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U.S. DEPARTMENT OF TRANSPORTATION
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INTRODUCTION

Mr. Chairman and Members of the Committee, thank you for inviting us to discuss the Administration's views on the future of Interstate Commerce Commission (ICC) regulation of motor carriers.

For the past two decades, the legislative effort to reduce federal regulation of interstate trucking has been a great bipartisan success story: first proposed by a Republican administration in 1975; first enacted under a Democratic administration in 1980, with strong bipartisan congressional support; and administered and defended staunchly by two succeeding Republican administrations. I am here today to express the Clinton Administration's wholehearted support for the process of completing the work.

As we dismantle the Interstate Commerce Commission, we want the process to be a reasoned and orderly one. As part of our report to the Congress, we have examined the ICC's specific regulatory functions and analyzed which few should be retained, as well as where particular remnant functions should be housed.

BACKGROUND

The trucking industry has been called the circulatory system of our national economy. It is the link that binds our nation together and provides U.S. manufacturers and consumers with access to domestic and global markets. Trucking accounts for about five percent of GNP and employs almost 2.8 million truck drivers. But today's efficient, economical truck transportation has a dramatic impact on our economic growth and international competitiveness that transcends its direct share of GNP or employment.

The trucking industry has historically been identified as being "affected with the public interest." However, improvements in the economic performance of the industry were often stifled by inappropriate and excessive economic regulation. In response to this problem, the Congress in 1980 embraced a powerful regulatory principle -- that competition is the best regulator. I would argue that nowhere has this been more vividly illustrated than in the U.S. trucking industry.

The deregulatory reforms of 1980 resulted in more efficient operations for carriers and better service, at lower rates, for shippers. At the same time, the accident rate for commercial vehicles has continued to decline. Many new firms have entered the industry, and both new and existing carriers have been given greater flexibility to meet customers' needs. Improvements in the reliability of trucking service have enabled manufacturers to enhance productivity by placing greater reliance on just-in-time manufacturing techniques. This transformation has been vitally important in helping U.S. business remain

internationally competitive. It has been estimated that nearly 40 percent of products will be shipped to meet just-in-time standards by the year 2000.

The Trucking Industry Regulatory Reform Act of 1994, Title II of P.L. 103-311 (commonly referred to as TIRRA) significantly reduced entry requirements into the interstate trucking industry and eliminated filing of independently set motor carrier rates. This legislation also required that the ICC and DOT conduct consecutive studies to be used as the basis for considering further policy changes related to the regulation of surface transportation. DOT's report was published for public comment on Monday. I will discuss our findings in more detail later in my statement.

One of the last remaining significant barriers to further efficiencies in the trucking industry was removed on January 1, 1995. Section 601 of Public Law 103-305 now prohibits the states from imposing economic regulation on intrastate trucking, which 41 states had done prior to its enactment. Consequently, significant numbers of shippers had been unable to fully realize the benefits of competition in their distribution systems. They had been compelled to use the more expensive services of regulated intrastate truckers to carry much of their local traffic, in effect employing two distribution systems instead of one.

But ongoing changes in the nature of the trucking industry clearly indicate that even the limited remaining federal economic regulation is excessive. Elimination of regulatory oversight is called for.

DOT'S REPORT

The Mandate

My remarks today are based primarily upon the Department of Transportation's report on the future of the Interstate Commerce Commission, which was mandated by TIRRA.

Section 210(a) of TIRRA required the ICC to examine its functions and responsibilities and to report within 60 days of enactment recommendations on which of these functions should be continued, modified, or eliminated. The ICC completed its report on October 25, 1994. The ICC report provided a very detailed treatment of the full panoply of existing functions and responsibilities of the agency. The Commission is to be commended for the high quality of its report.

Section 210(b) of TIRRA required DOT to study the feasibility and efficiency of merging the ICC into DOT as an independent agency, combining it with other federal agencies, retaining the ICC in its present form, eliminating the agency and transferring all or some of its functions to DOT or other federal agencies, and other organizational changes that would be expected to lead to government, transportation, or public interest efficiencies. Due consideration was given to the recommendations of the Commission in assessing the merits of eliminating or restructuring the current functions and responsibilities of the ICC. However, in our judgment, the Commission's recommendations in many cases reflected a business as usual approach that did not adequately reflect current competitive conditions. Our report recommends further functions for deletion.

The Process

DOT's approach to conducting this study was multifaceted. Every effort was made to ensure full

participation by all affected parties (including carriers, shippers, intermediaries, labor, the insurance industry, and all government agencies identified as potential recipients of residual ICC functions).

The first step in the process was to solicit comment from the public on the ICC's study. Notice of the opportunity for public comment was placed in the Federal Register on November 1, 1994, with a 20 day comment period. Forty comments were filed in response to this notice.

The second step was to hold outreach meetings for the various sectors of the industry, as well as the government agencies mentioned as candidates to receive some of the ICC functions. Meetings were held with representatives of the American Trucking Associations, the Association of American Railroads, the National Industrial Transportation League, the insurance industry, a group representing transportation intermediaries, the bus industry, the household goods industry, owner-operators, bulk shippers (coal, grain, plastics, and aggregates), off-shore water carriers, the Department of Justice, the Federal Trade Commission, the Federal Energy Regulatory Commission, and the Federal Maritime Commission.

Finally, DOT sponsored a one-day conference on the transportation industry of the future. The focus of this conference was to discuss the likely evolution of the transportation industry in the near term (1995-2010) and to identify and evaluate options for economic regulatory policies that would enable the industry to operate efficiently, as well as provide sufficient protection to the shipping public.

The information gleaned from all aspects of this process has been carefully considered in developing the recommendations contained in our report.

RECOMMENDATIONS

Motor Carriers

Trucking. The reforms of the Motor Carrier Act of 1980 and their implementation by the ICC have worked well in enabling this industry to restructure itself and offer its customers what they want. For the most part, shippers and carriers are now able to do business without worrying about arcane restrictions concerning who could carry what commodities where. Analyses by Bob Delaney, the ICC, DOT, and others have unanimously concluded that the reforms have allowed the industry to become more efficient, as well as enabling a significant percentage of U.S. shippers to begin using "just-in-time" inventory and manufacturing methods. The overall result has been billions of dollars in annual logistics savings and enhanced U.S. competitiveness in world markets.

In addition, TIRRA and Section 601 of P.L. 103-305 removed further barriers to efficiency. TIRRA substantially reduced the requirements for entry into the business of hauling regulated commodities and removed the requirement that motor common carriers file their independently set rates with the ICC. But even TIRRA stopped short of doing away with these requirements altogether. For example, dual (ICC/DOT) safety and insurance requirements still must be met by carriers, and collectively set tariffs still have to be filed. We believe that as long as there are requirements for the filing of tariffs, the specter of another undercharge crisis will always exist.

We recommend that all remaining economic regulation of trucking by the ICC, including HHG carriers, HHG freight forwarders, and transporters of personal automobiles, be eliminated. In particular, we recommend an end to all antitrust immunity, all filing of tariffs and rate regulation, all distinctions between common and contract carriers, control over mergers and transfers, and the single state registration system.

We recommend that only the following regulations be retained:

•**Motor carrier licensing.** All interstate carriers (private and for-hire) would be subject to the same safety and insurance requirements, administered by DOT/FHWA.

•**Mexican carriers.** DOT, in conjunction with the states, would monitor Mexican carriers' safety and insurance compliance, as well as their access to U.S. markets as the NAFTA is phased in.

•**Undercharge resolution.** Adjudication of existing undercharge claims under the Negotiated Rates Act of 1993 (NRA) would be retained over a transition period until the basis for such claims is eliminated through an end to tariff filing and enforcement.

•**Loss and damage claims.** This would be retained in law as a minimum liability statute, but there would be no federal agency involvement in adjudicating loss and damage claims between carriers and shippers.

The general issues have been studied and debated extensively, and a broad consensus has developed that it is time to finish deregulating the trucking industry. We strongly recommend that the Congress do so.

Before I move on to other aspects of today's subject, I would like to highlight a few points that deserve mentioning. First, experience with the shipper undercharge problem has taught us a valuable lesson: tariff filing -- even without an enforcement mechanism -- can cause severe, unintended problems.

In this instance, the result has been a multi-year crisis for shippers and carriers that even now has not been permanently resolved. The problem has cost shippers millions of dollars in wasteful litigation costs. We strongly urge this Congress to provide a permanent remedy by abolishing the tariff filing requirement for all motor carriers.

Next, I would like to discuss in greater detail DOT's recommendations with respect to motor carrier safety and insurance issues. The motor carrier programs of the ICC and DOT have the common goal of ensuring that motor carriers are properly identified, have adequate levels of insurance and operate in a safe manner. While complementary, the scope and approach of the two programs are substantially different. The ICC has economic oversight over a numerically small portion of the motor carrier industry -- the for-hire interstate freight and passenger carriers regardless of vehicle weight or capacity. There are approximately 55,000 for-hire carriers subject to ICC jurisdiction.

DOT has a broader safety mandate. In addition to over 300,000 interstate motor carriers, the DOT has authority over most commercial vehicle drivers, some shippers and manufacturers, and some intrastate operations. DOT regulations apply to for-hire and private carriers, Mexican and Canadian carriers alike.

Both the ICC and DOT require insurance and carrier identification, but administrative mechanisms used by the two agencies are significantly different. Minimum insurance levels for for-hire carriers are defined by Congress; private carriers do not fall under the insurance rules.

The ICC continuously monitors insurance coverage of carriers by using policy pre-expiration notices obtained from the insurance companies, in order to determine compliance.

DOT currently enforces insurance and safety regulations through a federal-state partnership of on-site carrier compliance reviews. DOT uses performance information such as roadside vehicle and driver inspections and accidents to select carriers for review. During the review, insurance coverage and safety compliance are checked. The reviews result in a safety rating. Unsatisfactory ratings for passenger and hazardous material carriers can lead to operations out-of-service orders if the problems are not corrected within 45 days. DOT uses civil penalties and "imminent hazard" out-of-service orders for all carriers to enforce safety and insurance requirements.

The ICC licenses for-hire motor carriers and collects a fee when it does so. The carrier must show proof of insurance and familiarity with DOT's safety regulations to obtain the license. The ICC accesses DOT safety ratings to check safety fitness of the applicant. The Commission has the authority to revoke the license for failure to meet safety fitness and insurance requirements.

Insurance and carrier identification are currently being met by two separate Federal programs. We believe

a streamlined, consolidated approach would be beneficial to the industry and improve safety for the public. We are proposing a revised method to remove government from the day-to-day operations of the motor carriers and insurance companies, while creating sufficiently high federal penalties to promote compliance. This approach can fit within our existing staff resources.

ICC licensing and insurance functions should be eliminated and the DOT program revised. DOT would require registration prior to operation for all carriers and allow revocation and suspension of the registration for non-compliance with safety and insurance requirements. In addition, DOT would seek authority to require evidence of insurance prior to registration. Enforcement of insurance provisions can be handled similarly to safety regulations.

To properly track insurance compliance, we support the need for states, insurers, and DOT to access a central database on insurance. The ICC is currently developing a separate automated system which would allow insurers to electronically update a carrier's record when insurance is lapsed, modified or canceled. The ICC estimates completion of this system in March. DOT does not propose to directly operate this system. Rather a contractor would be used to administer the system, with its costs met through user fees. With implementation of the new approach to insurance regulation, there is no longer a need for the single state registration system set up by the ICC, as directed by the ISTEA legislation in 1991.

I would also like to provide more information about our recommendations with respect to Mexican motor carriers.

Mexican law currently reserves use of its federal roads to Mexican carriers only. In addition, foreign investment in motor carrier companies in Mexico is prohibited.

Because of Mexican restrictions on foreign motor carriers, the United States has limited Mexican motor carriers' access to the United States to the area immediately across the border, in ICC-defined commercial zones. This access to the commercial zones along the southern border of the United States permits the switching operations needed for cross-border shipments in both directions. Mexican motor carriers are not permitted to operate beyond the commercial zones nor are they permitted to make pick-ups and deliveries within the commercial zones. In addition, no Mexican-owned or -controlled carrier may currently be established within the United States.

The ICC is solely responsible for the enforcement of the current restrictions on the operations of Mexican motor carriers in the United States. ICC licenses are specifically designed to prevent Mexican carriers from exceeding the scope of entry currently authorized, as well as to form the basis for subsequent enforcement action if a Mexican carrier exceeds the scope of the authorization.

The North American Free Trade Agreement (NAFTA) creates a timetable for the removal of barriers to the provision of transportation services among the NAFTA countries for carriage of international cargo and passengers:

- For trucking, the United States and Mexico will allow access to each other's border states for the delivery and backhaul of cargo beginning in December

1995. In 2000, all restrictions on cross-border trucking will be lifted.

- For buses, liberalized cross-border access involves two steps. For charter and tour buses, all cross-border restrictions were lifted in January 1994. In 1997, Mexico and the United States will lift all restrictions on granting authority to carry passengers from one country to another over regular routes in scheduled operations.

- Mexico will gradually lift its investment restrictions for motor carriers established in that country over the next ten years. The United States will lift all investment restrictions in 1995 for trucking companies transporting international cargo, and in 2001 for bus companies.

The Administration is committed to assuring that access of Mexican carriers is matched by access for U.S. carriers, in accord with NAFTA. To assure that Mexican motor carriers do not exceed the scope of operations permitted under NAFTA, the Administration proposes that certain of ICC's responsibilities for enforcing operating restrictions be transferred to the Department of Transportation. An effective enforcement mechanism is critical to successful implementation of NAFTA's transportation provisions. Ensuring that Mexican carriers do not violate the NAFTA liberalization provisions will present a major enforcement challenge, which DOT will accept.

The proposal we are making includes provisions that will require all motor coach and freight carriers operating in the United States, whether for-hire or private, to register with the Department of Transportation. Registration applications will include a demonstration of financial responsibility (i.e., insurance). In addition, applicants will be asked to

provide sufficient information to enable the Department to identify his or her country of origin and nationality. For Mexican-owned or -domiciled carriers, the Department will issue an ID number that will indicate Mexican ownership and a document specifying the areas of the United States in which the carrier is permitted to operate and the cargo it is permitted to carry under NAFTA. In the event a Mexican carrier violates the limits on its operations established by NAFTA, its DOT number will be canceled and, with it, its ability to operate in the United States.

Our proposal will continue the President's authority to restrict the operations of foreign motor carriers operating in the United States if the motor carrier's country of origin imposes unreasonable or discriminatory requirements on U.S. motor carriers operating in that country. This provision will retain for the President the ability to take action against motor carriers domiciled in Canada or Mexico should it be necessary.

In anticipation of NAFTA's implementation, the Department of Transportation has been working with the Mexican government to assure that Mexican motor carriers are aware of their operating responsibilities in the United States. Mexico has joined the Commercial Vehicle Safety Alliance (CVSA) and has adopted CVSA roadside inspection procedures and standards. The Department has translated the inspection materials into Spanish and has trained Mexican inspection trainers.

FHWA continues to work with Mexican officials to harmonize the two countries' commercial motor vehicle safety regulations and driver qualification standards. This effort was begun as part of the negotiation of a Memorandum of Understanding with Mexico that recognized

the Mexican commercial driver's license as the equivalent of our Commercial Driver's License (CDL), thus allowing Mexican truck drivers to drive in the United States without obtaining a CDL. The harmonization efforts include facilitating the exchange of driver safety records.

FHWA has also contracted with the International Association of Chiefs of Police (IACP) to develop procedures to monitor the safety and insurance compliance of Mexican carriers now crossing the border. IACP is also working to define the parameters of an appropriate inspection program as traffic increases because of NAFTA. Funding has been earmarked for the Motor Carrier Safety Assistance Program for enhanced inspection activities in the border states. We will assess what increases may be needed in staffing and grant assistance as the IACP review is completed and as Mexican traffic increases. Due to the current workload and anticipated increases in Mexican traffic, the Administration is proposing that current ICC staff assigned to Mexican operations be transferred to DOT and integrated into DOT's enforcement program.

Finally, I would like to address in somewhat greater detail our recommendations for the household goods moving industry. Pursuant to a mandate contained in the Household Goods Transportation Act (HHGTA) of 1980, the ICC has sought to reduce the paperwork burden; however, in the context of existing regulation, this task has proved substantially intractable. We have recommended a different approach to reducing the regulatory burden: abolish existing economic regulation of the HHG moving industry and vest the Federal Trade Commission with the authority to oversee this industry under the consumer protection and antitrust statutes enforced by the FTC.

We recognize that the household goods industry has expressed strong concerns about removal of its antitrust immunity for certain collective activities. According to the American Movers Conference, most interstate HHG carriers base their rates on the industry's collectively set tariff, which provides a reference point (a "list price") from which individually determined discounts are taken. Industry members also engage in other activities under antitrust immunity, such as development of the Mileage Guide.

First, there is no basis to permit continuation of collectively-set tariffs, so antitrust immunity for that activity should be abolished, as we recommend for other motor carriers.

Second, DOT believes that antitrust immunity is not needed for development of the Mileage Guide or other efficiency enhancing collective activities and should be abolished. It is our understanding that the Department of Justice shares this view.

Finally, since an agent and its parent van line may be actual or potential competitors for some traffic, HHG carriers have expressed concern that collaboration on rates with their parent van line would violate the Sherman Act. We understand that the Department of Justice does not believe that these arrangements violate the Sherman Act and does not believe that bona fide van line-agent agreements, even where the parties are capable of providing competing service, raise significant antitrust risks.

Nevertheless, the initial transition period could generate some uncertainty for carrier-agents (agents

that now have operating authority of their own) as they renegotiated agreements with their van lines. A similar analysis would apply to carrier-agents that collectively own their van line. In order to minimize the potential for disruption, Congress might consider providing a brief phase-in period for removal of antitrust immunity to allow any necessary renegotiation of contracts between agents and their van lines.

Intercity Buses. Although it was hoped that the Bus Regulatory Reform Act of 1982 would help to stem the long-term decline of the intercity bus industry and enhance competition, the regular route sector of the industry continues to be marginally profitable at best. However, the charter and tour sector has grown and prospered. The financial condition of the regular route carriers reflects intense intermodal competition with Amtrak, the airlines, and especially the private automobile. Continued regulation by either the ICC or state regulatory bodies cannot possibly help, but could be harmful to this sector's fight for survival. Consequently, we recommend that all existing federal economic regulation of the intercity bus industry be abolished. In addition, the present ICC state preemption appeals process should be superseded by a legislative preemption similar to that enacted by the Congress for the trucking industry last year.

Regulation of Domestic Water Transportation.

Domestic water carriage currently is subject to economic regulation by the ICC as well as the Federal Maritime Commission. The ICC has jurisdiction over water transportation in the contiguous (48-state) trades, as well as over intermodal water movements in the domestic offshore trades (movements between the contiguous states and Alaska, Hawaii, Puerto Rico, and

U.S. territories and possessions). The FMC regulates transportation provided under "all-water" rates in the domestic offshore trades.

The vast majority of water transportation in the contiguous trades (e.g., most barge transportation) is exempt from ICC regulation. However, FMC regulation of water transportation is subject to public utility rate analysis. For the past 15 years, most water carriers (when they have the choice) have availed themselves of the option to have their intermodal movements subject to ICC jurisdiction. Thus, most traffic in the domestic offshore trades is essentially subject to market forces, since the ICC does not subject this traffic to strict regulation.

It would be contrary to recent progress if the deregulatory thrust of ICC sunset were to subject this traffic to the FMC's public utility type of regulation. The Administration believes that the Congress should remove economic regulation (including tariff filing) of water transportation in the domestic offshore trades. We also share the ICC's view that economic regulation of inland water carriage should be abolished. Our recommendations would not alter either current safety regulation of water transportation or provisions of the Jones Act concerning the FMC's jurisdiction over shipping in foreign commerce.

Location of Remaining ICC Functions

Two issues must be resolved in phasing out the ICC. First, functions currently performed by the Commission must be analyzed and decisions made as to which functions will be retained and which functions will be eliminated. The discussion above enumerates the Administration's recommendations on this question.

Second, the appropriate placement and organizational design for those functions and responsibilities that are retained must be determined.

TIRRA identified a wide range of organizational choices for relocating remaining ICC functions. These included retaining the ICC in its current form; merging the ICC into DOT as an independent agency; merging ICC into DOT but not as an independent agency; eliminating the ICC and transferring all or some of its functions to DOT or other federal agencies; and combining the ICC with other federal agencies, e.g., the Federal Maritime Commission. The pros and cons of each of these and other alternatives were examined in our study.

One question that has been raised concerning the administration of remaining functions is the necessity of independence or autonomy in the decisionmaking process. In the motor carrier area, the remnant responsibilities related to registration of motor carriers (insurance and safety), Mexican carrier registration, and processing of undercharge claims are similar to activities currently administered by DOT. Creation or retention of an independent entity for these functions would be both unnecessary and wasteful.

At the recent hearing on railroad issues held by this Committee's Rail Subcommittee, most witnesses argued in favor of an independent agency within DOT to house remnant ICC functions. We strongly disagree.

There is no need for such an approach. Most of the remnant regulatory functions are similar to activities currently administered by DOT (or other agencies) without any independent or insulated staff. For those few functions where there is a special need for

"insulated" decision-making (such as resolution of disputes between passenger and freight railroads), administrative procedures can be readily established.

As new functional responsibilities are incorporated within an existing agency, careful planning is important. Analysis in support of the transfer of functions will require examination of workload and workflow, space and other physical resources, and processes of performing specific functions within the new organizational framework. The last of these is especially important. Finally, it is critical to the trucking industry, shippers, and the economy that transition plans maintain continuity and integrity for any ICC functions that remain.

Conclusion

We believe that the time is right to abolish all remaining unneeded economic regulation of the trucking, household goods, and intercity bus industries. Remnant regulatory responsibilities should be assigned to DOT or, in a few instances, other federal agencies. This process should be carefully considered, in order to avoid unnecessary disruptions to carriers, shippers, agencies, and the U.S. economy. I look forward to working with this Committee toward our mutual goal of eliminating unneeded economic regulation of motor carriers.