

STATEMENT OF
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COMMITTEE ON ENERGY AND COMMERCE
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Mr. Chairman and Members of the Committee, thank you for inviting me to discuss the Administration's proposal to sunset the Interstate Commerce Commission (ICC) and the ICC's implementation of the Staggers Act. With me today is Chris Rooney, Deputy Administrator of the Federal Railroad Administration.

The central point of my testimony today is the success of reforms enacted in the past 10 years to bring the Interstate Commerce Act and the ICC's regulations into greater conformity with current economic realities, and the need for additional changes to complete the regulatory reform process. I will lead off with the Staggers Act and the ICC's implementation of its reforms.

Staggers Rail Act

In 1980, when the Staggers Rail Act was being formulated, this Committee brought together shippers, railroad management and labor, as well as my predecessors in the previous Democratic Administration. You listened to the interests and concerns of all the parties, and you constructed a bill that won the broadest possible support from those groups. All sides agreed that the reforms mandated by the bill were necessary if the railroads were to be able to provide efficient, economical and competitive service -- indeed, if the railroads were even to survive.

At that time, the Milwaukee and Rock Island Roads and large segments of the Northeast rail system were in bankruptcy. In fact, the Rock Island had utterly collapsed and Conrail was still hemorrhaging badly. Although the Federal Government had paid more than \$3 billion for operations, rehabilitation and labor costs for Conrail, Conrail still found itself unable to respond to truck competition and was chained into unprofitable rate bureau agreements. Even the top railroads faced investment needs far beyond the capital available to them. In 1978, the Class I carriers as a group reported a rate of return on investment of only 1.58 percent. Nationalization of the entire industry was being discussed as a serious possibility.

There were no winners. The problems afflicting the railroads touched virtually every rail shipper, every community served, and every employee. Rural shippers were hard hit by branch line abandonments as the railroads focused their declining resources on the heaviest density lines. Poor cash flow meant deferred maintenance, which translated into car shortages, derailments, and unreliable service and abandonments.

The report of your Committee in the spring of 1980 provided sound documentation of the crisis facing the industry, and the urgent need to cut back on railroad regulation.

Six years ago, you produced the legislation that was needed, and it was up to the railroads, the shippers, and the ICC to put the law into action.

The economic gains we have seen since then show clearly the wisdom of the actions you took in 1980. Today's rail industry is

in a considerably improved financial condition. It survived the deepest recession since the 1930's without a single Class I bankruptcy. Capital investment has increased dramatically. I cannot represent that the industry has entirely closed the gap between funds available and total capital needs, but deferred maintenance has been mostly eliminated from the nation's main lines, the pace of branch line abandonments under the Staggers Act is below the level for 1976-1980, and the so-called "car shortage" has evaporated.

The Class I railroads have reported that their return on investment has increased nearly four fold to 5.7 percent for 1984 -- a revealing figure, because it tells both sides of the story. This 5.7 percent is certainly a dramatic increase from the 1 to 2 percent levels of the past twenty years, but as the Congressional Research Service pointed out last spring, not as well as you or I can do with a NOW checking account. And it is still less than the rate the railroads must pay to secure debt or compensate equity investors. As the nation's utilities have argued so persuasively -- and correctly -- in their own rate cases, an industry must be able to generate a return equal to the cost of capital in order to survive in the long-term. These return on investment figures underline how far the railroads have come and at the same time how fragile the industry's financial position remains. The progress is real, but it can be easily eroded.

With stronger capital investment levels has come an historic improvement in railroad safety. The number of train accidents has been cut by two-thirds since the adoption of the Staggers Act.

The industry's financial recovery has also enabled the Federal government to cut its rail freight assistance from close to \$2 billion in fiscal year 1978 to approximately \$60 million for fiscal year 1985.

In assessing the impact of these accomplishments on national policy, it is essential to recognize that no one has gained more from the railroads' turnaround than the railroad shipper.

It was only a few years ago that "railroad marketing" seemed to be a contradiction in terms. Today, price and service innovations like multiple car grain rates, just-in-time service, and reduced rate backhauls have become standard shipper benefits. Shippers have used the contracting option to lock in rates and service commitments, signing close to 35,000 contracts with the railroads since October 1980.

In addition to becoming more price competitive, car shortages have largely disappeared, and the improved maintenance of tracks and equipment has resulted in more timely and reliable service for shippers.

As the Congress intended, the railroads' improved financial condition has not come at the shippers' expense. Rather than simply increasing prices, railroads have utilized their new-found pricing flexibility to tailor rates and services to attract a greater share of existing markets, and provide competition for commodities, like perishables, for which they had been noncompetitive for decades. This base broadening, along with more efficient operations made possible by deregulation, enabled the industry to increase its cash flow while cutting the rate of increase in rail rates by more than 50 percent.

Statistics tell that story in clear, hard numbers. In real terms as deflated by the GNP implicit price index, the Bureau of Labor Statistics rail freight rate index declined by 3.8% between September 1980 and September 1985. In the latest twelve-month period, rail rates measured in current dollars dropped by two-tenths of a percent.

A recent study conducted for the railroads by an independent accounting firm showed that grain rates have gone ~~down~~ by more than 25 percent since the Staggers Act. According to a study published by USDA in October 1985, the average rail rates paid to move export wheat from Kansas points declined 34 percent in the first 4 years after the Staggers Act, and rates for grain moving under contract dropped even more. The study indicated that the lower rates resulted in higher prices paid to farmers for their grain. A similar study by two independent agricultural economists in the midwest found that corn and soybean prices received by farmers had increased by 23 cents per bushel as a result of substantial rail rate reductions following passage of the Staggers Act. Moreover, the advantages of contracting for rail service are not limited to the largest grain shippers; shippers of all sizes have entered contracts under the Staggers Act provisions.

Coal shippers have entered more than 1,700 contracts with railroads since the Staggers Act, and many utilities have cited the substantial savings they will make as a result of their ability to enter contracts. The Department of Energy has specifically examined the situation of coal-burning electric

utilities, and concluded that coal-carrying railroads are not earning excess profits under the Staggers Act. Using rate data from the Bureau of Labor Statistics, the President's Council of Economic Advisers calculates that average railroad coal rates have actually gone down in real terms since the Staggers Act. The railroads' and shippers' interest in maintaining the U.S. market share in the highly competitive export coal market are closely linked. In the face of a very soft market for U.S. export coal, the railroads have not raised their export coal rates since 1982, even though they are entitled to do so under the Staggers Act.

The tangible proof of the success of the Staggers Act is that the dire consequences confidently forecast by critics when the Act became law have not materialized. Rates did not skyrocket, even when the economy came out of the deep recession of 1982. They are rising more slowly today than at any time in the last two decades. Short line railroads have not disappeared. Their numbers are growing at record rates, and they have prospered with the marketing flexibility made possible by the Act. The variety of logistical choices available to shippers today is unequalled by any in the transportation industry's history.

Perhaps, in the end, the most significant accomplishment of the Staggers Act lies in the fact that it has forced shippers and carriers to work directly with one another, to address their own problems and develop their own compromises. The success of that system can be measured in the number of contracts negotiated by railroads and shippers, and in important, substantive agreements such as those reached between the National Industrial

Transportation (NIT) League and the Association of American Railroads (AAR) on the difficult issues of joint rates and shipper access to competition, and between the AAR and the National Grain and Feed Association on contract disclosure. In contrast, the old regulatory system created incentives for the parties to defer, rather than resolve, the issues of greatest importance to them. Before the Staggers Act, regulation was a slow and cumbersome process, in which marketing was done by rate attorneys and ICC practitioners. It was a process that poorly served the public, shippers and the railroads.

This Committee showed great wisdom in adopting the Staggers reforms six years ago and enabling the railroad industry to compete effectively with the largely deregulated truck and barge industries. The Staggers Act changed shipping and pricing patterns that had been established for half a century or more. While these changes have brought great benefits there have been pains in the transition, and hardship cases, as there inevitably will be with comprehensive changes. But they do not imply a structural or systemic weakness in the Staggers reforms. To the extent any fine tuning is needed, it can be done within the framework of the Staggers Act.

The railroad industry has utilized its pricing and marketing opportunities, and because of those opportunities, has become more stable, while providing better shipper service. It should also be clear that while no system dependent on human judgments will ever be flawless, allowing the commercial relationship between shippers

and carriers to be shaped by market forces produces better results, for shippers and carriers, than a system which delegates the major share of those decisions to a board of political appointees.

The Department of Transportation opposes changes to the Staggers Act. That Act has worked well. It involves a sensitive balancing of the interests of shippers, railroads, labor, and other affected groups, and it has delivered enormous benefits to all of them. It is one of the great bipartisan accomplishments of our time -- proposed by a Democratic President, enacted by a Democratic Congress, implemented and defended and by a Republican Administration. We look forward to maintaining that bipartisan spirit in working with you to make certain that no future Administration will ever again have to return to the Congress to plead for money or other changes to rescue the railroads from financial collapse.

I shall now turn to the future and the next logical step in the evolution of surface transportation regulatory reform.

ICC Sunset

The President's 1987 Budget calls for sunseting the Interstate Commerce Commission at the end of fiscal year 1986. This initiative builds on the reforms of the past five to ten years, during which time deregulation was enacted for the air cargo, airline passenger, trucking, railroad, and intercity bus industries. All those reforms have worked extremely well, and now is the time to get rid of the remaining vestiges of unnecessary economic regulation. In so doing, we can not only eliminate the

inefficiencies of over-regulation, but reduce the Federal budget as well.

The ICC budget for the current fiscal year is about \$53 million. The President's FY 87 Budget reflects the proposed sunset legislation by not including appropriations to the ICC for any of its current activities in 1987. The Budget also provides for \$8-10 million in additions in order to facilitate the transfer of the residual regulatory authority to the Department of Transportation, except for antitrust related matters which the President's Budget contemplates will be transferred to the Department of Justice. This will provide the opportunity to save \$43-45 million annually.

The Department is in process of drafting and reviewing the legislation to implement the President's budget. For this reason, it would be premature at this point to be very specific about the details of the proposal, but I can safely outline for the Committee the major ingredients in the bill the Administration expects to submit in the near future.

First, the sunset bill will not only build on the successful reforms of the last five to ten years, but it will also be consistent with the three deregulation bills the Administration submitted to Congress in September 1985 by incorporating those proposals in the new bill. Those bills would completely eliminate federal economic regulation of the trucking, surface freight forwarder, and interstate water carrier industries. The sunset bill will also generally eliminate remaining economic regulation of the intercity bus industry, rail passenger and ferry

operations, and interstate pipeline companies other than water, gas, and oil. To ensure that the economic reforms envisioned by the Staggers Act continue, the bill will leave intact the regulation of railroad freight transportation.

Except for railroads, we don't think that any surface transportation industry benefits from or requires Federal economic regulation. And we don't think it makes much sense to keep an entire surface transportation regulatory agency merely to partially regulate one mode. Although we are opposed to any reopening of the Staggers Act, we do not believe that the continuation of existing federal economic regulation of the railroads should be tied to the continued existence of the ICC as a regulatory agency. Accordingly, we propose to simply transfer the major responsibility for the implementation of the rail freight functions, to the Department of Transportation. I would like to reiterate, Mr. Chairman, that ICC sunset would not mean the sunseting of rail regulation.

Let me briefly summarize each of the elements in the bill and the reasons why they are desirable.

Trucking

Our proposed Trucking Deregulation Act of 1985 (H.R. 3929) builds on the regulatory reforms effected in recent years as provided by the Motor Carrier Act of 1980 and the Household Goods Transportation Act of 1980, and through administrative changes made by the ICC.

These reforms have worked extremely well. They have removed a considerable regulatory burden from the trucking industry,

permitting carriers to increase the efficiency of their operations and to respond more rapidly and effectively to changing market conditions. Companies now compete relatively freely with each other because of liberal entry and procedures for removing inefficient operating restrictions. There is a more competitive environment, with more service and rate options for shippers, in many cases even for small shipments. The great majority of shippers believe the reforms have been advantageous to them. In sharp contrast to the arguments of opponents of reform that service to small communities would suffer, numerous studies show that the overwhelming majority of rural small town shippers are getting service at least as good as before the reforms.

These reforms comprised an excellent first step. It is now time to take the necessary final steps to complete deregulation of the trucking industry.

H.R. 3929 builds on the evidence and recommendations of the Motor Carrier Ratemaking Study Commission, by eliminating the antitrust immunity now enjoyed by the trucking industry. The evidence compiled shows clearly that such immunity has raised rates unnecessarily and has not prevented undue discrimination.

The entry and rate regulation of the trucking industry that remains is unneeded and undesirable, because there is ample competition within the trucking industry as well as competition from other modes. Moreover, the industry continues to enjoy immunity from the antitrust laws for most of its collective ratemaking activities, which, according to the congressionally-mandated Motor Carrier Ratemaking Study Commission, results in

artificially high trucking rates. Overall, the remaining regulation suppresses managerial initiative and innovation, and wastes valuable taxpayer dollars and resources that the trucking industry could employ more usefully in improving its productivity.

Freight Forwarders

The second bill we submitted last September, the Surface Freight Forwarder Deregulation Act of 1985, would end economic regulation of freight forwarders and brokers of property, which began in 1942. Freight forwarders and brokers are intermediaries who arrange transportation for others. There is no justification for the continued regulation of either brokers or freight forwarders, as there is ample competition not only among and between them, but also from trucking companies and shipper associations who are already exempt from ICC regulation.

Even the freight forwarder industry itself wishes to be put on an equal footing with its competition, and its members have strongly supported a bill, S. 1124, which is very similar to our freight forwarder deregulation bill. S. 1124, which passed the Senate in November of last year, is currently before the House Public Works Committee.

Although the Motor Carrier Act of 1980 (MCA) has provided significant new operational freedoms and reduced regulatory burdens for motor carriers, most of these benefits have yet to be provided to freight forwarders. Strict freight forwarder regulation is particularly anomalous in an era of transportation deregulation and its concomitant market changes. To the extent that the forwarders' competitive disabilities are the result of

regulatory restrictions on their right to perform economically viable services, both equity and efficiency considerations dictate that the roadblocks imposed by regulation should be eliminated.

Water Carriers

Our third bill, the Interstate Water Carrier Deregulation Act of 1985, would end economic regulation of the domestic water carrier industry, which has nominally been regulated by the Interstate Commerce Commission since the Transportation Act of 1940. Because numerous water and rail carrier competitors exist, entry is easy, and investment requirements are relatively modest, the ICC-regulated intercoastal, inland waterways, and Great Lakes transportation markets have no public utility basis for regulation. Domestic water transportation accounts for approximately one quarter of all U.S. domestic ton-mile freight movements. However, most water carriage has been granted a full or partial exemption from regulation, with the result that less than ten percent of domestic waterborne traffic is, in fact, subject to ICC jurisdiction. Indeed, most of the operational and pricing efficiencies that constitute the objectives of regulatory reform efforts for other modes of transportation have already been realized in the domestic waterway industry.

Thus, the continued regulation of domestic water carriers is unneeded.

Intercity Buses

The intercity bus industry was partially deregulated in 1982. The Bus Regulatory Reform Act, which opened up entry for intercity buses and permits ratemaking flexibility, also relieves interstate

bus carriers from inefficient operating restrictions and economic burdens imposed on them by both the ICC and state regulatory commissions. Prior to the 1982 Act, many states prevented bus companies from carrying passengers within the state, even though they were already carrying them through the state; other states were very slow to grant fare increases and refused to permit bus carriers to abandon service to points where there was no longer any appreciable ridership.

These reforms have also worked well. Easier entry into new bus passenger markets, greater fare flexibility, and easier exit from unprofitable markets have provided the bus industry with the ability to rationalize the carriers' route structures and to adjust more easily to changing market conditions, including more intense competition from other modes such as the discount airlines. Until recently, the bus industry had major pricing advantages to offset the time advantages of air travel. Without the freedoms provided by the 1982 Act, the necessary realignments would have been significantly more difficult, if not impossible, to achieve in a timely manner.

We believe now is the time to remove the remaining regulations from the bus industry.

Other Regulatory Changes

In addition to eliminating regulation of the above industries, the sunset proposal would terminate ICC regulation of express and sleeping car carriers, which no longer exist; rail passenger and ferry operations, of which only a few exist outside of Amtrak (which is not regulated by the ICC); and pipelines

(other than water, gas, or oil pipelines)--none of which is currently regulated.

Summary

The current substantial deregulation of surface transportation has been very successful. We believe the time is right to complete these important reforms for all surface modes except rail. No changes to existing freight rail regulation are contemplated -- except changing the agency charged with the jurisdiction. We believe that the reforms of the Staggers Act have been very beneficial, and we think that shippers and carriers will continue to resolve their differences by means of these reforms.

Hence, the Administration's ICC sunset proposal will transfer intact all existing rail freight regulation, while eliminating all other ICC regulation, saving over \$40 million per year.

We look forward to working with all interested parties to assure enactment of this important reform legislation in the coming months.

This concludes my prepared statement, Mr. Chairman, and I will now be happy to answer any questions that you or the other members of the Committee may have.