

STATEMENT OF DR. JOHN J. FEARNSIDES, DEPUTY UNDER SECRETARY OF TRANSPORTATION, BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND POWER, REGARDING THE POTENTIAL FOR ENERGY CONSERVATION IN THE TRANSPORTATION OF PROPERTY BY TRUCKS, JULY 9, 1979.

Mr. Chairman and members of the Committee, I am delighted to be with you this morning. The Administration is very pleased that the Committee is interested in a matter of great concern to us-- the need to reform the laws governing the regulation of the trucking industry. We simply must make the industry more efficient, thereby reducing needless energy consumption.

The specific legislation before the Committee today is H.R. 1681, which is designed to conserve fuel in certain movements of trucks which are not subject to ICC regulation.

However, today I intend to discuss not only H.R. 1681, but the potential for conserving energy in those other segments of the trucking industry which would not be affected by H.R. 1681. I will also explain how the Administration's proposed "Trucking Competition and Safety Act of 1979" would realize that potential for energy conservation.

H.R. 1681 is intended to reduce empty backhauling, the movement of empty trucks on a return trip, by improving incentives for the backhauling of goods which sellers choose to sell within a geographic zone at a uniform price (i.e., the price of the good plus a factor based on average transportation costs).

Let me begin by briefly describing how a uniform zone delivered pricing system works. When a seller chooses to market its products through such a system, that seller's customers pay the same price for the seller's product regardless of their geographic location, so long as they are within the same geographic zone. In other words, for products subject to a uniform zone delivered pricing system, the price of that product to a customer, which is uniform throughout a zone, includes a uniform component based on the seller's average transportation cost. Obviously, such a system discriminates among different customers. Under this pricing system, the cost of the product to a distant buyer reflects less than the true transportation cost of delivery; for a nearby customer the uniform price charged includes a transportation cost component that is more than the true transportation cost of delivery.

I want to emphasize that neither law nor regulation requires a manufacturer or other seller to establish such a pricing system. That is a decision which a seller makes after considering a variety of operating and marketing considerations.

H.R. 1681 is intended to promote the backhauling of goods which are sold under a uniform zone pricing system. The opportunity for a backhaul in such a system arises because a seller's customers often have the opportunity to fill an otherwise empty backhaul by transporting a shipment that the seller would otherwise have to deliver to that customer.

Specifically, the opportunity for a backhaul in such a system arises as follows. A wholesaler of a product subject to a manufacturer's uniform zone price delivers that product to a retailer. That retailer is geographically closer to the manufacturer of that product than the wholesaler. Upon delivery of the product to the retailer, the wholesaler's truck can either return empty to his place of business, or go on to the manufacturer's place of business and then return with a full truck. In cases where the wholesaler's truck returns directly to his place of business from the retailer's, the manufacturer must deliver the goods to the wholesaler, with the manufacturer's truck returning empty from the wholesaler's place of business. Thus, in the case where, upon completion of delivery to the retailer, the wholesaler sends his truck on to the manufacturer's place of business, two empty backhaul movements (the return of the wholesaler's truck from the retailer's place of business and the return of the manufacturer's truck from the wholesaler's place of business) are replaced by a single empty fronthaul movement (the movement of the wholesaler's truck from the retailer's place of business to the manufacturer's place of business).

If these situations were subject to market forces, those forces would act to reduce time and fuel costs by arranging for the backhaul of goods by the seller's customers. However, in uniform zone pricing systems, considerations of pure transportation economics are not allowed to shape events. Under a uniform pricing system, the seller's price to its customer already reflects a transportation component. Thus, there is no incentive for the customer to pick up the goods

from the seller unless the seller is willing to give the customer a discount (or "backhaul allowance") which will compensate the customer for the additional costs it will incur in transporting the goods.

While some sellers presently do offer backhaul allowances, larger backhaul allowances would create even further incentives. H.R. 1681 is intended to create these incentives by explicitly allowing backhaul allowances greater than those currently being offered. Specifically, H.R. 1681 is intended to permit sellers to grant buyers a backhaul allowance off the uniform zone delivered price of up to "the actual savings in delivery costs to the seller".

While there is no doubt that granting of such backhaul allowances would encourage more backhauling, the application of the language of H.R. 1681 would have certain side effects. For example, the bill would permit a buyer located far away from a seller to deduct more from the uniform delivered price than a competing buyer located closer to the seller. This would result in those two buyers paying differing prices for the same product at the same place, with the closer-in buyer paying a higher f.o.b. (free-on-board) price than the buyer located farther away from the seller. The non-discrimination language in the bill would not prevent this result.

The Federal Trade Commission has noted that such pricing discounts would probably violate the Clayton Act (as amended by the Robinson-Pitman Act), and raises a general policy question. As the Director of the FTC's Bureau of Competition has remarked in testimony before the House Small Business Committee:

"From my point of view, Mr. Chairman, the real issue is simple. If I show up at a seller's loading dock with my own truck, the cost of the product I buy should be no different from the price charged to any other buyer who shows up with his own truck. This is because the seller's costs at the loading dock are the same for everyone."

Alfred Dougherty, Jr.
September 7, 1977

While we are aware of the FTC's expertise on questions concerning the Robinson-Patman Act, that Act is concerned with the pricing of goods, not with the pricing of transportation services. This compels us to look at this implication of H.R. 1681's provisions differently. When a seller chooses, for whatever reason, to use a uniform zone delivered pricing system, the price of products in that system distorts the true transportation costs of delivering the products to each buyer. To encourage energy conservation in such systems, this legislation would permit the seller's actual transportation costs to be reflected in backhaul allowances. However, as explained above, this would, result in what the FTC has indicated would be a violation of the Robinson-Patman Act.

Further, we are unaware of any way to devise backhaul allowances within a uniform zone pricing system which meet the FTC's concerns for fair pricing of goods without retaining a pricing system which distorts transportation costs. For example, the FTC has noted that backhaul allowances within a uniform zone pricing system are legal as long as the backhaul allowances granted are equal for all buyers,

so that they result in the same price f.o.b. to all buyers. However, in such cases buyers with differing transportation costs would be granted the same price allowance for transporting goods different distances, i.e., transportation price distortions would continue.

This does not mean that a system of equal backhaul allowances cannot provide incentives for backhauling. A seller does not have to offer its buyers a backhaul allowance greater than its average transportation cost in order to attract backhauling even from buyers within a zone who are relatively distant from the seller. This is because the opportunity cost to that distant buyer of picking up its goods from the seller can be less than the average cost to the seller of delivering goods to a buyer in certain instances. The most frequent such situation would be where the distant buyer's truck begins its trip to the seller's place of business from a point closer than the average distance of a buyer from the seller. However, it cannot be denied that a backhaul allowance of the seller's true transportation costs to that distant buyer would provide that buyer with an even greater incentive to backhaul than an allowance of the average transportation cost. Again, though, that larger allowance can result in what the FTC considers to be discriminatory f.o.b. pricing.

In sum, while transportation economics will act to conserve energy, a fact recognized by the drafters of H.R. 1681, uniform zone pricing systems pervasively distort economic considerations. Because of these distortions, H.R. 1681 cannot authorize backhaul

allowances in uniform zone price systems as great as a seller's transportation economics considerations would allow without running afoul of the Robinson-Patman Act, as interpreted by the FTC. Similarly, the FTC's concerns as to the pricing of goods by a seller cannot be met in a uniform zone system without maintaining transportation pricing distortions among buyers.

At this time, it might be useful to review the implications of this bill in terms of a specific example. Attached to my testimony is a chart and accompanying appendix which describe how this bill would affect the operation of uniform zone pricing systems. Should you desire it, Mr. Chairman, I would be pleased to discuss that chart at this time.

Clearly then, Mr. Chairman, our problem with this whole situation is that uniform zone pricing systems pervasively distort transportation economics which, particularly in this era of escalating fuel costs, would otherwise operate to conserve energy. As to H.R. 1681, we note that application of its provisions to uniform zone price systems would allow for what the FTC has indicated would be a violation of the Robinson-Patman Act.

More importantly, though, the bill's provisions would further the important economic and energy objective of reducing empty backhauls, an objective which we fully endorse.

Before moving to a discussion of energy savings in other segments of the trucking industry, I would like to mention several possible technical problems with the wording of the bill.

First, while it is clear that the bill is designed to overcome an FIC interpretation of the Robinson-Patman Act which limits the ability of sellers to provide incentives for backhauling by buyers, the bill would not amend the Robinson-Patman Act, but the Energy Policy and Conservation Act of 1975. The Committee should consider whether the legislation, unless styled as an amendment to the Robinson-Patman Act, would indeed have its intended legal effect.

We also note that we interpret the bill as allowing an f.o.b. price (uniform zone price less backhaul allowance) to be quoted to small buyers who themselves do not have backhaul capacity, but would have to arrange for another carrier to backhaul goods from the seller. While we feel the phrase "or an authorized carrier serving the buyer" accomplishes this objective, we recommend that, should the Committee take further action on this bill, explicit legislative history on this point be developed. Clearly, it is desirable for the small buyer which does not own trucks to have the same opportunity to take advantage of an f.o.b. price as the larger buyer which has a private fleet.

At this time, I would like to address opportunities to improve energy efficiency in the trucking industry which do not raise Robinson-Patman Act problems. In particular, I would like to describe the energy inefficiencies resulting from the present scheme of ICC regulation of the trucking industry and how the Administration's proposed trucking legislation would reduce energy waste in all sectors of the trucking industry.

Actually, Mr. Chairman, a wide range of ICC regulations causes truckers to waste precious fuel. Most notable are those which specify routes that must be traveled, commodities that can be carried, and restrictions specifying "one way authority" only.

"Empty backhaul" may be caused by a number of these restrictions, acting either singly or in concert. For example, many certificates of operating authority award only one-way authority, or specify that a carrier may haul commodities to a point, but with "no transportation for compensation upon return unless otherwise authorized." As recently as 1975, only half the operating certificates awarded by the ICC contained authority for a carrier to haul goods on a return trip. Unless that carrier already has authority to operate from that newly authorized destination, empty backhauls will result.

In other cases, ICC certificates specify in mindboggling detail the commodities that a trucker can carry. These restrictions often follow no logical pattern and serve no purpose. Some certificates, for example, authorize the carrier to haul crated, but not uncrated, machinery; or allow paint hauled in 2-gallon cans, but not paint in 5-gallon cans. One recent certificate permits a carrier to haul bananas. The carrier may also haul pineapples, but only if mixed with loads of bananas. It is easy to imagine how these kinds of restrictions result in less than full front hauls, as well as empty backhauls. Let say, Mr. Chairman, that you are a carrier with authority to carry only chop suey. It clear to me that you would have a hard

time finding a load of chop suey to carry in a town to which you just delivered a truckload of chop suey. As silly as this may seem, Mr. Chairman, we are aware of one carrier with authority to carry only chop suey.

Many certificates prohibit carriers from making intermediate stops between authorized points. This prevents carriers from maximizing their loads, increases costs, and keeps many towns, especially smaller ones from receiving the best possible service.

Most certificates authorizing the carriage of general commodities specify the routes, that is, the actual highway the carrier must use. In some instances, carriers are required to take an indirect route or travel through a designated "gateway city" to reach their destination. For example:

- Denver, Colorado and Albuquerque, New Mexico, are only 442 miles apart. Garrett Freight Lines is permitted to haul freight from Denver to Albuquerque, but only if it goes by way of Salt Lake City, a total distance of 730 miles.
- In 1974, during the height of that energy crisis, Consolidated Freightways was denied a request to travel directly between Minneapolis-St. Paul and Dallas. The carrier's route authority required it to travel 37% further on trips between the two points. Despite the company's desire to eliminate excessive mileage and save fuel, the ICC denied the request on the ground that the change in service would harm carriers already serving the route.

In addition, there is the case of the unregulated truckers involved in private carriage and carriage of exempt agricultural commodities. "Unregulated" is actually a misleading term because, although they are not subject to ICC regulations, these carriers are restricted from carrying most types of commodities. For example, an unregulated trucker carrying a load of produce from Florida to New York cannot carry any freight back to Florida unless he leases himself to a regulated carrier (at a fee of 20-25%) who has operating authority to carry shipments moving into Florida.

Private carriers, non-transportation companies carrying only their own commodities, are subject to a host of restrictions which add up to a high probability of empty backhauls. Private carriers, for example, are not permitted to carry freight for their own corporate subsidiaries, nor are they permitted to "trip Lease" with certificated carriers for single trips -- any lease must be for a continuous 30 days or more. (A recent ICC ruling "softens" this regulation somewhat by permitting private carriers to also become common carriers but, between court challenges to the ruling and the expense and difficulty of securing common carrier authority from the ICC, there is understandably no rush of private carriers seeking to become common carriers.)

The net effect of ICC restrictions on "unregulated" truckers is that they are empty far more often than regulated truckers. An ICC study in 1976 showed that general purpose vans of exempt truckers and private carriers were empty 125 percent more often

(more than twice as often) than those of regulated truckers. A study done for DOT in 1974, which analyzed the private trucking operations of 40 firms, estimated that those firms would save 24 million vehicle miles each year (or about five million gallons of fuel) if they were allowed to haul for their corporate affiliates and subsidiaries. Obviously, the savings for all such firms would be a high multiple of this figure, and the more that such restrictions are relaxed, the greater the savings that would result.

While we support the intent of H.R. 1681, we note that it addresses only the "backhaul problem", and very possibly only part of it. H.R. 1681 would not, for example, address any of the problems associated with current restrictions on the ability of private carriers to carry goods for subsidiaries. Nor does it permit regulated carriers with only one-way authority to carry goods on their return trips. Finally, Mr. Chairman, H.R. 1681 does not address route circuitry or any of the other fuel-wasting regulations I discussed above.

The Administration's proposed "Trucking Competition and Safety Act of 1979", H.R. 5865, addresses all of these wasteful regulatory practices, Mr. Chairman, and its enactment would not only save many millions of gallons of precious fuel, but also save consumers perhaps \$5 billion dollars per year in transportation costs. We hope the members of the Committee will support the Administration's bill and we would welcome the opportunity to discuss its provisions with each of you.

In closing, Mr. Chairman, I again want to commend the Committee for holding hearings on this important topic. We look forward to working with this Committee, as well as all other interested members of the Congress, in advancing legislation which will conserve fuel and improve the performance of the trucking industry.

At this time, I would be pleased to answer any questions that the Committee may have.

