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Transferring ICC's Rail
Regulatory Responsibilities
May Not Achieve Desired
Effects

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Messrs. Chairmen and Members of the Subcommittees:

We appreciate the opportunity to discuss the results of our review of the Interstate Commerce Commission's (ICC) regulatory responsibilities. In 1980, after ICC had extensively regulated transportation for nearly a century, the Congress substantially reduced ICC's jurisdiction over rail and motor carriers' rates and market entry and exit. Subsequently, several proposals have called for eliminating ICC altogether.

Concerned that the Congress have adequate information before making such a decision, the Chairman and Ranking Minority Member of the Subcommittee on Transportation and Hazardous Materials, House Committee on Energy and Commerce, asked GAO to evaluate ICC's current railroad regulatory activities and determine what might be gained by transferring these activities to other federal agencies, such as the Department of Transportation (DOT). My statement today responds to your request. In addition, because ICC allocates more than one-half of its resources to motor carrier activities my statement includes an overview of these functions as well. Our main points are as follows:

- In many instances, shippers have access to only railroads to carry their goods. In other instances, communities are faced with the prospect of losing rail service. The Congress has determined that the public interest is best served if the needs of shippers and communities for reasonably priced railroad services are balanced against the needs of railroads for adequate revenues. ICC is charged with this responsibility. The agency continues to (1) ensure that railroad rates are reasonable; (2) review and approve railroad mergers, abandonments, consolidations, and line sales; and (3) review and approve trackage rights applications and resolve disputes. In fiscal year 1993, about 37 percent of ICC's resources were devoted to these activities, while about 63 percent were devoted to motor carrier activities.
- With respect to motor carriers, ICC continues to issue operating certificates and receive tariffs. However, since few rate proposals or entry petitions are challenged today, these activities are largely a formality. As a result, many shippers, transportation brokers, and others question the scope of ICC's continued motor carrier rate and entry regulation. We found that in recent years ICC has had to adjudicate disputes that have arisen because the tariff rates filed by motor carriers have differed from the rates negotiated with shippers--called undercharge cases. Although adjudicating these disputes has substantially increased ICC's workload in this area, fewer such cases are expected in the future once the current cases are resolved. Many who support deregulation of motor carrier rate and

entry favor continued federal enforcement of ICC's ancillary functions, such as providing consumer protection for the movement of household goods. These functions have continuing value and will either need to be retained by ICC or transferred to other agencies.

- ICC's responsibilities for regulating railroads could be transferred to DOT and/or the Department of Justice (DOJ). However, a transfer could compromise the independence of the decision-making process without generating meaningful cost savings. In addition, a transfer of ICC's rail functions to DOT could create conflicts of interest with DOT's responsibility for investing in and promoting the rail industry, especially the intercity passenger rail industry. DOT administers federal funds for the National Railroad Passenger Corporation (Amtrak). Other alternatives for handling ICC's rail responsibilities include making ICC an independent commission within DOT, much as the Federal Energy Regulatory Commission was made an independent agency within the Department of Energy, or merging ICC with the Federal Maritime Commission. Although these alternatives could preserve ICC's independence, they would produce only minimal cost savings for the federal government.

Our review indicates a continuing need for an independent regulatory commission, such as ICC, to address rail competitive issues and adjudicate disputes. Budgetary savings might be achieved by further reforming motor carrier regulation, but any savings from changes in organizational responsibility for ICC's rail activities are likely to be small. Nonetheless, over the longer term there are basic questions that need to be resolved about the appropriate scope and extent of motor carrier tariff filing and entry application requirements in a deregulated environment.

BACKGROUND

ICC is the nation's oldest independent regulatory agency. In 1887, the Interstate Commerce Act established ICC as an independent regulatory agency and charged it with protecting the public from monopolistic and discriminatory practices by the railroads. The Motor Carrier Act of 1935 extended ICC's mandate to include interstate trucking and bus operations. For nearly a century, the Commission exercised extensive economic regulation over the nation's surface transportation industries. ICC controlled the rates that could be charged and decided which firms could transport which goods. In the early 1960s, the agency

employed nearly 2,500 people. Today it employs approximately 625. ICC's budget for fiscal year 1994 is approximately \$52.2 million.¹

In the mid-1970s and early 1980s, in response to changing market conditions and perceptions that excessive regulation had led to significant inefficiencies in the transportation sector, the Congress substantially reduced ICC's jurisdiction over rates and market entry and exit. The Staggers Rail Act of 1980, among other things, increased the freedom of railroads to set rates according to the demands of the marketplace. Similarly, the Motor Carrier Act of 1980 substantially reduced federal regulation of the trucking industry. Nevertheless, the Congress did not completely deregulate the surface transportation sector, and ICC continues to regulate, albeit less extensively, both the rail and the trucking industries. In addition, the Congress continues to be concerned that shippers forced to rely on a single railroad not be subject to unreasonable rates and that individual communities served by a single line not be deprived unnecessarily of rail service. ICC's current motor and rail regulatory functions, together with their staff-year allocations, are listed in appendix I.

ICC CONTINUES TO PERFORM IMPORTANT RAIL REGULATORY FUNCTIONS

We reported in 1990 that most shippers had benefited from declines in real rail rates and improvements in service since the passage of the Staggers Rail Act.² However, not all shippers saw their rates decline or their service improve. Some shippers, called "captive shippers," are on rail lines served by only one railroad. Although the Staggers Rail Act limited ICC's authority to review rail rates to instances in which (1) a railroad has market dominance--that is, it has no effective competition--and (2) the revenue-to-variable cost ratio exceeds 180 percent, ICC serves an important role by hearing complaints and ensuring that rates are reasonable. In fiscal year 1993, about 37 percent of ICC's 625 staff years were devoted to rail-related activities, and ICC issued 65 decisions pertaining to rail rate complaints.

The Staggers Rail Act also imposed time limits on the process for abandoning lines to help the railroads reduce their costs. However, ICC continues to review proposals for abandoning rail lines to ensure that shippers and communities do not lose rail service unnecessarily. In deciding whether or not to approve a petition to abandon a rail line, ICC is required by law to take into account (1) the financial interest of the railroads, (2) the

¹This includes \$7.3 million in revenue from such activities as collecting registration and filing fees.

²Railroad Regulation: Economic and Financial Impacts of the Staggers Rail Act of 1980 (GAO/RCED-90-80, May 16, 1990).

service and development needs of local shippers and communities, and (3) the public interest in maintaining a healthy, adequate interstate rail system. In addition under the Staggers Rail Act, the railroads are required to sell lines approved for abandonment to responsible, interested buyers. If the parties involved cannot agree on a purchase price, ICC is empowered to establish terms and conditions.

Finally, ICC maintains responsibility for reviewing and approving mergers and acquisitions of rail carriers and for resolving disputes over trackage rights. Like abandonments of rail lines, some mergers, acquisitions, and trackage disputes are controversial. For example, in one recent rail acquisition case, ICC imposed conditions on the sale to ensure that employees who lost their jobs would be adequately compensated. ICC also reviews and approves trackage rights applications. The importance of this role is likely to increase in the next few years as 97 percent of the tracks Amtrak uses is owned by freight railroads and Amtrak will be renegotiating the compensation it pays to use these tracks. Amtrak currently pays nearly \$100 million per year to use freight railroads' tracks. ICC is already reviewing one dispute between Amtrak and the Consolidated Rail Corporation over such compensation. Most representatives of the freight railroads we contacted expressed dissatisfaction with the current payments and may seek to increase their compensation. ICC will likely be called upon to help resolve disagreements stemming from Amtrak's renegotiation of agreements to use freight railroads' tracks.

POLITICAL INDEPENDENCE IS
AN IMPORTANT ICC ATTRIBUTE

The Congress recognized the importance of maintaining ICC's independence in 1966 when it declined to merge the agency into the newly created DOT. While no agency can be wholly immune from political influence, ICC's status as an independent agency has led to the general perception that the agency is an impartial authority for resolving disputes and ensuring that economic policies affecting surface transportation are carried out fairly and equitably. ICC's five commissioners are appointed by the President, with the advice and consent of the Senate. These appointments expire in a staggered fashion so that a single-term President cannot, except under unusual circumstances, appoint a majority. No more than three commissioners may be from one political party, and a commissioner may be removed from office only for neglect of duty or malfeasance in office.

Our review indicates that this independence is an important attribute valued by all sectors of the transportation community. None of the representatives from the trade associations we interviewed--associations representing most railroad carriers and shippers--favored transferring ICC's rail regulatory functions to an executive branch agency. The consensus was that there are

special benefits to having an independent regulatory agency, such as ICC, to adjudicate disputes and resolve issues affecting rail transport. In general, trade association representatives believed that transferring ICC's functions to DOT and DOJ would affect the impartiality of the decision-making, the ability to balance the interests of all concerned parties, and the accessibility of the process to the public and industry. In particular, some representatives said that small carriers and shippers could be hurt the most, since they would not have the resources to litigate their disputes in court if there were no ICC. According to the representatives, preserving ICC's independence is important to support unbiased decision-making.

REDUCING ICC'S MOTOR CARRIER RESPONSIBILITIES COULD LEAD TO BUDGETARY SAVINGS

Even though the Motor Carrier Act of 1980 largely deregulated the trucking industry, ICC's responsibilities in this area consume approximately 63 percent of the agency's staff year resources. About half of these resources were devoted to regulating rates and entry in fiscal year 1993. In 1993, legislation was proposed that would have eliminated regulation of motor carriers' rates and entry. This legislation is still pending. We estimate that ICC could reduce its total budget by about 30 percent if its responsibilities for regulating motor carriers' rates and entry were substantially reduced or eliminated.

Some Regulatory Requirements for Motor Carriers May Not Be Needed

The Motor Carrier Act of 1980 substantially reduced federal regulation of the trucking industry by easing entry restrictions for new firms, eliminating restrictions prohibiting a motor carrier from operating as both a common and a contract carrier, and increasing the number of exempt commodities.³ It also eliminated certain operating restrictions placed on regulated carriers (such as restrictions on which routes and how many shippers the carriers could serve). The act also encouraged greater price competition among motor carriers in general by phasing out ICC's authority to grant antitrust immunity for certain rate-setting activities. Nevertheless, ICC continues to have tariff and entry regulations for approximately 53,000 interstate for-hire motor carriers.⁴ ICC grants operating authority/licenses to new carriers, processes

³Interstate truck transportation of some agricultural products is exempt from ICC's jurisdiction. These products include livestock, feed, seeds, and unprocessed agricultural commodities.

⁴ICC exempts certain classes of interstate carriers--such as haulers of fruits, vegetables, and farm products--from regulation.

about 1 million tariff filings for rate changes, administers insurance requirements for interstate motor carriers, and enforces compliance with its regulations.

Even though the trucking industry is largely deregulated, the law still requires motor carriers to acquire operating certificates and file tariffs. In fiscal year 1993, ICC spent 100 staff years on rate regulation functions and 95 staff years on entry regulation functions. We found that common carriers' rates, which must be reflected in tariffs on file with ICC, are seldom challenged. However, in recent years ICC has been required to resolve disputes that arose because motor carriers' filed tariff rates differed from the rates negotiated with shippers--called undercharge cases.⁵ Over the last several years, these cases have substantially increased ICC's motor carrier rate regulation workload: As of May 1994, there were about 340 undercharge cases pending at ICC. The Congress recently enacted legislation designed to help resolve these cases.⁶ As a result, ICC expects its workload to decline over the next few years as these cases are resolved. ICC also grants about 10,000 motor carrier licenses per year.⁷ According to ICC, 99 percent of these applications are unopposed. In view of these facts, many shippers, transportation brokers, and others question whether the current scope and extent of tariff filing and entry application requirements are needed. Eliminating this regulation would require legislative action.

ICC is also responsible for other motor carrier functions. Commonly referred to as "ancillary regulatory functions," these include some aspects of safety and insurance regulation as well as responsibility for antitrust enforcement, cargo damage liability, data collection, owner-operator protection, household goods protection, and Mexican carrier registration. These functions accounted for approximately 38 percent of ICC's motor carrier resources (and 24 percent of ICC's total staff years) in fiscal year 1993. Many of those who support deregulation of rates and entry nevertheless favor continued federal enforcement of some of these ancillary regulations. In our 1987 report on trucking deregulation,⁸ we identified a number of ancillary functions--including providing consumer protection for the movement of household goods, protecting owner-operators, monitoring insurance and cargo damage liability, and collecting data--that many believe

⁵Trucking Transportation: Information on Handling of Undercharge Claims (GAO/RCED-93-208FS, Aug. 30, 1993).

⁶The Negotiated Rates Act of 1993 (P.L. 103-180, Dec. 3, 1993).

⁷This includes motor carriers of property and passengers.

⁸Trucking Deregulation: Proposed Sunset of ICC's Trucking Regulatory Responsibilities (GAO/RCED-87-107, Apr. 23, 1987).

would need to be continued either at ICC or at some other federal agency if ICC's rate and entry responsibilities were eliminated. We found no evidence to suggest that these activities are any less important today than they were in 1987.

Proposals have been made to reduce ICC's responsibilities for regulating motor carriers' rates and entry. For example, a legislative proposal made by Congressman Emerson in August 1993, H.R. 2860, "Trucking Regulatory Reform Act of 1993", would (1) eliminate motor carriers' tariff filing requirements and regulation for all rates set outside rate bureaus, and (2) streamline motor carriers' entry requirements.⁹ Enactment of this legislation would reduce ICC's need for resources devoted to regulating motor carriers' rates and entry. The House has yet to act on this bill.

Eliminating Rate and Entry Regulation Would Produce Budgetary Savings

The Congressional Budget Office estimates an initial annual savings of \$19 million if all of ICC's motor carrier responsibilities (including the ancillary functions) are eliminated and 300 staff years are cut.¹⁰ The annual savings are projected to increase to \$32 million within 4 years after the terminated employees have received all of their compensation, including severance and annual leave pay. We believe that ICC would save approximately \$17 million per year (32 percent of ICC's estimated fiscal year 1995 budget) if its motor carrier rate and entry regulations were repealed.¹¹ This estimate assumes that ICC would eliminate the 192 staff years budgeted for motor carrier rate and entry regulatory functions in fiscal year 1995 plus a portion of ICC's administrative overhead expenses.¹² We did not include the 149 staff years allocable to ancillary and finance functions. As discussed above, some of these activities, such as providing consumer protection for the movement of household goods, appear to

⁹Motor carrier rate bureaus are organizations of carriers created to analyze carriers' costs and file tariffs with ICC on behalf of its members. ICC regulates rates, charges, and other tariff conditions established by rate bureaus.

¹⁰This estimate assumes that ICC would cease to regulate motor carriers, intercity buses, interstate water carriers, and movers of household goods.

¹¹This estimate includes only current wages and salaries and does not include severance pay or annual leave pay for terminated employees.

¹²Alternatively, ICC might find that it needs to reallocate some of the cost savings to other areas that might already be underfunded.

have value and would need to be transferred to other federal agencies if ICC were sunset. However, it is unclear what benefits would accrue from simply shifting these activities to other agencies if ICC is to continue performing rail regulatory activities.

SHIFTING ICC'S RAIL FUNCTIONS TO DOT/DOJ COULD COMPROMISE ICC'S INDEPENDENCE AND YIELD ONLY SMALL COST SAVINGS

ICC's regulatory and adjudicatory responsibilities in the rail area could, in theory, be divided between DOT and DOJ. The responsibility for mergers and acquisitions could be assigned to DOJ, and the other activities could be assigned to DOT. However, transferring ICC's rail functions to DOT and DOJ could reduce the independence, or the perceived independence, of the regulatory process. In addition, if the transfers did take place, DOT and DOJ would probably have to acquire additional staff (or retain current ICC staff) in order to obtain the necessary expertise in rail issues. Depending on how many of ICC's staff would need to be absorbed or replaced by DOT and DOJ, the budget savings could be small and largely limited to reductions in administrative or overhead costs. In fiscal year 1993, administrative costs consumed about \$7.6 million of ICC's budget. On the basis of ICC's fiscal year 1993 allocation of staff between rail and motor carrier functions, we estimate that 37 percent of the agency's administrative costs (\$2.8 million) are assignable to rail activities.

Loss of Independence Could Result From Transferring ICC's Rail Functions

Transferring ICC's rail functions to DOT and DOJ could reduce the independence of rule-making and dispute resolution. In declining to merge ICC into the newly created DOT in 1966, the Congress reaffirmed its belief that an independent body was necessary to ensure that the regulatory decision-making process was free from partisan influence. Although the regulatory environment within which ICC makes decisions has changed substantially since 1966, ICC's remaining rail regulatory responsibilities continue to require an unbiased consideration of the public interest. Since both DOT and DOJ are part of the executive branch and the Secretaries of these agencies serve at the pleasure of the President, both are already subject to more direct partisan influence than ICC. In contrast, ICC is a bipartisan collegial body. Although its commissioners are appointed by the President and confirmed by the Senate, they may be removed only for cause. Therefore, transferring ICC's rail responsibilities to DOT or DOJ could expand a more partisan influence in the decision-making process. Representatives of the rail industry and shippers we spoke with expressed serious concerns about the loss of independence that could occur if ICC's rail responsibilities were transferred to other agencies.

Transferring ICC's rail functions to DOT could also create potential conflicts of interest, since DOT's responsibilities include investing in and/or promoting Amtrak. DOT administers federal funds for Amtrak, and the Secretary of Transportation sits on Amtrak's Board of Directors. Transferring ICC's responsibilities for resolving rate and service disputes among railroads, including Amtrak, to DOT could raise questions about DOT's ability to make unbiased decisions. For example, questions could arise about the appropriateness of DOT's deciding Amtrak's current dispute with the Consolidated Rail Corporation (Conrail) over Amtrak's payments for using Conrail's tracks. This case includes issues about how much is to be paid and how such payments are to be calculated, and it can be expected to have implications for the entire rail industry as Amtrak's current operating agreements with freight railroads are renegotiated over the next several years. Over the years, successive administrations have held different views on the need for intercity passenger rail service. Such policy considerations could, or could be perceived to, play a role in the outcome of the disputes between freight railroads and Amtrak.

Budget Savings From Transferring ICC's Rail Functions Would Be Minimal

ICC's rail functions could, in theory, be divided between DOT and DOJ. DOT could assume all of ICC's rail functions except the approval of mergers and acquisitions. Authority for this function could be transferred to DOJ. The amount saved from such transfers would likely be small, since neither agency is currently positioned to handle ICC's functions. The Federal Railroad Administration (FRA) is primarily responsible for regulating railroad safety. FRA officials told us they would need additional staff to gain the necessary expertise and handle the increased workload if FRA were to assume ICC's existing rail responsibilities. DOJ's Antitrust Division is responsible for evaluating industry mergers for possible anticompetitive effects. However, ICC maintains sole responsibility for approving or denying railroad mergers and/or acquisitions. Officials at DOJ said they occasionally participate in rail merger proceedings before the ICC and provide it with economic analyses and other input for railroad mergers and acquisitions. However, they noted that their focus is on the competitive aspects of mergers rather than on possible economic and/or financial impacts on rail labor.

If ICC's rail responsibilities and functions are transferred to DOT and DOJ, both agencies will likely need to acquire the necessary staff and expertise if they are to handle these duties in the same manner as ICC. DOT's FRA acknowledged the need for both staff and expertise. DOJ officials told us they believe DOJ could assume ICC's merger and acquisition authority without additional resources, but they would not consider the noncompetitive effects of mergers, such as their potential economic and financial impacts

on rail labor. If consideration of such factors is to continue as part of the merger approval process, we believe additional staff will be needed either at DOJ or DOT--depending on which agency assumes responsibility for them.

ALTERNATIVE ORGANIZATIONAL STRUCTURES
COULD PRESERVE ICC'S INDEPENDENCE
BUT OFFER SMALL COST SAVINGS

Several alternative organizational structures are available for handling ICC's rail regulatory functions. These include making ICC an independent commission within DOT and/or merging ICC with another commission, such as the Federal Maritime Commission (FMC). While each of these alternatives would preserve ICC's independence, the cost savings from adopting any one of them is likely to be minimal.

Making ICC an independent body within DOT and DOJ would allow the agency to retain its status as an independent federal commission responsible for regulating and adjudicating railroad issues. It would continue to operate much as it does today, presumably with similar staffing levels, but it would, in name at least, be a part of DOT. The Federal Energy Regulatory Commission (FERC)--an independent regulatory agency responsible for overseeing the natural gas industry, electric utilities, hydroelectric power projects, and oil pipeline transportation--operates under such an arrangement. Similar to ICC, it has both regulatory and adjudicatory functions. FERC has rate-setting powers and issues certificates for the construction and abandonment of interstate natural gas pipeline facilities. However, FERC is officially a part of the Department of Energy (DOE). An agency official emphasized that neither the Secretary of Energy nor any other DOE employee may direct or control FERC's activities. According to a FERC official, there were few, if any, cost savings in its move to DOE because the integration was a simple transfer of functions with no reduction in staff or budget. The same situation could apply to ICC--that is, ICC could retain its independent status but the move might produce few, if any, cost savings.

ICC could also be merged with FMC. Under this proposal, ICC's rail regulatory and adjudicatory functions would stay largely intact, but the merged commission would take on FMC's responsibilities for ocean-going and domestic offshore transportation. ICC and FMC have many similar functions and duties. FMC is responsible for regulating oceanborne transportation in the foreign commerce and in the domestic offshore trade of the United States, receives and reviews tariff filings of common carriers, and regulates rates and charges of controlled carriers to ensure that they are just and reasonable. Like ICC, FMC has five commissioners who are appointed by the President with the advice and consent of the Senate and no more than three of whom may come from any one political party. To the extent that the two

commissions could be integrated, some savings in administrative overhead costs might be achieved. In fiscal year 1993, ICC incurred about \$7.6 million and FMC about \$4 million in administrative overhead costs. Additional savings would depend on the extent to which staff and services from the two agencies could be integrated. These savings would likely be small, however, since the types of industries regulated by each agency differ widely.

CONCLUSIONS

ICC continues to perform a number of important rail functions that remain necessary as long as there are captive shippers and market-dominant railroads. These functions could conceivably be transferred to DOT and DOJ, but it is not clear whether the benefits would be significant and there is the potential for the loss of independence in the decision-making process. There is more potential for budgetary savings in the motor carrier area. Many shippers and transportation brokers question the need for the current system of motor carrier rate and entry regulation. However, there are basic questions that Congress first needs to address about the appropriate extent of motor carrier tariff filing and entry application requirements in a deregulated environment. These functions constitute about one-third of ICC's annual budget. ICC's ancillary motor carrier functions, such as providing consumer protection for the movement of household goods, continue to have value and likely will need to either be performed at ICC or transferred to another agency along with the resources needed to adequately perform them.

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Messrs. Chairmen, this concludes my testimony. I would be happy to respond to any questions that you or Members of the Subcommittees may have.

ICC'S ALLOCATION OF STAFF YEARS^a FOR RAIL AND MOTOR
REGULATORY FUNCTIONS, FISCAL YEARS 1993-95

<u>Rail regulatory functions</u>	<u>FY 93</u>	<u>FY 94^b</u>	<u>FY 95^b</u>
Rate regulation	41.0	37.5	37.6
Antitrust matters:			
Major mergers/consolidations	12.1	14.4	13.1
Pooling, rate bureaus, etc.	1.0	1.0	1.0
Minor mergers/consolidations	12.8	13.9	13.8
Abandonments	71.0	70.8	71.7
Acquisitions	13.1	14.2	14.3
New constructions	7.5	8.3	8.4
Trackage rights and leases	11.3	11.1	11.0
Data reporting	37.0	37.5	36.2
Allocation of G & A Expenses	<u>25.2</u>	<u>25.5</u>	<u>24.8</u>
Total rail	232.0	234.2	231.9
<u>Motor regulatory functions</u>	<u>FY 93</u>	<u>FY 94^b</u>	<u>FY 95^b</u>
Rate regulation	100.0	108.8	108.0
Entry regulation	95.1	84.8	83.8
Finance regulation	6.2	5.9	6.0
Ancillary functions:			
Safety	10.1	8.5	8.5
Insurance	46.5	45.3	45.5
Antitrust enforcement	3.7	3.8	3.8
Cargo damage liability	23.0	22.1	22.2
Data reporting	5.8	4.5	4.0
Owner-operator protection	27.9	27.4	26.4
Household goods rules	21.6	23.3	23.3
Mexican carrier registration	9.2	8.9	8.9
Allocation of G & A expenses	<u>42.8</u>	<u>43.5</u>	<u>42.2</u>
Total motor carrier	391.9	386.8	382.6
Total Motor Carrier & Rail	623.9	621.0	614.5

^aMotor carrier staff years excludes 1 staff year devoted to water carrier functions.

^bStaff years for fiscal years 1994 and 1995 are based on budget estimates.

Source: Interstate Commerce Commission.

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