Preface

EDWARD MARGOLIN

On December 9-10, 1980, a joint meeting of the Transportation Research Board's Committee on Passenger and Freight Transportation Characteristics and the Committee on Surface Freight Transport Regulation was held at the National Academy of Sciences, Washington, D.C.

In examining the rather sweeping and controversial changes effected by the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980, these TRB committees considered it timely to obtain some early impressions and insights to the impact of these measures on reform of the major truck and rail federal regulatory statutes. It should be emphasized that these legislative changes were not viewed by conference participants as economic deregulation but as regulatory reform--albeit the amendments to the truck and rail legislation differ in many respects.

The potential consequences of these changes are not only important to the national and the regional economies but to all levels of shippers and users; regulated, exempt, and private rail and truck carriers; U.S. Department of Transportation; Interstate Commerce Commission; other concerned federal, state, and local agencies; and the academic community.

The meeting program included representatives of all these groups. In addition to the formal papers and discussions published in this Record, several informal presentations and panel discussions also took place.

Highlights of Truck and Rail Regulatory Reform in the 96th Congress

JEFFREY C. KLINE

One of the first things that both shippers and carriers have to realize is that there are new laws and that the new laws provide substantial changes in the purchasing of transportation services, especially in the area of pricing. These new laws should not be viewed hastily as the sum of their parts. Rather, the laws should be viewed as a whole, recognizing the delicate balance between carriers and the shipping public and the intent of the U.S. Congress to reduce economic regulation of motor carriers and railroads to a minimum, consistent with the public interest. This paper discusses these and other issues related to the shipper-carrier relationship.

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MOTOR CARRIER ACT OF 1980

On July 1, 1980, President Carter signed into law the Motor Carrier Act of 1980 (P.L. 96-296). The two chief goals of this act were to make motor carrier transportation more competitive and more energy efficient. The act contains 36 sections, seven of which will be discussed here. (A complete section-by-section summary of the act is available from me.)

Section 5--Entry Policy

Section 5 of the act frees entry by statutorily shifting the burden of proof from applicants to protestants. Applicants have the initial burden of proving that they are fit, willing, and able to provide the transportation service proposed. Applicants must also have shipper support that the service proposed will serve a useful public purpose and be responsive to a public demand or need.

The onus is on the protestant to prove that the application is inconsistent with public convenience and necessity. No common carrier may protest an application unless (a) it has authority, in whole or in part, to handle the traffic at issue; (b) it is willing and able to handle, in whole or in part, the traffic for which authority is applied; (c) it has performed service within the scope of the application during the previous 12-month period or has actively solicited such service; (d) it has pending before the Interstate Commerce Commission (ICC) a prior application that is similar to the one being considered for substantially the same traffic; or (e) the ICC grants leave to intervene.

When ruling on an application, the ICC shall consider and, to the extent applicable, make findings about the National Transportation Policy and the effect on existing carriers. However, diversion of revenues or traffic from an existing carrier is not in itself inconsistent with the public convenience and necessity.

Section 5 prohibits the ICC from issuing "master certificates". It requires that the ICC consider each application on an individual basis.

The ICC may grant certificates solely on the basis of fit, willing, and able for the following types of applications: (a) service to communities not served by a certificated carrier; (b) service that is a direct substitute for abandoned rail service if it is the abandonment of the last remaining rail service to a community and if an application is filed within 120 days after the ICC approves the abandonment; (c) carriage of U.S. government property other than household goods, hazardous or secret materials, and sensitive weapons and munitions; (d) shipments weighing 100 lb or less if hauled in a vehicle in which no one package weighs more than 100 lb; and (e) food and edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers if hauled by an owner-operator, subject to certain requirements.

Section 6--Removal of Certain Restrictions on Motor Carriers' Operations

Section 6 of the act requires that within 180 days after enactment the ICC has to eliminate gateway restrictions and circuitous routing limits in certificates and to implement, by regulation, procedures to expeditiously process individual applications to remove operating restrictions in order to (a) reasonably broaden the commodity categories authorized in certificates or permits; (b) authorize service to intermediate points; (c) provide round-trip authority where only one-way currently exists; (d) eliminate unreasonable or excessively narrow territorial limits; or (e) eliminate any other unreasonable restriction that wastes fuel, is inefficient, or is contrary to the public interest.

Section 6 requires the ICC to take final action on these individual applications within 120 days after they are filed. In extraordinary circumstances the ICC may extend the deadline up to 90 days. In ruling on applications under this section, the ICC shall consider, among other things, the impact on energy consumption, potential cost savings, and improved efficiency as well as providing and maintaining service to small and rural communities and small shippers.

Finally, Section 6 allows carriers to haul both common and contract goods in the same vehicle at the same time.

Section 7--Exemptions

Section 7 of the act adds fresh shellfish to the exemptions granted under 49 USC 10526(a)(6)(D). It creates an exemption for livestock and poultry feed and agricultural seeds and plants, if products (excluding those already exempted under this section) are hauled to an agricultural production site or to a business that sells to agricultural producers goods used in agricultural production.

This section also broadens the exemption for incidental to air traffic to include (a) passengers as well as property (including baggage) as part of a continuous movement that prior or subsequent to the motor portion of the haul has been moved by aircraft, subject to certain conditions; and (b) truck hauls in lieu of air movements as a result of adverse weather, mechanical failure of the aircraft, or any other circumstances beyond the carrier's or shipper's control.

Section 9--Private Carriage

Section 9 of the act exempts intercorporate hauling if (a) the parent corporation notifies the ICC of its or one of its subsidiary's intent to provide this type of transportation; (b) the notice contains a list of the participating subsidiaries and an affidavit that the parent directly or indirectly owns 100 percent of each subsidiary; (c) the ICC publishes the notice in the Federal Register within 30 days after receipt; and (d) a copy of that notice is carried at all times in the cab of each vehicle.

Section 11--Zone-of-Rate Freedom

Section 11 of the act provides the carriers with greater pricing freedom in response to market demands. The ICC is prohibited from suspending, investigating, or revoking a rate as unreasonable because it is too high or too low if (a) the carrier gives the ICC prior notification that it wishes consideration under this section and (b) the aggregate of increases and decreases is not more than 10 percent above the rate in effect one year prior to the effective date of the proposed rate nor more than 10 percent below the rate in effect July 1, 1980, or the rate in effect one year prior to the proposed rate's effective date.

The ICC may increase these percentages by an additional 5 percent a year if it finds (a) there is sufficient actual or potential competition to regulate rates and (b) there are benefits to carriers or freight forwarders, shippers, and the public from further rate flexibility.

During the first two years after enactment, carriers are allowed to apply the first 5 percent of general rate increases to these rates. After this two-year period, the zone is automatically adjusted upward for inflation, which is determined by the Producers Price Index.

Rates implemented by a carrier pursuant to this section shall be subject to the antitrust laws. However, a carrier shall not be prohibited from docketing and publishing the rate.

Finally, nothing in this section prohibits the ICC from exercising its authority to suspend and investigate on the basis of allegations of discrimination or predatory pricing.

Section 13--Rule of Ratemaking

Section 13 of the act requires the ICC in proceedings to determine the reasonableness of rates, to authorize revenue levels that are adequate under honest, economical, and efficient management to cover total operating expenses, including leased equipment and depreciation, plus a reasonable profit. The standards and procedures adopted by the ICC shall allow the carriers to achieve revenue levels that will provide a flow of net income, plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, attract and retain capital, and take into account reasonable estimated or foreseeable future costs.

Section 14--Rate Bureaus

Section 14 of the act allows for the continuation of rate bureau agreements as long as the ICC finds that each agreement meets all of the following conditions: (a) Each member files a verified statement detailing certain required information; (b) it allows any member to discuss any rate proposal but, after January 1, 1981, it limits voting only to those members who can participate in the traffic; (c) it prohibits bureau interference with each member's right to independent action; (d) it prohibits bureau changes in independent action rates, except for pass-through of general rate increases or broad tariff restructurings, without the consent of the carrier (with that consent, the bureau may make changes for tariff simplification, removal of discrimination, or elimination of obsolete items); (e) it prohibits bureau protests or complaints against any item published by a member; (f) it prohibits bureau employees from docketing or acting on tariff changes; (g) it prohibits representatives from voting without specific written authority from the represented member; and (h) final disposition of any docketed rate or rule must occur within 120 days after it is docketed (this deadline may be extended, subject to review by the ICC).

No bureau agreement may allow for (a) voting or discussion on zone increases; (b) voting or discussion on released-value rates except that rates filed prior to enactment may be voted on and discussed until January 1, 1984; and (c) voting or discussion on single-line rates effective January 1, 1984, except if the Motor Carrier Study Commission's report is not filed by January 1, 1983, this deadline is extended to July 1, 1984. However, the prohibitions in this last item above do not apply to (a) general rate increases or decreases, if shippers, under specified procedures, are given 15 days' notice and an opportunity to comment prior to filing the proposal with the ICC and if discussion is limited to industry average carrier costs and after January 1, 1984, or July 1, 1984, discussion excludes individual markets or particular single-line rates; (b) changes in commodity classifications; (c) changes in tariff structures if discussion is limited to industry average carrier costs and, after January 1, 1984, or July 1, 1984, discussion excludes individual markets or particular single-line rates; and (d) tariff publication, filing of independent action rates, provision of member support services, and changes in rules and regulations that are of at least substantially general application throughout an area.

Finally, this section creates the Motor Carrier Ratemaking Study Commission charged with making a full and complete investigation and study of the collective ratemaking process. The commission is to be comprised of six members of Congress and four from the public. Their report is to be filed January 1, 1983.

STAGGERS RAIL ACT OF 1980

The Staggers Rail Act of 1980 was signed into law on October 14, 1980, and became effective retroactively on October 1. The purpose of this act is to provide for the restoration, maintenance, and improvement of the physical facilities and the financial stability of the railroads. The act provides the railroads with greater pricing freedom to enable them to respond to market conditions. It retains shipper protections from unreasonably high freight rates where there is an absence of effective competition.

The Staggers Rail Act contains 64 sections; eight of them will be discussed here. (A complete section-by-section summary of the act is available from me.)

Section 201--Regulation of Railroad Rates

Section 201 of the act provides that a carrier may establish any rate for transportation, unless it has market dominance over the transportation, or the rate does not contribute to its "going concern value." If a carrier has market dominance, as defined by the current law, the rate established must be reasonable.

Rail carriers continue to have the burden of proof in determining reasonableness in investigation and suspension proceedings and shippers in complaint cases. Shippers shall have the burden of proof for reasonableness when challenging zone-of-flexibility rate increases that are less than 20 percent above the sliding jurisdictional threshold or less than 190 percent of variable cost, whichever is less (these rates can only be challenged by complaint). Carriers will have this burden if a rate is 20 percent above the trigger, or 190 percent, whichever is less, and is challenged by a protest.

Finally, Section 201 establishes new minimum rate provisions. This section prohibits rates below a reasonable minimum. Any rate that does not contribute to the going concern value of a carrier is presumed to be not reasonable. A rate that contributes to the going concern value of a carrier is conclusively presumed not to be below a reasonable minimum. A rate that equals or exceeds the variable cost of providing the transportation is conclusively presumed to contribute to the going concern value of a rail carrier.

On the filing of a complaint alleging that a rate is below a reasonable minimum, the ICC shall take final action thereon by the 90th day. The complainant has the burden of proving that the rate is below a reasonable minimum.

Variable costs shall be determined under formulas or procedures prescribed or certified by the ICC. In the determination of variable costs for purposes of minimum rate regulation, the ICC shall determine the individual carrier costs for the specific service in question. The ICC may not include in such variable costs an expense that does not vary directly with the level of transportation provided under the proposed rate.

Section 202--Determination of Market Dominance

The Railroad Revitalization and Regional Reorganization Act (4-R Act) defines market dominance as an absence of effective competition for the traffic to which the rate applies from other carriers or other forms of transportation. Under Section 202 of the Staggers Rail Act, the ICC has jurisdiction over captive rates if they are equal to or in excess of the revenue-to-variable-cost ratios as follows: Oct. 1, 1980-Sept. 30, 1981--160 percent; Oct. 1, 1981-Sept. 30, 1982--165 percent; Oct. 1, 1982-Sept. 30, 1983--170 percent; Oct. 1, 1983-Sept. 30, 1984--175 percent (or the cost recovery percentage, whichever is lower); and Oct. 1, 1984, and thereafter--the cost recovery percentage cannot be more than 180 percent or less than 170 percent. If a rate is in excess of these threshold ratios, there is no presumption either way about the traffic being captive or about the rate exceeding a reasonable maximum.

Section 203--Zone-of-Rate Flexibility

Section 203 provides--effective October 1, 1980, and for six years--that all carriers may, without ICC review, increase their rates to recover inflation plus 6 percent a year providing (a) no more than a total of 18 percent is taken, (b) no more than 12 percent in any one year, and (c) no more than 10 percent in the last two years.

The second phase of the zone, effective October 1, 1984, allows all carriers to recover, free from ICC review, inflationary costs plus allows revenue-inadequate carriers to increase rates 4 percent annually with no carryover. No single line rate may be increased under the 4 percent zone if the carrier proposing the increase earns adequate revenues. The ICC is to prescribe rules with respect to joint rates between revenue-adequate and revenue-inadequate carriers.

Section 206--Inflation-Based Rate Increases

Section 206 allows the ICC to prescribe, on a quarterly basis, a single percentage or range of percentage rate increases to offset inflation. This single percentage or range may be applied either on an industrywide, territorial, or carrier-by-carrier basis. Within 60 days after the single percentage or range is prescribed, carriers must notify ICC as to which rates are to be excluded from the proposed rate hikes, otherwise all rates will take the increase. For joint rates, all carriers must agree to the exclusion. This section becomes effective January 1, 1981.

Section 207--Investigations and Suspensions

Section 207 of the act makes it appreciably harder to obtain a suspension of a proposed freight rate increase. The suspension period has been shortened to five months but may be extended to eight months on a report to Congress.

If shippers are successful in obtaining an investigation of a rate increase and win, the railroads must issue refunds plus interest. However, if a rate increase is suspended and shippers lose, shippers are required to pay undercharges plus interest.

Section 208--Contracts

Section 208 of the act legalizes and encourages contract rates. One or more carriers are given the authority to enter into contracts with one or more shippers, subject to filing the contract with the ICC for its approval prior to its effective date.

The ICC is required to publish special tariff rules to assure that summaries of nonconfidential contract information are made available to the public. The ICC also is required to establish a railroad contract rate advisory service to (a) compile and disseminate contract's nonconfidential summaries, (b) provide the ICC and interested parties with advice on contracts, and (c) assess the impact on competition, according to guidelines, and report to Congress within 90 days after enactment.

The ICC may limit a carriers' right to enter into future contracts if it finds that additional contracts will impair its ability to meet its common carrier obligation.

Section 208 provides that the ICC may review contracts on its own initiative or on the filing of a complaint within 30 days after a contract has been filed. On contracts other than agricultural commodities, including forest products, shippers may complain only on grounds that they will be harmed because the contract impairs the carrier's ability to meet its common carrier obligation. A port may complain only on grounds that the contract is unreasonably discriminatory against it.

Finally, once a contract is approved by the ICC, the service provided under the contract is exempt from all regulations of the Interstate Commerce Act, subject to certain wartime provisions. Contracts are to be enforced in the courts and not at the ICC.

Section 213--Exemptions

Section 213 of the act allows the ICC to exempt from regulation any person, class of persons, transaction, or service (a) that is not necessary to carry out the national transportation policy, (b) that is limited in scope, or (c) that is not necessary to protect shippers from the abuse of market power.

The ICC may begin exemption proceedings on its own initiative or by an application of the U.S. Department of Transportation or an interested party. Finally, the ICC may exercise its authority under this section to exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement.

Section 219--Rate Bureaus

Section 219 of the act provides for most of the rate bureau reforms adopted by the ICC in its recent Section 5b decision. This section requires bureaus to make transcripts or recordings of all meetings and to keep records on all votes. These transcripts are to be filed with the ICC and made available to other federal agencies. They are not subject to the Freedom of Information Act. It also requires a rate bureau to make final disposition of a docket within 120 days.

Section 219 prohibits bureau members from (a) discussing, participating in agreements to, or voting on another carrier's single-line rates, except for general rate increases and broad tariff changes; (b) discussing, participating in agreements to, or voting on a particular interline haul unless they can participate in them; or (c) if there are interline movements over two or more routes between the same end point, discussing, participating in agreements to, and voting on rates unless a carrier forms part of a particular route. Until January 1, 1984, the last two joint-line reforms do not apply to (a) general rate increases to cover inflationary costs or general rate decreases for joint rates if shippers, under specified procedures, are given at least 15 days' notice and an opportunity to comment before the tariff is filed with the ICC or (b) broad tariff changes of general applicability except discussion of single-line rates. Finally, this section prohibits the ICC from eliminating general rate increases prior to April 1, 1982.

CONCLUSION

Passage of the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980 marks the beginning of a new era in transportation, that of market competition. The old era of regulatory control where the ICC was the referee is rapidly subsiding as the legislation is implemented. In this new competitive environment, the market not the ICC dictates price and service levels.

Adjusting to the new transportation era will not be easy. However, as shippers and carriers adjust to this more competitive environment, we will all benefit from a transportation system that has the flexibility to meet our needs.

Discussion

Don A. Boyd

It is my understanding that the purpose of this meeting is to sharpen your focus and understanding of the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980. Jeffrey Kline has reviewed the major sections of both bills and others have given you some insight concerning the perspective of the various modes or the agency that they represent. I would like to summarize how a shipper such as DuPont views the new regulatory environment in which we find ourselves and discuss our outlook for the future.

You can hardly pick up a transportation publication today without finding articles or reports of speeches about the motor carrier and rail bills and the implications of such legislation. After reading such articles you are also well aware that there are differing opinions concerning the effects of the bills. In view of the new legislation, shippers must exert a concerted effort, even if the present picture is somewhat cloudy, to manage the business of moving their products in this changed transportation environment. I think we all agree that transportation has undergone and will undergo major changes as a result of the recent legislation. I am not as pessimistic as some of my colleagues are about what the changes will bring and the effect on shippers. From a shipper's viewpoint, the new transportation environment will require new strategies and practices, not just a refinement of doing business in the same old way. Those who are willing to adapt to change can profit from it and, if properly managed, the new environment should have significant results on the profitability of our business.

First, I would like to look at the new Motor Carrier Act and then at the Staggers Rail Act and attempt to assess some of the implications for shippers and also suggest some new directions for shippers. I believe, at the outset, it must be remembered that there are significant differences between the new rail and motor carrier acts, and a shipper's plans and strategies will be different depending on the mode with which they are dealing.

The primary thrust of the Motor Carrier Act is to broaden competition and conserve energy. As a shipper, we believe the provisions of the act will provide opportunities to be more aggressive and use our corporate volume and image to purchase the appropriate mix of price, service, and safety we need in the motor carrier area.

The primary thrust of the Staggers Rail Act is revitalization and rejuvenation of the rail industry. As contrasted with the motor carrier mode, the rail mode will require us to use all of our resourcefulness and persuasive powers to keep our rail rates from escalating at 6-10 percent per year above inflation. One might characterize the strategies depending on the mode as offensive for the motor mode and defensive in the rail area.

MOTOR CARRIER ACT OF 1980

First, what does the Motor Carrier Act do? I think it is safe to say that it increases competition, removes inefficiencies, liberalizes prices, revises rate bureau procedures, and limits collective ratemaking. What does the act not do? We should also remember that it does not eliminate the Interstate Commerce Commission (ICC), necessarily conceal rates, reduce service (at least as far as we in DuPont are able to determine), impair safety, and debilitate the motor carrier industry.

After reviewing the various provisions of the Motor Carrier Act, we need to try to determine the probable impact of the new legislation from a shipper's view. At DuPont it would appear to us that at least some of the following will occur:

1. We believe there will be a trend toward more cost-based pricing in the motor carrier area. The bill does direct the ICC to consider rate levels on a future-cost basis and establish fair-rate-of-return standards for the industry. We believe that the trend toward more cost-based pricing will result in more market competition with carriers determining the cost of doing business with a particular shipper rather than with the cost of doing business with shippers in general. Cost-based pricing does not necessarily mean lower freight costs. It will permit individual negotiations with individual carriers and shippers will pay more to receive more service and pay less if you have less demanding requirements.

2. We forecast that there will be more intense competition for our truckload business (I might add that at DuPont 70 percent of our motor carrier business moves in truckloads). The reason we foresee more competition for this type of traffic is that it is easier for new carriers to enter the field because expensive freight-handling terminals are not needed, thus less investment is needed to handle this type of business. Prior impediments to entry have been substantially relaxed, and this should intensify competition.

3. We also foresee more but simplified tariffs, particularly for contract carriers rather than the complicated tariffs and classifications that we have today. We believe many tariffs will be simple, a mileage tariff or perhaps a tariff based on a price per load. There will not be the necessity for as many tariff rules as are in existing tariffs. This will be particularly true for contract carriers and DuPont already has in place contracts with several contract carriers for movement of our goods in which the schedules are structured primarily on a mileage basis without regard to the commodities that are being moved. I recently saw a schedule of one of our relatively new contract carriers and it consisted of about four or five pages.

4. We foresee more price-service options. We anticipate there will be more market-oriented pricing by the carriers. DuPont and other shippers do not all need the same kind and type of service. For some movements we need less service and others we need more. With price-service options we visualize that we would pay for the kind and type of service we require. If we need fancier super service, we would have to pay for it; but, if we only need service without any frills, we could also have that option and pay accordingly.

5. We also believe there will be less reference to historical methods of doing business and more emphasis on innovative solutions to problems in the motor carrier area.

6. Finally, we foresee, insofar as DuPont is concerned, a leveling off or even a reduction in our private motor carrier operations. Since DuPont's primary business is the manufacture of chemicals and other related products, we are not overly interested in expanding our private motor carrier fleet. We are in private motor carriage because carriers were either unwilling or unable to meet our service requirements on a corporate basis. Where motor carriers can now tailor their services to meet our needs, we would anticipate that such service could replace some existing private carrier moves.

Also, we have to ask, "What will be the effect on DuPont?" In other words, What's in it for DuPont? Initially, in the motor carrier area we anticipate a 5-10 percent lower cost in terms of constant dollars. Preliminary results of current studies under way at DuPont indicate this magnitude of savings for truckload freight and we believe they are available with proper management of our practices and procedures. If we can orient our buyers of transportation much the same way as those persons who purchase supplies and raw materials in the open market, we believe there will be savings for DuPont. If we are able to make transportation forecasts in much the same way as we make purchasing forecasts for our supplies and raw materials, we should be able to purchase only that service that is really needed to move and distribute our products. With the ability to purchase only that motor transportation service that we need, we are confident there will be incentives to improve the distribution planning and to have the ability to tailor systems for specific distribution and marketing needs. We would also anticipate there will be increased efforts by the motor carriers to be innovative and offer various types of service that may not be offered by other motor carriers. We believe there is a definite relation between price and service and if we can be more specific as to the different types of service we require for our many products, we believe there also will be price advantages for the movement of our goods.

STAGGERS RAIL ACT

As I have mentioned before, the motives for change in the regulation of our nation's railroads are different from the motives that produced a change in motor carrier regulation. Our strategies and techniques in the rail area will be different. In developing our strategies, we should consider what the Staggers Rail Act of 1980 does. The following points are significant:

1. Provides railroads with greater freedom to increase rates,
2. Reduces the shipper's ability in most instances to challenge rates,
3. Authorizes contracts between railroads and shippers,
4. Limits rate bureau action,
5. Permits surcharges on joint rates,
6. Calls for phaseout of general rate increases,
7. Simplifies to some extent rail merger procedures, and
8. Simplifies rail abandonments.

Again, I would ask in view of these new provisions, What is in it for shippers such as DuPont? Our forecast is that rail rates will probably increase 10-20 percent in terms of constant dollars. This seems consistent with current rail revenues that cover approximately 127 percent of variable cost. The ICC has estimated that in order to earn an adequate return, revenue equal to about 150 percent of variable cost is required. This would represent an average increase of about 18 percent and would increase rail revenue substantially over the next five years. In the rate area shippers must work hard, be firm, have strong negotiators with the railroads, and develop imaginative propositions for the railroads that serve our plants.

The ability to enter into contracts with railroads is one opportunity we have to try to control rapid rail rate escalation. We believe contracts can help railroads plan and should improve their efficiency in scheduling power, crews, and operations. Contracts can provide shippers with stable, predictable price structures. We are confident that contracts can bring to the railroads an assured source of revenue as they do in the unregulated modes. Our experience in the unregulated area is that contracts are often used as financing vehicles for providing transportation equipment where none existed before. We see no reason why the railroads cannot use contracts in a similar manner to aid in obtaining their capital needs. When we speak of contracts we mean more than contracts concerning the transportation charge. We visualize an agreement between a shipper and a rail carrier that would include provisions for services, method of payment, equipment to be provided, the mutual responsibility of the carrier and shipper, and indemnity. Most importantly, from DuPont's point of view, safety practices would be set forth--particularly those that we believe are required in excess of regulatory provisions. Maintenance stipulations would be included and other similar items could be added to your list. The point I mean to make and that we have made with railroads is that in many instances we would pay for better service, but we need an agreement that provides us assurance that we will receive that better service.

CONCLUSION

Much has been done to relax government regulation of rail and truck transportation. Wherever we can we should continue to prod government in the direction of letting competition and the marketplace supply the incentives for innovation and productivity that regulation, by its very nature, can never provide. We should also strive to eliminate the adversarial barriers that regulation has erected over the years. Shippers and carriers should be much like partners, not opponents. We both need each other.

We face demanding, challenging, and exciting times in this new transportation era, but I believe that such times will be filled with opportunity.

Richard E. Briggs

It has been observed many times that life is full of irony. That certainly is the case with the deregulation of the railroad industry. For one ironic result of enactment of the Staggers Rail Act of 1980 has been to enhance the importance of the ICC and to build up its case load.

The reason for this is, of course, that deregulation cannot just happen. The old rules have to be changed in an orderly process. The Staggers Act puts that responsibility with the ICC and does, in fact, grant the ICC at least some leeway to interpret those provisions.

Because of this, the success of the Staggers Act in achieving its goals will be determined, in good measure, by what happens during the next few months as its provisions are implemented.

Indeed, we in the railroad industry have a particular reason for understanding the importance of the implementation process. Four years ago Congress passed the Railroad Revitalization and Regional Reorganization Act (4-R Act). That law also contained a number of regulatory reforms--reforms that were supposed to reduce regulation and help railroads compete more effectively.

That law also left much of the authority to write the rules and regulations implementing those reforms with the ICC. The ICC at that time was not necessarily in sympathy with the basic direction of the 4-R Act and its implementation of the law reflected that. In some instances, the existing regulatory burden was actually increased. In other instances, the reforms were virtually emasculated. In some areas, the intentions of the Congress were realized.

I might add that many of the initial problems with the implementation of the 4-R Act have now been eliminated. The current ICC has moved effectively to reduce regulation where it could under the 4-R Act provisions. But this just underscores the importance of the implementation process since the ICC is left with a considerable degree of discretion in deciding how far to deregulate, although the amount of discretion is considerably less in some areas than it was under the 4-R Act.

For this reason, railroads are making a concerted, coordinated effort to participate effectively in that process. The Association of American Railroads has established a special steering committee made up of staff and member road officials to direct that participation and have also hired outside counsel to aid in parts of the implementation.

We do have several advantages in the implementation of this law that were not present during implementation of the 4-R Act. First, the current ICC appears philosophically supportive of the direction of the Staggers Act. Second, it had considerable input into the final law and has a greater understanding of its contents than did the ICC in 1976. Third, it already had under way various studies and proceedings that are directly relevant to the new legislation.

Given these facts, it is not surprising to find that the ICC is moving with uncommon speed to implement the new law. The day after President Carter signed it, the ICC chairman announced that the ICC would propose more than 20 new rules within six weeks.

The ICC is meeting that rather ambitious timetable--a fact we welcome. It has in fact begun the process of implementing a number of the key provisions of the Staggers Act, including the provision that may well be the most important from the standpoint of the railroad industry.

The provision that we regard as being particularly critical is the one dealing with standards for revenue adequacy. The ICC issued its notice of proposed rulemaking on November 26, 1980, with comments due early next year.

We find this provision to be of particular importance since it seems obvious that one of the major problems of the railroad industry has been lack of earnings. The problem is real and the railroad industry will not be able to do all that must be done to improve service without greater earnings. The ultimate test of the Staggers Act will be whether or not it provides railroads with the opportunity to reach an adequate level of earnings. Certainly, the legislation was shaped with that primary objective in mind.

This provision will take on added importance in future years since some of the rate provisions of the act will be applicable only to carriers earning inadequate revenues.

The ICC seems to be moving positively to carry out the intent of Congress with its proposed rule on revenue adequacy. The current cost of capital is not a perfect standard, as the ICC itself recognized in its notice. But it is a standard, an understandable one that is highly relevant to the determination of whether or not railroads are earning sufficient money to attract necessary capital.

I might quarrel with the determination that 11.22 percent is adequate. Under current conditions, that would seem to be inadequate. But, since we only earned 3 percent in our most recent 12-month period, it seems highly unlikely that we will reach or exceed that figure in the near future.

The ICC suggests that replacement cost might be a better investment base than net book value--a suggestion that has merit if the process of restating investment and other expenses can be fashioned without inordinate debate and regulatory delay. Certainly this is a question that ought to be explored more fully since use of net book value serves to understate railroad revenue requirements. So overall, it does appear as if the ICC is moving in the proper direction on this vital provision.

It has also acted with considerable foresight on the rail cost index.

This provision is crucial to a couple of different parts of the Staggers Act. It has considerable importance with respect to general rate increases due to inflation. The index--because it measures the impact of inflation on railroads alone--could be used to supplant the enormous, costly evidentiary requirements railroads must now fulfill in a general rate case.

Of course, the authors of this legislation envision the possibility of a complete phaseout of general rate increases in a few years. Again, the index is important since it could be the basis for a substitute to the general rate increase.

Development of the index is also crucial to the implementation of the "zone-of-reasonableness" provision.

In generally adopting the railroad industry's index of material prices and wage rates as the basis for its index, the ICC is recognizing the fact that general economic indicators can often serve as poor barometers for particular segments of the economy. The railroad industry has been far more severely impacted by inflation than most industries during the 1970s, in large part because of fuel increases and federally mandated pension costs.

The ICC also for the first time would permit railroads to recover costs in a timely fashion. This is very important for railroads and would eliminate--or at least reduce considerably--the problem of regulatory lag. Always in the past railroads have had to have experienced a cost increase before filing for a rate increase. This meant that by the time a rate increase became effective, hundreds of millions of dollars had already been absorbed and the new rates were already out of date. Regulatory lag has cost railroads roughly $1 billion a year over the last decade; railroads are delighted to see the ICC moving to solve that problem.

The ICC's action in adopting interim rules permitting contract rates is also welcome. Certainly the thrust of these rules, if carried over into permanent rules, is right on target. I would say, however, that a number of railroads will be quite cautious in negotiating contracts until permanent rules are adopted. They could well find themselves in the position of having to renegotiate a contract because the rules have been changed. The suit by water carriers against the interim rules is another complicating factor.

Again, however, the ICC seems to be moving in the right direction. It also seems to be moving in the right direction with respect to the feeder railroad development program, although this is an area that could become highly controversial and could well be subject to a court test. Basically the law sets up conditions under which a rail line can be taken over by another entity for operation as a railroad. There are two conditions under which this can happen. One would be when a line is either listed as a possible candidate for future abandonment or is already under abandonment proceeding. Assuming that a railroad gets fair value and a reasonable division, the railroad losing the line probably would have little objection to its sale and operation by someone else.

Far more difficult to resolve would be a situation in which the railroad losing the line did not want to sell. The law established five strict criteria that would have to be met before such an "unfriendly" takeover could be ordered.

Disputes may also arise over the provision for settling disputes as to the price to be paid for a property. The ICC has proposed that both carrier and prospective buyer submit their last offers, and the ICC will then choose one or the other. Questions have been raised as to whether such a process would provide fair value.

Substantial controversy also seems likely over yet another action proposed by the ICC--creation of a zone of reasonableness for car hire charges.

The ICC's objective is one supported by the act--maximization of car supply and use through maximization of revenues. The ICC is proposing that railroads be permitted to establish perimeters both above and below the established car hire rate. Within that zone, rates could be changed on one day's notice. While the objective may be laudable, there may be many practical (and perhaps legal) difficulties in such an approach. Railroads are now in the process of analyzing this proposal.

The ICC has also moved rather quickly to eliminate some practices permitted before passage of the Staggers Act. On October 29, 1980, it handed down orders eliminating both capital-incentive and demand-sensitive rates.

Yet even here, the ICC has not adopted an unduly restrictive approach. For example, it has permitted one railroad to file a tariff permitting it to reduce rates on boxcar freight as much as 20 percent and increase them as much as 40 percent on one day's notice. This is certainly a positive response to the need to improve use.

The ICC is also responding positively to its broadened authority to exempt services, practices, commodities, or rates from regulation.

One could argue about whether or not railroad piggyback services ought to be exempt from regulation. But quite obviously, the ICC's proposal to exempt them shows that it intends to make vigorous use of this section of the law to promote marketplace competition.

The ICC had, of course, already been moving in the direction of exempting piggyback before passage of the Staggers Act. But it is arguable whether the 4-R Act exemption provision would have withstood a court test with respect to piggyback. The new law clearly will.

Clearly we can expect the ICC to make much wider use of its exemption authority.

As I have indicated, up to now the implementation of the Staggers Act has been going forward at an almost dizzying pace. In fact, there are only two key areas where we are still awaiting action.

One of these revolves around market dominance.

Rates will be regulated when railroads have market dominance and are above specified revenue cost levels. How much rate freedom the railroads will have above these congressionally dictated levels is obviously a vital question that has yet to be answered. The cost recovery percentage also needs to be defined--not a major concern in the short term, but obviously a major one in the long run, since that will become the determining factor for ICC juristiction on a good many rates beginning in 1984.

Also, the ICC is supposed to undertake a study to determine whether to include product competition among the criteria that would prove railroads lack market dominance. That study is to be completed by next summer. To our mind, it seems obvious that product competition does exist, that it constitutes a market force that tends to limit railroad dominance of a market and therefore should be considered when determining if regulatory interference is necessary.

One other key provision also awaits action: appointment by the Comptroller General of the United States of a cost-accounting standards board to develop new costing criteria.

The board's work will be quite important over the long run since many of the new law's freedoms relate to various cost figures--and those cost definitions will be established by this board. Each railroad's accounting system will have to be compatible with the new criteria developed by this board.

The board will consist of the Comptroller General and representatives of the following groups: railroads, accounting profession, economics profession, ICC, large shippers, and small shippers. It will have three years to complete its work.

The Comptroller General is soliciting nominations to the board now, with all nominations due by the end of the year. But so far he has indicated he will make no nominations to the board until a budget is appropriated by Congress. The 96th Congress seems likely to adjourn without appropriating a budget, so that means the board will not be appointed until sometime next year. An additional complication is the fact that the current Comptroller General's term of office runs out on March 1, 1981, and he has indicated he does not wish to be reappointed. So we are regrettably looking at the possibility of considerable delay before this board is appointed and can begin it work.

It is hoped that this bottleneck will be eliminated quickly in the new Congress. Until now, it is one of the few key provisions of the act that has not moved quickly toward implementation. Indeed, I am somewhat surprised at how smoothly the implementation process is proceeding. The ICC is to be commended not only for its commitment to bring about a smooth implementation but also for its commitment to the basic principles of the new law.

Given the rapid pace of implementation, I would expect the new law to make its presence felt significantly by next summer. However, I would not expect there to be wholesale changes even then.

It will take some time for both shippers and carriers to develop new relations in this less-regulated atmosphere. In Canada, where more extensive deregulation occurred a dozen years ago, it took from two to five years before shipper and carrier adjusted fully to the new, market-oriented environment.

It may not take that long in this country, since we do have the Canadian experience as a guide. On the other hand, the more drastic dismantling of collective ratemaking in this country will mean more radical departures from the past. And, given the greater number of U.S. railroads, the shippers will have to review more proposals and can expect significant variances in carrier reactions.

As to what will happen when the shakedown period is over, it is hard to say with precision. But the Canadian experience does suggest that fears of major rate increases may be overstated.

During the first five years of Canadian deregulation, rates actually dropped on the average, as railroads made use of their new freedoms to gain new business through incentive pricing. It was only after the OPEC cartel began multiplying petroleum prices and double-digit inflation hit the Canadian economy that rail rates started back up. Even then, deregulated rates on Canadian railroads have increased less than regulated rates on U.S. railroads--an exact reversal of the situation before Canadian deregulation.

More importantly, Canadian deregulation has led to increased traffic, more efficient service, improved productivity, and better earnings for railroads--all the objectives that the Staggers Act hopes to achieve. On balance, there are good reasons to believe it will do the same in this country--especially if implementation proceeds on the positive and smooth course it appears to have taken.