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Report to the Chairman, Subcommittee on Transportation and Related Agencies, Committee on Appropriations, U.S. Senate

April 1987

TRUCKING DEREGULATION

Proposed Sunset of ICC's Trucking Regulatory Responsibilities

RELEASED

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Resources, Community, and
Economic Development Division

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April 23, 1987

The Honorable Frank R. Lautenberg
Chairman, Subcommittee on Transportation
and Related Agencies
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

In response to a request from your subcommittee, this report analyzes deregulatory issues remaining to be resolved so as to ensure a smooth transition should the Congress proceed with further deregulation of the trucking industry. Specifically, the report assesses the merits of retaining or eliminating certain Interstate Commerce Commission (ICC) trucking regulatory functions and estimates the budgetary impact of trucking deregulation on the ICC.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from its issue date. At that time, we will send copies to other interested congressional committees and other interested parties. We will also make copies available to others upon request.

This review was performed under the direction of Kenneth M. Mead, Associate Director. Other contributors are listed in appendix I.

Sincerely yours,

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

In 1980 the Congress, in response to allegations that regulation of the trucking industry by the Interstate Commerce Commission (ICC) raised costs of consumer products by billions of dollars per year, passed the Motor Carrier Act of 1980. Implementation of this act has largely deregulated rates and entry in the trucking industry. At present, in addition to some residual rate and entry regulations, ICC continues to enforce several kinds of ancillary trucking regulations on matters other than rates and entry. At the request of the former Chairman of the Subcommittee on Transportation and Related Agencies, Senate Committee on Appropriations, GAO agreed to

- identify ICC's ancillary trucking regulatory functions,
- estimate the budgetary impact of eliminating them, and
- assess the merits of retaining or eliminating these regulatory functions.

Background

ICC was created in 1887 to regulate the railroad industry, and in 1935 was given responsibility for regulating trucking carriers as well. ICC's main trucking regulatory functions deal with ensuring that new entrants into the trucking industry will serve the public interest and that rates charged are reasonable. The 1980 Motor Carrier Act limited ICC's regulation of trucking by reducing the burden for new carriers to prove a need for their service and by reducing the grounds on which rate changes could be challenged before the Commission. Legislation to eliminate rate and entry regulation was introduced in the 99th Congress. While the primary focus of deregulation has been on eliminating ICC's authority to regulate rates and entry into the industry, comparatively little analysis has been directed at ICC's ancillary trucking regulations, which include such matters as insurance requirements and antitrust enforcement.

Results in Brief

GAO identified 8 ancillary trucking regulatory functions at ICC. In total, in fiscal year 1985, ICC spent about 483 staff-years on trucking regulatory functions, of which about 242 were spent on ancillary functions. The remaining 241 staff-years were spent on reviewing new entrant applications and proposed rates. GAO found that the budgetary effects of deregulation of these ancillary functions would depend both on which functions were retained and on what enforcement approaches were adopted by the agencies assuming these functions after ICC's role in trucking regulation ended.

GAO found no consensus on the merit of retaining ICC's regulations and that sufficient information on the effectiveness and importance of these

regulations was unavailable. However, GAO did develop analyses which may be useful in assessing the value of these functions. GAO identified important issues relating to insurance regulations, cargo damage liability, and data reporting that deserve close congressional attention if trucking deregulation legislation is acted on.

Principal Findings

ICC's Ancillary Trucking Regulatory Functions

On the basis of an examination of ICC's authorizing legislation and discussions with ICC staff, carriers, shippers, and transportation lawyers and economists, GAO identified the 8 ancillary trucking regulatory functions shown (along with rate and entry regulation) in the table below. On the basis of discussions with ICC officials and examination of ICC documents, GAO estimated the staff-years spent by ICC on these functions in fiscal year 1985:

Table 1: Staff-Years Expended on ICC Trucking Regulatory Functions

Regulatory function	Staff-years
Rate regulation	111
Entry regulation	130
Ancillary functions:	
Safety regulation	4
Insurance regulation	72
Cargo damage liability rules	51
Data reporting	16
Antitrust enforcement	23
Owner-operator protections	58
Household goods rules	17
Mexican carrier registrations	1
Total	**483**

These data are for fiscal year 1985, the most recent year for which data were available by individual regulatory functions. Since then, ICC's total staff-years have decreased by 13 percent, and are expected by ICC to decrease an additional 5 percent in fiscal year 1988. Staff-years attributable to these trucking regulatory functions are believed by ICC to have fallen correspondingly.

Budgetary Effects of Deregulation

Elimination of ICC's rate and entry regulation could save 241 of its 483 staff-years spent on trucking regulation in fiscal year 1985. While rate and entry regulation is now largely pro forma, carriers are still required to secure operating authority from and file tariffs with ICC, thus generating substantial paperwork processing costs.

The other budgetary effects of deregulation would depend on which functions were eliminated and on how other agencies which acquired new regulatory responsibilities as a result of deregulation chose to meet those responsibilities. Deregulation would cause some agencies to acquire new regulatory responsibilities by explicit transfer from the ICC. For example, one deregulation bill transferred enforcement of consumer protection rules for household goods to the Federal Trade Commission. Whether total staff-year costs would be reduced would depend on how other agencies chose to meet new responsibilities. Agencies might avoid any staff increases through reassignments of staff currently doing other work or through alternative enforcement strategies. This approach appears to be the basis of the administration's fiscal year 1988 budget request.

Merits of ICC Trucking Regulations

ICC's role in safety and insurance regulations is to enforce Department of Transportation (DOT) rules by monitoring each carrier's insurance coverage and DOT safety record. While there is broad support for continued DOT regulation of the trucking industry's safety practices and insurance coverage, there is little evidence of how effectively ICC improves safety through its limited role.

Insofar as insurance requirements do promote safety, existing disparities in the coverage of insurance requirements for private carriers (those who ship their own goods in their own trucks) and for-hire carriers (those who sell transportation services to others) may not have merit.

For-hire carriers and private carriers are subject to the same DOT safety regulations, and insurance requirements for private and for-hire carriers of hazardous materials are the same. However, for-hire carriers of non-hazardous materials have more stringent public liability insurance requirements than private carriers of non-hazardous materials. The 1980 Motor Carrier Act more than doubled insurance requirements for for-hire carriers of non-hazardous materials, but insurance for private non-hazardous materials carriers was not required. These insurance requirements were justified primarily on the basis of safety. Safety considerations, however, apply equally to both kinds of carriers, and could

serve as the basis for applying the same public liability insurance requirements to both kinds of carriers.

GAO found no consensus on the continuing value of ICC promulgation and enforcement of rules regarding liability responsibility for cargo damage. Before cargo damage rules were enacted, common law rules, which varied from one jurisdiction to another, governed these shipments. Cargo damage liability rules could again vary if current statutory rules were eliminated. Confusion and litigatory expense could result until these obligations became well-defined.

ICC has been the primary collector of data on the trucking industry, and its data are widely used by the trucking industry, insurers, and other federal agencies. For example, the Department of Commerce uses ICC data to assist in developing Gross National Product statistics, while the Department of Labor uses ICC data to develop labor productivity analyses. If ICC's trucking regulatory responsibilities ended, its data-gathering role would probably end as well. GAO found that neither DOT, which has general responsibility for promoting and undertaking collection of data on truck transportation, nor the Office of Management and Budget (OMB), which has responsibility for coordinating data collection under the Paperwork Reduction Act of 1980, has made any assessments of trucking data needs. Furthermore, neither agency plans to ensure the collection of needed trucking data should ICC's current data-gathering role be eliminated. This could result in gaps in data series, which could handicap other agencies in accomplishing their missions.

Matters for Congressional Consideration

If the Congress proceeds with proposals to sunset ICC's trucking regulations, it may wish to examine the question of whether differences in statutory requirements for insurance coverage between private and for-hire motor carriers should be eliminated. The Congress may also wish to consider clarifying what, if any, cargo liability obligations would be assumed by carriers if existing statutory cargo liability requirements are eliminated.

Recommendation

GAO recommends that the Secretary of Transportation direct the appropriate departmental officials, in conjunction with the staff of OMB's Office of Information and Regulatory Affairs, to make a comprehensive assessment of needs for and costs of data on trucking, and arrange to have appropriate agencies designated to collect the needed data.

Agency Comments

GAO discussed this report with officials of DOT and ICC, who generally supported its conclusions. However, in accordance with the requester's wishes, GAO did not obtain official agency comments on this report.

Contents

Abbreviations

ATA	American Trucking Associations
BMCS	Bureau of Motor Carrier Safety
CAB	Civil Aeronautics Board
DOJ	Department of Justice
DOT	Department of Transportation
FBI	Federal Bureau of Investigation
FY	fiscal year
FTC	Federal Trade Commission
GAO	General Accounting Office
GVW	gross vehicle weight
ICC	Interstate Commerce Commission
OCCA	Office of Compliance and Consumer Assistance
OMB	Office of Management and Budget

Introduction

In the late 1970's, the Congress re-evaluated the body of transportation regulation that had developed since the Interstate Commerce Commission (ICC) was created in 1887. The Congress decided that the transportation system would perform better with less regulation and more competition. This decision was embodied in several pieces of legislation—the Airline Deregulation Act of 1978, the Motor Carrier Act of 1980, the Staggers Rail Act of 1980, and the Bus Regulatory Reform Act of 1982. The extent of deregulation varied in these different acts. Deregulation was most complete in airlines, where the agency responsible for regulating the airlines (the Civil Aeronautics Board—CAB) was abolished, or "sunsetted."

The interstate for-hire trucking industry had been regulated by the ICC since the passage of the Motor Carrier Act of 1935. The ICC regulates which companies can enter the industry (i.e., which receive certificates of operating authority permitting them to offer service), what rates they can charge, and numerous other aspects of their operations. Safety regulation, which was originally also ICC's responsibility, was transferred to the Department of Transportation (DOT) in 1967. Prior to 1980, there were allegations that regulation of the trucking industry raised costs of consumer products by billions of dollars per year, and proposals were raised for the complete elimination of regulations on rates and entry, as had been done with the domestic airline industry. At the same time there were concerns that complete elimination of rate and entry regulation would cause financial instability, reduced service levels, and unsafe practices in the industry. As a result, the Congress passed compromise legislation that reduced regulatory restrictions but did not remove them entirely. The legal burden on entrants of proving the need for their services was reduced, and carriers were allowed to change rates, within limits, without ICC approval. While ICC's implementation of the 1980 act has resulted in virtually complete freedom from regulatory rate and entry controls, ICC retains discretion under the act to tighten its rate and entry regulation considerably. The act provided for studies and oversight hearings to evaluate the results of the new regulatory structure, with the expectation that further changes in the regulatory system might be considered.

Over six years have now passed since the 1980 Motor Carrier Act was passed. The administration, many shippers, and some in Congress have concluded that deregulation has been a success, and that more deregulation would reduce regulatory costs further. Several bills were introduced

in the 99th Congress that would have completed the deregulatory process begun with the Motor Carrier Act of 1980 by eliminating the statutory authority for rate and entry regulation that was left in place by that act.

The central elements of ICC trucking regulation are controls over rates and entry, but the ICC has always regulated other aspects of trucking as well, which we have characterized as "ancillary regulatory functions." These ancillary trucking regulations currently include some aspects of safety and insurance regulation as well as antitrust enforcement, cargo damage liability rules, data collection, owner-operator protections, household goods consumer protection rules, and Mexican carrier registrations. Many who support deregulation of rates and entry nevertheless favor continued federal enforcement of some of these ancillary regulations. Any bill to deregulate rates and entry should therefore address to what extent these ancillary forms of trucking regulation should also be eliminated or retained. Also, if the ICC's role in trucking regulation is to be "sunsetted," as CAB regulation of the airlines was, some provision should be made to transfer any remaining regulatory roles to other agencies.

Historical Development of ICC Trucking Regulation

The 1935 Motor Carrier Act carried over into motor carrier regulation much of the apparatus that was already in place for railroad regulation. As with railroads, the act provided for regulation of rates and restrictions on entry. It also applied to motor carriers the full liability for damage to cargo that was applied to railroads by the "Carmack amendment" of 1906. Motor carriers were required, like the railroads, to report financial and operating data and were subjected to safety regulations. (Responsibility for enforcing these safety rules was mostly transferred to the DOT in 1967.) The 1935 act also authorized the ICC to approve mergers between carriers and added insurance requirements that had not been imposed on the railroads.

Other regulatory functions were added later. The ICC acted in 1939 to adopt special rules for household goods carriers to provide additional protection for consumers who were not knowledgeable shippers. The Transportation Act of 1940 gave ICC the authority to approve pooling agreements by motor carriers (i.e., agreements to share traffic and revenues). The Reed-Bulwinkle Act of 1948 gave motor carriers immunity from the antitrust laws to set prices collectively. Rate bureaus (organizations created by carriers to set rates and file them with the ICC on the

carriers' behalf) were authorized to seek approval from the ICC for collective price-setting arrangements which, if approved, would be immune from the antitrust laws. In 1951 the ICC adopted rules restricting leases of trucks by carriers from owner-operators (i.e., independent truck owner/drivers who must lease their services to authorized carriers because they do not have operating authority of their own) so as to prevent owner-operators from circumventing ICC's entry restrictions. In the 1970's the scope of these rules was expanded to provide protection for owner-operators by requiring that leases specify what payments the owner-operator would receive and what payments the owner-operator must make.

The 1980 Motor Carrier Act gave carriers more flexibility in setting rates without ICC approval, and also reduced the obstacles to carriers entering or expanding their operations in the industry. It also narrowed the scope of antitrust immunity which the ICC could confer on collective price-setting (e.g., carriers could no longer get antitrust immunity for collectively setting single-line rates—rates on shipments carried by a single trucking company). However, the 1980 act strengthened regulation by enacting additional owner-operator protections (e.g., protections against coercing the owner-operator to pay for unwanted loading and unloading services). Also, the 1980 Household Goods Transportation Act gave the ICC additional authority to regulate household goods carriers. The 1984 Motor Carrier Safety Act required that the ICC review more strictly the "safety fitness" of carriers applying for new or expanded operating authority (i.e., how safely the carriers operated). This act also required ICC to register otherwise exempt Mexican carriers.

Exemptions From ICC Trucking Regulation

ICC regulations do not apply to all motor carriers. Three major categories of motor carriers are exempt from ICC regulation: (1) purely intrastate motor carriers, who are regulated by the states within which they provide service, (2) private carriers, whose trucking activities are ancillary to some other business, and who carry only their own freight, and (3) carriers of a miscellaneous collection of exempt commodities, principally agricultural commodities, but also including newspapers, used shipping containers, and wood chips, as well as motor carrier transportation that is incidental to transportation provided by air. DOT's Office of Motor Carriers Management Information System lists about 230,000 interstate carriers, of which about 189,000 are private and exempt interstate carriers (categories 2 and 3 above) which are exempt from ICC regulation, and about 41,000 are interstate, for-hire, nonexempt carriers which are subject to ICC regulation. The number of intrastate carriers (category 1

above) is unknown, but is believed by DOT staff to be about the same as the number of interstate carriers.

Resources Used for ICC Trucking Regulation

Enforcement of ICC's trucking regulations required about 483 staff-years at ICC in fiscal year 1985, about 53 percent of ICC's total of 916 staff-years. The remaining staff-years were used to regulate railroad, bus, water, and freight forwarder transportation and transportation brokers. The 10 regulatory functions we identified, with their staff-year allocations, are listed in table 1.1.

Table 1.1: ICC Staff-Years for Trucking Regulatory Functions, Fiscal Year 1985

Regulatory function	Directly assigned staff-years	General management staff-years	Total
Rate regulation	77	34	**111**
Entry regulation	90	40	**130**
Ancillary regulations.			
Safety regulation	3	1	**4**
Insurance regulation	50	22	**72**
Antitrust enforcement	16	7	**23**
Cargo damage liability rules	35	16	**51**
Data reporting	11	5	**16**
Owner-operator protections	40	18	**58**
Household goods rules	12	5	**17**
Mexican carrier registrations	1	0	**1**
Total	**335**	**148**	**483**

We emphasize that the data presented here are for fiscal year 1985. These were the most recent data available at the time we did our audit work. Since ICC's total staff is shrinking, the amount of staff for these regulatory functions would be smaller in fiscal year 1987 than it was in fiscal year 1985. ICC's budget request for fiscal year 1988 indicates that, for ICC as a whole, staff levels had fallen from 916 in fiscal year 1985 to 800 in fiscal year 1987, a reduction of 13 percent, and are expected by ICC to fall an additional 5 percent to 762 in fiscal year 1988. ICC expects that staff-years for individual trucking regulatory functions have declined correspondingly.

Aside from the overall reduction in staff, other factors will affect staffing for particular functions. The number of Commissioners was reduced from seven to five in fiscal year 1986, thus reducing general management staff. Enforcement of insurance requirements was

expected to require more staff-years in fiscal year 1986 than in 1985, because of the greater difficulty that carriers were having in securing coverage. Staffing could also be affected by the outcomes of recent rulemakings. For example, the recently announced reduction in data-reporting requirements could reduce staff-years for this activity.

ICC Trucking Regulatory Functions

About half of ICC's trucking regulatory staff-years—241 out of 483—were spent for rate and entry regulation in fiscal year 1985. These are the primary forms of ICC trucking regulation, and they have been the focus of most of the discussion about trucking deregulation. But ICC also enforces eight other ancillary categories of regulation, which are the primary focus of this report. In this section, we outline all 10 of these regulatory functions, both rate and entry and ancillary. The staff-years indicated for each function include its allocation of general management staff-years.

Rate and Entry Regulation

Rate regulation consists of reviewing proposed rates (or "tariffs") filed by carriers or by rate bureaus (organizations of carriers which file on behalf of their members) to ensure that the rates are reasonable and nondiscriminatory. Proposed rates can be protested by other carriers or by shippers and, if they fail to meet this standard, can be rejected. ICC also maintains records of filed tariffs so that rates are publicly known. ICC spent 111 staff-years on rate regulation in fiscal year 1985.

Entry regulation consists of reviewing and acting upon applications for authority to operate as a motor carrier. The carrier must demonstrate that it is "fit, willing, and able" to provide service, and that its service would serve a "useful public purpose." ICC spent 130 staff-years in fiscal year 1985 on entry regulation.

Ancillary Regulatory Functions

Safety and Insurance Regulation

ICC originally had complete responsibility for truck safety regulation as well as for rate and entry regulation. However, when DOT was created in 1967, truck safety responsibility was for the most part transferred to the newly created Bureau of Motor Carrier Safety (BMCS) in DOT. The

only remaining safety function for ICC was to consider safety as an element of whether a carrier was "fit" to provide service. While in principle a carrier's safety record can be reviewed at any time, in practice such a review is normally made only when the carrier applies for new or expanded operating authority. ICC conducts its safety review by consulting the carrier's safety rating at BMCS (now the Office of Motor Carriers). ICC spent 4 staff-years carrying out such safety reviews in fiscal year 1985.

ICC enforces the insurance requirements enacted in the 1980 Motor Carrier Act by monitoring insurance policy cancellation notices received from insurers and carrying out proceedings to revoke the operating authority of carriers who have not demonstrated compliance with insurance requirements. ICC spent 72 staff-years enforcing insurance requirements in fiscal year 1985.

Antitrust Enforcement

ICC may confer antitrust immunity upon rate bureaus to set prices collectively if it approves the procedures which they propose to set prices. ICC also reviews and may approve mergers and pooling agreements, and enforces prohibitions on predatory and discriminatory pricing. ICC spent 23 staff-years enforcing antitrust provisions in fiscal year 1985.

Cargo Damage Liability Rules

ICC enforces the "Carmack amendment" (49 U.S.C. 11707, as amended), which requires (1) that liability for damage to cargo fall entirely upon the common carrier (subject to certain exceptions), unless the carrier's liability has been limited to a particular value by the explicit agreement of the shipper and (2) that the carrier must give the shipper the option of having the carrier assume full liability for the shipment. ICC also promulgates and enforces procedural rules governing the filing of claims. ICC spent 51 staff-years enforcing cargo damage liability rules in fiscal year 1985.

Data

ICC collects and processes financial and operating data pursuant to its regulatory responsibilities. During fiscal year 1985, carriers with revenues of over $1 million per year were required to fill out a 57-page report with detailed data on revenues, costs, tons carried, miles traveled, assets, and liabilities. In fiscal year 1985 ICC spent 16 staff-years on data.

Owner-Operator Protections

ICC enforces rules which govern what provisions carriers must include in leases when they lease the trucks and services of owner-operators. ICC also enforces prohibitions on illegal "lumping" (i.e., coercing truck drivers into having their trucks loaded or unloaded by terminal or warehouse personnel). ICC spent 58 staff-years on owner-operator protections in fiscal year 1985.

Household Goods Consumer Protection Rules

ICC enforces rules which protect consumers who ship household goods from overcharges and which require complaint handling procedures. ICC spent 17 staff-years enforcing such rules in fiscal year 1985.

Mexican Carrier Registrations

ICC spent 1 staff-year in fiscal year 1985 registering Mexican carriers pursuant to the requirements of the 1984 Motor Carrier Safety Act.

Objectives, Scope, and Methodology

On May 20, 1985, the former Chairman of the Subcommittee on Transportation and Related Agencies of the Senate Committee on Appropriations requested that we investigate the issue of trucking deregulation. Specifically, he asked that we

- summarize ICC's current trucking regulatory functions, and
- discuss options for phasing out and/or redistributing these functions, and
- assess the effects of such proposals on ICC's budgetary needs.

We agreed that we would not assess the broad issue of whether rate and entry regulation should be continued, but agreed that we would direct our attention primarily at an assessment of ICC's ancillary regulatory functions and at the issue of federal pre-emption of state trucking regulations. We also agreed that our analysis of the impact on ICC's budget would be primarily in terms of staffing levels rather than in terms of dollar outlays.

We identified ICC's regulatory functions by reviewing its authorizing legislation and by discussing its regulatory activities with ICC and DOT staff, carrier and shipper representatives, and transportation lawyers and economists.

We used three bills that had been introduced in the 99th Congress as representative of the range of possible proposals for deregulating these functions—the administration's bill (S. 1711/H.R. 3929), Representative

Jim Moody's bill (H.R. 3222), and Senator Bob Packwood's bill (S. 2240). We identified and assessed the issues relating to these deregulatory proposals by reviewing the literature on trucking deregulation and also by discussing deregulation issues with staff at potentially affected agencies such as the ICC, DOT, the Department of Justice (DOJ), the Federal Trade Commission (FTC), and the Bureau of the Census; carrier, shipper, and consumer representatives; and transportation lawyers and economists. In assessing the deregulatory proposals, we used the analytical framework presented in our earlier report, Government Regulatory Activity: Justifications, Processes, Impacts, and Alternatives (PAD-77-34, June 3, 1977).

We established a baseline for assessing the effects of deregulation proposals on ICC's budgetary needs by discussing with ICC staff the number of staff-years spent in fiscal year 1985 on each regulatory function, and by reviewing related ICC documents. A substantial portion of ICC's staff was expended on general management activities that could not be specifically allocated to any particular regulatory function. These were allocated to specific functions in proportion to the directly allocable staff-years. In the event that a specific function were deregulated, staff-years for general management activities might not fall directly in proportion to the decrease in directly allocable staff-years; however, it was not possible to estimate reliably how much general management staff-years would be reduced by the deregulation of any particular function. This report is based on audit work carried out between April 1985 and September 1986. Our review was carried out in accordance with generally accepted government auditing standards.

Should ICC's Ancillary Trucking Regulatory Functions Be Retained?

In 1977, we presented an analytical framework for considering the issue of deregulation. Our 1977 report suggested a number of questions which should be asked when the Congress is considering deregulation. These questions include the following:

1. What are the purposes of regulation?
2. Is regulation achieving its purposes?
3. Have conditions changed since regulation was initiated, so that regulation is no longer needed, or so that its costs exceed its benefits?
4. Does regulation have unintended consequences?
5. Are the costs of regulation borne unfairly?
6. Are there alternatives to the current form of regulation that would achieve its purposes at a lower cost?
7. Can the administrative or enforcement approach to regulation be changed to improve its effectiveness?

We believe the basic issues involved in assessing the issue of deregulation have not changed, because these questions are still relevant today.

We will use these questions, in the discussion that follows, as a framework for assessing the desirability of eliminating ICC's various ancillary regulatory functions.

Safety and Insurance

The Rationale of Safety and Insurance Regulation

The need for safety regulation was not disputed by those who testified before the 1985 Congressional oversight hearings on the 1980 Motor Carrier Act. Safety was one of the primary motivations for trucking regulation when the 1935 Motor Carrier Act was passed. The need for ensuring safety was a primary consideration in congressional deliberations over the 1980 act. The rationale of safety regulation lies in the costs which unsafe carriers can impose on those with whom they share the highways, and on those through whose communities they pass. Automobile and truck operators cannot protect themselves from the risk of an accident caused by an unsafe motor carrier, so they rely on the government to protect them. Similarly, local communities can partially protect their interests by regulating their own local trucks, but they cannot regulate interstate trucks passing through; they must rely on the federal government to regulate the safety of interstate trucks.

ICC has required motor carriers which it regulated to have insurance coverage since motor carrier regulation began in 1935. In 1980, the required coverage amounts for these ICC-regulated carriers were increased (from $300,000 to $750,000 for nonhazardous goods carriers, and to $5 million for carriers of extremely hazardous materials) in the hope that insurance underwriting discretion would make it more difficult for unsafe truckers to get the required insurance at a price that would allow them to compete with safer carriers. Insurance coverage requirements and safety concerns are thus closely related. Private carriers, however, who had never been required to carry insurance coverage, remained exempt under the 1980 act, unless they carried hazardous materials.

DOT and ICC Safety and Insurance Roles

A variety of approaches to regulating truck safety are currently in effect. DOT regulates safety directly by setting standards for required equipment and for driver practices. It enforces these standards by safety audits of carriers and by roadside checks of individual trucks. (Responsibility for roadside checks is being turned over to the states under the Motor Carrier Safety Assistance Program.) DOT also assigns a safety rating to carriers that it knows about. (Carriers are not required to identify themselves to DOT when they go into business, so DOT believes that there are thousands of carriers who operate without its knowledge.) Most of ICC's role in safety regulation was assigned to DOT when it was created in 1967. The only safety function retained at ICC is to use DOT's safety ratings to decide whether a carrier applying for new or expanded operating authority is "fit," from a safety point of view, to receive it. ICC and DOT also enforce insurance requirements on carriers over which they have jurisdiction.[1]

DOT's and ICC's safety responsibilities were expanded by the Motor Carrier Safety Act of 1984. That act broadened DOT's authority for regulating safety by giving DOT the authority to pre-empt state regulations which were inconsistent with its own safety regulations. The act also

[1]ICC enforces the requirements on ICC-regulated carriers, i.e., for-hire, interstate, nonexempt carriers. DOT enforces the requirements on these carriers as well as on other carriers covered by the requirement, namely (1) ICC-exempt for-hire interstate carriers (e.g., agricultural carriers), (2) all private and intrastate carriers of hazardous substances over 10,000 lbs. gross vehicle weight (GVW), and (3) interstate carriers of certain hazardous materials under 10,000 lbs. GVW (namely carriers of class A or B explosives, poison gas, or large quantities of radioactive materials). There are thus four categories of carriers exempt from federal insurance requirements: private carriers of nonhazardous materials; intrastate carriers of nonhazardous materials; intrastate carriers of hazardous materials under 10,000 lbs. GVW; and interstate private carriers under 10,000 lbs. GVW of hazardous materials other than class A or B explosives, poison gas, and large quantities of radioactive materials.

required that ICC not grant new operating authority to any carrier with an unsatisfactory DOT safety rating. The Commercial Motor Vehicle Safety Act of 1986 gave DOT further authority to set standards for state licensing of drivers of commercial motor vehicles.

The opportunity for ICC to enforce safety regulations normally occurs only when an ICC-regulated carrier applies for new or expanded operating authority (e.g., to operate in additional states, or to carry additional kinds of cargo beyond what the carrier's current operating authority permits). Many carriers already have all the authority they want, and thus would not be subject to this safety review. Moreover, for new carriers applying for operating authority for the first time, the significance of this requirement is minimized because they have no DOT safety rating which ICC can review (under the 1984 Safety Act, however, DOT plans to issue provisional safety ratings for new carriers). While ICC has the authority to revoke the operating authority of an existing carrier because of failure to meet safety standards, ICC was unable to identify a single case of such a revocation since DOT was created in 1967.

Proposed Changes

Recent deregulatory proposals would have retained DOT's safety regulations, but eliminated ICC's role.[2] The administration's and Representative Moody's bills would have eliminated the need for any carrier to secure operating authority, so that a carrier would not have had to demonstrate safety fitness before being authorized to operate. The Packwood bill would have retained (at DOT) a requirement that carriers previously regulated by the ICC secure operating authority based solely on their safety fitness and insurance coverage. The distinctions among these bills may lose their significance if DOT's proposed rule implementing the 1984 Motor Carrier Safety Act goes into effect, however. This proposed rule would establish a procedure for DOT to assign safety ratings to carriers and for it to suspend the operations of any carrier with an unsatisfactory rating. As such, the provisions it would achieve by administrative regulation would be similar to what the Packwood bill would have done by statute. All three bills would have retained insurance requirements, but enforcement authority would have been restricted to DOT.

[2]The Moody and Packwood bills would have deregulated only motor carriers of property other than household goods. Under these two bills, ICC would have retained jurisdiction over household goods carriers, and regulation of these carriers would not have changed. All subsequent references to the deregulatory effects of the Moody and Packwood bills should therefore be taken to apply only to carriers of property other than household goods.

Effectiveness of ICC Role Uncertain

While the need for safety regulation is agreed-upon, there is little evidence of how effective ICC's role in regulating safety has been. ICC's practice has been to grant applications for operating authority even in some cases in which the applicant has an unsatisfactory DOT safety rating, on the grounds that the DOT safety rating is no longer current. The 1984 Motor Carrier Safety Act limits ICC's discretion by making denial of the application for operating authority mandatory if the carrier has an unsatisfactory DOT safety rating. There is no experience with the enforcement of this provision yet because DOT did not issue proposed rules to implement this requirement until June of 1986, and the rules had not gone into effect as of March 1987.

The effectiveness of insurance requirements is also uncertain. The insurance requirement does not regulate safety directly. Instead, it regulates safety indirectly by encouraging insurance companies to investigate the safety of motor carriers who apply for insurance. When the provision was enacted, the expectation was that insurance companies would investigate how safely a carrier operated before agreeing to offer it insurance. However, all but four states guarantee insurance coverage up to the limits specified in the 1980 Motor Carrier Act to all motor carriers domiciled in that state under an involuntary market mechanism such as an assigned risk plan. The insurance company is required to write the insurance for all carriers, no matter how unsafe they are. Insurance prices in the involuntary market are generally higher than prices in the voluntary market, so a motor carrier that is refused coverage in the voluntary market does usually operate at a cost disadvantage compared with its voluntarily insured competitors. Several bankrupt carriers have cited the high price of insurance as a factor in their bankruptcies. However, there is little systematic information available on the extent to which insurance prices for motor carriers are based on their safety records. Even if insurance requirements do not improve safety, they still may be valuable because they allow those injured by motor carrier accidents to be compensated for their losses.

DOT Enforcement of Insurance Requirements Is Less Stringent Than ICC Enforcement

Enforcement issues are significant in assessing proposed deregulation. ICC enforces insurance requirements by requiring carriers to provide evidence of insurance coverage before they can receive operating authority, and by requiring insurance companies to notify ICC whenever coverage of a regulated carrier is cancelled. ICC requires that the policy provide that the coverage remain in force until 30 days after ICC is notified of its cancellation. If ICC's role in enforcing insurance requirements were eliminated, enforcement of these requirements would fall to DOT,

which has concurrent enforcement authority over ICC-regulated carriers that would continue in effect if ICC regulatory authority terminated. DOT currently enforces insurance requirements less stringently than does ICC. DOT requires neither that it be notified if a carrier's insurance coverage is cancelled (as ICC does), nor that proof of insurance coverage be carried in each truck, where it could be examined during roadside checks. The carrier need only maintain proof of insurance coverage at its headquarters, where it is subject to inspection when DOT conducts a safety management audit. Only a small percentage of DOT-regulated carriers are audited each year. DOT data based on their safety management audits, as shown in table 2.1, indicate that ICC-regulated carriers are somewhat less likely to have violations of the insurance requirements than are carriers subject only to DOT enforcement.

Table 2.1: Insurance Violations Found in DOT Safety Audits

Year	Total audits	Number of audits with insurance violations	Percentage of audits with insurance violations
1983:			
ICC-regulated	1,522	569	37.4
DOT-regulated	1,874	899	48.0
1984:			
ICC-regulated	1,655	567	34.3
DOT-regulated	1,626	626	38.5
1985:			
ICC-regulated	1,452	584	40.2
DOT-regulated	1,207	634	52.5
1983-85:			
ICC-regulated	4,629	1,720	37.2
DOT-regulated	4,707	2,159	45.9

Note GAO has not independently verified the reliability of the data in this table

Insurance Requirements for Private and For-Hire Carriers Differ

Prior to 1980, ICC imposed insurance requirements on ICC-regulated carriers under the authority of the 1935 Motor Carrier Act. The insurance requirements were imposed to allow those injured by trucks on the highway to be compensated. In the 1980 Motor Carrier Act, these insurance requirements were raised (from $300,000 to $750,000 for nonhazardous goods carriers), and the rationale for them shifted from

compensating those injured by accidents to promoting safety. It was believed that insurance companies would charge more to insure unsafe carriers, or refuse to insure them at all, thus driving unsafe carriers off the road. These requirements were imposed on all ICC-regulated carriers and on private and intrastate carriers of hazardous materials. While carriers were originally required by ICC and DOT regulations to purchase an insurance policy from an insurance company, carriers with sufficient assets—both private and for-hire—can now meet this requirement by self-insuring. Private carriers of nonhazardous cargo, which had never been subjected to insurance requirements before, were exempted.

The rationale of insurance requirements, however, applies as much to private carriers as to for-hire carriers. Both kinds of carriers can be involved in accidents, and innocent victims of such accidents are equally deserving of being compensated. Insofar as insurance requirements promote safer motor carrier operations, such a requirement will have as beneficial an effect on a private carrier as on a for-hire carrier. Under the 1980 act, however, for-hire interstate nonhazardous goods carriers are required to have $750,000 in liability coverage, while private interstate nonhazardous goods carriers are not required to have any. By giving private carriers a potential cost advantage, insurance regulations may have the unintended consequence of creating an artificial incentive for shippers to haul their own goods (as a private carrier) rather than using a for-hire carrier. In any case, if rate and entry deregulation are enacted, there will no longer be any difference in the federal rate and entry regulation to which for-hire carriers and private carriers are subjected. Subjecting these carriers to different insurance requirements might then appear anomolous.

In view of the limited evidence on the effectiveness of insurance requirements in promoting safety, we cannot conclude that either private or for-hire carriers should be subjected to insurance requirements for purposes of safety. However, insofar as insurance requirements do promote safety, that rationale applies equally to private and for-hire carriers. If an insurance requirement is in effect, therefore, it should apply equally to both kinds of carriers.

Matter for Consideration by the Congress

We therefore believe that, if the Congress acts favorably on proposed deregulatory legislation, it should consider revising the provisions in Section 30 of the Motor Carrier Act of 1980, which specify insurance requirements for motor carriers, so as to make the requirements for private and for-hire carriers identical.

Antitrust Enforcement

The ICC-regulated trucking industry has immunity from the antitrust laws to discuss its rates collectively in accordance with agreements approved by the ICC. This immunity was bestowed by the Reed-Bulwinkle Act of 1948, which similarly immunized the railroads, water carriers, and freight forwarders. The justification for antitrust immunity that was advanced when the act was passed was that carriers needed to confer about rates in order to achieve the

> "adequate and efficient coordinated national transportation system, with sound economic conditions and freedom from unfair or destructive competitive practices among the several carriers, and with reasonable and nondiscriminatory rates"

that is favored by the national transportation policy. It was also argued that

> "the relatively small size of motor carriers, and their large number, make it imperative that they resort to collective action in connection with their rate-publishing function. It is only in this way that they can obtain competent assistance and at the same time operate economically."

Carriers exercise their antitrust immunity through rate bureaus, which are organizations of carriers which are established to set prices collectively and to file these collectively established rates with the ICC. The ICC reviews and may approve the proposed agreements submitted by the rate bureaus which specify the procedures under which they will set prices collectively. It also reviews and may approve mergers and pooling agreements and enforces prohibitions against predatory and discriminatory pricing.

Changing Conditions Have Raised Questions About the Continuing Value of Antitrust Immunity

There was some question when the Reed-Bulwinkle Act was passed of whether antitrust immunity was needed to achieve the purposes of the national transportation policy. The bill was passed over President Truman's veto. Since then, opponents of antitrust immunity argue, conditions have changed so that antitrust immunity is no longer needed. The national transportation policy for motor carriers has been amended to put more emphasis on competition as an objective. At the same time, the ICC and the motor carrier industry have responded to the changes in the law enacted by the 1980 Motor Carrier Act to set prices more independently of the rates filed by the rate bureaus. Antitrust immunity thus is a less important factor in the national transportation system than it was when the Reed-Bulwinkle Act was passed. Also, motor carriers have grown in size and sophistication, and the falling costs of computers have allowed more of them to adopt their own cost analysis

systems, lessening their reliance on the cost analyses used by the rate bureaus in filing rates. They still make use of technical assistance provided by the rate bureaus in analyzing their costs, but this technical assistance would not necessarily require antitrust immunity. Shippers' organizations supported antitrust immunity in 1948, but now generally oppose it.

The 1980 Motor Carrier Act narrowed the antitrust immunity created by the Reed-Bulwinkle Act, making it inapplicable to single line rates (i.e., rates on shipments handled entirely by one carrier) and released rates (i.e., rates for shipments on which the carrier bears less than full liability for possible damage to the shipment). However, carriers still have antitrust immunity for joint-line rates (i.e., shipments which are picked up by one carrier and delivered by another), for changes in commodity classifications and "tariff structures," and for general rate increases applying to all routes in a particular region.

Proponents of antitrust immunity concede that the degree of independent pricing has increased since the Reed-Bulwinkle Act was passed, but argue that collectively established prices still provide a useful "benchmark" around which independently set prices can be established. They also argue that the technical assistance provided to the carriers by the rate bureaus to help them set up their own cost-analysis systems would be illegal without antitrust immunity. Carriers argue that not specifying what activities are legal would lead to costly court battles to resolve what was permissible and what was not. Even if the Department of Justice and the FTC were persuaded that a practice did not violate the antitrust laws, they argue, private plaintiffs could accuse carriers of violating the antitrust laws and might persuade a court that a practice was illegal even if the Justice Department thought otherwise.

Proponents of antitrust immunity also argue that discounting from the collectively established rates filed by the rate bureaus has become commonplace so that shippers are less affected by collective ratemaking. Opponents of antitrust immunity argue that, because many small shippers do not get discounts, they are particularly disadvantaged by antitrust immunity for collective ratemaking.

Antitrust Immunity for Household Goods Carriers

The household goods moving industry has its own reasons for favoring antitrust immunity. They have a unique structure of local agents and national van lines which, they argue, is essential to the efficient operation of the industry and which relies upon antitrust immunity. Without

this immunity, they argue, agreements between van lines and agents would be outlawed as contrary to the antitrust laws. The Justice Department and the FTC argue that, to the extent that such agreements actually do contribute to more efficient service, they would be legal under the antitrust laws, but that some features of the agreements between agents and van lines, such as dividing up markets, do not contribute to efficiency, are anti-competitive, and should be illegal.

Deregulatory Options

The deregulation bills that were introduced in the 99th Congress all would have eliminated antitrust immunity for carriers of commercial shipments. However, both the Packwood and Moody bills would have retained regulation and antitrust immunity for household goods carriers, while the administration's bill would have eliminated antitrust immunity for all carriers. These proposals have raised a number of uncertainties, both factual and legal. One factual uncertainty is whether the "benchmark pricing" that collective rate-setting permits has significant value in improving the performance of the trucking market. Another is the need for collectively determined freight classifications. A third is whether collective price-setting results in higher prices for certain classes of shippers. A fourth is whether the structure of local agents and national van lines used in the household goods moving industry is important for its efficient operation. We do not have data that would allow us to answer these questions.

The legal uncertainties concern what practices would be legal in the event that antitrust immunity were eliminated. Disputes have arisen over whether rate bureaus would still be allowed to provide cost analyses to their members to assist them in rate-making. It is uncertain whether carriers would still be allowed to establish joint-line rates without antitrust immunity. It is not clear what practices of household goods carriers would be legal without antitrust immunity. It is also not clear whether carriers would still be allowed to agree jointly on freight classifications without antitrust immunity.

A variety of possible approaches to antitrust immunity might address the legal and factual concerns that have been raised. Just as the 1980 act eliminated antitrust immunity for some activities but kept it for others, further deregulatory legislation could keep antitrust immunity for some activities that are considered desirable but eliminate it for others. This would reduce the likelihood that the scope of permissible activity would have to be tested in court. For example, opponents of antitrust immunity are generally most opposed to antitrust immunity

for general rate increases. If collective freight classification were considered desirable, it could be explicitly permitted in the legislation, while collectively established general rate increases could be outlawed. In areas where more judgment might be required in deciding whether a practice was desirable, such as for pooling agreements among household goods carriers, legal uncertainties could be reduced by empowering the Justice Department to review a proposed agreement to see if it were anticompetitive. Agreements that satisfied the Justice Department could be immunized from private suits just as agreements that satisfy the ICC are immunized from private suits now. The Justice Department would probably be less likely to approve agreements among carriers than is the ICC, but an agreement which did improve the efficient operation of the industry could still be approved. Justice Department review would give carriers a clear idea of what would and would not be permissible.

Cargo Damage Liability

Liability for damage to cargoes in shipment by truck and rail is governed by the "Carmack amendment" to the Interstate Commerce Act, which was enacted in 1906 for rail transportation and became part of the structure of motor carrier regulation with the passage of the Motor Carrier Act in 1935. The Carmack amendment was not intended to add a new regulatory requirement, but rather to impose uniformity on the varying requirements of common law and state statutes. Common law generally required a common carrier to be fully liable for any damage to the cargo en route (though the shipper could, by a "fair, reasonable, and just agreement," accept less than full compensation for a loss in return for paying a lower rate for the shipment), but the interpretation of this general requirement varied substantially from one jurisdiction to another. Some states required carriers to be liable for damages caused by connecting carriers, while others did not; some states allowed carriers to exempt themselves from all or a part of their common law liability, while others did not. As one court put it,

> "this branch of interstate commerce was being subjected to such a diversity of legislative and judicial holding that it was practically impossible for a shipper engaged in a business that extended beyond the confines of his own State, or for a carrier whose lines were extensive, to know without considerable investigation and trouble, and even then oftentimes with but little certainty, what would be the carrier's actual responsibility as to goods delivered to it for transportation from one State to another."

(Southern Pacific Co. v. Crenshaw, 63 S.E. Rep. 870 [Georgia Court of Appeals, 1909], quoted in Adams Express Co. v. Croninger, 226 U.S. 505 [1913]). The Carmack amendment made the full liability requirement

uniform by pre-empting common law and state statutory law. In addition to Carmack, ICC was also authorized to issue related rules specifying how damage claims should be filed and how carriers should respond to them.

Repeal of Carmack Would Cause Common Law Liability Rules to Apply

The purpose of the Carmack amendment, in one sense, remains as valid as ever. In the absence of a statutory Carmack provision, and in the absence of applicable state statutes (which all the deregulatory bills would have pre-empted), the rules of statutory construction suggest that pre-existing common law requirements would become effective once again (see, e.g., Sutherland Statutory Construction [1984], v. 2a, p. 422), and these requirements could vary. The Second Circuit Court of Appeals ruled in Ruston Gas Turbines v. Pan American World Airways (757 F.2d 29 [1985]) that the deregulation of motor carrier shipments which immediately precede or follow air shipments caused common law rules to govern these shipments. Other courts have ruled that airline deregulation similarly caused common law rules to become effective in governing cargo damage liability in air cargo shipments.[3] As noted above, common law requirements varied before Carmack was enacted, and could similarly vary if Carmack were repealed. Retaining Carmack as statutory law would ensure more uniform requirements for carriers to observe.

The repeal of Carmack would thus not eliminate federally imposed standards for cargo damage liability, because common law would impose a similar requirement that shippers be offered a choice between full liability coverage on their cargoes and limited liability in return for a reasonable rate discount. In fact, the pre-existing common law could be even stricter than existing statutory law, because the 1980 Motor Carrier Act amended the statutory Carmack provisions to give the ICC discretion over whether motor carriers would be required to offer full liability service or not.[4] If the intent of deregulation is to eliminate cargo liability requirements other than those provided for by contracts

[3]See, for example, First Pennsylvania Bank v. Eastern Airlines, 731 F.2d 1113 (3d Cir. 1984), and Arkwright-Boston Manufacturers Mutual Insurance Co. v. Great Western Airlines, 767 F.2d 425 (8th Cir. 1985).

[4]The possible re-emergence of common law obligations after the repeal of a corresponding statutory obligation could also affect rate regulation. Under common law, common carriers were required to set "reasonable" rates. Rate regulation by ICC codified this common law requirement. In the absence of statutory ICC rate regulation, common law obligations to set "reasonable" rates could once again apply, and carriers could find themselves subject to a degree of rate regulation by the courts. The issue of the reasonableness of rates has been raised to some extent in cases brought in the wake of airline deregulation, particularly the reasonableness of rates charged for different degrees of liability coverage.

between shippers and carriers, it would be necessary to replace common law liability requirements by statute. Like Carmack, this would also provide for uniformity in the legal framework within which contracts were negotiated, though the actual liability obligation would vary from contract to contract. (Current law also allows the amount for which the carrier is liable to be limited by contract between the parties.)

Should Carmack Be Repealed?

Carmack was originally enacted as part of a pervasive regulatory scheme for interstate rail and (later) truck transportation. If that pervasive regulatory system is eliminated for trucking companies, it may no longer be appropriate to regulate damage claims. On the other hand, carriers were subject to common law liability requirements similar to Carmack even when there was no pervasive regulatory scheme. Carriers would prefer to drop the requirement that a full-liability rate be offered. The two principal organizations of shippers have stated that they prefer to maintain Carmack as statutory law. Shippers who want Carmack retained argue that enforcement is more effective under current law than it would be under a common law regime. Relying on common law would require enforcement to be carried out by the courts, possibly supplemented by private arbitration. The current system of statutory liability requirements is enforced through ICC intervention as well as private arbitration and court enforcement.

While sound arguments can be presented either for retaining a federal liability standard or for dispensing with one, we conclude that, if a federal liability standard is retained, it should take the form of a statutory requirement rather than a common law requirement. Reverting to common law could require significant expenses for litigation and uncertainty about what liability standard was in fact required. While a statutory regulation enforced by the ICC would be repealed, similar common law requirements enforced by the courts would still be in effect. As such, it would provide less assurance of regulatory protection for shippers without necessarily reducing the liabilities of carriers, while imposing increased costs for litigation on both. Repealing the Carmack amendment only to have similar requirements re-emerge as common law would create confusion without achieving any significant deregulatory gain.

Matter for Consideration by the Congress

If the Congress takes further action on deregulatory legislation, we recommend that they consider either retaining Carmack as statutory law, or replacing by statute both the statutory and common law cargo

damage liability requirements, leaving such requirements solely to contractual agreements between the carrier and the shipper.

Data Reporting Requirements

ICC's Data-Reporting Program

The ICC requires motor carriers to fill out and submit each year a data report of 57 pages, including detailed data on operations, finances, costs, revenues, assets, and liabilities. The ICC reduced its data collection requirements significantly in 1980 by making Class III carriers (those with revenues of less than $1 million per year) exempt from data reporting. In 1979, ICC issued a policy statement that it would base its data collection requirements solely on its own regulatory needs, not on the broader public policy needs of other agencies or of the public. Pursuant to this policy, and in response to its belief that deregulation dramatically reduced its need for data, ICC in 1985 proposed dramatically reducing (from the 57-page form to a 1-page form) the data it gathers on Class I motor carriers (those with annual revenues of $5 million or more). Class II motor carriers (annual revenues of $1 million to $5 million) would be exempted from data reporting altogether. On March 31, 1987, ICC issued a revised rule calling for a 10-page reporting form for Class I motor carriers, and no reporting requirement for Class II carriers.

Users of ICC Data

The data which ICC requires carriers to report is of value both for regulatory purposes and for more general public policy purposes. The data have been used not only by ICC, to analyze whether proposed trucking rates are reasonable, but also by other government agencies for a variety of purposes. For example, the Bureau of Labor Statistics in the Department of Labor noted that it uses ICC data in its labor productivity analyses. The Department of Agriculture uses ICC data in meeting its responsibilities under the Agricultural Marketing Act to assist in obtaining equitable and reasonable transportation rates for the agricultural community. The Department of the Army's Military Traffic Management Command uses ICC data to evaluate potential carriers and in its strategic mobility planning. The Bureau of Economic Analysis in the Department of Commerce uses ICC data to assist in developing its Gross National Product statistics. Several state public utility commissions,

including those from Minnesota, Pennsylvania, Washington, and Missouri, as well as the National Association of Regulatory Utility Commissioners, stated that they needed ICC data to meet their regulatory responsibilities.

ICC's regulatory requirements not only lead to data collection directly by ICC; they also lead to data collection by industry rate bureaus to justify proposed rate increases. These data collected by rate bureaus provide useful information on the regional structure of the trucking industry. Such data were used by the Congress, for example, in analyzing the competitive structure of the trucking industry both prior and subsequent to deregulation.

The partial deregulation of the industry since 1980 has reduced ICC's regulatory data needs, but has not necessarily reduced the broader needs of the public. Several of those who have commented on ICC's proposal to reduce its data gathering requirements (such as the Departments of Labor, Commerce, Defense, and Agriculture, as well as several state public utility commissions) have argued that their needs for data on the trucking industry, which ICC proposes not to meet, are more extensive than ICC's needs.

While it would be possible for these other state and federal agencies to require separate annual reporting, this would impose a greater burden on the trucking firms than filing a single annual report to ICC which met the needs of the other agencies as well. The Paperwork Reduction Act of 1980 specifies that agencies only gather data that is needed, but provides for a central collection agency to be designated by the Office of Management and Budget (OMB) in cases where the same data are needed by two or more agencies. The Secretary of Transportation also has responsibilities with respect to data collection. Among her duties are to

"promote and undertake the development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation."

What Data Are Needed?

Assessing the appropriate level of continued data collection is difficult, since the benefits of data collection often take intangible forms such as more informed decisionmaking. However, some transportation analysts are alarmed by current trends. In 1984, a staff paper for the Committee on National Statistics of the National Research Council (NRC) commented,

"as the data set available on regulated trucking declines, and regulated trucking as a portion of the industry declines, information on trucking, which was never comprehensive or extensive, will go from poor to almost non-existent. It is extraordinary that so little is known about an industry of this size and importance."

In 1981, the NRC issued a report sponsored by DOT entitled Identification of Transportation Data Needs and Measures for Facilitation of Data Flows. The report had 12 recommendations, including 5 tasks to be carried out specifically by DOT, for improving the quality and usefulness of transportation data within existing budget constraints. These included recommendations to improve the documentation, indexing, timeliness, and cost-effectiveness of transportation data, and for DOT to "lead the coordination of all federal transportation data programs" and "support the establishment of a national forum to represent data suppliers and users in the continuing assessment of user needs and data programs." The report also recommended that agencies which are discontinuing basic data series prepare alternatives for future provision of these data. DOT officials told us that they have not explicitly implemented these recommendations, though they believe some DOT actions could be considered responsive to the recommendations. Both DOT and OMB officials told us that they had made no assessments of the need for data on the trucking industry by other agencies, the Congress, or the public. Neither DOT nor OMB had taken any action to ensure that these needs would be met in the event that ICC acted on its proposal to sharply reduce its data collections.

In other respects, DOT has not gathered sufficient data to meet its own needs adequately, not to mention meeting the needs of other agencies. In a 1980 report on the transportation of hazardous materials, we stated that DOT

". . . does not have complete or accurate information on the volumes and types of hazardous materials shipped or the identity and locations of all firms involved in the hazardous materials industry. Without this information, the Department cannot effectively plan its inspection and emergency response activities."[5]

In July 1986, the Office of Technology Assessment (OTA) reported that ". . . the database deficiencies noted in the GAO report persist,"[6] and in September 1986 a DOT Safety Task Force noted deficiencies in DOT's safety-related data on trucking.

[5]Programs for Ensuring the Safe Transportation of Hazardous Materials Need Improvement (CED-81-5, Nov. 4, 1980).

[6]Transportation of Hazardous Materials (OTA-SET-304, July 1986).

It is appropriate for ICC to scale back on its data collection activities as deregulation reduces its needs for data. But because ICC data are used by other agencies, such a scale-back should be coordinated with other agencies and with OMB to ensure that needed data continue to be gathered. As the lead federal agency on issues of transportation policy, it is appropriate for DOT, in conjunction with OMB, to take the lead in coordinating the collection of trucking data to ensure that the government's data needs are met in the most cost-effective way possible. Yet DOT does not appear to have ensured that its own data needs are met, much less those of other agencies.

While the amount of data needed remains uncertain, it is equally clear that, unless DOT takes the initiative to consult actively with transportation data users both within and without the federal government, it will not be able to ensure that legitimate data needs are being met.

Alternative Approaches

There are several alternative approaches to ICC's current data reporting requirements. Data could be gathered by another government agency or by a private organization. DOT, like ICC, has broad authority to gather data on the industry (49 U.S.C. 504). Also, the Bureau of the Census has general legislative authority to gather transportation data in cases where the data are not already being gathered by a "designated regulatory agency." To the extent that ICC ceased collecting data, and these data were not gathered by any other regulatory agency, Census would thus be authorized to gather data on the industry. Data reporting by one of these two agencies could be expanded to fill any undesirable gaps left by reductions in ICC data reporting requirements.

However, while these agencies have existing authority to gather additional data, they have made limited use of the authority that they have. Census reduced the scope of its quinquennial Census of Transportation in 1982 partly because of budget cuts and partly because of quality control problems. The Census Bureau has recently stepped in to gather some of the data that ICC stopped gathering in 1980, but Census' survey form asks for much less information than was formerly collected on Class III carriers by ICC. While DOT already has authority to require reporting of data from motor carriers, it has not elected to do so, except for accidents, hazardous materials incidents, and out-of-service vehicle reports. DOT has recently proposed, however, as part of its implementation of the Motor Carrier Safety Act of 1984, a one-time census of carriers under its jurisdiction. In view of the limited data collection efforts

by DOT and Census, it seems likely that the elimination of ICC's regulatory and data-collecting role would lead to a reduction in the collection of data by the federal government on the trucking industry.

Alternatively, private organizations, such as the American Trucking Associations (ATA), or private data publishing services, such as Trinc Transportation Consultants, could step in to gather data no longer gathered by ICC. These organizations currently tabulate and publish data collected by ICC. Whether they would collect these data themselves is uncertain. The primary difficulty would be that they would have to rely on voluntary compliance by the industry, so the data they collected might be less complete and reliable.

Also, the volume of data worth collecting by a private organization may be less than the amount that is worth collecting for public policy purposes. This is because information is a public good, in the sense that its value to society can be greater than its value to the organization that collects it. Even when a data-collecting organization tries to recoup the full value of the information by charging for its use, it generally cannot restrict access to the data well enough to collect from all users. Additionally, to the extent that a private organization does charge for the data it collects, the value of collecting the data is reduced, because some potential users cannot afford to pay for it. The result is that private data collection is likely to leave some public policy data needs unmet. ATA believes that any data that it collected would not be nearly as comprehensive, reliable, or useful as ICC's data.

Another alternative to ICC's current data-reporting approach would be to use more sample data in place of ICC's current requirements that all carriers in a particular class report on all the items on ICC's report form. This approach was recommended by the 1981 NRC report. Census has adopted a sampling approach in its newly adopted reporting program, and such an approach might well meet many of the nation's public policy needs while substantially reducing the costs to carriers. For example, a 1981 GAO report, The Trucking Industry's Federal Paperwork Burden Should be Reduced (GGD-81-32, Mar. 3, 1981), estimated that using a statistical sample to gather ICC's commodity data could save $3.2 million annually while improving the statistical quality of the data.

Recommendations to DOT

Trucking data are important to the missions of several different federal agencies, numerous state agencies, the Congress, and the private sector.

It appears to be more efficient for the federal government and less burdensome for the trucking industry if these data are collected by a single agency rather than by several.

This will require that an assessment be made of what data are needed by various users and of the costs of providing these data, so that an appropriate data collection program can be designed. The collection of these data can then be coordinated among the various federal data-collection agencies involved. In view of DOT's statutory responsibility for promoting the collection of transportation data, we believe that it is appropriate for DOT, in conjunction with OMB's Office of Information and Regulatory Affairs, to undertake an assessment of trucking data needs and costs and coordinate the collection of trucking data by the various federal agencies that use or collect them. It is particularly urgent for DOT to undertake such a role in view of ICC's desire to reduce its data collection activities as a result of deregulation. We therefore recommend that the Secretary of Transportation direct appropriate departmental officials to develop a long-term assessment of requirements for and costs of data on truck transportation, based on the needs of various users in the federal and state governments and in the private sector, and, in conjunction with OMB, coordinate data gathering among DOT, ICC, Census, and other truck transportation data-gathering agencies.

Matter for Consideration by the Congress

The Congress may also wish to consider, in any deregulatory legislation, the need to restructure the collection of data on the trucking industry in the federal government to ensure that public and private needs for data are met in the most cost-effective manner if ICC's role in data collection is terminated. The Congress may wish to mandate that DOT act to coordinate such a restructuring along the lines described above.

Owner-Operator Protections

Owner-operators are independent truckers who own and operate their own rigs. Most do not have ICC operating authority, and therefore can perform regulated transportation only by leasing their trucks and their services as drivers to a carrier who has ICC operating authority. Although the owner-operators who do not have ICC operating authority are not directly regulated by the ICC, the carriers to whom they lease their trucks are regulated, and the ICC protects the interests of owner-operators to some extent through the regulations it imposes on regulated carriers. These regulations include requirements that the leases between owner-operators and carriers clearly specify what payments the owner-operator will receive and what costs the owner-operator is obligated to

pay. ICC also enforces prohibitions against "lumping" (i.e., coerced payment for unwanted loading and unloading services) and investigates complaints about carriers received from owner-operators, most of which involve failure on the part of the carrier to live up to its obligations under the lease agreement.

ICC's Role in Protecting Owner-Operators

The ICC's concern with protecting the interests of owner-operators is of relatively recent vintage. While ICC began investigating leasing practices in the early 1940's and first issued rules to govern leases in 1951, the original purpose of these rules was to prevent leasing from being used as a subterfuge for evading ICC's restrictions on operating authority. It was not until 1974, when owner-operators went on strike to protest higher fuel prices caused by the Arab oil embargo, that the Congress passed legislation requiring the ICC to order carriers to compensate owner-operators for the increased cost of fuel. In 1975, the ICC investigated allegations by owner-operators that carriers were "skimming" on their leases—paying the owner-operator a smaller percentage of the revenue than had been agreed to. In response, ICC adopted a rule requiring that the owner-operator be allowed to see the freight bill to ensure that the agreed-upon share was being received. In 1977, ICC began an expanded investigation into complaints by owner-operators, partly in response to hearings by the House Committee on Small Business, which led to the adoption of a "truth-in-leasing" rule in 1979. This required that the lease spell out in greater detail than before what the obligations of the carrier and the owner-operator were for payments of insurance, damage, and other charges. The 1980 Motor Carrier Act made lumping a specific criminal offense and strengthened ICC's enforcement power. It also made it easier for owner-operators to get ICC approval to operate on their own by easing the "public convenience and necessity" criterion for entry.

The Need for Protecting Owner-Operators

The rationale of these protections is that the owner-operator's small size creates a weak bargaining position relative to the carrier. It is not clear how effective these protections have been. Owner-operators complain that they get little protection from the ICC, though they do not want to lose what little protection they are receiving. They also complain that their condition has worsened under deregulation because competitive pressures have induced carriers to reduce the revenues paid to owner-operators. They also argue that they are still regularly cheated by unscrupulous brokers. One purpose of the Motor Carrier Act of 1980 was to allow owner-operators to escape from their dependence upon ICC-

certificated carriers by making it easier for owner-operators to get operating authority on their own. While over 20,000 small carriers have received operating authority since 1980, most owner-operators still do not have authority. They argue that, even with the liberalized rules under the 1980 act, it is still necessary to present evidence from shippers that their operations would serve a "useful public purpose," and that this represents too high a barrier for most owner-operators to surmount.

The Effect of Deregulation on Owner-Operators

Deregulation, as proposed in the three deregulation bills introduced in the 99th Congress, would eliminate the requirement that a carrier have ICC operating authority.[7] Owner-operators could therefore operate on their own, without having to lease their trucks to an ICC-regulated carrier. Even if the owner-operator continued to lease to a carrier, the expanded options for operating in the motor carrier industry would probably improve the owner-operator's bargaining power vis-a-vis the carrier.

Owner-operators that became carriers would still need the services of brokers to act as an intermediary with shippers, and would still be subject to fraud by unscrupulous brokers. The administration proposed, as part of its related deregulatory legislation on freight forwarders and brokers, eliminating ICC requirements that brokers be licensed, which could also have reduced protection for owner-operators. In the absence of ICC licensing of brokers, one alternative would be for organizations of owner-operators to carry out their own broker-certifying program. To the extent that owner-operators did business only with such certified brokers, owner-operators might be able to protect their own interests.

Deregulation would also eliminate ICC's role as an investigator of complaints from owner-operators. However, other agencies could perform this role in ICC's absence. Other industries, of course, have experienced similar problems of fraud and misrepresentation. In these cases, special agencies have not generally been created to deal with these problems, but instead such industries have relied on the actions of the Federal Bureau of Investigation (FBI) and the FTC. If ICC no longer investigated lumping and criminal fraud complaints, the FBI could investigate such

[7]The Moody and Packwood bills would have excepted carriers of household goods. The Packwood bill would have also retained an entry requirement based on safety fitness, but would have eliminated the need for an entrant to demonstrate that a "useful public purpose" would be served by entry. The entry requirement would have been enforced by DOT.

complaints, since they would still be federal criminal offenses. Alternatively, they could be investigated by state enforcement agencies under state law. If ICC leasing rules were abolished, similar rules could be promulgated under the FTC's authority to prevent unfair trade practices. Since these other agencies have not focussed on owner-operator problems in the past, however, it is likely that they would devote fewer resources to these problems than does the ICC. But it is not certain whether ICC's or FTC's enforcement activities would be more effective. We could find no data which would show whether the problems of fraud and misrepresentation in the trucking industry are more extensive than the corresponding problems in other industries with which the FBI and the FTC deal. It is therefore difficult to say whether the industry needs a special agency to combat fraud and misrepresentation more than other industries which are protected by the FBI and the FTC.

Consumer Protection for Household Goods Shippers

Like owner-operators, consumers who ship their household goods are considered to be vulnerable to fraudulent practices on the part of carriers. This is partly because consumers, like owner-operators, are in a weak bargaining position vis-a-vis carriers, and partly because consumers usually move infrequently and therefore are not knowledgeable about the industry.[8] The consumer protection rules were changed in 1980 by the Household Goods Transportation Act, which for the first time allowed carriers to offer consumers binding estimates and guaranteed delivery dates.

The administration has proposed, as part of its trucking deregulation legislation, retaining these rules but transferring their enforcement to the FTC. The Packwood and Moody bills would have kept them at the ICC. One consumer group which has presented testimony on the issue believes that ICC's regulatory oversight is ineffective, and that the FTC, which they believe has historically had a more pro-consumer orientation, would in the long run be more effective. We have no basis for saying which agency would provide household goods shippers with better protection.

Mexican Carrier Registration

The 1984 Motor Carrier Safety Act required that Mexican carriers carrying exempt commodities register with the ICC. Mexican carriers seeking authority to carry regulated commodities had already been

[8]This is true of consumers who arrange their own moves. Consumers whose moves are paid for or arranged by their employer may be in a substantially better bargaining position.

barred from entering the U.S. market by a moratorium imposed by the 1982 Bus Regulatory Reform Act. These requirements were motivated by the unwillingness of the Mexican government to allow U.S. truckers into the Mexican market, and by concerns about the safety fitness of Mexican carriers. There was little dispute among those who testified before the 1985 congressional oversight hearings on the Motor Carrier Act of 1980 over the appropriateness of restricting the activities of Mexican carriers. None of the proposed deregulation bills has suggested eliminating this registration requirement. However, some shippers from the region close to the Mexican border have objected that the restrictions on Mexican carriers have disrupted the border economy and placed an unfair burden on businesses operating near the border. They do not propose to eliminate the restrictions entirely, but would like to expand the border region within which Mexican carriers are allowed to operate. The ICC has acted, in Ex Parte MC-37, Sub. 38, to expand the size of these border zones.

Should State Trucking Regulation Be Pre-empted?

The proposed deregulation of the trucking industry raises two issues about the scope of deregulation. One issue is the extent to which federal regulatory functions should be eliminated; the other is the extent to which these functions should be eliminated from state regulation as well as from federal regulation. In the past, deregulation of air, rail, and bus transportation has in many cases included pre-emption of regulation of these modes by the states. There is disagreement between state officials and shippers about whether the burden which state trucking regulation places upon interstate commerce is sufficient to justify federal pre-emption of state trucking regulation.

Federal Pre-emption of State Regulation in Other Transportation Modes

Deregulation of air, rail, and bus transportation has been accompanied by broad pre-emption of state regulation to a greater extent than has occurred in truck transportation. Prior to 1978, the airline industry was subject to federal safety regulations and to state and federal economic regulations. States regulated intrastate rates and entry while the federal government regulated interstate rates and entry. It was in part the example of lower fares resulting from less regulated intrastate air transportation in California, Texas, and Florida that led to federal deregulation of air transportation in 1978. However, federal deregulation led to the end of independent state regulation. The 1978 Airline Deregulation Act eliminated the states' regulatory authority over federally registered air carriers, and later all air carriers, interstate and intrastate, were exempted from state regulation.

Railroads were originally regulated by the states, but were increasingly regulated by the federal government after the ICC was established in 1887. Deregulation under the Staggers Rail Act of 1980 prohibits states from regulating intrastate rates unless the ICC has certified their procedures and standards.

States also have been largely pre-empted from regulating intrastate motor carriers of passengers who are also interstate carriers. In 1982, a joint report on state regulation of motor carriers prepared by the ICC and DOT in response to a mandate from the 1980 Motor Carrier Act concluded that lack of uniformity in state regulations imposed unnecessary burdens on interstate carriers. This report found that states imposed more stringent regulations on bus companies than on truck companies. The Congress found that these regulations imposed an unwarranted burden on interstate transportation, particularly because of slow action by state regulatory agencies. Accordingly, the Bus Regulatory Reform Act of

1982 granted ICC new powers to review state decisions on route abandonment, as well as the authority to overturn state actions which unreasonably burden interstate commerce.

Motor carriers of property were, until recently, subject to state regulation of their intrastate operations and federal regulation of their interstate operations. Three recent laws, however, have pre-empted some state regulation of intrastate transportation by motor carriers. The Surface Transportation Assistance Act of 1982 requires states to allow the use of certain types of trucks on their roads. The Motor Carrier Safety Act of 1984 mandates minimum federal safety standards for commercial motor vehicles. It also gives the Secretary of Transportation the power to review state safety regulations and suspend the effectiveness of those regulations which either are less strict than federal standards, are more strict and incompatible with federal standards, are an undue burden on interstate commerce, or have no safety benefit. Finally, the Commercial Motor Vehicle Safety Act of 1986 allows DOT to pre-empt state standards for licensing of drivers of commercial motor vehicles by setting minimum federal requirements.

Pre-emption of state regulation of air and rail carriers was justified on the grounds that the air and rail networks were long-haul, essentially national networks which it was inappropriate for the states to regulate. Pre-emption of state bus regulation was more limited, and was pressed for by the bus industry because state regulators held intrastate rates below comparable interstate rates. In trucking, the situation is the reverse of that for buses; intrastate rates are often higher than interstate rates, and it is shippers, not carriers, who press hardest for pre-emption of state regulation.

Pre-emption of State Regulation in Proposed Deregulatory Legislation

The Packwood, Moody, and administration bills took different approaches to striking a balance between state interests in regulating state commerce and the federal interest in the free flow of interstate commerce. They varied in how broadly pre-emptive they would have been. The Packwood and Moody bills would have completely pre-empted state laws regarding both interstate and intrastate rates, routes, and services of interstate (or "national") motor carriers of property (except for household goods movers). The Packwood bill would also have prohibited state taxes or fees which discriminate against truckers, as compared with other modes of transportation or other commercial and industrial taxpayers, and would have directed the Secretary of Transportation to

issue regulations governing the administrative requirements for collecting state taxes and fees. The Moody bill would have required DOT to assemble a working group of state officials to advise the Secretary on what uniform state standards are necessary and on the best way to implement those standards.

While the Moody and Packwood bills did not purport to deregulate purely intrastate carriers, they granted virtually complete freedom of entry and ratemaking to interstate (or "national") carriers operating on intrastate routes. Since both bills imposed minimal requirements for being recognized as an interstate or national carrier, an intrastate carrier could have elected to become an interstate carrier and exempted itself from state regulation of its intrastate operations. Any attempt by states to limit entry or control rates of intrastate carriers would have almost certainly failed, since any carrier disagreeing with a state regulation could have declared itself an interstate carrier and exempted itself from state regulation.

The bill which the administration introduced in the 99th Congress would have been less broadly pre-emptive, since it only would have pre-empted state regulation relating to interstate rates, routes, and services of interstate carriers. It was intended to prevent states from enacting new regulations within the domain of interstate regulation vacated by the federal government. The new bill which the administration proposed in February 1987, however, adopts the Moody-Packwood approach and would pre-empt state regulation of intrastate as well as interstate operations of interstate carriers.

Proponents of federal pre-emption argue that the multiplicity of state regulations increases costs for interstate motor carriers, and that there would be an economic benefit from pre-emption of state regulations. Some opponents of pre-emption acknowledge that state regulation imposes some burden on interstate commerce, but argue that the burden is insufficient to justify federal pre-emption of state regulations. Some carriers have argued that stringent state regulation of intrastate trucking reduces competition in interstate trucking, because carriers in some cases can not efficiently provide interstate service unless they also have authority to offer intrastate service. At the same time, proponents of state regulation argue that political and constitutional considerations support broad deference to each state's regulation of its own commerce, so that state regulation of intrastate commerce should not be pre-empted unless the economic burden on interstate trucking is clearly excessive.

The 1982 DOT-ICC report on uniform state regulations gave little attention to intrastate rate and entry regulation, but concluded that the administrative procedures for collecting state taxes and fees could be made more uniform and less burdensome without violating each state's essential prerogative to set taxes and fees at whatever level it finds appropriate. Whether the economic burdens of state regulations are great enough to outweigh the political and constitutional deference that is traditionally granted to state regulation is an issue that does not have a certain answer.

Budgetary Effects of Deregulation

It seems likely that at least some trucking regulatory functions, such as safety and consumer protections for household goods shippers, would be retained even if most trucking regulation were eliminated. The budgetary effects of deregulation depend not only on how many of ICC's functions are eliminated, but also on the extent to which other agencies expand their regulatory activity to replace parts of the functions abandoned by ICC.

Rate and entry regulation accounted for 241 out of 483 staff-years spent on trucking regulation at ICC in fiscal year 1985. Elimination of rate and entry regulation would create the potential to save these staff-years. If entry regulation based on safety fitness and satisfaction of insurance requirements were retained, however, as proposed in the Packwood bill (that is, if only the "useful public purpose" requirement for entering the industry were eliminated for all but carriers of household goods), the savings might be less. The staff-year effects of each bill are summarized in Table 4.1.

It is not clear what portion of the 130 staff-years that ICC devoted to entry regulation in fiscal year 1985 would be needed by DOT to enforce the more limited entry standard in the Packwood bill. DOT is already moving in the direction of establishing the equivalent of a safety-based entry requirement under the mandate of the 1984 Motor Carrier Safety Act. DOT's proposed rules to implement this act would require that all interstate carriers, both existing and new (including private and exempt carriers subject to DOT safety regulation, who would not be affected by the Packwood bill), register with DOT for purposes of receiving a safety rating. Any existing carrier receiving an unsatisfactory safety rating would be directed to cease operations until remedial actions have been taken. New carriers receiving an unsatisfactory safety rating presumably would not be allowed to begin operating. Since these requirements are similar to those proposed by the Packwood bill, implementation of DOT's proposal might mean that enactment of the Packwood bill would not require any additional staff-years.

The budgetary savings for all the functions deregulated would be affected by whether household goods carriers were included in deregulation. The Moody and Packwood bills would have exempted household goods carriers from rate and entry deregulation, while the administration's bill would not. Under the Moody and Packwood bills, ICC would have continued to enforce the full range of its trucking regulations on household goods carriers, including owner-operator protections, data reporting, etc. Such regulation of household goods carriers required, in

fiscal year 1985, about 17 staff-years for enforcement of consumer protection rules and 35 for other regulatory functions. The 35 staff-years are about 7.5 percent of the 466 staff-years ICC used for functions other than consumer protection rules. Hence, if household goods carriers were exempted from deregulation, the staff-year savings for each regulatory function other than consumer protection rules would be approximately 7.5 percent less than if all carriers were deregulated.

The extent of budgetary savings would depend upon the extent to which regulatory functions were retained, on where the function was transferred if ICC's role were terminated, and on the enforcement approach adopted by the agency to which the function was transferred. Household goods consumer protection rules, for example, would have been retained by all the deregulation bills proposed in the 99th Congress. The Packwood and Moody bills would have retained them at ICC, while the administration's bill would have transferred them to FTC. The FTC staff with whom we discussed this potential transfer thought that FTC would likely devote fewer staff-years to handling this responsibility than the 17 staff-years spent by ICC in fiscal year 1985. Similarly, the Carmack provisions on cargo damage liability and ICC's leasing rules (which in part protect owner-operators) would have been transferred to DOT by the Packwood and Moody bills. These transfers could result in budgetary savings if DOT spent less, for example, on enforcing the cargo damage liability rules than the 51 staff-years spent by ICC.

Even if ICC functions were not explicitly transferred to any other agency, other agencies with existing authority might take over some of the regulatory functions currently exercised by the ICC, and might have to increase their staffing as a result. For example, if ICC lost its authority for enforcing insurance requirements, DOT would have responsibility for enforcing these requirements under its existing authority, substantially increasing the number of carriers for which it had primary enforcement responsibility.

Similarly, if ICC lost its authority to approve mergers and pooling agreements, DOJ and FTC would acquire the merger approval authority, while authority to approve pooling and price-setting agreements would be eliminated. If ICC no longer collected data on the trucking industry, DOT and the Bureau of the Census would have the authority to gather additional data on trucking. FTC might also pick up additional responsibility for investigating unfair practices against owner-operators. All three deregulatory proposals would have retained "lumping" as a criminal offense, but ICC's role in investigating lumping offenses would have

ended, leaving investigatory authority at the FBI (and, in the case of the Moody bill, at DOT). The FBI would also have been responsible for investigating cases of criminal fraud against owner-operators that might before have been investigated by the ICC. While Carmack would have ceased to exist as statutory law under the administration's bill introduced in the 99th Congress, it appears likely that pre-existing common law, which had similar requirements, would once again have become effective. Enforcement of these requirements would generally have fallen to private parties bringing suit in state and federal courts, possibly leading to an increase in staffing requirements in the judiciary. The new administration bill, introduced in February 1987, retains a statutory form of the Carmack amendment.

We have no definite basis for estimating how many staff these agencies would have assigned to these new areas. Whether these other agencies would have needed additional funding to handle these added responsibilities would have depended on the enforcement approaches they adopted. Agencies could avoid any increase in staffing by reassigning staff currently doing other work. This approach appears to be the basis of the administration's fiscal year 1988 budget request. In the case of insurance regulation, it is likely that DOT would have spent less than the 72 staff-years spent by ICC on insurance regulation in fiscal year 1985, since DOT's enforcement of insurance requirements has been less stringent than ICC's.

In the case of data reporting, Census has already acted to begin gathering limited data on Class III truckers who are no longer required to report to the ICC. Census' proposed data-reporting requirements for Class III truckers are substantially less than those formerly imposed by ICC. If ICC stopped requiring reports from Class I and II truckers and Census expanded its reporting requirements for these carriers, Census would, as it did in the case of the Class III carriers, probably not require reporting of as much data as ICC currently does. Census would probably therefore need fewer than the 16 staff-years required for data reporting at ICC in fiscal year 1985.

Summary of Budgetary Effects

To summarize, the administration bill would have eliminated all 483 trucking regulatory staff-years at ICC, including 241 for rate and entry regulation. However, other agencies would have picked up some additional responsibilities for ancillary functions. Justice would have picked up additional responsibilities for antitrust and anti-lumping enforcement; FTC would have picked up additional responsibilities for antitrust

and household goods consumer protection enforcement (and possibly also for owner-operator protections). DOT would have picked up additional responsibilities in insurance enforcement and Mexican carrier registrations. DOT and Census would have picked up additional responsibilities for data collection. These ancillary functions required a total of 242 staff-years at ICC. It is unlikely that the other agencies who would have gained responsibilities in these areas would have devoted as many staff-years to enforcement in these areas as ICC has. But the exact savings in staff-years for the government as a whole, while it would probably have been at least the 241 staff-years used for rate and entry regulation, is uncertain.

Of the three deregulation bills introduced in the 99th Congress, the administration's bill would probably have had the greatest budgetary effect. The Packwood and Moody bills would have been similar to the administration bill except that 52 staff-years would still be needed at ICC for household goods regulation. Under the Packwood and Moody bills, cargo damage liability and leasing rules would have been explicitly transferred to DOT, so that enforcement of these rules might have required more staff than would have been used, under the administration bill, for potential enforcement in these areas by the federal courts and FTC, respectively. The Packwood and Moody bills would thus have saved at least 189 staff-years (for rate and entry deregulation less the 52 staff-years for regulation of household goods carriers), and that portion of the 208 staff-years for ancillary regulatory functions (other than for household goods) not needed when these functions were carried out by other agencies. The Packwood bill might also have required some portion of the 130 staff-years that ICC spent in fiscal year 1985 for entry regulation to enforce the safety-based entry standard by DOT.

Table 4.1: Comparison of Effects of Different Bills on ICC Staff-Years

Regulatory function	Administration bill	Packwood bill[a]	Moody bill[a]	Staff years
Rate regulation	Sunset	Sunset	Sunset	(111)
Entry regulation	Sunset	Sunset[b]	Sunset	(130)
Safety regulation	Sunset	Transfer to DOT	Sunset[c]	(4)
Insurance regulation	Sunset[d]	Sunset[d]	Transfer to DOT	(72)
Antitrust enforcement	Sunset[e]	Sunset[e]	Sunset[e]	(23)
Cargo liability	Sunset[f]	Transfer to DOT	Transfer to DOT	(51)
Data reporting	Sunset[g]	Transfer to DOT	Transfer to DOT	(16)
Owner-operator rules	Sunset[h]	Transfer to DOT	Transfer to DOT	(58)
Household goods consumer protection rules	Transfer to FTC	Retain	Retain	(17)
Mexican carriers	Transfer to DOT	Transfer to DOT	Transfer to DOT	(1)
Household goods regulation	Sunset	Retain	Retain	(52)[i]
Total staff-year reduction at ICC	**483[j]**	**431[j]**	**431[j]**	

[a]The Packwood and Moody bills do not affect household goods carriers. Hence the changes indicated for these two bills apply only to motor carriers of property other than household goods

[b]Entry regulation based on safety and financial responsibility is retained; staff-year savings for entry regulation uncertain

[c]The Moody bill also would have established a new mandate for DOT to establish safety fitness requirements and maintain safety fitness records for individual owner-operators as well as private and for-hire carriers

[d]Enforcement responsibility would continue at DOT

[e]Justice and FTC could review mergers and enforce prohibitions on price-fixing and discriminatory/predatory pricing under existing authority.

[f]Amended and transferred to DOT under the administration's 1987 bill

[g]DOT and Census could gather data under existing authority.

[h]Lumping prohibition remains in force. FTC and FBI would have some enforcement authority under existing statutes.

[i]The 52 staff-years for household goods regulation includes the 17 for household goods consumer protection rules, as well as a portion of all the other functions

[j]Based on fiscal year 1985 data Reductions for fiscal year 1988 would be smaller (see p 13).

Glossary

Ancillary Trucking Regulatory Functions	We use this term to refer to ICC trucking regulatory functions other than rate and entry regulation, i.e., safety, insurance, antitrust, cargo damage liability, data reporting, owner-operator, household goods, and Mexican carrier regulations.
Backhaul	A return trip—the original trip is the "fronthaul" or "headhaul."
Broker	Someone who arranges transportation services by acting as an agent between the shipper and the carrier, but who does not take responsibility for the shipment. Cf. "freight forwarder."
Carmack Amendment	The Carmack amendment (49 U.S.C. 11707), originally enacted in 1906, in its current form provides that any common carrier is fully liable for any damage to a cargo while it is en route, whether the damage was caused while the cargo was in the custody of the carrier or of another connecting carrier. The carrier may limit his liability to a specific amount if the shipper agrees to the limitation, but the shipper must be offered the option of liability coverage up to the value which the shipper places on the cargo (though normally this full liability coverage would require payment of a higher price for the shipment).
Carrier	Someone who offers or provides transportation services, and takes responsibility for making sure that the service is performed. In the case of a freight forwarder, however, the carrier does not necessarily perform the transportation service itself.
Class I Motor Carriers	ICC-regulated motor carriers with more than $5 million in annual revenues.
Class II Motor Carriers	ICC-regulated motor carriers with between $1 million and $5 million in annual revenues.
Class III Motor Carriers	ICC-regulated motor carriers with less than $1 million in annual revenues.

Common Carrier	A carrier that holds itself out to provide transportation service to the general public, though it may restrict its services to transportation of particular commodities in particular areas or along particular routes. Cf. "contract carrier."
Contract Carrier	A carrier that does not hold itself out to provide service to the public generally, but provides service to a limited number of customers on a contract basis. Cf. "common carrier."
Discriminatory Pricing	Setting different prices for different customers where the price difference does not reflect differences in cost.
Exempt Carrier	A for-hire interstate carrier that is not covered by ICC regulation under Sections 10523 or 10526 of Title 49 of the U.S. Code. Section 10523 exempts carriers offering service in terminal areas, while section 10526 exempts school buses, taxicabs, hotel limousines, commuter vehicles, and carriers of unprocessed agricultural commodities, newspapers, shipping containers, and wood chips, as well as some other categories.
For-Hire Carrier	A carrier that sells transportation services to someone else. Includes both common and contract carriers. Cf. "private carrier."
Freight Forwarder	A common carrier that arranges for transportation, but that does not provide the transportation itself. A freight forwarder usually consolidates small shipments into truckload or carload lots and then hires a motor, rail, or air carrier to perform the transportation.
General Rate Increase	A rate increase filed by a rate bureau with a regulatory agency on behalf of its members, applying a common percentage increase to all shipments within the rate bureau's territory.
Interstate Carrier	A carrier providing service from points in one state to points in other states, or to points in foreign countries, or to points in the same state through another state.

Intrastate Carrier	A carrier offering service solely among points in a single state, and not passing through any other state.
Joint-Line Rates	Rates applying to shipments picked up by one carrier, and then transferred to and delivered by another.
Licensing	Entry regulation—i.e., the issuing by ICC or a state regulatory agency of certificates of operating authority permitting carriers to offer transportation service.
Lumping	Coercing a trucker into paying to have his truck loaded or unloaded.
Motor Carrier	A carrier offering transportation by truck or bus.
Operating Authority	A certificate issued by the ICC authorizing a carrier to provide transportation under chapter 109 of title 49 of the U.S. Code, or a similar certificate issued by a state regulatory agency authorizing intrastate transportation.
Owner-Operator	A truck driver who owns the truck which he operates. Such drivers may have ICC operating authority, but more commonly haul exempt commodities or lease their trucks and their services as drivers to ICC-regulated carriers.
Pooling Agreement	An agreement among carriers to share loads and revenues.
Predatory Pricing	Setting a price below cost so as to drive smaller rivals out of business.
Private Carrier	A company that carries its own goods in its own trucks, and whose trucking services are ancillary to some other business. Such companies may also have ICC operating authority to offer for-hire service, e.g., to fill backhauls.

Rate Bureau	An organization of carriers created to analyze carrier costs and file tariffs with the ICC on behalf of its members.
Released Rate	A rate that offers the shipper a discount in return for releasing the carrier from a portion of its liability for damage to the shipment.
Shipper	The party that buys transportation services, whose goods are being transported.
Single-Line Rates	Rates relating to shipments that are handled entirely by one carrier.
Tariff	A publication of rates to be charged for transportation services, which is filed with the ICC and is subject to its approval.
Uniform Commercial Code	A model code adopted by most states which governs various aspects of commercial transactions, including cargo damage liability requirements for intrastate shipments.

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