The original documents are located in Box 53, folder "1975/10/31 - Truck Bill Meeting" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

TRUCK BILL MEETING
Friday, October 31, 1975
11:00 a.m.

Mr. Cannon's Office

THE WHITE HOUSE

WASHINGTON

INFORMATION

October 30, 1975

MEMORANDUM FOR: JIM CANNON

FROM: PAUL LEACH

SUBJECT: Trucking

In the last two days the task force working on truck regulation reform has followed your suggestion and held very productive meetings with supporters of our reform legislation (e.g., people from Sears, Inland Steel, General Mills, Whirlpool and the American Farm Bureau). As you suspected, there is a great deal of support among the private carriers, consumer groups, exempt carriers, shippers and smaller carriers.

Also, final task force agreement on the legislation has been reached, and the material is going to Jim Lynn for his final approval, as is the usual practice on clearance of legislation for submission to the President.

The Departments of Transportation (Coleman) and Justice (Levi) have approved the legislation and we have provided the Counsel's office with an advance copy for clearance.

I have arranged a briefing for you on Friday morning at 11:00 a.m. Included with me will be Paul MacAvoy, John Snow (Deputy Undersecretary at DOT), Stan Morris (the OMB regulatory reform leader), and Steve McConahey.

If you have the time, you will want to review the fact sheet on the bill at Tab A. The section-by-section analysis at Tab B gives a more complete presentation.

We are also scheduling individual briefings Friday for Bill Seidman, John Dunlop and Rog Morton. The opportunity to be briefed will be offered to Bill Simon, Jack Marsh, Phil Buchen, Max Friedersdorf and Bob Hartmann.

A decision memorandum for the President may be ready as early as Friday afternoon for your review, approval and staffing.

FACT SHEET

MOTOR CARRIER REFORM ACT

The President is transmitting to Congress today the Motor Carrier Reform Act. This legislation will benefit the consuming public and the users of motor carrier services by eliminating excessive and outdated regulation affecting trucking firms and bus companies. It will stimulate competition in these industries, increase their freedom to adjust rates and fares to changing economic conditions, eliminate restrictions requiring empty backhauls, underloading, or circuitous routing, and enhance enforcement of safety regulation.

This is the third legislative proposal in the Administration's program to reform transportation regulation. It follows the Railroad Revitalization Act and the Aviation Act of 1975 which have already been submitted to Congress. Together, these three proposals will produce a transportation system more directly responsive to the needs of the public and provide the Nation with the best possible transportation services at the lowest possible cost.

Principal Objectives of the Legislation

1. To benefit users and consumers by providing more efficient and economical truck and bus transportation. The existing regulatory process has built up artificial constraints on efficiency. As a result, trucks and buses tend to be less fully loaded than is desirable. They operate over unnecessarily circuitous routes, waste fuel, and are forced to charge higher prices than might otherwise be necessary. By removing arbitrary economic restraints, the bill will allow trucks to transport a greater variety of goods and both trucks and buses to operate over more direct routes at a lower cost to consumers.

2. To eliminate antitrust immunities and encourage competitive pricing. Presently, motor carrier rate bureaus are permitted to engage in price-fixing activities which are immune from antitrust prosecution. The proposed legislation will prohibit rate bureau ratemaking activities which stifle competition and discourage innovation.

3. To encourage a greater variety of services and prices. Existing regulation inhibits innovation and limits the choice of prices and services available to shippers and bus passengers. The Act will permit shippers who want high quality service and are willing to pay a premium to do so. Similarly, those who want a lower price and will accept less service will find this option available also.

4. To strengthen the enforcement of motor carrier safety regulation. While the motor carrier industry has a good overall safety record, there are gaps in present safety laws which require correction. This bill modernizes and places increased emphasis on safety regulation for all types of motor carriers.

Section - by - Section Analysis

1. Rate Bureaus. The bill eliminates antitrust immunity for anticompetitive ratemaking activities. Over a period of three years, the bill prohibits carrier associations from discussing, agreeing or voting on all rates except joint or interline rates. Rate bureaus will continue to provide useful administrative services, such as publishing tariffs and assisting in determining joint rates and through routes. (Section 2).

2. Aircraft Exemption. The bill enlarges the geographic area in which motor carriers may transport persons or property incident to air transportation without obtaining ICC authorization. This provision extends the area from a 25 to a 100 mile radius around the airport terminal.

3. Private Carriers. The bill reduces ICC restrictions now imposed on businesses operating their own trucking fleets. It will allow private carriers to transport goods for their affiliates. It will also permit these carriers to lease their vehicles and drivers to regulated carriers for short time periods. This will alleviate the inneficient backhaul problem which private carriers now experience and permit common carriers to expand services without buying expensive equipment. (Sections 4 and 7).

4. Contract Carriers. The bill removes unnecessary restrictions on contract carriers by changing the entry test. Contract carriers may become certificated by proving that they have dedicated equipment to a shipper or that they provide service tailored to the distinct needs of a shipper. Also, the ICC is prohibited from limiting contract carriers to a particular industry or territory. These provisions will remove previous impediments to normal growth of contract carriers and permit shippers and consumers to benefit from these specialized services. Carriers will also be permitted to hold both common and contract authority under certain conditions. (Sections 4 and 9).

5. Commercial Zones. The bill directs the ICC to reassess regulations dealing with commercial zone transportation, to eliminate unnecessarily restrictive practices and to improve procedures for making boundary changes within two years after enactment (Section 5).

6. New Plant. The bill exempts service to or from any plant less than 5 years old from ICC certification requirements. This will provide new plants with needed flexibility in meeting their transportation needs and eliminate the costly certification process. (Section 6).

7. Entry. The bill will provide liberalized entry into the trucking and bus industries. It will shift the focus of entry proceedings away from the present concern for protecting existing carriers to providing the public better service. These simplified procedures will permit the ICC to expedite consideration of applications. (Section 8).

8. Common Carrier Rate Suspension. The bill provides a gradual phasing of increased pricing flexibility for motor carriers. These provisions parallel the Railroad Revitalization Act. Carriers will be permitted to adjust rates up or down within specified percentages without fear of ICC suspension (7 percent in year one; 12 percent in year two, 15 percent in year three and 15 percent upward flexibility annually with no limit downward thereafter.) To suspend rates outside this zone, the ICC will be required to find that a proposed rate will result in immediate and irreparable damage. The bill also sets a 7 to 10 month time limit on ICC consideration of rate cases (Section 10)

9. Compensatory Rates. The bill provides that rates which are compensatory, that is those above a carrier's variable cost, may not be found to be too low.

10. Commodity and Route Restrictions. The bill directs the ICC to remove certificate restrictions that are wasteful and inefficient and requires a progress report to Congress within one year of enactment. The bill also reduces circuitous routing. (Section 13)

11. Discrimination. The bill expedites the ratemaking process by limiting the number of parties who may protest a proposed rate. Carriers will no longer be permitted to protest rates by alleging discrimination against shippers. Protests by shippers will be limited to those directly affected by a proposed rate change. (Section 14).

12. Backhauls. The bill allows agricultural carriers to haul regulated commodities on return trips without ICC authorization provided specific conditions are met: (1) the backhaul follows the movement of agricultural commodities, (2) the carrier is a small business with three or fewer trucks, (3) the backhaul in in the general direction from which the trip originated, (4) the revenue earned from this provision must not exceed revenue earned from agricultural carriage, and (5) the rate charged may not be lower than the rate of any regulated carrier for the same service. (Section 15)

13. State Licensing Requirements. The bill directs the Secretary of Transportation to recommend ways to eliminate duplicative and costly State motor carrier regulations. (Section 16).

14. Safety. The bill provides for more even-handed and responsive enforcement of safety regulation governing motor carriers. Presently there are many gaps in the safety enforcement statutes. The bill would permit the Secretary of Transportation to impose civil as well as criminal penalties for all carriers and to prohibit operations by carriers who consistently violate safety regulation. (Section 17).

15. Merger. The bill eliminates ICC authority to grant antitrust immunity to motor carrier mergers and gives the courts exclusive jurisdiction to determine the legality of mergers. It also establishes a new standard for motor carrier mergers similar to that in effect for the banking industry. (Section 18).

Section-by-Section Analysis

Sec. 2. Rate Bureaus

This section would amend section 5(a) of the Interstate Commerce Act to limit the activities of the rate bureaus. It would prohibit discussions, agreements or voting on single-line movements and would also prohibit any carrier not physically participating in a joint line or interline movement from participating in discussions, agreements, or votes on those movements. Three years after enactment of this Act, discussions, voting, and agreements on general rate increases would also be prohibited. This amendment would also prohibit bureau protest of rates and require rate bureaus to take final action within 120 days on any matter docketed for consideration, and require records of the individual votes of the bureau members, with such records open to Commission inspection and to public inspection through the Commission.

The rate bureaus exert a significant anticompetitive influence in the motor carrier industry, although they do provide certain necessary functions. This amendment, similar to the amendment proposed in the Railroad Revitalization Act would restrict the anticompetitive activities of the rate bureaus while enabling them to continue their beneficial activities such as considering joint line rates and tariff publishing.

Sec. 3. Aircraft Exemption

Section 203(b)(7a) of the Interstate Commerce Act exempts from economic regulations transportation of persons or property by motor vehicle "when incidental to transportation by aircraft." The legislative history of this section provides virtually no assistance in interpreting it, but the Commission by rulemaking has determined that to be within the exemption, the transportation must be (1) within the "terminal area" of the air carrier, and that terminal area is described in a tariff filed with the CAB; (2) part of a continuous movement received from or delivered to an air carrier; and (3) on a through air bill of lading. (See 49 CFR 210.40). The CAB at first accepted a radius of 25 miles as a rule of thumb in determining what is a terminal area, and this holding has been codified. (See 14 CFR 222). Although the Commission retains the authority to modify the 25-mile rule, it has been hesitant to do so. The 25-mile restriction has little relationship to economic reality and it has been subject of complaint by air cargo shippers. The amendment would extend the radius to 100 miles, while retaining the other tests for exemption.

Sec. 4. Private and Contract Carriers.

This section eases the restrictions now imposed upon private and contract carriers.

Private Carriers

The IC Act now allows a non-transportation concern to transport its goods within the scope of its own non-transportation business without obtaining a certificate of public convenience and necessity from the Commission. Essentially, this is the concept of a "private carrier" as defined in section 203(17). Private carriers may not, however, transport goods of others "for compensation" because they would then fall under the definition of a common carrier, or contract carrier (Section 203(15)) and they would have to obtain a certificate or permit from the Commission.

Furthermore, the Commission has held in a decision affirmed by the Supreme Court, Schenley Distilleries Motor Division, Inc., Contract Carrier Application, 44 M.C.C. 1717 (1944), aff'd. 326 U.S. 432 (1946), that a private carrier may not carry the goods of corporate affiliates or subsidiaries.

This amendment will eliminate this artificial restriction and the discrimination it causes, and allow affiliates to move the goods of other affiliates without losing their private carrier status.

Contract Carriers

Section 203(a)(15) of the Interstate Commerce Act defines contract carrier by motor vehicle as one which operates "under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the primary use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer". This section is in turn affected by section 209(b) which requires the Commission to issue a certificate to a contract carrier if that carrier is "fit, willing, and able" and if the proposed operation is "consistent with the public interest and the national transportation policy". That section then goes on to describe five factors to be considered with respect to each application.

Historically, the Commissinn has favored common carriers over contract carriers. The Commission has done this by restrictively interpreting the public interest test of section 209(b) to favor existing carriers and by arbitrarily imposing a rule of seven: even though an applicant satisfies one of the tests of section 203 and can meet the other tests of section 209, the applicant will be denied a permit if the applicant already serves seven shippers under contract. (Umthun Trucking Co. Ext.-Phosphatic Feed Supplements, 91 M.C.C. 691).

The effect of the Commission's interpretation has been to impede the growth of contract carriers and to deny the specialized services and expertise of the contract carriers to the shipping community and to the public at large. This amendment will prohibit the Commission from limiting the number of shippers when a carrier dedicates equipment for each shipper served, although where equipment is not dedicated it would allow the Commission to consider the number of shippers where relevant to show whether the carrier is meeting shippers' distinct needs. It will also prohibit the Commission from limiting contract carriers to a particular industry or territory. This amendment would also remove the reference to "the public interest and national transportation policy" in section 209, and require the Commission to issue a permit where the carrier fits under one of the definitions of section 203 and complies with the other requirements of section 209. Thus, the Commission is no longer authorized to consider the effect upon other carriers when deciding contract carrier applications. In addition, this amendment also makes clear that the Commission may not require a contract carrier to prove both "gates" of Section 203(9)(15): That the service is both dedicated and distinct. Under this amendment either gateway would be sufficient.

Section-by-Section Analysis

Sec. 5. Commercial Zones

Section 203(b)(8) of the Interstate Commerce Act exempts from economic regulations transportation within "commercial zones". The purpose is to exempt local traffic within the commercial areas of a city or locality. The term "commercial zone" is not defined in the Act, but is left to the Commission to determine. The Commission has formulated general rules for defining commercial zones and also made specific determinations in certain cases. Unfortunately, these rules are no longer consistent with the expansion of modern communities and economic reality. In addition, applications to change these rules take a great deal of time and are often unsuccessful. These outmoded definitions create a great deal of unnecessary and costly transportation.

Consider for example, a shipment from New York City to an outlying suburb of Washington, D.C. In many cases, under the existing rules, it will not be possible to deliver the item directly to the suburban location, because the carrier only has authority to transport to Washington, D.C. and its commercial zone. This means the item must first be shipped to Washington, unloaded, and loaded onto another carrier who has the appropriate point-to-point authority. This section of the bill requires the Commission, in consultation with the Secretary to reform its regulations dealing with commercial zones and its procedures for changing the boundaries of such zones within 2 years of the enactment of this section.

Sec. 6. New Plant

New plants have particular difficulty in anticipating transportation requirements, and therefore, need more flexibility in choosing carriers than existing plants. In addition, carriers are not anxious to undergo a long and costly certification process where the transportation needs are not well-defined.

This section would amend section 203(c) and exempt from economic regulations for a period of two years transportation to new plants, as long as that plant did not replace an existing plant. The second part of this amendment would then allow carriers to have "grandfather" rights to continue serving the plant after the initial two-year period if certain conditions are met. This exemption would simplify the administration of the Interstate Commerce Act and reduce the costs of obtaining certificates.

Section-by-Section Analysis

Sec. 7. Private Carrier-Leases to Common Carriers

Section 204(e) of the Interstate Commerce Act provides the Commission with authority to regulate the leasing of vehicles to carriers. The leasing regulations prescribed by the Commission in general provide that the leasing parties must enter into a written contract; that the equipment must be in the exclusive possession and control of lessee; that the compensation must be specified in the contract; and if the arrangement includes the driver, that the contract must be for a minimum of 30 days. The reason for these regulations was to prevent certain abuses of the motor carrier safety regulations and also to prevent carriers who could lease vehicles from obtaining an unfair advantage over carriers who could not lease.

In 1956, the Congress passed an amendment to the Act which withdrew from the Commission the power to regulate the duration of leases with respect to most vehicles used for the hauling of agricultural products. Our proposed amendment would expand that exemption to apply to all vehicle leasing whether by a common or private carrier. This would mean an expansion of capacity available to common carriers without the need to buy expensive equipment. For the private carriers, it would create an opportunity to obtain backhauls which they don't have today. This amendment would not withdraw the Commission's authority to require written leases and other matters. It would also not affect the present requirement that the leased motor vehicles to

be used by the motor carrier in a single movement or as one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based.

The Commission itself has recognized the problems associated with the trip leasing and recently in Ex Parte M.C. 43 (Sub. No. 3), Lease to Regulated Motor Carriers of Vehicles with Drivers by Private Carriers, proposed a rulemaking to relax the 30-day rule. This rulemaking, however, has not been completed, and even if the rulemaking is completed as proposed, the Commission in its notice indicated that the relaxation would only be "temporary" and apply only to equipment in existence prior to March 7, 1970, or replacements thereof.

Sec. 8. Entry

For most goods and services the buyer has a wide variety of choices ranging from high quality and high cost items to low quality and low cost items. He is able to select that combination of cost and quality which best suits his purposes and wants. For trucking services, however, the range of choices is limited.

Early decisions of the Commission recognized an obligation to protect existing carriers. In these cases, the Commission declared that new certificates should not be issued if the existing carriers could handle the traffic. Many of these decisions held that the existing service had to be inadequate to justify the entry of a new carrier. While later decisions have modified this position, adequacy of the present service is still of critical importance to the Commission. The amendment proposed in this section would open up the range of options available to the purchaser of trucking services and encourage innovation. This amendment would substantially change the requirements for entry by broadening the focus of the present entry test and by providing a new alternative test for entry.

Subsection (a) of this amendment requires the Commission to weigh in favor of an application if the new service would result in lower costs, greater efficiency (including fuel), better service, satisfy the shipper's preference for a different combination of services and rates, or would generally improve competition. This new provision would apply to any entry petition. It is intended to tilt the whole entry process towards a more competitive approach. It is to be noted that the Commission has taken a dim view of allowing private carriers to become for-hire carriers. The provision specifically provides that private carriers, who intend to remain private carriers, may not use the new standards and procedures to become common carriers, and thus retains the present law.

The second part of the proposed amendment is a technical amendment.

In the proposed subsection (b), the Commission would be required to issue a certificate if the applicant demonstrates that it is "fit, willing, and able" and if the revenue derived from the proposed service will cover the "actual costs" of the service unless a protestant proved that the proposed rate was discriminatory. The Commission would be specifically prohibited from considering the adequacy of existing service or the effects of the proposed entry upon competitors. In other words, the Commission would have to issue an applicant a certificate if (1) the applicant were "fit, willing, and able"; (2) the rate was compensatory; and (3) the rate was not discriminatory.

The proposed subsection (c) would allow the Commission to require the proposed rate to be put into effect for up to one year as a condition for granting the certificate.

The proposed subsection (d) would define "actual costs" to include only those costs which are directly associated with the particular service.

In order to expedite such proceedings and to ensure that the Commission does not consider adequacy of service in an indirect manner, the Commission in the proposed subsection (e) could not require industry or system-wide data. Industry-wide data could be introduced at the option of the applicant, however. As a further safeguard, proposed subsection (f) would authorize the Secretary to enact cost and revenue standards, which the Commission must follow.

Subsection (g) provides that the rate authorized for a certificate may not be suspended or set aside for a period of two years. This amendment is intended to consolidate the various rate and entry questions in one hearing and relieve an applicant of the burden of defending a series of charges.

Subsection (h) would also expedite the consideration of entry hearings by requiring decisions to be rendered within one year of application for those applications filed within the first year of enactment. The one-year period for decision is still excessively

long, but it recognizes that the Commission has a certain backload. After the first year, the decision period is limited to 90 days which is an adequate period in consideration of the prohibitions or the scope of the Commission's hearing.

The proposed subsection (i) would require the payment of an applicant's defense costs by protestants if the protest against entry fails. This provision is intended to discourage frivolous protests.

The foregoing amendments will substantially reform the present entry procedure, and allow entry as well as potential entry to play a much greater role as the natural regulator of market efficiency. The last part of the amendment requires the Secretary to study the effects of these amendments and the other amendments in the Act to determine whether they have satisfied the purposes of the Act, and to recommend any changes he thinks necessary to ease entry further, to produce more price flexibility, and in general, to meet the purpose of the Act by the third year following enactment.

Contract Carriers: Dual Operations

Sec. 9. Section 210 of the Interstate Commerce Act prohibits a single on related entity from holding both common and contract authority over the same route or within the same territory unless the Commission has affirmatively found that such authorities can be held consistent with the public interest and the National Transportation Policy. The purpose of this provision is to preclude a carrier which serves a shipper both as a contract and common carrier from in effect giving a rebate on the common carriage rates by charging artifically low contract rates. The Commission has consistently taken the position that to permit dual operations it must find that there is not even the remotest possibility of a rebate. This policy of not granting authority where there is just a theoretical possibility of rebate constitutes another unreasonable bar to entry and competition and is unnecessarily restrictive in light of the Commission's power to review carriers' operations and to revoke authorities under section 212.

The amendment proposed in this section would limit the application of section 210 and provide that the restriction regarding dual operations would not apply if the contract carrier established that its contract rates were compensatory. This requirement for a

compensatory rate is consistent with other sections of this bill, and would also protect against the possibility of a carrier charging an unreasonably low contract rate as a form of rebate.

Section-by-Section Analysis

Sec. 10. Suspension of Common Carrier Motor Rates

At present, the Commission has the authority to determine if a rate filed by a motor carrier is lawful, and while it is making that determination, it may suspend that new rate for up to seven months. However, since there is no limit upon the time for hearing, the ultimate decision may not be made until long after the expiration of the suspension period. The present procedure is often lengthy and the cost, uncertainty and delay associated with it limit the ability of a carrier to respond to the changing conditions of the market place. The present procedure also causes the hearing to focus upon "maybe's" and hypothetical arguments. A carrier proposes a rate; it is commonly suspended; and the hearing revolves around extensive testimony of what "might happen" if the rate would go into effect.

This amendment would expedite the hearing process by (i) providing that in all but exceptional cases rate hearings must be completed within 7 months and (ii) restricting the right of the Commission to suspend a rate increase or decrease if the change is within certain percentages of prior rates. If the Commission failed to reach a decision within the required time, the rate would go into effect, subject to latter complaint. The no-suspend zone would initially be phased in over a three-year period (7 percent, year 1; 12 percent, year 2; 15 percent, year 3). After this three-year period, there would be a permanent prohibition against suspending

any rate decreases and carriers could raise rates annually 15 percent without suspension. Within these limits, the only exception to the prohibition against suspension would be a charge of discrimination. In all cases where suspension is sought the protestant would be required to satisfy the standard used by Courts in applications for temporary restraining orders: the protestant would be required to establish immediate and irreparable injury, likelihood of success; and satisfaction of the public interest. To protect against unjust enrichment in cases where a rate increase is not suspended but is later found to be unreasonable, the amendment would require reimbursement of the difference berween the initial rate and the rate ultimately allowed, with interest, to the concerned shippers. For carriers of passengers, since it would be very difficult to make such a refund to individual travelers, the bill provides that the carrier reduce its future fares in an appropriate amount. With respect to rate decreases that were suspended and later found justified, the amendment would allow payment of the difference to the shippers.

The no-suspend zone would not apply to any general rate increase of any type.

Sec. 11. Common Carrier Compensatory Rates

At present, the Act allows a rate to be found to be too low even though it covers the variable costs of the applicant. The present law discourages price decreases, interferes with efficient resource allocation, and is anticompetitive.

This section would amend the Interstate Commerce Act to provide that a carrier's rate which is above the carrier's variable cost for the specific transportation in question may not be found to be unjust or unreasonably low.

At the same time, in its study of the surface transportation industry, the Department has found that certain carriers - contrary to economic sense - have sought to decrease rates below variable costs. This section would also prohibit the Commission upon complaint from allowing rate decreases which are not compensatory. To provide for past rates which are not compensatory, this section would also prohibit the Commission from disallowing any rate increase which raises the level of a rate to a compensatory level.

Section-by-Section Analysis

Sec. 12. Contract Carrier Compensatory Rates

Under the Interstate Commerce Act, the Commission only has authority over minimum rates for contract carriers. This amendment - similar to the amendment in section 10- provides that the Commission may not find unreasonable a contract carrier rate which is compensatory.

Section-by-Section Analysis

Sec. 13. Commodity and Route Restrictions

The Commission in its administration of part II has imposed many arbitrary and unnecessary commodity and route restrictions in its certificates. This section would require the Commission in general to take all necessary steps to remove these wasteful and inefficient restrictions and to report to Congress within one year of enactment the specific steps it has taken pursuant to this directive.

In addition to this general change, this amendment would also reduce circuity of route in two specific ways. First, if a carrier was required to operate through a particular gateway city to serve any two points for six months or more and was providing a significant amount of service between these two points, the Commission shall, upon application of the carrier, remove the gateway requirement. Second, the Commission must broaden the present deviation rules to 25 percent.

Section-by-Section Analysis

Sec. 14. Discrimination

This amendment clarifies present law regarding the standing to raise the question of discrimination between various shippers. This amendment prohibits carriers from raising the issue of discrimination against another carrier. Since the possible discrimination is against a shipper, it should be raised by the shipper. In addition, this amendment would restrict the standing of shippers to allege discrimination to those shippers directly affected by the rate change. In other words, a shipper may not protest a rate change as the basis of discrimination unless the protesting shipper is also being served by the motor carrier in question and that motor carrier is transporting for the protesting shipper the commodity which is the subject of the rate change. This would insure that a shipper could not forestall rate changes afforded competitors by carriers more efficient than the carrier used by the shipper. Both of these changes should serve to expedite the rate hearing process.

Section-by-Section Analysis

Sec. 15. Back Hauls

Present regulation has restricted the ability of the motor carrier industry to use its resources efficiently. Many trucks move only partially loaded or entirely empty, and valuable fuel is wasted. This problem is particularly acute with respect to "exempt agricultural" trucking. Section 203(b)(6) of the IC Act exempts from regulation movements of certain agricultural goods. Thus, truckers may move agricultural items out of rural areas without certificates of public convenience and necessity. These same truckers, however, may not move regulated commodities on their return trip because they are not certificated.

This amendment is designed to reduce the problem of empty back hauls. It would allow "agricultural exempts" to carry regulated commodities, but only subsequent to a movement of agricultural items. It would apply only to small businesses of 3 or less trucks, and to avoid unfair competition with the regulated industry, all back haul movements of regulated commodities would have to move at a rate at least equal to the lowest rate filed by a regulated carrier for that same transportation. In addition, to ensure that this amendment applies only to true agricultural exempts, the revenue derived from hauling regulated commodities

for any year could not exceed the revenue from agricultural items for that same year.

Section-by-Section Analysis

Sec. 16. State Filing Requirements

In addition to the federal economic regulations imposed upon the motor carrier industry, the States also imposed many requirements for registration and filings upon interstate trucking. While it is recognized that the States have a legitimate interest in such activities, it must also be recognized that many of the State requirements are unnecessarily duplicative and lacking in uniformity. Because of this, many times, the carriers' cost for filing far outweigh the fee paid to an individual State. This section would direct the Secretary to work with the industry and the States to develop legislative or other recommendation for providing a more efficient and equitable system of State regulation.

Motor Carrier Safety

SEC. 17. (a) Section 204(a)(3) is amended by removing the words "of property" wherever they may be found and by striking the words "and (g)" and inserting "(g), and (h)" in substitution;

(b) Section 212(a) is amended by inserting in the first sentence immediately after the word "provided" the following: "or as provided pursuant to section 222";

(c) "Sec. 222. (a) is amended by inserting "(1)" after "(a)" and by adding a new subsection 222(a)(2) to read as follows:

"SEC. 22(a)(2). Any person who knowingly commits an act in violation of any requirement, rule, regulation, or order promulgated by the Secretary of Transportation under section 204 of this part relating to qualifications and maximum hours of service of employees and safety of operation and equipment shall be fined not more than $1,000 for the first offense and not more than $2,000 for any subsequent offense.

(d) Section 222(h) is amended (i) by inserting in the first sentence after "thereof," the following: "who fails to follow any requirement, rule, or regulation of the Secretary promulgated

pursuant to section 204 of this part," and (ii) by striking "$500" and "$250" and inserting "$1,000" and "$500" in substitution;

(e) Section 222 is further amended by adding a new subsection to read as follows:

"(i) In administering the functions, powers, and duties transferred by section 6(e) of the Department of Transportation Act, the Secretary may, after notice and hearing pursuant to 5 U.S.C. § 554, remove or suspend the certificate of a common carrier, remove or suspend the permit of a contract carrier, or order a private carrier to cease or suspend operations as a private carrier, if he determines that such carrier has failed to comply with regulations issued by the Secretary pursuant to this part, 18 U.S.C. 831 et seq., or The Hazardous Materials Transportation Act and that such carrier's continued operation as a motor carrier poses an unreasonable hazard to the public safety. In addition, the Secretary may, after notice and informal hearing, prohibit a motor carrier from operating pursuant to the exemption in 203(b) 11 if such carrier has failed to comply with regulations

issued by the Secretary pursuant to this part, 18 U.S.C. 831 et seq., or The Hazardous Materials Transportation Act and if such carrier's operations pose an unreasonable hazard to the public safety."

Motor Carrier Safety

Section-by-Section

Originally, Part II of the Interstate Commerce Act gave the Commission the authority to regulate certain motor carriers with respect to safety. Section 6(e) of the Department of Transportation Act removed that authority from the Commission and placed it in the Secretary. This section amends Part II to strengthen the authority to govern the safety of motor carriers.

Even-handed enforcement is a basic starting point for any safety program, but such even-handed treatment must be based upon a consistent and logical statutory framework. The Secretary's present authority for motor carrier safety has many statutory gaps. The Secretary has broad authority to issue regulations for all carriers, but he may impose criminal penalties for some carriers and some violations, and civil penalties for others. Moreover, one of the prime deterrents to violating a safety regulation is the possible removal of a carrier's operating authority. But while the Secretary has the authority to regulate motor carrier safety, the Commission has the sole authority to revoke a carrier's permit because of safety violations. Unfortunately, because of a lack of interest or expertise, the Commission has not utilized this deterrent to its full potential. This amendment

would broaden the authority of the Secretary and essentially fill in these gaps.

Subsections (a) and (d) of this amendment would extend the authority of the Secretary to impose civil penalties to all persons subject to regulation and for all violations. At present, this authority exists only with respect to common and contract carriers and only for record-keeping and filing offenses. Private carriers and general safety violations are covered by way of criminal sanctions, but such sanctions have been found to be inflexible and inappropriate in many cases and very difficult to process to adjudication. These subsections would also increase the maximum civil penalty to $1,000 for a single violation, or $500 a day for a continuing violation.

Subsection (c) of the Section would increase the minimal fine for violating the Motor Carrier Safety Regulations (49 C.F.R. Parts 390-396) to a range of $250 to $1,000 for first offenses and $500 to $2,000 for subsequent offenses. The present minimal penalties are insufficient to serve as an adequate deterrent for violations of these Motor Carrier Safety Regulations. In addition, the existing criminal penalty provisions require the Government to

show knowledge and willfulness on the part of defendants. Some courts have interpreted the willfulness provision under the present statute so narrowly that ignorance of the law or the regulations constitutes a defense to prosecution for violating them. This is clearly an inappropriate requirement where the unsafe practice, rather than the intent to commit it, is what is proscribed for the public's protection. This amendment removes the word "willfully," but retains the word "knowingly" and thus the requirement to prove intent.

Subsection (c) of this amendment would authorize the Secretary to suspend or revoke the certificates or permits of common or contract carriers, respectively, if he determined after a formal administrative hearing subject to the Administrative Procedures Act that the carrier had violated Motor Carrier or Hazardous Materials safety regulations promulgated by the Secretary and that the operation of the carrier constituted an unreasonable risk to the public safety.

Private carriers do not operate via any certificate or permit, but this subsection would also authorize the Secretary to prohibit a private carrier from future operations as private carrier, under the same standards and procedures as applies to common and contract carriers. This subsection also allows the Secretary

after an informal hearing to prohibit carriers from operating pursuant to the special backhaul exemption provided in this bill if he determines their operation is unsafe and that they have violated safety regulations issued by the Secretary.

Section-by-Section Analysis

Sec. 18. Motor Carrier Mergers

Presently, the ICC has jurisdiction under Section 5(2) and 5(13) of the Interstate Commerce Act to approve mergers involving motor carriers and to immunize such acquisitions from the antitrust laws. This amendment is designed to eliminate the ICC's power to approve and thereby to immunize such acquisitions from the antitrust law. The result of this amendment is to vest exclusive jurisdiction in the federal courts to test the legality of such transactions.

Sec. 19.

The ICC presently has jurisdiction to enforce Sections 7 and 8 of the Clayton Act in respect of acquisitions and interlocking directorates involving motor carriers. This amendment would revoke the ICC's authority to enforce these sections of the Clayton Act in connection with motor carriers.

Sec. 20

It has been argued in ICC enforcement proceedings under Section 7 of the Clayton Act that because of language regarding common carrier acquisitions of branch lines in that section, trucking mergers ought to be given more liberal treatment under Section 7 than mergers between other kinds of firms. This amendment would make explicit the fact that such language is to be applied only to railroads and would thereby remove any basis

litigation on this point.

Sec. 21.

This amendment provides that acquisitions involving motor carriers are subject to a test of legality under Section 7 of the Clayton Act which is slightly different than that applied to non-transportation firms. Such acquisitions otherwise violative of the Clayton Act could be defended as clearly necessary to meet the transportation convenience and needs of the community or communities to be served. To satisfy this standard, the acquisition must be proved to be the least anticompetitive alternative for the achievement of transportation convenience and needs. Moreover, it would be the burden of the party defending the legality of the acquisition to establish that it was the least anticompetitive alternative for the accomplishment of the necessary transportatinn convenience and needs.

October 31, 1975

11:00 a.m.
Meeting with Paul Leach, Steve McConahey, John Snow, Paul MacAvoy, Stan Morris

RE: Truck Bill

The above group also has appointment with Secretary Morton at 3:45 and Secretary Dunlop at 4:45 Friday.

Jim Lynn is sending memo through on the bill also on Friday.

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