPETUS OF CHANGE

It was known when the Shipping Act of 1916 was passed that conferences could substitute dual-rate contracts 1/ for the deferred rebate system which had been made illegal. The leading U.S. independent line, Isbrandtsen Company, challenged the legality of dual rates in 1948 (Federal Maritime Board v. Isbrandtsen Co., 356 U.S. 481, 1958). After 10 years of litigation and dispute, the Supreme Court ruled in favor of Isbrandtsen and held dual-rate systems to be intended to stifle competition, and, therefore, illegal under the 1916 Act.

1/Dual-rate contracts are contracts between a shipper and a conference where the shipper agrees to make all shipments of a specific commodity over a certain route on ships of that conference, and in return receives a reduced schedule of rates.

The Congress' reaction was to pass temporary legislation legalizing the existing dual-rate systems pending results of several studies which were then initiated.

THE LEGALIZATION OF DUAL RATES (1961 AMENDMENTS TO THE SHIPPING ACT, PUBLIC LAW 87-3461)

Two major reports emerged from the congressional inquiries, one from Representative Bonner, Chairman of the House Merchant Marine and Fisheries Committee and the other from the House Committee on the Judiciary, headed by Representative Celler. Their conclusions were that a conference system was essential for the maintenance of regular service and stable rates. Investigations also showed that the 1916 Act did little to correct the abuses of the conference system.

The major provisions of the 1961 law were aimed at resolving the carrier-shipper disagreements over dual-rate contracts, and though adding some strength to the Commission powers, continued to rely on competition from independent lines to keep rates at reasonable levels.

The Act gave FMC new authority and responsibility. The major provisions were:

--Commission authority over all rates inbound and outbound by common carriers operating in foreign commerce as well as rules and regulations relating to these rates. The rates must be filed and adhered to by the filing carrier.

--Rates must be filed 30 days before effective.

--The Commission may disapprove rates so unreasonably high or low as to be detrimental to U.S. commerce.

--No conference agreement will be approved unless membership is open on the same terms to any carrier.

--Allowed any carrier to enter into dual-rate contracts with any shipper subject to specific restraining provisions and the filing of the agreement with the Commission. 1/

1/Larner, pp. 110 and 111.

The 1961 legislation was the last major attempt to alter the authority and thrust of FMC. It did not solve many Commission problems, one of the most important of which is the conflict between the Commission's authority to obtain information from foreign carriers and the resistance of foreign governments to do so. Since most of the Commission's activity is the regulation of common carrier conferences engaged in foreign commerce, this inability to deal with the direct competition of the conferences severly limits FMC's effectiveness.

THE REGULATION OF AVIATION

The development of aviation in the United States was initially haphazard and uncoordinated. The Government had an interest in promoting aviation and regulating the safety of aircraft and aviators. The promotion of aviation during the 1920s and 1930s was the primary responsibility of the Department of Commerce, but indirectly, the Post Office Department had more influence through its mail route contracts. Initial awarding of mail routes was to the low bidder through competitive bidding. Since this was the only stable business available for air carriers, the Post Office held substantial financial control over the survival of those carriers then in service. In addition to the involvement of the Departments of Commerce and Post Office, ICC had authority to fix rates for airmail.

REGULATION OF AIR SAFETY

The first major piece of legislation seriously affecting the air carrier industry was for regulation of the craft and its pilot. The Air Commerce Act of 1926 vested in the Secretary of Commerce the responsibility for registration of aircraft, certifying pilots, lighting civil airways, installing navigation beacons, and establishing penalties for noncompliance with the Act. The Act also gave the President the authority to reserve airspace for special purposes.

THE REGULATION OF CIVILIAN AIR CARRIAGE

By the mid-1930s, the lack of coordination of aviation matters within the Federal Government led to the opinion that all Federal involvement in aviation should be made the responsibility of one agency. In addition, passenger travel had begun to emerge and a substantial new investment was necessary to make air passenger service a viable possibility. Toward the mid- and late-1930s, mail routes were in such demand that route bids were growing increasingly low, often to the point of destructive competition. It was felt that Federal regulation was necessary to keep excessive competition from

destroying the financial stability of the industry and that the assurance of route security was one method of making investment in airlines attractive.

All of these factors eventually led, after several years of unsuccessful effort, to the Civil Aeronautics Act of 1938. The Act established the Civil Aeronautics Authority, a five member independent agency with powers over both the economic and safety regulation of civil aviation, and the Air Safety Board, which investigated aviation accidents and made recommendations for the prevention of future accidents.

The Civil Aviation Authority was empowered to direct and encourage the development of civil aeronautics and air commerce in the United States. Among the major aspects of the 1938 Act were:

--The requirement of a license to engage in air carriage based upon certification of public convenience and necessity, for both domestic and international routes.

--The carrier must file with the authority and adhere to rates and tariffs which are just and reasonable, and which the authority may modify, reject, or accept. The Act also prohibits rebating and requires notice for change in rates.

--The Authority had the power to determine mail rates and amounts of subsidy.

--It gave the Authority powers over the financial and corporate structure of the carrier and the ability to control mergers and consolidations.

--Required registration and certification of aircraft and airmen, and provided for other air and navigation safety standards.

Considerable debate was given as to whether aviation should be regulated by a separate authority or fall under a separate division of ICC. The major reasons the Congress went to an independent agency is because it was felt that ICC at that time was already overworked, that aviation was of such an importance it needed the support of its own agency, and that there was a need for men trained in aviation to make the regulatory decisions.

THE REORGANIZATION OF THE CIVIL AERONAUTICS ADMINISTRATION (1938-58)

Within 2 years of the establishment of the Civil Aeronautics Authority, the organization was split under Reorganization Plans Nos. 3 and 4 of 1940. The reorganization created the Civil Aeronautics Administration (CAA) and the Civil Aeronautics Board. CAB absorbed the investigation functions of the Air Safety Board (the Board was abolished) and retained the quasi-legislative and quasi-judicial functions of safety rulemaking and economic regulation.

CAA took on the operational functions of the old Authority plus the air navigation and promotional aspects. CAA was given additional authority over air navigation rulemaking by an Act of Congress on July 1, 1948 (62 Stat. 1216).

Reorganization Plans Nos. 5 and 21 of 1950 resulted in the CAA being firmly placed within the Department of Commerce under the Under Secretary for Transportation. 1/ It retained responsibility for managing the airways, but often, other diffused groups and panels were formed to deal with aviation policy and problems. CAB continued to make safety rules and control economic regulations; its authority being basically unchanged.

CREATION OF THE FEDERAL AVIATION AGENCY (FEDERAL AVIATION ACT OF 1958)

Several major shortcomings of the pre-1958 situation stimulated new aviation legislation. The first was a general diffusion of authority, together with the subordination of aviation interest, to other interests within the Government, specifically the Department of Commerce and the Bureau of the Budget.

Air traffic had been increasing rapidly. Their had been many near midair collisions and actual accidents, along with numerous other airway problems. In addition, there was the highly publicized development of a civilian air traffic control system which was not compatible with the military system. Moreover, there was a lack of clear statutory authority for centralized airspace management and related activities.

1/Schwartz, Vol. V, p. 3338.

These problems led to the Federal Aviation Act of 1958. Though the major thrust of the Act was to create the Federal agency (Federal Aviation Agency) as a new independent regulatory authority, it also outlined an aviation policy which CAB was to consider in the performance of its duties.

--Encouraging air transport development to meet the future needs of foreign and domestic commerce, the Postal Service, and national defense.

--Regulating air transport to assure the highest degree of safety, foster sound economic conditions in air transportation, and coordinate transportation between air carriers.

--Promoting adequate, economic, and efficient service at reasonable charges and without discrimination.

--Preserving competition to the extent necessary to assure sound development of an air transport system able to meet the needs described above. 1/

The Federal Aviation Agency was given the responsibility and authority for advancing and promoting civilian air transportation along with most of the nonregulatory powers of the Civil Aeronautics Authority. These included:

--Promulgation and enforcement of safety regulations.

--The management of national airspace along with air traffic rules.

--The development of air navigation facilities.

CAB retained its economic regulatory functions, while its responsibility to investigate accidents and its quasi-judicial powers related to airmen, aircraft, and safety actions were later delegated to the Federal Aviation Administration under the Department of Transportation. The accident investigation and related safety functions were later redelegated to the National Transportation Safety Board.

1/Guandolo, John and Fair, Marvin L., Transportation Regulation, Wm. C. Brown Pub., Dubuque, Iowa, 7th Edition, 1972 p. 43.

Limitations were put on foreign carriers by the Act (section 402(a) 49 U.S.C. 1372(a)) which established that foreign carriers engaged in U.S. air transport must obtain a permit based on the fact that they are fit, willing, able to perform, and that it will be in the public interest. The law was written, however, so that the President has the ultimate authority over foreign air carriers and CAB only recommends action.

There have been numerous other changes in Federal involvement in airline regulation since 1938, but the basic regulatory authority of CAB and its purpose as outlined in the original act have not been altered. The many amendments to the 1938 Act have addressed specific minor administrative or newly found safety problems but have not changed the agency's thrust. Even the 1958 Act was only a reenactment of the Civil Aeronautics Act of 1938. This was because the economic regulation of airlines outlined in the 1938 Act was drawn heavily from the Interstate Commerce Commission's Act, and thus, was far ahead of the industry's development.

ESTABLISHMENT OF THE DEPARTMENT OF TRANSPORTATION (DEPARTMENT OF TRANSPORTATION ACT of 1966)

By 1966 the Federal involvement in transportation had grown to where almost 10,000 Government employees and $6 billion in Federal funds were devoted annually to transportation. 1/ The concensus in and out of the Government was that it was time to consolidate Federal efforts in transportation so that there could be organizational indentity by mode, special attention given to safety matters, and above all, transportation could receive the recognition of national importance it deserved through a cabinet level position.

President Lyndon Johnson called for the formation of the department in his transportation message to Congress in March 1966. The resulting bill was signed into law in October of the same year.

The Act took all Federal powers in the transportation area and vested them in the new department with one major exception. It did not touch the economic regulatory functions of the independent regulatory agencies. Furthermore, the Act says nothing about the divided jurisdiction of the four transportation regulatory agencies (including the Federal Power Commission's control over natural gas pipelines). Only the safety and accident investigation functions were transferred to the Department of Transportation.

1/Schwartz, p. 3477.

APPENDIX II

The Federal Aviation Agency was transferred to the new Department, becoming the Federal Aviation Administration. The original bill was also to have transferred the Maritime Administration and its functions to the Department of Transportation, along with the United States Coast Guard. However, following considerable debate, that legislation was amended to allow the Maritime Administration to remain under the Department of Commerce.

DETAILS OF LEGISLATIVE EVOLUTION

AMENDMENTS TO INTERSTATE COMMERCE ACT AND RELATED ACTS

1889--Clarified provisions relating to tariffs, added force to penalty provisions, added a requirement that ICC should execute and enforce the provisions of law, and removed the provision requiring ICC to report to the Congress through the Department of Interior.

1893--Compulsory Testimony Act. Gave immunity from self-incrimination. Safety Appliance Acts set standards for the promotion of the safety of travelers and employees.

1903--Expediting Act. To expedite hearings and determination of cases.

1903--Elkins Act. Provided tariffs must be observed. Strengthened law against rebating. Made shippers liable for receiving them. Courts given power to enjoin violations of the law. Dealt forcefully with discrimination and with deviation from published tariffs of carriers' rates and charges.

1906--Hepburn Act (amendment to Elkins Act). Distinctly gave ICC power to prescribe just and reasonable maximum rates and charges, regulations or practices for the future, and through rates and maximum joint rates. Membership of ICC increased from five to seven. Increased jurisdiction of ICC to include express and sleeping car companies, and petroleum pipe lines. Comprehensive definition of the terms railroad and transportation. ICC given power to prescribe forms of accounts and to require various reports and inspect accounts. Increased power over discriminations and to prevent rebates, etc., added "Commodities Clause" (Sec. 1(8)), added duty to establish switch connections (Sec. 1(9)), authorized reasonable allowance to shippers for furnishing transportation services (Sec. 15(13)). The Commission was authorized to employ agents or examiners with authority to administer oaths, examine witnesses, and receive evidence. Provided for enforcement of ICC orders.

1906--Carmack Act. Required common carriers in interstate commerce on receipt of goods to issue receipt or bill of lading. Made carriers liable for loss or damage regardless of any limitation in bill of lading. Initial carrier primarily liable but was entitled to recover from participating carriers. Provided for through bill of lading. See Section 20 (11-12) of the Interstate Commerce Act.

1906--Immunity of Witnesses Act. Provided that immunity provided in compulsory testimony provisions extended only to a natural person (not corporation) who in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath.

1910--Mann-Elkins Act. Provided for suspension and investigation of rates. ICC given power to conduct investigations on own motion instead of on complaint only. Shipper given power to route under Part I. Changed Section 4 of the Act by deleting words "under substantially similar circumstances and conditions" and placed primary judgment as to 4th Section violations in ICC instead of the carriers; also added aggregate of intermediates, and prohibited increase in rates reduced to meet water competition after that competition had been eliminated. Commerce Court established to enforce ICC orders from which appeal could be taken to the Supreme Court. The Commerce Court failed to operate and abolished in 1913. Brought telegraph, telephone, and cable companies under the Act.

1912--Panama Canal Act. Prohibited railroads from continuing ownership or operation of water lines where competition would thereby be lessened. It also authorized ICC to establish through routes and rates for combination rail-water movements.

1913--Urgent Deficiencies Act. Abolished Commerce Court. Provided procedure for injunctions against ICC orders and judicial review.

1913--Valuation Act. Required valuation of railroads. (Sec. 19a.) Directed ICC to determine the value of property owned or used by railroads.

1914--Clayton Act (Antitrust Act). Contained provisions for regulating competition.

1915-16--Cummins Amendments. Forbade released rates without special permission.

1916--Bill of Lading (Pomerene) Act. Codified negotiability of, and liability under, bills of lading.

1917--Esch Car Service Act. Added paragraphs (10) and (17), inclusive, to Section 1 of the Act. Defined car service and outlined carriers' duties and ICC's powers in relation to car service. Authorized ICC to determine the reasonableness of freight car service rules; prescribe rules in place of those found unreasonable; and in time of emergency, suspend the car service rules and direct car supply to fit the circumstances.

1918--During World War I Government took over the railroads. (Until Transportation Act of 1920--approved Feb. 28, 1920.) Government paid the railroad owners a return equivalent to the net average operating income of the railroads for the period 1915 to 1917.

1920--Transportation Act of 1920. Ended Federal Government control of the railroads. Returned railroads to private operation. Added a rule of rate making (Section 15a). Indicated what should be a fair return and provided for recapture of excess earnings. Permitted pooling of freight when in the public interest. Gave ICC power to authorize control of one carrier by another. Provided for consolidation of railroads into limited number of systems. Directed ICC to devise a program for merging the Nation's railroads, but the plan which was developed was never carried out. Amended car service provisions of Section 1 (10) to (17), inclusive, by authorizing ICC to prescribe general rules as to car supply. Gave emergency powers to Commission. Added Section 1 (18) to (22) to the Act dealing with extensions, etc. Gave Commission specific control over State rates that discriminated against interstate commerce (Section 13(3), (4)). Added Section 20(a) authorizing ICC to regulate issuance of securities as to amount, terms, etc. Prohibited interlocking directors, etc., except as authorized by ICC. Gave ICC power over the divisions of joint rates (Section 15(6)). ICC given power to prescribe minimum and precise rates as well as maximum rates. Section 4 changed by adding equidistant

clause and "reasonably compensatory" clause, and further providing that rates violating the 4th section would not be allowed based on meeting of merely potential water competition not actually in existence. Paragraph 5 was added to Section 15 providing that no loading and unloading charges for livestock are to be made at public yards. Section 25 was added giving ICC authority to order the installation of certain safety devices. Changed the name of the original statute to Interstate Commerce Act.

1925--Hoch-Smith Resolution. General investigation of rates on livestock and farm products.

1927--Newton Amendment. Amended Section 22(1) permitting reduced rates in case of calamitous disaster. Amended Section 3(2) so that consignees informing carriers that they are agents only are relieved from liability for undercharges discovered after delivery. Suspension period in Section 15(7) set at 7 months. Section 20(11) and (12) extended to the delivering carrier as well as limited carrier.

1933--Emergency Transportation Act. Eliminated "recapture clause" in Section 15(a) and established a new rule of rate making, to carry out the provisions of the Act--to encourage, promote, and require action on the part of the carriers to avoid unnecessary duplication of services and expense, to promote the financial reorganization of carriers, and to provide for a study by a Federal Coordinator of Transportation of means of improving conditions of transportation in all forms. The emergency powers of the Act expired in 1936.

1934--Federal Communications Act passed creating the Federal Communications Commission which took over from ICC the regulation of telegraph, telephone, cable, and radio companies.

1935--Motor Carrier Act (Part II). Brought motor carriers of property and passengers under ICC jurisdiction. Caused the greatest expansion of ICC duties since the Transportation Act of 1920. Field offices were established as well as a bureau to assist in the administration of the Motor Carrier Act.

1937--Bituminous Coal Act. Consumers counsel to represent public before ICC.

1938--Civil Aeronautics Act (now Federal Aviation Act). Permitted through rates between air and other common carriers. Provided for cooperative action relative thereto, between ICC and Civil Aeronautics Board.

1938--Agricultural Adjustment Act. Secretary of Agriculture to plead and appear before ICC.

1940--Transportation Act of 1940. Added National Transportation Policy. Section 1(4) amended, making it duty of rail carriers to establish reasonable through routes with water carriers. Section 1(14)(a) amended to give ICC authority to establish rules and regulations covering all terms of contracts for use of cars, etc., whether or not the equipment is owned by another carrier. Section 3(1) was amended by adding "that this paragraph shall not be construed to apply to discrimination, prejudice or advantage to the traffic of any other carrier of whatever description." Section 3 amended to make it unlawful to give any undue or unreasonable preference or advantage to any region, district, or territory. Section 3(4) requires carriers to afford proper facilities for interchange of traffic. Section 4 made applicable to water carriers and "equidistant clause" was eliminated. Section 202 amended to provide that pickup and delivery services by motor vehicle within terminal areas incidental to transportation subject to Parts I and III would be regulated as transportation subject to those parts. Added and clarified exemptions from Part II regulation (Sections 203(b) (4-a); 203(b), (4-b), etc.). Section 218(a) amended to require schedules of rates as contract motor carriers to contain rates actually charged. Placed common carriers by water under ICC regulation.

1942--Freight Forwarder Act (Part IV) established regulation of freight forwarders.

1945--Land Grant Rates; repeal, effective October 1, 1946.

1946--Administrative Procedure Act. Governs procedure before governmental agencies.

1948--The Mahaffie Act added Section 20b which makes possible the voluntary reorganization of railroads by providing a means of adjusting financial structures without bankruptcy proceedings.

1948--Reed-Bulwinkle Act. Conference method of rate-making not subject to Antitrust.

1949--Statue of Limitations (same as in Part I) added to Parts II, III, and IV.

1950--Amendments to Freight Forwarder Act (Part IV). Forwarders declared common carriers; contract arrangements replace interim through route and rate arrangements with motor common carriers.

1958--(Part V, Loan Guarantee, terminated in 1963.) Section 13a, liberalized discontinuance or change of train operations or services. Section 13(4) amended preference or prejudice, or discrimination against interstate and foreign commerce. Reduced the number of agricultural commodities exempt from ICC regulation when transported by motor carrier (Section 203). Section 15a--revised rule of rate making to effect that rates of a carrier are not to be held up to protect other modes of transportation.

1965--Amendment of Act enabled ICC to deal more efficiently with a number of areas, primarily the problem of curbing illegal motor carriage. New opportunities were created for fruitful cooperation between State and Federal authorities.

1966--Department of Transportation Act. Effective April 1, 1967. Established the Department of Transportation. Safety functions of ICC transferred to Department of Transportation. Time zone jurisdiction also transferred.

1970--Section 303(b) amended. Exemption afforded under section shall not be lost by the concurrent transportation in the same vessel of other commodities.

FEDERAL AVIATION LEGISLATION WITH
CHRONOLOGICAL LIST OF AMENDMENTS AND REVISIONS

1938--Civil Aeronautics Act of 1938, Public Law 75-706, 52 Stat. 973. Established first comprehensive structure for the regulation of the economic and safety aspects of commercial aviation.

1939--Civilian Pilot Training Act, Public Law 76-153, 53 Stat. 855. Authorized Civil Aeronautics Authority to train civilian pilots.

1940--Reorganization Plans Nos. III and IV, P. Recs. No. 75, 54 Stat. 1231. Separated and clarified functions of Civil Aeronautics Board from those of the Administrator of Civil Aeronautics.

1947--Act of August 4, 1947, Public Law 80-346, 61 Stat. 743. Eliminated the requirement for joint rates in cases of through or coordinated service involving an air carrier and common carrier subject to Interstate Commerce Act, and substituted a requirement of just and reasonable rates.

1948--Act of June 29, 1948, Public Law 80-815, 62 Stat. 1093. Authorized Administrator to train air traffic control tower operators.

1949--Act of June 26, 1949, Public Law 81-186, 63 Stat. 480. Provided for the regulation of explosives and other dangerous articles transported by air.

1950--Reorganization Plan No. 13 of 1950, 64 Stat. 1266. Transferred certain CAB administrative responsibilities to the Chairman.

1950--Act of August 3, 1950, Public Law 81-635, 64 Stat. 395. Made it criminal to willfully display misleading markings as to the nationality of aircraft.

War Risk Insurance Act, Public Law 82-123, 65 Stat. 65. Authorized provision of war risk insurance.

1952--Act of July 14, 1952, Public Law 82-539, 66 Stat. 628. Brought ticket agents within the regulatory jurisdiction of CAB for purposes of preventing unfair or deceptive practices, rebates, and unfair methods of competition.

1953--Act of August 8, 1953, Public Law 83-225, 67 Stat. 489. Amended Air Commerce Act so as to transfer certain functions of the Civil Aeronautics Administrator regarding the navigation of foreign civil aircraft to CAB.

1953--Reorganization Plan No. 10 of 1953, 67 Stat. 644. Established separate payment of service mail rate by Postmaster General and subsidy mail rate by CAB.

1955--Act of May 19, 1955, Public Law 84-38, 69 Stat. 49. Provides for the permanent certification of the local service carriers.

1956--Act of July 20, 1956, Public Law 84-741, 70 Stat. 591. Provides for the permanent certification of Hawaiian and Alaskan air carriers.

1956--Act of August 1, 1956, Public Law 84-865, 70 Stat. 784. Authorizes reduced-rate transportation on a space-available basis for ministers of religion.

1957--Act of September 7, 1957, Public Law 85-307, 71 Stat. 629. Authorized CAB to guarantee equipment loans for local service air carriers, metropolitan helicopter service, and certain territorial air carriers.

1958--Federal Aviation Act of 1958, Public Law 85-726, 72 Stat. 731. Recodified the general economic regulatory authority of the Civil Aeronautics Act and established the Federal Aviation Agency to regulate safety and provide for safe and efficient use of airspace by civil and military aircraft.

1959--Act of July 8, 1959, Public Law 86-81, 73 Stat. 180. Facilities financing of aircraft engines and propellers.

1959--Act of August 29, 1959, Public Law 86-199, 73 Stat. 427. Authorized use of airmail for service of process.

1960--Act of July 12, 1960, Public Law 86-627, 74 Stat. 445. Clarified provisions relating to free or reduced-rate transportation for employees and directors of air carriers, and their families.

1960--Act of July 14, 1960, Public Law 86-661, 74 Stat. 527. Provided for temporary authorization for certain air carriers to engage in supplemental air transportation.

1960--Act of September 13, 1960, Public Law 86-758, 74 Stat. 901. Authorized the elimination of a hearing in certain cases arising under Sec. 408 of the Act.

1961--Act of September 13, 1961, Public Law 87-225, 75 Stat. 497. Provides for reasonable notice of applications to the United States Courts of Appeals for interlocutory relief against orders of the Board (and other agencies).

1961--Reorganization Plan No. 3 of 1961, 75 Stat. 837. Authorized CAB to delegate functions to the staff and provided for the transfer of certain functions to the chairman.

1962--Act of July 10, 1962, Public Law 87-528, 76 Stat. 143. Provided for permanent certification of the supplemental air carriers and for civil penalties for certain economic violations.

1962--Act of October 15, 1962, Public Law 87-810, 76 Stat. 921. Provided additional authority to CAB in the investigation of aircraft accidents.

1962--Act of October 15, 1962, Public Law 87-820, 76 Stat. 936. Provided for the transfer of the loan guaranty functions to the Secretary of Commerce.

1966--Department of Transportation Act, Public Law 89-670, 80 Stat. 931. Established the Department of Transportation and transferred the Board's safety and accident investigation functions to the National Transportation Safety Board within the Department.

1969--Public Law 91-62, approved August 29, 1969, the law requires CAB approval of the acquisition by any person of control of an air carrier as of August 5, 1969. CAB is authorized to exempt any acquisition of control of a noncertificated air carrier from the approval requirement to the extent that such may be in the public interest.

Unless CAB finds otherwise, any person owning beneficially 10 percent or more of the voting securities or capital of an air carrier is presumed to be in control of the carrier. This law also requires any person owning, beneficially or as trustee, more than 5 percent of any class of the capital stock or capital of an air carrier to submit annually, and at such other times as CAB may require, a description of the stock or other interest owned and the amount.

1970--The Airport and Airway Development Act of 1970 (Public Law 91-258, approved May 21, 1970) provides, in substitution for the Federal Airport Act, large-scale Federal assistance for expansion and improvement of the Nation's airport and airway system. To provide additional revenue for the financing of the Federal assistance, the Act imposes new and increased aviation user charges. In order to insure that the aviation user charges are expended only for the expansion and improvement of the airport and airway system, an "Airport and Airway Trust Fund" is established, into which such user charges are deposited.

1970--On April 3, 1970, Public Law 91-224, the Water Quality Improvement Act of 1970, was approved. Section 11(p)(1) requires that any vessel over 300 gross tons, using any port or place in the United States or the navigable waters of the United States, establish and maintain evidence of financial responsibility of $100 per gross ton, or $14 million whichever is the lesser, to meet the liability to the United States to which the vessel could be subjected under the Act, for the cost of cleanup of spilled oil. The President, on June 2, 1970, delegated to FMC the responsibility to carry out the provisions of the Act pertaining to this financial responsibility.

PRINCIPAL MERCHANT MARINE AND SHIPPING ACTS

1916--Shipping Act of 1916, 39 Stat. 728, established the first comprehensive program for the development of the U.S. merchant marine and for a structure of regulation of common carriers by water engaged in foreign commerce. It remains the basic act in regulation of steamship conferences and lines.

1920--Merchant Marine Act of 1920, 41 Stat. 988, provided for establishment of fleet operations in foreign and domestic service by sale of Government constructed vessels of the Emergency Fleet Corporation, and provided assistance to private operations through insurance and construction aid.

1925--Home Port Act (1925), 43 Stat. 947 required every vessel of the United States to have a home port in the United States.

1928--Merchant Marine Act of 1928, 45 Stat. 689, provided for substantial aid to U.S. merchant fleets through an indirect subsidy of mail contracts.

1933--Intercoastal Shipping Act, 1933, 45 Stat. 1425, provided for the regulation of common carriers by water engaged in intercoastal commerce. The Transportation Act of 1940 transferred this jurisdiction, except for offshore domestic shipping, to the Interstate Commerce Commission.

1936--Merchant Marine Act of 1936, 49 Stat. 1985, remains the basic act for the maintenance of the U.S. merchant marine. It made direct subsidy through construction and operating contracts the principal support. Mail aid was abolished but other indirect aids continue.

1936--Carriage of Goods by Sea Act, (1936) 49 Stat. 1208, incorporated the basic exemptions of liability of the Harter Act, but added to protection of shipper in regard to inspection after delivery and in other ways.

1940--Transportation Act of 1940, 54 Stat. 898, transferred the regulation of coastwise and intercoastal (except offshore), shipping to the Interstate Commerce Commission.

1954--Emergency Foreign Vessels Acquisition Act, Public Law 569, authorizes the Secretary of Commerce to purchase or requisition, any merchant vessel lying idle in U.S. waters in event of a national emergency.

1967--Reorganization Plan No. 7 of 1967 (75 Stat. 840), provided for the transfer of the regulatory functions of the Federal Maritime Board respecting rates, services, practices, agreements, and discrimination of common carrier lines and conferences engaged in offshore domestic trade to the Federal Maritime Commission. Regulation of subsidy contracts was transferred to the Maritime Administration of the Department of Commerce.

1970--Public Law 91-469(1970) amended the Merchant Marine Act of 1936 to make bulk cargo carrying services under the American flag eligible to construction subsidy.

Source: Transportation Regulation
Marvin L. Fair and John Guandolo
William C. Brown Pub. Dubuque, Iowa 7th Ed.
1972 pp. 27-34

CURRENT ADMINISTRATION AND AGENCY REGULATORY REFORM ACTIVITIES IN BRIEF AS OF OCTOBER 10, 1975 1/

The administration has proposed various regulatory reforms covering a wide selection of regulation controls during recent months. There has been some tendency to mix economic regulatory reforms with changes in health and safety regulation, but in the transportation area, the proposals have been restricted to changes in regulation as administered by CAB and ICC. The administration has developed its proposals and has submitted several bills for consideration and has indicated that it is considering at least one other transportation regulatory change.

Within the administration the primary responsibility for regulatory reform has fallen on a task force, the Domestic Council Review Group on Regulatory Reform headed by Counsel to the President Roderick M. Hills. (Mr. Hills has only recently been nominated as chairman of the Securities and Exchange Commission.) President Gerald Ford has also provided additional administration viewpoint to the transportation regulatory agencies through his appointment of Mr. John E. Robson as head of CAB and nomination of Mr. Karl E. Bakkee as chairman of FMC. Moreover, it is expected that the President will soon be appointing a new ICC chairman.

ICC

ICC completed its own internal staff study for regulatory modernization in July 1975, which resulted in more than 60 recommendations for change, mostly internal and procedural. Many of the proposals deal with the problems of regulatory delay and lack of rate and service flexibility, primarily through internal changes, though several proposals would require minor legislative change.

The administration has made several proposals for altering ICC's regulatory role, addressing the problems of each mode in separate legislation. The only official proposal to date concerns railroad regulation and was included as part of the legislation to restructure the Northeast railroads. Among other matters, the act would:

1/The information in appendix III was gathered from articles on, and public announcements from, the regulatory agencies involved and is intended solely as background to the issues raised in this report.

--Permit railroads to increase or decrease rates 7 percent the first year, an additional 12 percent the second year, and another 15 percent the third year. After the third year, rate increases of 15 percent and rate reductions down to cost would be permitted without being subject to ICC suspension.

--Set time limits for ICC action in rate cases.

--Prohibit ICC from protecting carriers against competition from another mode.

--Remove antitrust immunities from certain rate bureau practices.

An unofficial, or as yet unannounced, proposal relative to ICC regulation of motor carriers 1/ was "previewed" by Mr. Millard M. Holden, president of the Independent Produce Haulers of America, on July 16, 1975, in a press conference held at the Department of Transportation. According to Mr. Holden, the forthcoming legislation on motor carriers is expected to call for ways to end some "dead-heading" or empty backhauls, by exempting small independent truckers from certain ICC regulation. Other specifics are unannounced but are said to be contained in a trucking bill scheduled to be completed within the next few weeks.

There has been no indication of any administration proposals to modify ICC regulation of water carriers.

FMC

The administration has not proposed any regulatory changes in FMC, nor have there been any internally generated proposals for change. The only administration activity involving FMC is the recent nomination of a new chairman as previously mentioned.

CAB

CAB has completed several studies, primarily through consultants which led it to propose an experiment with deregulation, limited in duration and restricted to traffic over a few selected routes.

1/The administration's motor carrier legislation was submitted to the Congress during the week of November 10, 1975, too late for inclusion within this discussion.

APPENDIX IV

The administration proposal, released at the beginning of October, goes further toward deregulation and covers a broader range of regulatory change. This proposal, which is to be phased in over a 5-year period, includes the following:

--Permits airlines to raise fares up to 10 percent per year without CAB approval and reduce them to the level of operating cost, with cuts up to 20 percent the first year and another 20 percent the second.

--Various required operating services, such as required through plane service, would be eliminated.

--Beginning in 1981 airlines could expand their route systems by 5 percent per year for trunk lines and 10 percent per year for local-service carriers.

--Charter airlines could apply to CAB for individually ticketed, scheduled service.

--CAB would lose authority to approve certain joint agreements and more industry action would become subject to antitrust. Exemptions would remain for certain interline services, such as ticketing.

--Enable carriers to more easily drop unprofitable routes.