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INTERSTATE COMMERCE
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Budget and Other Impacts of
Eliminating or Transferring
Functions

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Madam Chairwoman and Members of the Subcommittee:

We appreciate the opportunity to discuss the impacts of eliminating the Interstate Commerce Commission (ICC) and transferring its functions to other federal agencies. As you know, beginning in 1980, the Congress substantially curtailed ICC's jurisdiction over rail and motor carrier rates and market entry and exit. Last year, we testified on proposals to further reduce ICC's regulatory activities and we identified certain trucking regulatory activities that could be eliminated.¹ The Congress subsequently enacted the Trucking Industry Regulatory Reform Act of 1994 (TIRRA), which eliminated these activities and reduced ICC's budget by about one-third. Recent proposals would eliminate the ICC altogether and would transfer any activities that need to be continued to other agencies.

To assure that the Congress has adequate information to decide where ICC's remaining rail and motor carrier responsibilities can best be handled if the agency is eliminated, the Chair of the House Committee on Transportation and Infrastructure, and you, as Chair of this Subcommittee, requested that we identify regulatory functions that could be eliminated and evaluate options for transferring ICC's remaining activities to the Department of Transportation (DOT) and other federal agencies. As part of that analysis you asked us to assess potential budget impacts. In summary:

- There is general agreement among regulators, shippers, and carriers that a number of the ICC's current motor carrier and rail activities could be eliminated. For example,

¹See Interstate Commerce Commission: Transferring ICC's Rail Regulatory Responsibilities May Not Achieve Desired Effects (GAO/T-RCED-94-222, June 9, 1994) and Interstate Commerce Commission: Key Issues Need to Be Addressed in Determining Future of ICC's Regulatory Functions (GAO/T-RCED-94-261, July 12, 1994).

given the competitive nature of the trucking industry, there appears to be little need for continued regulation of rates or for special handling of consumer protection functions. ICC's own analysis indicates that both rail and motor carrier regulation could be cut back to achieve savings of 182 staff years and \$16 million annually. ICC's fiscal year 1995 budget is \$39 million and 428 staff years.² The President's budget proposal calls for even greater reductions and would eliminate essentially all motor carrier and a substantial portion of rail regulatory functions, resulting in savings of about 300 staff years and \$28 million annually.

- Several options are available for transferring remaining ICC functions. These include moving all remaining functions into DOT; transferring most functions to DOT but giving the Department of Justice (DOJ) authority to review railroad mergers and making the Federal Trade Commission (FTC) responsible for providing consumer protection for the transport of household goods; combining ICC with the Federal Maritime Commission (FMC); creating an independent regulatory body within DOT similar to the way the Federal Energy Regulatory Commission (FERC) was made a part of the Department of Energy; and simply repealing ICC's authority. The budget impacts of these options would range from about \$16 million to about \$39 million.

- Although the budgetary impact of each option is a key factor in the final decision, we believe perhaps an even greater consideration is the manner in which the successor agencies would perform their new activities, if the Congress decides that some of the ICC's current functions

²The \$39 million does not include \$2.9 million in severance payments from staff reductions made in fiscal year 1994.

need to be retained. For example, rail mergers would likely be handled differently if they were transferred to DOJ and analyzed under the Clayton Act rather than if they were transferred to DOT and handled under the Interstate Commerce Act. The Clayton Act focuses on competitive impacts, unlike the Interstate Commerce Act, which requires that factors such as the impacts of mergers on rail labor also be considered.

The Congress is currently deciding whether any of the ICC's current functions should be retained. If the Congress decides to retain any of the functions, the trade-off between budgetary savings and the desirability of continuing to have these functions handled by an independent regulatory body will be an important consideration.

BACKGROUND

ICC, established in 1887 by the Interstate Commerce Act, is the nation's oldest independent regulatory agency. It was charged with protecting the public from monopolistic and discriminatory practices by railroads. Over the years, ICC's jurisdiction was expanded to include motor carriers, intercity buses, water carriers, and the transportation by pipeline of materials other than water, gas, or oil. For nearly a half century, the Commission exercised extensive regulation over the nation's surface transportation industry by controlling rates and deciding which firms could transport which goods and over which routes. However, beginning in the mid-1970s and early 1980s, in response to changing market conditions and perceptions that excessive regulation had led to inefficiencies in the transportation industry, the Congress substantially reduced ICC's jurisdiction over rates and market entry and exit. Most recently, TIRRA further reduced ICC's jurisdiction over motor carrier rates and market entry. Because of

these reductions in responsibilities, ICC's staffing has declined from about 2,500 in the early 1960s to 428 today.

Although ICC's jurisdiction has been substantially curtailed over the years, the surface transportation industry has not been completely deregulated. ICC continues to perform many regulatory functions. The Staggers Rail Act of 1980 gave railroads greater freedom to set their rates according to market conditions and limited ICC's authority to review such rates to instances in which (1) a railroad has market dominance--that is, no effective competition, and (2) the revenue-to-variable cost ratio exceeds 180 percent. However, ICC continues to hear complaints over the reasonableness of rail rates. In fiscal year 1995, ICC expects to devote about 48 percent of its resources to rail activities. Similarly, ICC continues to license interstate, for-hire motor carriers, perform consumer protection functions involving household goods and other motor carriers, and regulate the intercity bus industry. In fiscal year 1995, ICC expects to devote about 52 percent of its resources to motor carrier activities. Appendix I breaks out ICC's regulatory functions and the staff years allocated to each of these functions.

THERE ARE OPPORTUNITIES FOR REDUCTION OR ELIMINATION OF REGULATORY FUNCTIONS

Although TIRRA led ICC to reduce the number of staff from 622 to 428, further opportunities for reducing costs and regulatory functions are available. In October 1994, in response to a TIRRA requirement, ICC reported on the continued need for its regulatory activities.³ According to the report, ICC currently performs 18 motor carrier and 27 rail regulatory activities. While ICC believes many of these activities should be continued, the report

³Study of Interstate Commerce Commission Regulatory Responsibilities, Pursuant to Section 210(a) of the Trucking Industry Regulatory Reform Act of 1994 (ICC, Oct. 25, 1994).

identified 12 motor carrier and 6 rail activities that could be eliminated.⁴ ICC staff estimate that eliminating these functions would save 103 staff years. In addition, ICC staff assumed that four activities--intercity bus regulation, freight forwarder licensing, loss and damage claim handling, and pipeline regulations--could be transferred to DOT without increasing DOT's staff. This transfer would save 36 staff years. Finally, ICC staff estimated that truck licensing activities could be accomplished with 42 fewer staff than the 54 now assigned. The total savings from these changes were estimated by ICC to be 182 staff years and about \$16 million.

The President's budget proposes a reduction of 301 staff years for an annual cost savings of about \$28 million.⁵ Of the remaining 127 staff years, 102 would be transferred to DOT, 24 to DOJ, and 1 to FTC. The President's budget would essentially eliminate all regulation of the motor carrier industry and make substantially greater cuts in rail regulation than suggested in the ICC staff study.

Many carriers and shippers also believe opportunities exist to reduce or eliminate regulatory functions. For example, in comments submitted to DOT for its analysis of ICC's functions, one trade association, representing more than 400 short-line and regional railroads, recommended repeal of the rail rate discrimination provisions of the Interstate Commerce Act. In its opinion, the competitive environment no longer required this type of regulation.

⁴The motor carrier activities included all motor carrier rate regulation (including collective rate making), most consumer protection functions such as owner-operator leasing and household goods complaints, and data collection and oversight of the industry. Handling motor carrier loss and damage claims was excluded. The rail activities included rates on recyclables, rate discrimination, commodities clause, railroad securities, recording liens, and rail valuation.

⁵This does not include severance costs of \$6.7 million.

Other associations, such as the American Trucking Associations, the American Bus Association, and the Interstate Truckload Carriers Conference, support the elimination of motor carrier merger and acquisition regulations, given the competitive nature of the trucking industry. Several large railroads have publicly advocated eliminating virtually all rail regulation. Some shipper organizations, including the National Industrial Transportation League, also believe antitrust immunity for motor carrier activities should be eliminated.⁶

TRANSFERRING ICC'S FUNCTIONS TO OTHER AGENCIES COULD YIELD COST SAVINGS

Eliminating ICC and transferring its functions to other agencies offer opportunities for budgetary costs savings. We examined the following options for eliminating or transferring ICC's remaining functions to other agencies: (1) fully integrating ICC's rail and motor carrier functions into DOT (including the review of railroad mergers), (2) integrating most functions into DOT but assigning rail merger functions to DOJ and consumer protection functions to FTC, (3) merging ICC with FMC, (4) creating an independent body within DOT, as FERC was created within the Department of Energy, and (5) eliminating ICC and repealing the Interstate Commerce Act. Table 1 summarizes the estimated cost savings for each of these options. The savings range from \$0 to about \$39 million. The lowest savings estimate reflects the costs of keeping all of ICC's current functions intact with no reductions in staffing. The largest savings estimate assumes that all of ICC's functions would be eliminated. In general, mid-range savings estimates are based on eliminating potential overlaps in administrative staff and costs, implementing changes contained in

⁶ICC currently has the authority to grant motor carriers antitrust immunity to collectively discuss and set rates.

ICC's October 1994 TIRRA report, or achieving reductions contained in the President's budget proposal.

Table 1: Estimated Savings From Transferring or Eliminating ICC's Functions

Dollars in millions

Options	ESTIMATED SAVINGS		ESTIMATED SAVINGS (IF ICC-RECOMMENDED REDUCTIONS ARE MADE)	
	Staff years	Dollars ^a	Staff years	Dollars ^a
1. Full integration into DOT	0 - 301	\$0 - \$28	182 - 301	\$16 - \$28
2. Integration into DOT, DOJ, and FTC	301	28	301	28
3. Merge ICC and FMC	0 - 40	0 - 5	at least 182	at least 16
4. FERC-like model	0	0	182	16
5. Eliminate ICC and repeal Interstate Commerce Act	428	39	428	39

^aSavings do not reflect one-time separation costs, which could be as high as \$16 million if all 428 of ICC's staff are eliminated.

TRANSFER OF ICC'S FUNCTIONS COULD YIELD COST SAVINGS BUT IMPORTANT ATTRIBUTES MAY BE LOST

While the budget impact is a key factor in the final transfer decision, we believe another--and perhaps even greater--consideration is the manner in which remaining activities, if any,

will be handled by the successor agencies. Specifically, careful consideration must be given to the trade-offs between cost savings and attributes exhibited by an independent regulatory commission. These attributes include independence in decision-making and expertise in economic regulatory matters.

Repealing the Interstate Commerce Act

In terms of cost, eliminating ICC entirely by repealing the agency's authority to regulate under the Interstate Commerce Act would save the most of any option--about \$39 million.⁷ Nevertheless, this option would entail hidden costs and leave certain regulatory concerns unresolved. In particular, cases now brought to ICC would, in the future, be examined by other federal and state agencies. This could potentially increase these agencies' workload and costs. For example, elimination of rail merger and consolidation provisions of the Interstate Commerce Act would place these cases under the antitrust laws. Such an action would shift the responsibility of merger analysis, and the attendant costs of these activities, to the judicial system. Similarly, elimination of existing rail tariff provisions would remove antitrust immunity and subject railroad ratemaking to antitrust laws. Again, such an action could shift the burden and costs of adjudicating rail rate disputes to other agencies as well as the courts. In addition, under the Interstate Commerce Act, ICC has generally preempted state regulation of the intrastate portions of interstate transportation. If ICC were eliminated, railroads and other common carriers could be subject to widely differing state laws and regulations unless the Congress preempted the states' reregulation.

⁷This does not include severance costs of \$16 million.

Transferring ICC's Functions to DOT and other Agencies

Transferring ICC's functions to DOT or dividing them among DOT, DOJ, and FTC as proposed in the President's budget could provide a more orderly transition to a reduced regulatory environment than the outright repeal of the statute. However, trade association representatives with whom we spoke believed that transferring ICC's regulatory functions to DOT and DOJ would affect the impartiality of decision-making, the ability to balance the interests of all concerned parties, and the accessibility of the process to the public and industry. Small shippers and carriers claim that they would be particularly disadvantaged if they had to litigate disputes in court. In addition, DOT has responsibilities for promoting the railroad industry, including providing federal funds to the National Railroad Passenger Corporation (Amtrak). Resolving disputes related to Amtrak could raise questions about DOT's ability to make unbiased decisions.

Proposals for transferring ICC's functions to other agencies have also raised concerns about the loss of economic regulatory expertise and about the way the public interest would be considered in rail mergers. The President's budget proposal would eliminate about 300 staff years, but at the time of our review, the final decisions as to which staff and functions would be retained or eliminated had not been made. However, a reduction from 428 to 127 staff years would likely result in the loss of economic regulatory expertise. While over the long-term such expertise could be developed or acquired, in the short-term the speed and/or quality of decision-making could be impaired. Transferring rail merger activities to DOJ could also alter the criteria used in merger analysis and the speed with which this analysis is completed. According to DOJ, the advantage of reviewing rail mergers under the Clayton Act are that (1) mergers can be approved or disapproved faster, and (2) market competition is preserved. While ICC and DOJ address many of the same issues in their analyses, their focus

differs. For example, ICC is required to consider a merger's effect on rail labor, DOJ is not. In deciding where ICC's functions will go, the Congress will need to consider whether the railroad industry continues to require special merger treatment.

Our analysis also shows that DOT could have difficulty in assuming ICC's functions. The Department is focused more on ensuring safety and financing infrastructure than on handling economic regulatory matters or adjudicating rate and other disputes. According to Federal Railroad Administration (FRA) officials, there is little overlap between FRA's and ICC's functions. About 75 percent of FRA's staff of 720 is in the Office of Safety, which is responsible for ensuring the safe operation of passenger and freight trains. FRA does not regulate rail rates and its adjudicatory processes are focused on safety violations and decertification of locomotive engineers. Moreover, FRA participates in ICC's rule makings and proceedings, and FRA officials suggested their involvement with ICC functions could raise potential conflicts of interest. In particular, they suggested potential conflicts between (1) rail safety concerns and the economic protection of captive shippers, (2) DOT's interest in Amtrak and that of freight railroads in trackage rights and compensation disputes, and (3) freight railroad trackage rights and compensation decisions and the Federal Transit Administration's interest in promoting commuter railroads.

The Federal Highway Administration's (FHWA) Office of Motor Carriers (OMC) might also have difficulty in assuming ICC functions. Although this office registers interstate motor carriers, sets insurance limits for these carriers, and conducts periodic motor carrier safety inspections, it does not require preregistration of motor carriers prior to doing business, or maintain an automated insurance monitoring system, as ICC does currently. OMC also does not handle consumer protection functions. These activities would likely be handled by DOT's Office of

Consumer Protection (OCP). The latter, however, currently handles aviation consumer protection only and, according to OCP officials, is not familiar with trucking or other surface transportation modes. In addition, OMC (or another office within DOT) would have to handle remaining truck undercharge cases. This would be in addition to their existing workload.

Finally, DOT recently announced its intention to reorganize the Department and consolidate functions. We believe it is too early to tell how this reorganization would affect DOT's ability to assume ICC's functions. However, the consolidation of functions offers opportunities for more explicitly considering the needs and interests of surface transportation modes and for giving greater flexibility to state and local governments in meeting their priority transportation needs.

Maintaining an Independent Regulatory Agency

Preserving an independent regulatory agency either by merging ICC and FMC or by following the FERC model in integrating the ICC's functions into DOT might produce the least savings. Both ICC and FMC are independent regulatory agencies with five commissioners appointed by the President with the advice and consent of the Senate and both regulate industry rates and practices. However, there do not appear to be immediate synergies between the two agencies. ICC regulates domestic surface transportation, while FMC primarily regulates international water transportation. According to FMC officials, the differences between these activities are significant, and there is little overlap. In addition, FMC characterized its functions as largely related to law enforcement, whereas ICC's functions have more to do with rate and other economic regulation. To the extent that the two commissions could be integrated, some savings in administrative overhead could be achieved. However, even these savings might be offset by the need for new physical space to house a combined agency and computer

systems and other equipment to handle each agency's workload. Finally, proposals for eliminating FMC have made this agency's future uncertain and a merger with ICC problematic.

Merging ICC into DOT under the FERC model would preserve the independence of the regulatory and adjudicatory processes, but the cost savings from transferring ICC's functions under a FERC-like model would depend almost entirely on which functions were retained. When FERC was made a part of the Department of Energy, there were no budgetary savings because all activities were continued and the agency maintained its administrative staff. To the extent that ICC's regulatory functions were reduced along the lines suggested by ICC or the administration, the cost savings associated with this option would increase.

CARRIERS AND SHIPPERS DIVIDED OVER THE OPTIONS

The transportation community is divided over how best to handle the elimination of ICC. While there is general agreement that certain rail and motor carrier regulatory functions could be eliminated, there is less agreement on where remaining functions should be placed. The division splits largely on the basis of the size of the firms. Generally smaller shippers and carriers tend to favor an independent body within DOT--the FERC-like option--because they believe that the other options could compromise the independence of the decision-making process. The larger railroads tend to favor the complete elimination of surface transportation regulation. In their view, further reductions in the regulatory burden would enhance their competitiveness and enable them to respond more quickly to changes in the marketplace.

There is also controversy over how to handle railroad mergers. At a recent hearing before this Subcommittee, several class I railroads advocated shifting the authority for rail merger reviews to the Justice Department and having them considered under the

Clayton Act.⁸ They believe that there is no longer a need for special standards for rail merger reviews and having these transactions reviewed under the Clayton Act would speed up the merger process. Some shippers, such as those represented by the National Industrial Transportation League, also favor this approach. Other railroads and shippers believe that railroad mergers should continue to be reviewed under the Interstate Commerce Act. The Interstate Commerce Act requires that shippers' and communities interests and railroad's financial health be taken into account in reviewing mergers. DOJ officials have stated that if DOJ reviewed rail mergers it would do so under the Clayton Act and would treat a railroad merger like any other merger, and focusing on the merger's impact on competition. Therefore, these officials stated that DOJ could handle rail mergers with its existing staff. Some railroads, which oppose transferring the authority for reviewing mergers to DOJ, believe that many rail consolidations would not have been approved if they had been subject to DOJ review under the Clayton Act.

CONCLUSIONS

If the Congress repeals the Interstate Commerce Act and eliminates the ICC, the budget savings would be \$39 million. To the extent functions are retained, savings would be less. Virtually all the options we reviewed for transferring the ICC's remaining functions offer opportunities for budget savings--ranging from about \$16 million to about \$28 million. Of potentially greater significance, however, is the issue of how ICC's remaining regulatory functions will be handled in the future. If the Congress decides that there continues to be a need for a high degree of independence and the application of substantial expertise in carrying out the remaining regulatory and adjudicatory

⁸A class I railroad is a railroad that earned at least \$253.7 million in revenues in 1993.

processes, the options of a merger with FMC or incorporating the functions into DOT under a FERC-like model might be preferable. Because there are few synergies between ICC and FMC and because the future of the FMC is also uncertain, the FERC model is probably preferable. If, on the other hand, the Congress decides that there is no longer a need for an independent regulatory agency, then potentially greater savings might be available by integrating the remaining ICC functions into DOT or dividing them among DOT, DOJ, and FTC. To the extent that recommended staff reductions outlined in the President's budget are accepted, the savings would be larger.

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Madam Chair, this concludes my testimony. I would be happy to respond to whatever questions you or Members of the Subcommittee may have.

ICC'S ALLOCATION OF STAFF YEARS FOR REGULATORY FUNCTIONS, FISCAL
YEARS 1994 THROUGH 1996

<u>RAIL REGULATION</u>	<u>FY 94^a</u>	<u>FY 95^b</u>	<u>FY 96^b</u>
Rail Rate Regulation			
Rate cases and rate rulemaking activities	52.8	40.5	40.5
Rail rate contracts	1.4	1.4	1.4
Rates on recyclables	1.4	0.9	0.9
Reasonable practices	2.5	2.4	2.4
Rate discrimination	0.2	0.2	0.2
Commodities clause	0.1	0.1	0.1
Exemptions	8.5	6.4	6.4
Railroad Consolidations			
Mergers	32.6	31.1	32.4
Line transfers, leases, and trackage rights	11.8	8.1	8.4
Line sales to noncarriers	14.7	13.2	13.2
Labor protection	5.1	4.8	4.8
Rail Service Availability			
Rail car supply and interchange	9.7	8.0	8.0
Railroad service orders	2.7	2.7	2.7
Competitive access	0.7	0.7	0.7
Line Construction	21.9	14.3	13.3
Line Abandonments			
Abandonment applications	60.2	44.0	44.4
Financial assistance program	8.1	6.9	6.9
Feeder line development program	1.6	1.5	1.5
Rails-to-trails program	3.6	2.7	2.7
Labor protection	0.4	0.4	0.4
Other Rail			
State certification	0.7	1.2	1.2
Antitrust immunity for rail activities	0.8	0.8	0.8
Interlocking officers and directors	0.1	0.0	0.0
Railroad securities	0.7	0.7	0.7
Recording liens	3.1	2.8	2.8
Valuation	0.0	0.0	0.0
Data collection and oversight	10.2	7.9	7.9
Rail passenger transportation	<u>3.5</u>	<u>3.4</u>	<u>3.4</u>
Total Rail	259.1	207.1	208.1

ICC'S ALLOCATION OF STAFF YEARS FOR REGULATORY FUNCTIONS, FISCAL
YEARS 1995 AND 1996

	<u>FY 94^a</u>	<u>FY 95^b</u>	<u>FY 96^b</u>
<u>MOTOR CARRIER REGULATION</u>			
Motor Carrier Licensing Activities			
Truck licensing	67.5	54.4	54.4
Truck contract carriage	18.8	3.3	3.3
Motor carrier control and transfer transactions	2.3	2.2	2.2
Freight forwarders	1.2	0.8	0.8
Brokers	24.0	19.4	19.4
Motor Carrier Rate Regulation			
Exemption authority	3.0	3.2	3.2
Individual carrier rate regulation	88.7	7.5	7.5
Collective ratemaking	5.3	3.4	3.4
Consumer Protection			
Owner-operator leasing	30.2	28.9	28.9
Lumping	1.3	1.3	1.3
Loss and damage claims	25.8	18.3	18.3
Duplicate payments and overcharges	3.4	3.0	3.0
Household goods and auto driveaway carriers	27.8	25.2	25.2
Trucking Undercharge Oversight	29.3	17.6	16.6
Intercity Bus Regulation	17.6	16.6	16.6
Mexican Carriers	8.7	11.5	11.5
Other			
Pooling by trucking companies	0.1	0.1	0.1
Data collection and oversight- trucking	<u>7.1</u>	<u>3.7</u>	<u>3.7</u>
Total Motor Carrier	362.1	220.4	219.4
Total Rail and Motor Carrier	621.2	427.5	427.5
<u>PIPELINE REGULATION</u>	0.5	0.3	0.3
<u>WATER CARRIER REGULATION</u>	0.3	0.2	0.2
TOTAL	622.0	428.0	428.0

^aStaff years for fiscal year 1994 represent authorized positions. ICC filled only 608 of these positions.

^bStaff years for fiscal years 1995 and 1996 are based on budget projections.

Source: Interstate Commerce Commission

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