The original documents are located in Box 29, folder "Regulatory Reform (5)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

AIRLINE REGULATORY REFORM

THE WHITE HOUSE

WASHINGTON

July 16, 1975

MEMORANDUM FOR : DICK DUNHAM

FROM : JIM CANNON

SUBJECT : Kennedy Letter

1. Mike's letter doesn't really answer Kennedy's question.

2. I understand John Barnum made this commitment for DOT in February.

   Who FOR CEA?

   Who for Justice?

   Can we get their testimony and see what they promised?

3. What is status of our airline regulatory reform proposals?

Is this taken care of?

to Durham 7/16/75 [illegible]

July 7, 1975

P
Hold for
follow up 7/21

MEMORANDUM FOR: JIM CANNON

FROM: JACK MARSH

SUBJECT: Kennedy Letter

Please note the attached incoming letter from Senator Kennedy inquiring about the status of proposed legislation on airline regulatory reform, which the Senator states we had indicated would be going to Congress in March. The President would like for us to check on this and see what the status is and whether the observations in the letter are valid.

For your information, I have sent copies of this memo to both Don Rumsfeld and Max Friedersdorf.

Many thanks.

JOM/dl

July 3, 1975

Dear Senator:

Thank you for your June 26 letter to the President concerning discussions of proposed regulatory reform. I know the President will be pleased to receive your evaluation of the problem and the initial steps which are being taken.

Please be assured that I shall call your letter to his attention at the earliest opportunity. I am certain your comments concerning proposals on airline regulatory reform will be given prompt attention.

With kind regards,

Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20510

bcc: w/incoming to Roderick Hills for appropriate handling.

bcc: w/incoming to James Cannon - FYI

WTK:VO:jsb

MASSACHUSETTS

United States Senate

WASHINGTON, D.C. 20310

June 26, 1975

Honorable Gerald R. Ford
The White House
Washington, D.C. 20500

Dear Mr. President:

I believe that yesterday's discussion on regulatory reform was extremely useful in opening the channels of communication and in providing for an airing of perspectives for both Congress and the Administration. As I have indicated, I certainly share your views on the need for lessening the restraints of federal regulation on the competitive forces in various markets.

As you know, the Congress is still awaiting your proposals on airline regulatory reform, which is an area of special interest to me. At our Subcommittee hearings in February representatives from the Justice Department, Department of Transportation, and Council of Economic Advisors appeared in substantial agreement as to the general form of such legislation and indicated that a bill would be forwarded to Congress in March. The delay, I am afraid, suggests to some a lessening of the Administration's commitment to genuine reform, making it correspondingly more difficult for me to maintain the same momentum on the congressional front.

I was pleased to participate in Wednesday's meeting and

look forward to working with you towards substantial changes in the nature of federal economic regulation on many fronts.

Sincerely,

Edward M. Kennedy

THE WHITE HOUSE
WASHINGTON

DATE: July 7, 1975

TO: MIKE DUVAL

FROM: JIM CAVANAUGH

SUBJ: Kennedy Letter

FYI_____

Action X

Where are we on this?

Taken care of?

THE WHITE HOUSE
WASHINGTON

DATE: July 7, 1975

TO: JIM CANNON

FROM: JIM CAVANAUGH

SUBJ: Kennedy Letter

FYI_____

Action____

We've asked Duval for
a status report on this.

THE WHITE HOUSE

WASHINGTON

July 7, 1975

MEMORANDUM FOR: JIM CANNON

FROM: JACK MARSH

SUBJECT: Kennedy Letter

Please note the attached incoming letter from Senator Kennedy inquiring about the status of proposed legislation on airline regulatory reform, which the Senator states we had indicated would be going to Congress in March. The President would like for us to check on this and see what the status is and whether the observations in the letter are valid.

For your information, I have sent copies of this memo to both Don Rumsfeld and Max Friedersdorf.

Many thanks.

United States Senate

WASHINGTON, D.C. 20510

June 26, 1975

Honorable Gerald R. Ford
The White House
Washington, D.C. 20500

Dear Mr. President:

I believe that yesterday's discussion on regulatory reform was extremely useful in opening the channels of communication and in providing for an airing of perspectives for both Congress and the Administration. As I have indicated, I certainly share your views on the need for lessening the restraints of federal regulation on the competitive forces in various markets.

As you know, the Congress is still awaiting your proposals on airline regulatory reform, which is an area of special interest to me. At our Subcommittee hearings in February representatives from the Justice Department, Department of Transportation, and Council of Economic Advisors appeared in substantial agreement as to the general form of such legislation and indicated that a bill would be forwarded to Congress in March. The delay, I am afraid, suggests to some a lessening of the Administration's commitment to genuine reform, making it correspondingly more difficult for me to maintain the same momentum on the congressional front.

I was pleased to participate in Wednesday's meeting and

look forward to working with you towards substantial changes in the nature of federal economic regulation on many fronts.

Sincerely,

Edward M. Kennedy

Q They are expecting them to be there through the winter?

MR. NESSEN: Well, at this rate I think some would be left by the wintertime.

Q What about on Guam, Ron? Have all been moved from Guam?

MR. NESSEN: Guam is closed.

Then the President said he wanted to give a little report on his meeting with the regulatory agencies. He called the meeting beneficial. He asked Jim Cannon to give a report, and Jim said that the reform is moving ahead.

He called the meeting a milestone, said it shows that the President means business about regulatory reform. He said that the White House is now preparing the next step in regulatory reform, which is the regulations within the departments and agencies as opposed to the independent regulatory agencies.

He said the purpose of this whole plan of the President's is, one, to promote competition; two, to let the Antitrust Division of the Justice Department handle many of these areas now handled by the regulatory agencies; and to have the regulatory agencies, as well as the Executive Branch departments and agencies, rethink their role to make sure they are really doing what they are supposed to do, which is to serve the public interest.

He said that there has been a large degree of cooperation within the regulatory agencies with the White House.

The President closed that portion of the meeting by saying that the atmosphere he has found surrounding this issue is constructive to getting something done, and that the Domestic Council will be continuing to pursue this.

Finally, there was the discussion of the energy program and the President said that he would send up his phased reasonable compromise decontrol program late this afternoon, to the Congress.

Q He calls it that -- a phased reasonable compromise?

MR. NESSEN: He does. He believes that is an accurate description of the program and he uses it when he speaks of it.

THE WHITE HOUSE

WASHINGTON

July 17, 1975

MEMORANDUM FOR: THE PRESIDENT

THROUGH: JIM CANNON and JIM LYNN

FROM: ROD HILLS RH

SUBJECT: Robinson-Patman Repeal or Revision as Part of Regulatory Reform

The Robinson-Patman question is being treated in the larger context of regulatory reform. The Domestic Council Review Group on Regulatory Reform has this on its agenda for discussion Friday, July 18.

Tab A provides a memorandum outlining the composition of the Domestic Council Review Group on Regulatory Reform and the agenda.

Robinson-Patman is an area where your advisers are in general agreement that something must be done. Over the next two or three weeks, the Review Group will discuss Robinson-Patman (and other regulatory subjects) with the appropriate people in Congress. We will focus on which substantive option might be acceptable, and then present you with a decision memo.

Tab B contains a memorandum outlining the three substantive options available.

THE WHITE HOUSE

WASHINGTON

July 16, 1975

File

MEMORANDUM FOR: ECONOMIC POLICY BOARD

FROM: ROD HILLS RH

SUBJECT: Domestic Council Review Group on Regulatory Reform

The President has given the Domestic Council responsibility for coordination of his regulatory reform effort. To this end, the Domestic Council has established a Review Group on Regulatory Reform to serve in the coordinating role. Included in this Review Group are:

Member	Working Representatives
Counsel's Office	Rod Hills
Domestic Council	Paul Leach
	Lynn May
Council of Economic Advisers	Paul MacAvoy
Office of Management and Budget	Cal Collier
	Stan Morris
Department of Justice	Jon Rose
Council on Wage and Price Stability	George Eads

Jim Cannon has designated me as Executive Director of this Group and Paul MacAvoy and I will serve as principal spokesmen. Paul Leach is the Domestic Council staff person with primary responsibility for staff coordination.

Where appropriate, other Executive departments and agencies and White House staff will be involved. Major economic regulation initiatives will be presented to the Economic Policy Board.

It is anticipated that all staff resources necessary to achieve the President's regulatory reform objectives will be provided by the White House staff groups and Executive departments and agencies.

The principal goal of the Group is to achieve tangible reform in the next year --- reduction of Commission activities where unnecessary and improvements in the efficiency of operation where there is a strong rationale for continued regulation. To deliver on the President's goals, we must have concrete results this year. A secondary goal for 1975 is to have results and a second year program by the time of the State of the Union Address.

The attached draft of an Agenda for the July 18 Review Group meeting provides a brief picture of where this effort is going during 1975.

DRAFT 7-17-75

DOMESTIC COUNCIL REVIEW GROUP ON REGULATORY REFORM

Meeting Agenda - July 18, 1975

I. Legislative Activity (with primary responsibility)

A. Legislation Before the Congress

1. Railroad Revitalization	Legislation submitted. House Commerce Committee is holding hearings. Some legislation possible this session. OMB & DOT
2. Natural Gas	Continue to push for de-regulation of natural gas. Speedy congressional action unlikely. OMB & FEA
3. Financial Institutions	Legislation submitted, but some legislative action likely in this Congress. OMB & Treasury
4. Fair Trade	Legislation submitted. Push for repeal, which should happen in 1975, and take credit with signing ceremony. OMB & Justice

B. Legislation Being Developed

1. Trucking	Send bill to Congress by August with Presidential message and press briefings. OMB & DOT
2. Airlines	Send bill to Congress by September with Presidential message and press briefings. OMB & DOT
3. Robinson-Patman	Finish proposed bill by August. Send to Hill with Presidential message and press briefings. OMB & Justice

4. Cable T.V. — Develop and consider legislation by September. Domestic Council & OTP

C. New Areas to be Considered

There are a variety of new areas where a policy review might be undertaken. These range from (a) a major overhaul or abolition of existing agencies, e.g., the FMC, (b) determination of the long-term regulatory role of FEA, (c) development of effective anti-trust policy particularly with respect to the Clayton and Federal Trade Commission Acts to (d) creation of incentives rather than use of the rule-making approach to health, safety and environmental regulations.

II. Follow-Up to the Regulatory Summit

1. Presidential letter to Commissioners sending transcript of July 10 meeting and asking for:

   - Specific plan to reduce delays
   - Description of economic analysis activities

2. Follow-up with continual contacts at both Commissioner and staff levels to see that internal reform effort continues.

3. Encourage Congressional committees to hold oversight hearings on delays in each Agency.

4. With Justice making major contribution, set up group to propose changes in the procedures of the Agencies. Changes can be internal or legislated.

5. Closely control Commission appointments. Develop list of acceptable candidates and committed deregulators.

6. Establish group to work with Independent Agencies in improving economic analysis.

7. Push FPC to allow interstate shipment of natural gas which is purchased by industrial firms in the intrastate (unregulated) market.

III. Regulation by Executive Departments and Agencies

1. Presidential effort to get Cabinet (and other) officers committed to reform. Announce meetings between Review Group and Cabinet officers to obtain specific 1975 reform objectives.

2. Develop a full catalog of agencies: Their responsibilities, weaknesses and opportunities for improvement.

3. Target several "dependent" agencies where the Review Group can concentrate its efforts.

4. Examine and assist FEA task force efforts to remove bottlenecks in development of new energy projects.

IV. Congress

1. Presidential letter to 24 Members to report on Independent Commissions meeting. Draft completed.

2. Continue contacts with Congressional regulatory reform group and their staff.

3. Schedule another meeting with Members after Labor Day.

4. Closely monitor legislative strategy on all regulatory reform bills to insure White House coordination.

V. Speeches and Other Events

1. Develop speech for President to give consumers on the impact of regulation on consumer costs, then schedule.

2. Develop speech for President to give to a "special interest group" in which he talks tough on the need for regulatory reform, then schedule.

3. See that Paul Theis has materials necessary to keep regulatory reform in a variety of Presidential speeches.

4. See that a group of spokesmen for the Administration begin to emphasize regulatory reform in speeches.

VI. Press

1. See that President is continually briefed on status of regulatory reform and has talking points for interviews.

2. Work with Press Office to educate general and specialized press about the Presidential effort.

3. Monitor press reports and editorials. Reply where necessary.

VII. State and Local Regulatory Reform

1. Finalize State and local task force on regulatory reform.

2. Articulate Presidential interest in this area.

VIII. Organization and Management of Effort

1. Set priorities for activities and assign responsibilities.

2. Insure availability of staff resources needed to achieve President's objectives.

3. Provide for regular coordinating meeting.

4. Develop routine status report.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 17 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: Status Report on Robinson-Patman Act Reform

In March you announced your intention to seek legislation to reform the Robinson-Patman Act.

Since then, concerned agencies (Justice, Commerce, SBA, HEW, CEA, CWPS, and OMB) have explored several alternatives and three substantive options have emerged. The purpose of this memorandum is to provide you a status report.

The Robinson-Patman Act (RP-A) was enacted in 1936, in the midst of the Depression, essentially to help the small local grocers hold their position against the then emerging chain supermarkets. The RP-A has two main provisions: One is a civil prohibition on discriminating between different customers unless the manufacturer can show that his lower price is cost justified or is meeting the legitimate competition of another manufacturer. Persons injured by prohibited conduct are entitled to recover treble damages in private suits. The second is a criminal prohibition against charging "unreasonably low prices."

The statute is unusual. No other country except France has anything similar, and in France, the government refuses to enforce it.

The RP-A has not achieved its objective of heading off the creation of chain stores. In addition to this failure, it has reduced price competition and spawned a great deal of litigation.

Also, it has permitted in some manufacturing industries, a few firms to dominate the industry by encouraging parallel pricing practices and, occasionally, by outright conspiracy. The RP-A makes it harder for aggressive buyers to break these

pricing patterns and thus helps to prevent competitive pricing. Moreover, the Justice Department's experience in prosecuting criminal price fixing cases suggests that manufacturers, in satisfying the RP-A, have used that occasion to swap pricing information, thus further preventing competitive pricing.

Therefore, the need for reform is clear. If reform is successful, it would contribute significantly to your overall regulatory reform program which is aimed at eliminating costly government restrictive practices that tend to eliminate a healthy competitive market place. However, achieving reform will be difficult. The options that have been considered have been viewed primarily as ways to head off the inevitable opposition of those businesses who want to avoid effective price competition by relying on the civil aspects of the RP-A.

The following options have been considered.

OPTIONS

1. Outright repeal. All agencies, except the SBA, believe that outright repeal of the Act is -- on the merits -- from Robinson-Patman can be more rationally achieved from preserving the Sherman Act's prohibition on "attempts to monopolize." Some of your advisors believe that outright repeal has the added virtue of demonstrating the depth of your commitment to regulatory reform. However, repeal will be vigorously opposed by small business groups and has the least prospect of success in Congress. Moreover, a repeal proposal will be viewed by opponents as a pro-big business move to unleash corporate bullies to prey upon smaller firms through abuses of market power. It would be argued -- but not demonstrably -- that this could lead to more industry concentration.

2. Predatory pricing substitute. The Justice Department has drafted a legislative substitute for Robinson-Patman that would outlaw: overt threats by businesses to force certain pricing practices on their competitors; and sales below out-of-pocket costs (except to meet competition or to enter new markets). This substitute would significantly narrow the Robinson-Patman Act, minimizing or eliminating its use to restrain hard competition. It would provide some answer to critics of reform, including small business groups. However,

sophisticated observers would realize that the protections afforded to small business are illusory because violations would be virtually impossible to prove. Accordingly, critics would charge that the proposal favors big business and will also lead to increased concentration. Again, Congressional sponsors will be difficult to attract.

3. Revision coupled with predatory pricing prohibition.

The final option builds upon the predatory pricing substitute and also outlaws sustained price discriminations that systematically favor larger buyers or are likely to eliminate competitively significant firms from a market. This alternative would constitute a major improvement over the status quo, making it quite difficult to prove a violation. It might be more acceptable to members of Congress. However, the modification approach is not favored on simple economic grounds (it does not go far enough toward repeal), will not satisfy small business, and may be viewed as inconsistent with a real commitment to regulatory reform.

Because the public has a poor understanding of the costs imposed by the Robinson-Patman Act, because the small business community is deeply concerned, and because Congressional interest is low, we are proceeding as follows:

-- The lead responsibility on this issue has been assigned to the newly established Domestic Council Task Force on Regulatory Reform.

-- The Task Force will begin working with staff members representing the newly established group of 24 Congressmen and Senators with whom you recently met on regulatory reform.

-- Hopefully, we can look to this group to provide a Congressional constituency for reform of the Robinson-Patman Act.

-- A decision on which legislative solution to propose will be recommended after these consultations by the end of August.

THE WHITE HOUSE

WASHINGTON

July 29, 1975

MEMORANDUM FOR: JIM CANNON

THROUGH: DICK DUNHAM

FROM: PAUL LEACH

SUBJECT: Regulatory Reform

Per your instructions of two weeks ago, the Regulatory Reform Review Group has assumed primary responsibility for coordinating the President's regulatory reform effort in the approved areas. Where appropriate, economic regulation initiatives are being presented to the EPB. The memorandum at Tab A outlines the composition and mission of the Review Group.

To facilitate communication and to assure deadlines are met, the Review Group is now meeting every Wednesday at 5:00 p.m. in the Roosevelt Room. You have received the agendas for the first two meetings.

Also, we are distributing from time to time a Status Report on Regulatory Reform. You have already been provided with the latest one, dated July 23.

In order to provide coordination for the effort in the fullest sense, the Review Group (or various members) has:

1. Met with Paul Theis to discuss regulatory reform speeches. We will work with Theis to develop a speech for the President to the Hardware Industry Convention in Chicago in late August. Also, we are working on the draft of a speech dealing with the positive effect of regulatory reform for the consumer. This coordination with Theis will be ongoing.

2. Established liaison with the Press Office through John Carlson. We will work with them to sustain the dialogue with the media and will try to stage a major discussion of regulatory reform at the next appropriate event, e.g., when a Trucking Bill is submitted.

3. Discussed the major importance of Commission appointments with Doug Bennett. We will attempt to supply him with names of strong candidates who could further the objectives of regulatory reform.

4. Scheduled a meeting with Virginia Knauer to assure that the President's announced goal of improved representation for valid consumer concerns in regulatory proceedings is achieved.

5. Discussed the effort with the Public Liaison office (Bill Baroody's shop) to assure that the Review Group can be exposed to the flow of interest groups and individuals coming through the White House system.

Very shortly, we will arrange a meeting to discuss scheduling of regulatory reform speeches and events with Warren Rustand (and maybe Jim Connor and/or Jerry Jones).

As a follow-up to the Congressional and Commissioner meetings, the Review Group has sent -- or drafted -- letters to the twenty-four Congressional members, the Congressional staff group members, the Independent Regulatory Commissioners and the Counsels of the Commissions. Rod Hill has -- or will have -- cleared these with you.

In response to the President's directive to his Cabinet officers and Agency heads, a letter has been drafted to the six primary regulators (EPA, FEA, DOT, DOL, USDA and HEW). The Regulatory Reform Review Group will meet with the heads of these departments and agencies during August to develop firm objectives for regulatory reform achievements by the end of 1975. OMB and Domestic Council staff will be involved in this process, as appropriate.

To reduce Independent Agency regulatory delays, a Task Force of the Justice Department, the Administrative Conference of the U.S. and others led by Cal Collier (Associate Director of OMB and formerly Counsel of FTC) will begin to work on ways to speed up the proceedings. This is a long and arduous challenge.

On the legislative front, the Review Group will begin to work with the relevant parties in order to insure Congressional action on legislation already submitted. The legislation and the lead agencies:

1. Fair Trade Law Repeal --- Justice
2. Energy (Oil and Gas Deregulation) --- FEA
3. Financial Institutions Act --- Treasury
4. Railroad Revitalization Act --- DOT
5. Increased Resources and Certain New Authority for Antitrust Division and FTC --- Justice & OMB
6. State Utility Procedures Reform --- FEA

Obviously, the Review Group will have to determine where its limited resources might do some good.

In addition, the Review Group is working with the ad hoc task forces finalizing three pieces of new legislation:

1. Truck Bill. A final decision paper has been submitted by Jim Lynn to the President and legislation should soon be ready. See Tab B.

2. Airline Bill. The Review Group is working to see that a bill is swiftly finalized. A decision paper is going to the EPB, hopefully, on Wednesday or Thursday of this week. See Tab C for draft. Soon thereafter it should be ready for a final Presidential decision.

3. Robinson-Patman. Justice is taking the lead in testing the Congressional waters. Once that is completed, Presidential decision on the options and the strategy will be sought. See Tab D for latest draft of Status Report with Options.

Finally, some work is being done -- or monitored -- on various other initiatives:

1. Cable TV Bill (Domestic Council: (Lynn May)
2. Insurance Antitrust Immunities (Antitrust Immunities Task Force)
3. Federal Maritime Commission Reform or Repeal (Council of Economic Advisers)
4. Tax Incentives Approach to Environmental Safety Legislation (OMB and Treasury).
5. Insurance Antitrust Immunities (Justice)
6. Inflation Impact Analysis (OMB)
7. Agricultural Cooperatives Antitrust Immunities (Justice)
8. State and Local Regulatory Reform (OMB)

THE WHITE HOUSE

WASHINGTON

July 16, 1975

MEMORANDUM FOR: ECONOMIC POLICY BOARD

FROM: ROD HILLS RH

SUBJECT: Domestic Council Review Group on Regulatory Reform

The President has given the Domestic Council responsibility for coordination of his regulatory reform effort. To this end, the Domestic Council has established a Review Group on Regulatory Reform to serve in the coordinating role. Included in this Review Group are:

Member	Working Representatives
Counsel's Office	Rod Hills
Domestic Council	Paul Leach
	Lynn May
Council of Economic Advisers	Paul MacAvoy
Office of Management and Budget	Cal Collier
	Stan Morris
Department of Justice	Jon Rose
Council on Wage and Price Stability	George Eads

Jim Cannon has designated me as Executive Director of this Group and Paul MacAvoy and I will serve as principal spokesmen. Paul Leach is the Domestic Council staff person with primary responsibility for staff coordination.

Where appropriate, other Executive departments and agencies and White House staff will be involved. Major economic regulation initiatives will be presented to the Economic Policy Board.

It is anticipated that all staff resources necessary to achieve the President's regulatory reform objectives will be provided by the White House staff groups and Executive departments and agencies.

The principal goal of the Group is to achieve tangible reform in the next year --- reduction of Commission activities where unnecessary and improvements in the efficiency of operation where there is a strong rationale for continued regulation. To deliver on the President's goals, we must have concrete results this year. A secondary goal for 1975 is to have results and a second year program by the time of the State of the Union Address.

The attached draft of an Agenda for the July 18 Review Group meeting provides a brief picture of where this effort is going during 1975.

DRAFT 7-17-75

DOMESTIC COUNCIL REVIEW GROUP ON REGULATORY REFORM

Meeting Agenda - July 18, 1975

I. Legislative Activity (with primary responsibility)

A. Legislation Before the Congress

1.	Railroad Revitalization	Legislation submitted. House Commerce Committee is holding hearings. Some legislation possible this session. OMB & DOT
2.	Natural Gas	Continue to push for de-regulation of natural gas. Speedy congressional action unlikely. OMB & FEA
3.	Financial Institutions	Legislation submitted, but some legislative action likely in this Congress. OMB & Treasury
4.	Fair Trade	Legislation submitted. Push for repeal, which should happen in 1975, and take credit with signing ceremony. OMB & Justice

B. Legislation Being Developed

1.	Trucking	Send bill to Congress by August with Presidential message and press briefings. OMB & DOT
2.	Airlines	Send bill to Congress by September with Presidential message and press briefings. OMB & DOT
3.	Robinson-Patman	Finish proposed bill by August. Send to Hill with Presidential message and press briefings. OMB & Justice

4. Cable T.V. — Develop and consider legislation by September. Domestic Council & OTP

C. New Areas to be Considered

There are a variety of new areas where a policy review might be undertaken. These range from (a) a major overhaul or abolition of existing agencies, e.g., the FMC, (b) determination of the long-term regulatory role of FEA, (c) development of effective anti-trust policy particularly with respect to the Clayton and Federal Trade Commission Acts to (d) creation of incentives rather than use of the rule-making approach to health, safety and environmental regulations.

II. Follow-Up to the Regulatory Summit

1. Presidential letter to Commissioners sending transcript of July 10 meeting and asking for:

   - Specific plan to reduce delays
   - Description of economic analysis activities

2. Follow-up with continual contacts at both Commissioner and staff levels to see that internal reform effort continues.

3. Encourage Congressional committees to hold oversight hearings on delays in each Agency.

4. With Justice making major contribution, set up group to propose changes in the procedures of the Agencies. Changes can be internal or legislated.

5. Closely control Commission appointments. Develop list of acceptable candidates and committed deregulators.

6. Establish group to work with Independent Agencies in improving economic analysis.

7. Push FPC to allow interstate shipment of natural gas which is purchased by industrial firms in the intrastate (unregulated) market.

III. Regulation by Executive Departments and Agencies

1. Presidential effort to get Cabinet (and other) officers committed to reform. Announce meetings between Review Group and Cabinet officers to obtain specific 1975 reform objectives.

2. Develop a full catalog of agencies: Their responsibilities, weaknesses and opportunities for improvement.

3. Target several "dependent" agencies where the Review Group can concentrate its efforts.

4. Examine and assist FEA task force efforts to remove bottlenecks in development of new energy projects.

IV. Congress

1. Presidential letter to 24 Members to report on Independent Commissions meeting. Draft completed.

2. Continue contacts with Congressional regulatory reform group and their staff.

3. Schedule another meeting with Members after Labor Day.

4. Closely monitor legislative strategy on all regulatory reform bills to insure White House coordination.

V. Speeches and Other Events

1. Develop speech for President to give consumers on the impact of regulation on consumer costs, then schedule.

2. Develop speech for President to give to a "special interest group" in which he talks tough on the need for regulatory reform, then schedule.

3. See that Paul Theis has materials necessary to keep regulatory reform in a variety of Presidential speeches.

4. See that a group of spokesmen for the Administration begin to emphasize regulatory reform in speeches.

VI. Press

1. See that President is continually briefed on status of regulatory reform and has talking points for interviews.

2. Work with Press Office to educate general and specialized press about the Presidential effort.

3. Monitor press reports and editorials. Reply where necessary.

VII. State and Local Regulatory Reform

1. Finalize State and local task force on regulatory reform.

2. Articulate Presidential interest in this area.

VIII. Organization and Management of Effort

1. Set priorities for activities and assign responsibilities.

2. Insure availability of staff resources needed to achieve President's objectives.

3. Provide for regular coordinating meeting.

4. Develop routine status report.

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: Reform of Truck Regulation

On May 19, you sent the Railroad Revitalization Act to Congress with a message stating that it was to be the first in a series of transportation regulatory reform bills and that truck and airline legislation would follow shortly.

An Executive Branch task force comprised of the Departments of Transportation and Justice, CEA, CWPS, and OMB has now completed the drafting of a truck bill. This bill is specifically designed to enhance competition in the trucking industry by providing increased pricing flexibility, permitting greater ease of entry, and eliminating antitrust immunities for most rate agreements. We expect such action to result in reduced rates and improved trucking services. A more detailed summary of the bill's provisions is provided at attachment A.

There are, however, two major issues that have not been completely resolved: (1) Should the Administration propose the elimination of all economic entry restrictions or do we stop short of free entry; and (2) what legal standards should be used to judge truck mergers?

Under Rod Hills' leadership the group has spent the last week attempting to reach a compromise. These negotiations are now to a point where, although the Justice Department is still of the firm opinion that a good case can be made for proposing a gradual phasing to free entry, in the interest of getting a truck bill to Congress before the recess, they are willing to compromise and stop short of complete decontrol. They do, however, feel very strongly about the need to subject truck merger cases to normal antitrust law. Accordingly, this issue is presented for your decision.

Background of Merger Issue

At present, the ICC has authority to approve truck mergers

and thus exempt such transactions from the antitrust laws. In the past, truck mergers and the ICC processes for dealing with them have not presented a particular problem. However, consistent with the Administration's announced goals of removing unnecessary antitrust immunities and increasing reliance on the antitrust laws, the Justice Department feels that ICC truck merger approval authority should be rescinded and that proposed mergers should be subject to the same competitive standards as other industries, i.e., Section 7 of the Clayton Act (as amended). This statute forbids mergers that may substantially lessen competition or tend to create a monopoly "in any line of commerce in any section of the country." It is the traditional antitrust standard applied to merger transactions.

DOT is opposed to the use of Section 7 as the standard for truck mergers because they feel it is too stringent and will prevent many beneficial mergers from taking place. They point out that in an industry of some 15,000 regulated firms, there is little danger of monopoly and are reluctant to change present ICC merger procedures which in the past have worked well. However, if a change is to be made, they feel the Administration should propose a standard which will take into account the "special characteristics" of the trucking industry. Put simply, their concern is that Clayton Section 7 will be mechanically applied as a "litmus test" of per se illegality. For example, if a proposed merger were shown to produce a beneficial or a neutral effect on competition in 10 markets but would have an adverse effect on the 11th market, DOT fears it will automatically be declared unlawful under Section 7.

In addition, DOT suggests that the ICC has created a highly complicated patchwork system of commodity and routing restrictions. Therefore, they are concerned that determination of a merger's anticompetitive effects under Section 7 will necessitate lengthy litigation.

Justice, on the other hand, points out that a number of recent merger cases clearly demonstrate that courts do take into account special characteristics of the industry in question as well as the particular economics of the market in which the merger is proposed. They contend that a prima facie case of illegality can be rebutted by a proper showing that anticompetitive effects will not occur and cite bank merger cases as evidence of how competitive conditions and

special circumstances involved in an individual merger are considered in a court decision. Furthermore, Justice points out that the courts do recognize that a merger can have anti-competitive effects in only some of the markets served by merging firms. In such cases, the court decision can be and frequently is structured so as to prevent the anticompetitive results while allowing the merger to occur.

Alternatives

Alternative 1. Include in the bill a provision to subject truck mergers to normal antitrust proceedings under Section 7 of the Clayton Act.

Pro

-- This provision recognizes a growing concern in the Congress and various parts of the Administration over the need for a strong antitrust policy to accompany the regulatory reform effort.

-- It eliminates special antitrust treatment for the trucking industry which Justice feels is indefensible in light of the economics of the industry and the fact that unregulated trucking is already subject to Section 7.

-- Legislative language to substitute Section 7 for ICC consideration has been drafted and could be added to the bill.

Con

-- DOT feels Section 7 is too stringent a test for truck mergers.

-- They feel it will not consider the special characteristics of the trucking industry, i.e., how under Clayton does one weigh a merger's beneficial effects in some markets against the anticompetitive effects in others?

Alternative 2. Include in the bill a special merger standard to be used by the courts to test proposed truck mergers.

Pro

-- This approach is specifically designed to take into account the special needs of the truck industry.

-- It would be written to specifically allow mergers that would produce improved trucking services while maintaining protection against anticompetitive effects.

Con

-- This approach sets a bad precedent for resolving Section 7 problems by writing new standards for each industry thought to have "special" characteristics.

-- It would delay submission of the truck bill until the task force drafts and agrees on the new standard. This means at least a two-week delay; therefore, we could not submit the bill before the August recess.

Because the decision centers on differing legal interpretations of a statute, White House counsel was asked to provide a separate opinion. It is their feeling that we should not be attempting to solve problems caused by the Section 7 standard by writing new merger tests to fit the "special" characteristics of each industry. If Section 7 is a problem, the Justice Department should undertake to examine the standard as a separate issue and propose appropriate changes. Accordingly, they support Alternative one.

Decision

Alternative 1 _____ (Supported by: Justice, CEA, CWPS, OMB)

Alternative 2 _____ (Supported by: DOT)

Attachments
1. Summary of the Bill's Provisions
2. Background of ICC Regulation of the Trucking Industry
3. Analysis of Need for the Bill
4. Draft Presidential Message

cc:
DO Records
Director
Director's Chron
Deputy Director
Mr. Collier
Mr. Morris
EG/MD:Return; Chron
EG/MD:DSteed kml 24 Jul retyped 28 Jul 75

TRUCKING REGULATORY REFORM ACT
SUMMARY OF PROVISIONS

I. Improvements in ratemaking

Pricing flexibility. The bill would create a no-suspend zone, to be phased in over a three-year period, to permit truckers to adjust rates up or down within certain percentage limits without ICC interference. (Phasing of the zone corresponds to that proposed in the Railroad Revitalization Act (RRA) -- 7% first year, 12% second year, and 15% third year.) After three years, the ICC would be prohibited from suspending any rate decreases so long as variable costs are covered, and carriers would be able to raise rates 15% per year without suspension.

Expediting Hearings. The bill provides that all but exceptional rate hearings must be completed in seven months (similar to RRA).

Discrimination. The bill clarifies present law regarding the use of discrimination as a reason for protesting rates. Under new provisions, only shippers directly affected by the rate change may allege discrimination.

Impact Study. The bill directs the Secretary of Transportation and the ICC to study the effects of the proposed changes in ratemaking to be completed in thirty months.

II. Restrictions on Anticompetitive Practices of Rate Bureaus

Discussions and Agreements on Rates. The bill prohibits rate bureaus from voting on rates involving single line movements -- that is, where one carrier provides the complete service. Discussion and voting on joint and through rates where more than one carrier is involved will be limited to those carriers which hold themselves out to participate in the movement.

Rate Bureau Protest of Rates. The bill prohibits rate bureaus from protesting or seeking to suspend rate proposals.

General Rate Increases. Three years after enactment, the bill would prohibit the use of across-the-board changes in freight rates. This goes further than the RRA which permits continued use of such increases when fuel or labor cost increases are involved.

Expediting Procedures. The bill requires rate bureaus to dispose of proposed rate changes within 120 days of filing. It also requires that the bureaus maintain and make available for public inspection voting records of its members.

Administrative Services. Like the RRA, the truck bill proposed no change in the administrative services provided by rate bureaus, e.g., publishing rates, collecting statistics, etc.

III. Increased Ease of Entry

The bill proposes to ease entry restrictions in several ways:

-- It narrows current ICC entry standards by directing the ICC to consider the positive effects of the proposed entry, e.g., lower operating costs, improved service, etc. and prohibits it from considering the negative effects of entry on existing carriers.
-- It directs the ICC to grant entry to an applicant demonstrating he is fit,willing and able to provide a service at a rate which covers his actual costs.
-- It directs the Secretary of Transportation to promulgate methods to calculate actual costs and subjects these methods to expeditious review by the District Court of Appeals so as to eliminate lengthy litigation over cost on each and every entry proposal.
-- It calls for a three-year DOT/ICC study of the effects of the new standards on the quantity and quality of truck transportation services, on the financial condition of the industry, and on rates. At the end of the study, the Secretary could propose new legislation seeking further liberalization of entry in order to realize the full benefits of competition in the industry.
-- In cases where entry is protested and ultimately granted in spite of the protest, it would place the burden of litigative costs on the protestant rather than the applicant, thus encouraging entry attempts.
-- It proposes expansion of a number of areas of unregulated trucking, e.g., to permit free entry to serve new plants, to remove restrictions now placed on private carriers, to exempt small owner-operators from ICC regulation, etc.

IV. Revisions in Merger Provisions

The specific provisions to be included in the bill will be determined once a Presidential decision is made on Administration policy in this area.

V. Other Provisions

A. Aircraft Exemption. The bill expands the current exemption for trucking service incident to air transportation from 25 to 100 miles.

B. Private Carriage. The bill would remove unnecessary restrictions on firms who operate their own trucks in furtherance of their principal business. Specifically, it would permit them to carry goods for their affiliates and allow them to lease their vehicles and drivers for short periods of time.

C. New Plant Service. The bill would exempt carriers from obtaining ICC approval to serve a new plant in order to facilitate a new firm's ability to secure truck service. A new plant is defined as any plant less than five years old or which is shipping and receiving new products.

D. Contract Carriers. The bill would remove unnecessary restrictions on carriers which operate dedicated service to individual customers by allowing these carriers to hold both common carrier and contract authority over the same routes, and by specifying what factors the ICC may or may not consider in granting contract certificates.

E. Commercial Zones. The bill directs a DOT study of the present system governing metropolitan transportation zones to determine whether legislative change is required.

F. Backhaul Authority and Commodity and Routing Revisions The bill would allow small owner-operator truckers to carry regulated commodities on their backhaul trips without seeking specific ICC authority. In addition, the bill directs the ICC to take all steps necessary to remove unnecessary commodity and routing restrictions.

TRUCKING REGULATORY REFORM ACT

BACKGROUND OF ICC REGULATION OF THE TRUCKING INDUSTRY

In 1935, Congress passed the Motor Carrier Act which extended regulatory authority of the ICC to cover motor carriers as well as railroads. (In 1940, this Act became Part II of the Interstate Commerce Act). This Act gives the ICC authority to regulate basic economic activities of the trucking industry--rates, entry, and financial transactions including merger. In general, the ICC has the power to dictate what markets a carrier can serve, what commodities he can transport over what routes, and what price he can charge.

Over the years, a number of trucking activities have been granted exemptions from economic regulation from the ICC. For example, carriers of raw agricultural products are not bound by ICC regulation. Trucking services performed incident to railroad, watercarrier, and air transportation are exempt as are carriers exclusively engaged in the transportation of newspapers. Intrastate carriers are exempt from ICC regulation. As a result, the ICC presently regulates, from an economic standpoint, only about 50% of the trucking industry.

From the beginning, trucking regulation was heavily patterned after ICC regulation of the railroad industry, with the ICC having considerable discretion over the precise application of their very broad and general statutory mandate. Accordingly, decisions have been made on a case-by-case basis and the ICC has historically become a protector of the regulated industry--minimizing competition, holding rates at higher levels than necessary, and discouraging new service innovations which might better respond to consumer needs.

While this finite regulation and control of common carriers has resulted in numerous inefficiencies, studies of unregulated truck transportation have shown that this sector tends to be efficient and economical and to provide good service to its customers--often better service than is found in regulated trucking. However, the different systems of rules governing regulated and unregulated trucking currently only serve to compound the problem.

For example, while unregulated agricultural carriers enjoy the freedom to set their own rates and select their own routes, they are limited to carriage of agricultural products only and are not authorized to carry processed food products or any

other type of non-agricultural commodities on return trips. Often unregulated carriers simply break the law and carry illegal commodities so that they can spread their costs over the whole trip, providing more economical service. However, by restricting entry, the ICC is creating costly inefficiencies and indirectly encouraging violation of their own rules. As some economists have pointed out, there would appear to be no reason why regulated and unregulated carriers should not be allowed to compete for service, thus providing more efficient, less expensive transportation services for all shippers.

The Administration's proposed bill has been designed to gradually reduce or eliminate excessive ICC regulation. The reforms included in the proposed Trucking Regulation Reform Act have been carefully drafted to complement reform provisions of the Railroad Revitalization Act. These provisions provide for increased pricing flexibility, elimination of antitrust immunities for most rate agreements, liberalization of carrier entry requirements, and an expansion of existing exemptions applicable to unregulated trucking. In general, these proposals are designed to increase the efficiency of the industry as a whole in order to provide the customer with the best possible trucking service at the lowest possible cost.

DRAFT

TRUCKING REFORM ACT

ANALYSIS OF THE NEED FOR THE BILL

Earlier this year, the Administration proposed the Railroad Revitalization Act (RRA) designed to improve the economic regulation of the railroad industry. Like the RRA, the basic thrust of the Trucking Reform Act (TRA) is to improve the economic use of resources, to save fuel and to eliminate unnecessary regulation.

A discussion of the major problems of the trucking industry which the bill addresses, along with an analysis of the effect of the bill in redressing these problems follows.

Improvements in Ratemaking

The current system of motor carrier rate regulation severely limits the ability of individual motor carriers to establish new rates and innovative services. Current ICC ratemaking rules prevent an efficient use of resources in several ways:

(1) Rates are higher, on average, than adequate to attract the resources necessary for an efficient motor carrier industry. There is excess investment, too much fuel is used, and the general level of prices is inflated.

(2) Regulated rates do not allow shippers choice between alternate levels of service and price.

(3) Regulated rates are insufficiently related to the costs of providing the specific transportation to which each rate applies. At present, rates which are below variable cost are sometimes not allowed to be raised, other rates which are well above variable cost are not allowed to be reduced. Consequently, distortion between different classes of shippers, different regions and urban and rural areas occurs.

As a consequence of the rate structure described above, carriers compete on the basis of the service they provide. For example, in order to attract customers, a carrier may increase pickup frequency, and reduce transit time. To provide this "improved" service, the carrier must increase his costs and operate with vehicles that are not as fully loaded as they should be. The customer, however, might prefer a lower "quality" less costly service, but has no way to opt for such an alternative within the common carrier system. Shippers have had to switch to private carriage, adjust inventories, and even their locational decisions have been affected by their inability to secure price and service combinations needed to stay competitive.

The basic thrust of the TRA is to place greater reliance on competitive forces in ratemaking while preserving the protection of appropriate regulatory supervision for shippers and carriers. Giving greater scope to individual carrier initiative in rate setting will result in a more economic distribution of traffic among the modes, a greater variety of service alternatives, and a lower and more equitable overall freight bill. It does this in the following way:

(a) The bill provides that a carrier's rate may not be found unlawfully low provided it is above the carrier's variable cost for the specific transportation in question. In addition, the ICC would be prohibited from approving rates which are below variable cost and from disallowing a rate increase which brought the rate up to variable cost. This provision would encourage price competition and move the rate structure closer to cost-based rates. It would also enable carriers to innovate with a wider range of price/service combinations.

(b) The bill also creates a no-suspend zone in which increases or decreases, other than general rate changes, could not be suspended pending investigation for being too high or too low, although they still could be suspended for violating sections 2, 3, or 4 of the Interstate Commerce Act, which are the basic sections prohibiting discrimination and prejudice to either an individual shipper or community.

The no-suspend zone would be phased in over a three-year period (up to seven percent rate increases or decreases in the first year;

12 percent in the second year; 15 percent in the third year; and thereafter 15 percent for increases and unlimited decreases). This no-suspend zone is a refinement of the approach proposed in the Transportation Improvement Act which did not include a provision for phasing. It is similar to, but of longer duration than, the provision in the House-passed Surface Transportation Act of 1974. It is identical to the no-suspend zone in the proposed Railroad Revitalization Act.

The no-suspend zone will allow carriers to respond repidly to market conditions and will improve the rate decision making process. Today, rate cases are often decided in a world of hypotheticals and "maybes." When rate proposals are suspended by the ICC, the hearing on the lawfulness of the rate is without the benefit of real world experience regarding the effect of the rate. The no-suspend provision will change this process, and allow rates within the zone to go into effect prior to hearing, thus providing concrete facts for the decision maker.

The three year phasing of the no-suspend zone will give carriers time to adjust their fleets because trucks have a short working life. The bill will also provide that the ICC must make findings similar to those required in temporary restraining orders before ordering a suspension.

(c) To expedite the hearing process, the bill will require the Commission to complete its rate hearings and render a final judgment within seven months of the time the rate was scheduled to go into effect. This time limit could be extended an additional three months if the Commission made a written report to Congress explaining the need for the delay. At present, there is no time limit and the average motor carrier rate case requires more than a year. The time limit should greatly expedite Commission rate proceedings.

(d) Carriers will be required to refund, with interest, that portion of the increased rate or charge found not to be justified by the Commission. This will discourage carriers from submitting rate increases which are within the "no-suspend" zone yet are not expected to be justified.

(e) The TRA also clarifies present law regarding the standing to raise the question of discrimination between various shippers. Because the possible discrimination is against a shipper, it should be raised by the shipper and this amendment prohibits carriers from raising the issue of discrimination. In addition, this amendment would restrict the standing of shippers to allege discrimination to those shippers directly affected by the rate change. A shipper may not protest a rate change on 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.

(f) In addition, the Secretary of Transportation shall, in consultation with the Commission, study the effects of these changes in rate making. The study shall be completed within 30 months.

Restriction on Anticompetitive Practices of Rate Bureaus

To assure that rate flexibility is not used anticompetitively and results in more competitive pricing practices, the TRA proposes significant changes to the provisions in the Interstate Commerce Act pertaining to rate bureaus. Section 5 (a) of the Interstate Commerce Act permits carriers subject to the Commission's jurisdiction to act collectively and collusively in establishing rates

When such action is taken pursuant to an agreement approved by the Commission, it is immune from the antitrust laws which apply to the rest of American business. Rate bureaus or carrier associations have been established pursuant to carrier agreements approved by the ICC. These rate bureaus are the vehicles through which carriers make decisions regarding the rates which the member lines shall charge.

Although rate bureaus provide a number of valuable services to their members and to the shipping public, they also dampen competitive forces in the rate making process and discourage pricing flexibility and service innovation. Rate bureaus discourage the establishment of rates based on the costs of the most efficient carrier and provide a mechanism through which carriers can set and keep rates above competitive levels.

Rate bureaus do provide a number of administrative services to carrier members, such as arranging for the interchange and facilitation of traffic moving via two or more carriers, the publication of rates, and the collection of statistics on traffic movements, rates charged, and related costs. The bill would not affect these administrative activities. It is addressed only to those activities of the rate bureaus which result in the establishment of non-competitive levels of rates.

The Commission has recently issued an order in Ex Parte Number 297, Rate Bureau Investigation, taking some of the corrective action needed. The Commission's order included a flat prohibition on rate bureau protests against members' independent rate proposals and establishes a 120-day maximum period for processing proposals. These changes will not eliminate the anticompetitive influence of rate bureaus.

The following provisions in TRA apply to rate bureaus.

(1) On single line rates, individual motor carriers will have complete freedom to propose rates, while on joint rates the influence of carriers not participating in the joint movement will be reduced. The bill prohibits motor carrier rate bureaus from voting on single line movements and limits consideration of joint line rates to those carriers which hold themselves out to participate in the joint movement. The bill also prohibits motor carrier rate bureaus from taking any action to suspend or protest independent rate proposals by members or non-members.

The proposed legislative change with respect to single line rate agreements would exert a competitive influence upon joint rates because carrier territories overlap and single line rates are often competitive with joint line rates. A single line carrier will often be in competition with two or more carriers offering a joint rate and through route. Nothing in this proposal would prohibit a single line carrier from individually establishing a rate competitive with a joint rate established through the rate bureau mechanism.

The bill does not preclude discussions or agreements relating to across-the-board percentage changes in freight rates during the first three years after enactment. But after that time they would not be allowed.

(2) Like the Commission's order, the bill requires all rate bureaus to dispose of proposed rate changes within 120 days from the time they are filed. However, unlike that order, it requires all rate bureaus to maintain and make available for public inspection the records of the votes of members. These provisions are designed to bring about speedier rate bureau treatment of proposed rate changes and to encourage initiative by individual carriers in making rate changes.

The Commission retains its present authority to review and approve all rate bureau agreements and to impose such additional limitations and conditions on the activities of rate bureaus as it believes are reasonable and necessary.

Relaxation of Overly Restrictive Barriers to Entry

At present, entry into individual trucking markets is restricted. The concept of "public convenience and necessity" has been interpreted by the ICC to require that carriers already operating in a market be allowed to carry all the traffic they can handle before another carrier is allowed to enter. The present entry restrictions are directed principally towards the well-being of existing firms and not enough at the interests of shippers and consumers as a whole. Hence consumers have suffered.

The Commission's entry policy has forced new entrants to narrow their applications to avoid markets where service is already provided. The resultant certificates restrict both routes served and commodities carried. An example of the artificially restricted certificates consider a regular route carrier with certification to service Baltimore, Philadelphia, and the towns in between, but without authority to carry goods between these two cities. Many irregular route carriers operate with certificates which narrowly specify commodities which may be carried from one part of the country to another. These certificates also often provide only one-way authority. Such restricted authority exacerbates the empty backhaul problem by reducing or eliminating the natural flexibility of operations essential to obtain efficient capacity utilization.

Taken together, the entry provisions of the TRA would substantially reform present entry procedure and allow entry as well as potential entry to play a much greater role in the natural regulation of market efficiency. Many of the inefficiencies which have crept into the industry during 40 years of regulation would be reduced or eliminated. The following changes in entry requirements are proposed.

(a) The TRA entry section broadens the focus of entry hearings which are conducted by ICC to include consideration of the shipper's preference for combinations of services and rates other

than those available from currently certificated carriers.

(b) Timeliness is an esstenial ingredient in any successful entry attempt. But in fiscal 1974, the average motor carrier operating authority case required over 10 months to resolve. This figure includes cases that are trivial route extensions that require little time. Controversial entry attempts can be expected to require even longer. Delays and their associated expense constitute a barrier to entry which does not discriminate between undesirable and desirable entry.

A simplified entry test is proposed which would reduce regulatory delay for those entry cases which have the potential for quick disposition. The TRA proposes to put a time limit on the consideration of such entry cases. In recognition of the backlog which now exists, a full year would be allowed for the consideration of applications which are submitted within the first 18 months after passage of this provision. After this transitional period, a maximum of 90 days would be allowed.

Under the proposed simplified entry test, the Commission would be required to issue a certificate: 1) if the applicant demonstrates that he is "fit, willing, and able"; 2) if the revenue derived from the proposed service will cover the "actual costs" of the service; and 3) if no protestant proves that the proposed rate is discriminatory. The Commission would be specifically prohibited from considering the adequacy of existing service or the effects of the proposed entry upon competitors.

In some cases, where information on the proposed service is difficult to project, the applicant may wish to utilize the cost of existing similar services as evidence of what the fully distributed cost on the proposed service will be. Provision for this has been made in the TRA. As an option, this provision will give carriers additional flexibility. But as a requirement, it would tend to frustrate any carrier which was more efficient than average or which proposed an innovation which lowered cost. Hence, the Commission would be prohibited from requiring industry-wide or system-wide information on cost or revenue.

(c) To insure that the proposed rate schedule used for entry is meaningful and relatively permanent, the bill provides that the Commission may require that it be put into effect for a period of up to one year. During that time, it could be lowered only in response to competitive rate reductions. On the other hand, to prevent harrassment, the rate schedule may not be suspended or set aside as being unlawful for a period of two years.

(d) In addition, the Secretary, with the cooperation of the Commission, is required to conduct a study of the effects of the entry standards on the performance of the trucking industry. This study shall be completed and submitted to the Congress by the end of the third year following enactment of the bill.

(e) The TRA also provides for improvements to the flexibility of contract carriers. 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 assighment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer."

Historically, the Commission has favored common carriers over contract carriers. The Commission has done this by restrictively interpreting the public interest to favor existing carriers and by arbitrarily imposing a rule of seven: even though an applicant satisfies all of the tests necessary for the granting of the certificate, he will be denied the certificate if he already serves seven shippers under contract. 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.

The TRA removes these unnecessary restrictions on contract carriers by changing the entry test which the Commission presently applies to contract carriers.

1. The Commission would no longer be authorized to consider the effect upon other carriers when deciding contract carrier applications.

2. The Commission would be prohibited from considering the number of shippers a carrier provides service to when deciding an application where facilities are dedicated to the shipper.

3. Where facilities are not dedicated, the Commission may consider the number of shippers, but any group or association of shippers must be counted as one shipper.

4. Carriers would be permitted to hold both common and contract authority over the same route provided that the contract carriage rates are above variable cost.

Due to the inherent imbalance of agricultural commodity flows, carriers of exempt commodities are forced to run empty a substantial portion of their mileage. They typically carry exempt agricultural commodities from rural to urban areas and find it difficult to secure loads in the return direction due to their lack of authority to carry other commodities.

An additional section would, therefore, allow carriers to haul regulated commodities on their backhauls without specific authority provided that:

1. The backhaul is subsequent to the movement of an exempt commodity.

2. The carrier owns or leases three or fewer trucks.

3. The backhaul is in the general direction of the area in which the vehicle is housed.

4. Revenue under this provision is not more than 100 percent of revenue from the carriage of exempt commodities.

5. The rate charged is contained in an approved tariff which has been published by (or for) an ICC regulated carrier. A carrier operating under this provision would have no ability to set rates but would be allowed to use any approved tariff.

This provision will save fuel and other scare economic resources by improving the efficiency of the many thousands of small exempt carriers and owner-operators.

The Facilitation of Truck Movements Which Are Incidental to Air Freight Service

The Interstate CommerceAct exempts from economic regulations transportation of persons or property by motor vehicle "when incidental to transportation by aircraft." 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; (2) part of a continuous movement received from or delivered to an air carrier; and (3) on a through air bill of lading. The size of the "terminal area" as determined by the ICC has been too restricted, resulting in some truck movements being regulated even though they are incidental to air freight. The TRA therefore, extends the size of the exempt zone to the area within 100 miles of the airport.

Facilitation of Motor Freight Services to New Plants

Under the present regulatory system, service to a new plant must be approved by the Commission, unless the commodities being shipped are exempt or the movement is entirely within one State. As a result, securing new service can be a problem for any firm contemplating the establishment of a new plant.

The TRA provides an exemption from this requirement for any plant which is less than five years old or which is shipping and receiving new products. In addition, any motor carrier which serves under this exemption for two years shall be granted authority to continue serving permanently.

Removal of Unnecessary Certificate Restrictions

The ICC has imposed restrictions on operating certificates that unnecessarily restrict the yypes of commodities that carriers may transport and that require carriers to follow unnecessarily circuitous routes. These restrictions have resulted in inefficient use of the nation's motor transportation capacity and in waste of fuel.

The TRA directs the Commission to take all steps necessary to broaden the categories of commodities that may be carried and to remove all restrictions requiring wasteful and circuitous routes. As a part of this relaxation, two specific steps are required. First,

the ICC is required to allow any carrier to offer direct service, by-passing any present gateways, provided that the carrier had previously been providing a significant amount of transportation via the circuitous route. Second, the ICC must broaden the present deviation rules and increase the maximum deviation to 25 percent. These provisions would apply to both regular route and irregular route carriers.

A Study of the Need for Change in Commercial Zone Legislation

Local motor freight transportation is unregulated. The zones within which transportation is considered local (commercial zones) are generally larger than the central city but smaller than the metropolitan area. Changes in the boundaries of the zone can have a major impact since firms which are included in the zone have a wider choice of transportation services.

The TRA directs the Secretary of Transportation, in consultation with the Commission, to undertake a comprehensive study of the present regulatory system relating to commercial zones, to determine if this present regulatory system is consistent with present economic realities, and whether there is need for regulatory or legislative change. The study shall be completed and submitted to the Congress within two years.

Provisions Allowing More Efficient Utilization by Private Carriers

Private carriers are firms whose main business is outside of transportation but who operate trucks in furtherance of their main business. Presently, they are allowed to carry their own or exempt commodities but are prohibited from carrying goods for their affiliates on a for-hire basis, and are specifically forbidden to lease their trucks to regulated carriers for periods shorter than 30 days. Both of these restrictions make it unnecessarily difficult for private carriers to utilize their vehicles on backhauls (return trips).

The TRA would permit private carriers to carry freight on a for-hire basis for affiliates. Two firms are regarded as affiliates if either firm owns 51 percent of the stock of the other, or if a third firm owns 51 percent of both. This will improve the efficiency of any firm where affiliates have freight which is moving in opposite directions. Savings of several kinds will result. For example, a recent study of 14 private carriers by the Department found that relaxing this one restriction could save 1.9 million miles and 480,000 gallons of fuel annually for these carriers alone.

The TRA would also permit private carriers to lease their vehicles and drivers to regulated carriers for short periods of time. This would enable the private carrier to utilize an otherwise empty backhaul by "trip leasing" equipment and drivers to a regulated carrier.

9/29/75

DRAFT PRESIDENTIAL MESSAGE

TRUCKING REGULATORY REFORM ACT

TO THE CONGRESS OF THE UNITED STATES:

I am, today, sending to the Congress the Trucking Regulatory Reform Act as part of the overall program of my Administration to strengthen our system of free enterprise. In recent weeks, I have observed a growing concern both in the Congress and the public at large for the need to take a fundamental look at our regulatory system and insist on some much needed modernization. This legislation responds to that concern in one major sector of the transportation industry.

This Act is the second in a series of legislative initiatives in our effort to achieve fundamental reform of transportation regulation. The Railroad Revitalization Act is already before the Congress. In the next few weeks, I will submit my proposals for the modernization of airline regulation. Together these proposals represent the most comprehensive set of reforms in the long history of economic regulation of the transportation industry.

Like the Railroad Revitalization Act, the basic thrust of this bill is to improve the economic use of valuable transportation resources, to conserve fuel, and to eliminate antiquated and unnecessary regulation. It is specifically

designed to enable trucking firms to carry a greater variety of goods by way of more direct routes at lower costs to our nation's consumers.

To achieve these goals, the bill proposes a number of amendments to the Interstate Commerce Act to remove the artificial barriers which today impose costly operating restrictions on the industry. Specifically, it provides trucking firms greater freedom to adjust prices to meet market conditions. It will permit greater ease of entry and place greater reliance on the natural forces of competition to improve efficiency. It will outlaw collective ratemaking activities of rate bureaus which currently stifle competition and discourage service innovation. In addition, the bill will subject merger transaction to court review under normal antitrust proceedings. Such action eliminates special treatment for the trucking industry whose economincs and competitive characteristics do not justify an exception to traditional antitrust practices. In short, it will reduce or eliminate many of the inefficiencies which have crept into the industry during 40 years of regulatory control.

Currently, not all trucking firms are subject to economic regulation. Since 1935 when the Motor Carrier Act was passed, extending ICC authority to regulate trucks as well as railroads, a number of trucking activities have been granted exemptions from ICC control. For instance, carriers of raw

agricultural products are not bound by economic regulatory constraints. Trucking firms engaged in intrastate operations and those involved in transporting their own goods are exempt. Studies of unregulated trucking indicate that these carriers provide efficient and economical transportation services -- often better service than is provided by regulated carriers. However, even these activities are in part affected by the intricacies of our current regulatory system. For example, while agricultural carriers are free to set their own rates and select their own rotues, they are limited to the carriage of agricultural products only. Thus, after delivering their goods, they are not allowed to transport processed food or non-agricultural commodities on their return trips. As a result, they are often faced with a choice of carrying unauthorized goods, thereby breaking the law, or returning home empty, thus wasting fuel and raising the cost of their services. The proposed bill includes a number of changes which would expand areas of unregulated trucking and reduce the backhaul problem by calling for a gradual abandonment of restrictive commodity and route regulations.

The importance of regulatory reform in our efforts to improve the efficiency of our transportation system cannot be overemphasized. Therefore, I urge the Congress to give this measure serious consideration at the earliest possible date.

The special interests will undoubtedly oppose these changes which must be made if the American public is to receive the full benefits of a more competitive, more efficient transportation system. But I am confident that the public benefits that will flow from the proposed reforms are so clear and so great that the Congress will act quickly to achieve them without delay.

C

The Airline Bill Memo is still being drafted and I will supply it to you when it is ready.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 17 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: Status Report on Robinson-Patman Act Reform

In March you announced your intention to seek legislation to reform the Robinson-Patman Act.

Since then, concerned agencies (Justice, Commerce, SBA, HEW, CEA, CWPS, and OMB) have explored several alternatives and three substantive options have emerged. The purpose of this memorandum is to provide you a status report.

The Robinson-Patman Act (RP-A) was enacted in 1936, in the midst of the Depression, essentially to help the small local grocers hold their position against the then emerging chain supermarkets. The RP-A has two main provisions: One is a civil prohibition on discriminating between different customers unless the manufacturer can show that his lower price is cost justified or is meeting the legitimate competition of another manufacturer. Persons injured by prohibited conduct are entitled to recover treble damages in private suits. The second is a criminal prohibition against charging "unreasonably low prices."

The statute is unusual. No other country except France has anything similar, and in France, the government refuses to enforce it.

The RP-A has not achieved its objective of heading off the creation of chain stores. In addition to this failure, it has reduced price competition and spawned a great deal of litigation.

Also, it has permitted in some manufacturing industries, a few firms to dominate the industry by encouraging parallel pricing practices and, occasionally, by outright conspiracy. The RP-A makes it harder for aggressive buyers to break these

pricing patterns and thus helps to prevent competitive pricing. Moreover, the Justice Department's experience in prosecuting criminal price fixing cases suggests that manufacturers, in satisfying the RP-A, have used that occasion to swap pricing information, thus further preventing competitive pricing.

Therefore, the need for reform is clear. If reform is successful, it would contribute significantly to your overall regulatory reform program which is aimed at eliminating costly government restrictive practices that tend to eliminate a healthy competitive market place. However, achieving reform will be difficult. The options that have been considered have been viewed primarily as ways to head off the inevitable opposition of those businesses who want to avoid effective price competition by relying on the civil aspects of the RP-A.

The following options have been considered.

OPTIONS

1. Outright repeal. All agencies, except the SBA, believe that outright repeal of the Act is -- on the merits -- from Robinson-Patman can be more rationally achieved from preserving the Sherman Act's prohibition on "attempts to monopolize." Some of your advisors believe that outright repeal has the added virtue of demonstrating the depth of your commitment to regulatory reform. However, repeal will be vigorously opposed by small business groups and has the least prospect of success in Congress. Moreover, a repeal proposal will be viewed by opponents as a pro-big business move to unleash corporate bullies to prey upon smaller firms through abuses of market power. It would be argued -- but not demonstrably -- that this could lead to more industry concentration.

2. Predatory pricing substitute. The Justice Department has drafted a legislative substitute for Robinson-Patman that would outlaw: overt threats by businesses to force certain pricing practices on their competitors; and sales below out-of-pocket costs (except to meet competition or to enter new markets). This substitute would significantly narrow the Robinson-Patman Act, minimizing or eliminating its use to restrain hard competition. It would provide some answer to critics of reform, including small business groups. However,

sophisticated observers would realize that the protections afforded to small business are illusory because violations would be virtually impossible to prove. Accordingly, critics would charge that the proposal favors big business and will also lead to increased concentration. Again, Congressional sponsors will be difficult to attract.

3. Revision coupled with predatory pricing prohibition.

The final option builds upon the predatory pricing substitute and also outlaws sustained price discriminations that systematically favor larger buyers or are likely to eliminate competitively significant firms from a market. This alternative would constitute a major improvement over the status quo, making it quite difficult to prove a violation. It might be more acceptable to members of Congress. However, the modification approach is not favored on simple economic grounds (it does not go far enough toward repeal), will not satisfy small business, and may be viewed as inconsistent with a real commitment to regulatory reform.

Because the public has a poor understanding of the costs imposed by the Robinson-Patman Act, because the small business community is deeply concerned, and because Congressional interest is low, we are proceeding as follows:

-- The lead responsibility on this issue has been assigned to the newly established Domestic Council Task Force on Regulatory Reform.

-- The Task Force will begin working with staff members representing the newly established group of 24 Congressmen and Senators with whom you recently met on regulatory reform.

-- Hopefully, we can look to this group to provide a Congressional constituency for reform of the Robinson-Patman Act.

-- A decision on which legislative solution to propose will be recommended after these consultations by the end of August.

File
Reg Reform

AGENDA FOR
DOMESTIC COUNCIL REVIEW GROUP MEETING

JULY 30, 1975 5:00 p.m.
THE ROOSEVELT ROOM

1. Follow-up items from 7/12/75 meeting (Leach)
   a. Summary of last meeting-clarifications (attached)
   b. Need to develop work plans for items assigned at last meeting.
   c. Comments on Status report and other organizational matters.
   d. Result of White House meetings (press, speech, etc.)
2. Status of Air and Truck Reform Legislation (Collier/Steed)
3. Results of ETIP meeting on Regulatory Lag (MacAvoy)
4. Results of Congressional Meetings on Robinson-Patman (Sims/May)
5. Ocean Rate Bureau Situation (MacAvoy)
6. Proposal for Inflation Impact Analysis Workshop (Collier)
7. Status of FPC - Intrastate Gas Purchase Rulemaking (MacAvoy)
8. Assignments/Follow-up

SUMMARY OF DOMESTIC COUNCIL REVIEW GROUP MEETING

WEDNESDAY, JULY 23, 1975
THE ROOSEVELT ROOM

1. Several items were followed up from last week's meeting:

   a. The status of the 121 brake standard.

   b. The progress on allowing industry purchase of natural gas in intra-State markets.

   c. Need to schedule meetings with six department heads following the President's remarks at the Cabinet meeting.

2. Establishment of Priorities for DCRG - there was general agreement on the following priorities and assignments:

   a. Continue efforts to achieve enactment of repealing fair trade laws, enactment of Financial Institutions Act and the Railroad Revitilization Act.

   b. Complete legislative drafting and submit legislation on:
      Truck Reform - OMB lead (Morris)
      Airline Reform - OMB lead (Morris)
      Robinson-Patman Reform - Justice lead (Sims)

   c. Develop issues and seek Presidential decisions on legislation for:
      Cable Television - Domestic Council (May)
      Insurance - Justice (Sims)
      Ocean Rate Bureaus - CEA (MacAvoy)

   d. Ensure that the following Presidential directives are fully implemented:
      Inflation Impact Analysis - OMB lead (Morris)
      Concentrate on Six Agencies to Reform Existing Regulations - Domestic Council (Leach)

   e. Monitor activity but do not concentrate effort on the following areas:
      Capper-Volsted - Agricultural Cooperatives - awaiting FTC report - Justice (Sims)
      Improve Consumer Representation - Hills
      Implement State and Local Task Force on Regulatory Reform - OMB (Morris)

f. There was no resolution as to what efforts should be undertaken in the areas of Antitrust or what should be the next steps with Independent Regulatory Commissions. Follow-up meetings with ETIP, Administrative Conference and Justice should result in a plan for the Commissions.

3. A bi-weekly status report was distributed with responses requested as to whether it was useful.

4. Robinson-Patman - Justice agreed to meet with House and Senate staff members in the next week and come back with recommendations for next steps.

5. Mr. Hills asked what assistance Ed Berger of NSF and his staff might provide to the effort. Some agreement that we might want to involve them in some long term reviews at a later point in time.

6. There was an assignment to prepare a concept paper on a tax incentives approach to Environmental Safety Regulations. A paper will be prepared for discussion at the August 13 meeting of the DCRG. - OMB/Treasury lead (Morris/Clarke)

THE WHITE HOUSE
WASHINGTON

July 28

TO: Jim Cannon

FROM: PAUL LEACH

FYI