Need for Future Regulatory Reform of Rail and Motor Carrier Industries

W. BRUCE ALLEN AND SUSAN M. BEAUREGARD

The Motor Carrier Act of 1980 and the Staggers Rail Act of 1980 will result in significant reform of economic regulation of the respective industries. Further legislation changes will be necessary, however, to achieve the most efficient regulatory framework. Provisions that create intermodal inequities, increase risk, limit managerial flexibility, stifle innovation, and cause distortions in economic decisions should be revised or eliminated. This paper highlights those aspects of rail and motor carrier regulation that require future legislative and administrative attention and action.

In 1980, the motor carrier industry and the railroad industry experienced substantial regulatory reform as a result of the passage of the Motor Carrier Act of 1980 (July 1, 1980) and the Staggers Rail Act (October 14, 1980). Although the extent of regulatory changes will not rival those seen since the deregulation of air cargo in 1977 or the changes developing during the gradual deregulation of the air passenger industry, the new bills represent significant and positive steps. On the whole, both bills will improve the economic efficiency of the industries under regulation, but the work of regulatory reform is not complete. Provisions remain that will continue to cause inefficient distortions. New provisions have been introduced that may be improvements but that have a set of associated effects themselves. Those apsects of rail and motor carrier regulation that require future legislative attention and administrative action are highlighted here. In particular, provisions that cause intermodal inequity, discourage adequate return, increase risk, or limit flexibility are discussed.

STAGGERS RAIL ACT

The policy intents and the goals of the Staggers Act primarily focus on increased reliance on market forces to achieve economic efficiency. This act emphasized increased intermodal and intramodal competition, reduced regulatory barriers to entry and exit, and minimized regulatory burdens. Where regulation is deemed necessary, the Interstate Commerce Commission (ICC) is ordered to ensure adequate revenues, to make expeditious decisions, and to eliminate noncompensatory rates. The aim of the Staggers Act, as stated in the goals and the policy description, is the establishment of a healthy and efficient railroad system in the private sector. These mandates are consistent with the use of regulation only to improve efficiency where the market cannot achieve the same result. Despite this general tone, some aspects of the policy statement and the act should be noted with caution.

The extent to which national transportation policy advocates the use of railroad regulation to achieve nontransportation programs is a key concern. Traditionally, economic regulation of the transportation industries has been used as an instrument of social policy. For example, indirect aid to regions or industries is provided by holding transportation rates below the level that the market would set. As a result, these shippers face less-than-the-marginal cost of the resources used in the production of transportation services. Overconsumption of the transportation services results, and the shippers have an uneconomic, competitive advantage. Resources are drawn away from more productive uses; this causes a social loss of productive output and a series of income transfers.

The use of transportation regulation to implement indirect social policies is convenient since transportation is ubiquitous, highly regulated, and relatively obscure to most citizens. Policies can be effected with minimal impact on consumer prices and no explicit accounting of the cost of various social programs. Such indirect aid should be offensive to taxpayers not only because it is inefficient, but also because it obscures information on the cost and even the existence of many forms of government aid. Direct aid programs should be used to encourage appropriate economic resource allocation. When national transportation regulation is saddled with nontransportation policies, efficiency is sacrificed, and transportation regulation deviates from its purpose.

Evidence of social policy manipulation is still apparent in the Staggers Act. The final transportation policy statement is "to encourage and promote energy conservation." Energy conservation is not a transportation-specific issue. It should be handled through an energy pricing mechanism faced by all industries so that current energy supplies will be channeled into the most productive uses.

Similarly, the limitation of railroad rates for recyclable material transportation to levels at or below the average revenue-to-variable-cost ratio that railroads need to cover expenses plus a fair return is distortive. According to the National Association of Recycling Industries, the railroads otherwise have an incentive to discriminate against recyclable materials traffic in order to make the materials noncompetitive with railroad-owned virgin materials (U.S. Senate hearing on Railroad Deregulation Act of 1979, 96th Congress, Session 1, Parts 1-4). Another basis for the provision was the national emphasis on conservation and recycling. In reality, the provision merely enforces a form of discrimination. Rates for the movement of virgin materials will be subject to the standard Staggers Act pricing rules, possibly rising above the average ratio of 150, according to the ICC's Office of Policy and Analysis. Manufacturers who buy recycled materials may face lower costs, thus gaining an anticompetitive and uneconomic advantage. Overconsumption of recyclables would result if buyers face less-than-the-true resource cost of recyclables' preparation and transportation. Finally, underconsumption of other unknown commodities will result as transportation rates for other commodities rise to cover total costs.

The goal to provide a regulatory process that balances the needs of the carriers, the shippers, and the public should be limited to protection of shippers and the public from market power or from externalities that they bear unfairly. The act fails to define the needs of all parties that are to be balanced, leaving a possibility of ICC interpretation of this goal as justification for these and other social policy measures enforced by transportation regulations. Incentives that would encourage private carrier investment, competition, and efficiency can be developed only if regulation permits the reasonable pursuit of self-interest by all parties--i.e., carriers, shippers, and the public.

The vague wording of the Staggers Act leaves many areas open to ICC interpretation. The ICC is charged with the responsibility of ensuring adequate revenues and reasonable rates. The ICC also must avoid undue concentration of market power. All such aspects of railroad regulation that can be changed as new ICC representatives interpret the law are sources of financial risk. A private-sector investor has no reasonable certainty about the rules of the game into which the investor is placing long-term funds. In the projection of the future, neither the classic competitive constraints nor well-defined and stable regulatory guidelines can be assumed. The greater the number of vague legislative provisions, the higher will be the perceived risk of regulatory change, and, as a result, the higher the required rate of return on private capital. By failing to eliminate uneconomic uncertainty, the Staggers Act thwarts its own goal of increased private investment in the railroad industry.

Several examples of vague terminology exist in the maximum ratemaking provisions and they require ICC clarification. The definition of effective competition, for example, will be critical since the presence of competition will determine whether or not a railroad must prove rate reasonableness. The ICC is directed to include a return on capital in the fixed and variable cost determination, but the return on equity capital is limited to a level equal to the embedded cost of debt. This nebulous term remains undefined. It is hoped that it will not be interpreted at face value to allow equity investors to earn a return equal to the cost of historic debt. No rational investor would invest in an equity position, only to derive the same return as the less risky debt position offers. Also, the low average return likely to be found in historic debt structures relative to today's high market interest rates would preclude private investment in an equity position under this interpretation.

The ICC retains oversight of maximum ratemaking by means of a cost recovery percentage (CRP) based on an industrywide revenue-to-variable-cost ratio. Essentially, the CRP reflects the highest margin reasonably needed on some traffic in order to cover traffic with low returns. The concept of a CRP is not without problems. The CRP will be based on industrywide cost figures, imposing greater burdens on certain carriers. Although rates in excess of the CRP do not establish a presumption of market dominance or rate unreasonableness, freedom to price without investigation and suspension is lost for rates with ratios above the percentage. Those carriers that are currently less efficient, have higher costs, or more low-margin traffic may require rates with ratios above the CRP in order to cover costs. Low CRPs would make these railroads more susceptible to complaints and interference. Also, the system will be costly to administer. In order for a shipper to challenge a rate on the basis of a revenue-to-cost ratio, a great deal of information is required.

The CRP test does not rely on the influence of available competitive alternatives as a price regulator in the market. If Congress seeks to rely on the market as much as possible, any form of competition that will prevent abuse of market power should be considered, including carrier, geographic, or product competition. The Staggers Act mandates that coal competition from foreign sources be disregarded in the consideration of proposed rates. This is a disturbing note. The reality of the foreign coal competition is driven home by the ongoing purchases of Polish coal by Gulf Coast electric utilities (1, p. 1). U.S. coal produced for export also is moved by rail, and competitive price pressures from Australian and other coal should serve to control rail rates. Possibilities like these demonstrate that, even if product competition is not a reality with fixed coal-burning facilities and conversion laws, there are other competitive pressures.

Other provisions will exert competitive pressures on railroad pricing. Entry provisions in the Staggers Act permit a new rail line to cross an existing line once a certificate of public convenience and necessity is granted. Reciprocal switching is mandated where the ICC wants to induce competition. The administration bill proposed mandatory trackage rights with adequate compensation. Presumably these provisions would introduce real or potential intramodal competitive pressure. The possibility of increased sympathy for pipeline eminent-domain legislation also should temper monopolistic pricing by carriers with long-run objectives. The new liberalized entry provisions of the Motor Carrier Act of 1980 will increase rail-truck competition in many markets.

The future of maximum railroad ratemaking reform is unclear. Suggestions have included caps on rates; permanent regulation of food, fiber, and resource rates; and an arbitration system similar to the Canadian system. None of these provisions seem necessary if adequate intermodal and intramodal competition is encouraged by Congress and carriers can employ contracts without arduous court intervention. The contract provisions, eased entry standards, and the restricted ability of railroads to come together in rate bureaus will heighten competition and permit protection of shippers by competitive market forces. Increased pricing freedom and flexibility will be promoted as well.

Many aspects of the Staggers Rail Act enhance railroad flexibility in other areas. Railroads can offer premium service at special rates to meet shipper service requirements. Similarly, carriers and shippers may agree to permissive liability rates that involve a lower rate in exchange for relieving the carrier of some share of liability for the traffic. ICC ability to control car supply is limited to emergency 30-day periods and incentive per diem is eliminated. However, flexibility has been reduced by some provisions of the bill.

The elimination of demand-sensitive rates limits railroad ability to react to seasonal demand shifts and truck competition. For storable commodities, higher peak rates could level seasonal-demand peaks somewhat, lessening railroad investment requirements. In the off-peak periods, railroads should be able to price more competitively relative to the truckers who are attempting to use their excess capacity also. In the absence of the authority to establish demand-sensitive rates, carriers will rely on the efficient marketing provisions that reduce the time required to change rates. Increases can be implemented in 20 days and decreases in 10 days. This is superior flexibility relative to the competitive motor carriers who have a 30-day notice requirement on most commodities, but remains too restrictive, particularly where both modes are not exempt for the commodity in question.

Several types of ratemaking flexibility will be denied to carriers found to be making adequate revenues. The limitations influence the zone of flexibility, the considerations in complaint resolution, and the application of surcharges. Adequate revenues may influence joint rates eventually. A disincentive for improved efficiency stems from carrier awareness that, if the ICC reviews a specific rate proposal, the rate could be held down or flexibility denied on the basis of overall carrier revenue adequacy. Without this overall adequate revenue constraint, carriers might have pursued cost reductions to improve profits on traffic with approved, nonreviewable rates. The adequate revenue provisions effectively limits profits, cooling such incentives for efficiency and innovation.

Railroad flexibility is limited in the key area of labor protection. The Staggers Rail Act mandates labor protection during a 4-year period for employees harmed by entry, rate bureau reductions, or reciprocal switching agreements. Congress should not legislate resolutions of labor issues. Rigid labor clauses will hinder the successful rationalization of the railroad system and limit rail's ability to compete.

Restrictions on railroads' ability to reconfigure their systems to more economically viable sizes remain too inflexible. The end result of the abandonment debate was essentially a codification of current ICC practice, with the carrier retaining the burden of proof and gaining a somewhat shorter protest time. A financially responsible person, including a government agency, may subsidize or purchase and operate the line. The opportunity for inefficient cross-subsidy looms here. If federal, state, or local general tax monies are used to buy and subsidize such lines, then nonusers will subsidize low rates for transportation services and sponsor inefficient consumption of rail service where another mode might be more appropriate.

The ICC retains jurisdiction over an important reconfiguration strategy, railroad mergers, but the ICC must make expedited decisions and consider nonmerger alternatives. At the ICC's Commissioners' Meeting on Railroad Merger Policy (June 24, 1980), it was stated by ICC Chairman Darius Gaskins and others that carriers were not taking advantage of operating improvements that would increase productivity more than mergers. The ICC stressed a heavy burden of proof on merging railroads to demonstrate that less anticompetitive actions could not achieve the same results. The ICC expressed concern that pending mergers were inefficient distortions caused by regulatory incentives or were defensive responses to the flood of merger announcements. On the basis of these remarks, it seems likely that the passage of the Staggers Act will result in a tougher merger approval process. Despite concerns expressed over labor protection and necessary special considerations of transportation policy, there seems to be no reason to delay transfer of railroad merger approval to the U.S. Department of Justice as was proposed in the original bill (U.S. Senate Bill 796, Railroad Deregulation Act of 1979).

Controlled transfer, too, is broached (a) in the Staggers Rail Act by the section that allows the transfer of Consolidated Rail Corporation (Conrail) lines to a transferee railroad and (b) by the directive to the U.S. Railway Association (USRA) and Conrail to study rail properties that might be proposed for such transfers. The first provision is a positive step toward system rationalization, but the USRA review is inappropriate government interference. Conrail management should be encouraged and authorized to use controlled transfer to attain optimal plant size. As written, the provision substitutes the government's judgment for the managerial judgment of a for-profit corporation. Controlled transfer reform legislation should be permissive and not binding in nature.

Another type of industry reconfiguration, the development of multimodal transportation companies, remains illegal. The Staggers Act states that intermodal ownership as otherwise prohibited by U.S.C. Title 49 cannot be authorized by the ICC at its discretion. A multimodal transportation company's goal would be to maximize profits by using each mode at its optimal level. Predatory pricing and elimination of the independent motor carrier companies could not occur because of the lack of entry barriers in the motor carrier industry. Canada has found no adverse impacts of intermodal ownership, and positive impacts have been noted. For example, piggyback developed more rapidly and extensively in Canada as compared with development in the United States (2). It is archaic transportation policy to prohibit multimodal ownership in the United States.

The improved stability and reduced risk required to draw private investment capital to the railroads will not be promoted by all provisions of the Staggers Rail Act. Legislation of rates for the San Antonio utility's coal leaves a fear of other special interest provisions in the future. Also, contract commitments for agricultural commodities are limited to 40 percent of carrier equipment by car type. This restriction limits the guaranteed use of carrier equipment, thus increasing financial risk. A bias toward nonrailroad equipment is created. Simultaneously, railroads cannot discriminate among agricultural shippers under similar circumstances. ICC resolution of complaints by agricultural shippers who claim discrimination in contracts will be constrained by 40 percent equipment restriction.

The lack of a clear definition of common carrier obligation heightens instability, too. If rates are established at levels that would permit the attainment of an adequate rate of return, railroads will have the incentive to provide cars to every shipper who will pay the rate. The economic merit of a common carrier obligation--and its necessity with the increasingly competitive motor carrier sector providing profitable rural service--should be addressed.

Stability is enhanced by provisions that make approved rates and contracts nonreviewable. The mandate for ICC approval of state-level regulatory procedures also minimizes sources of change. ICC authority to suspend rates is limited, and shippers must make retroactive payments if a suspended rate is subsequently approved.

An area that requires reform in the future is the regulation of joint rates on through routes. The compromise on this controversial issue in the Staggers Rail Act was a surcharge provision that is designed to ensure revenues equal to 110 percent of variable costs. Although the provision is an improvement, the logic behind the choice of 110 percent of variable cost is unclear. Carriers with a high percentage of joint rates at 110 percent of variable cost not only lose flexibility, but they will have a more difficult time attaining an overall adequate return, unless the economics of through-route traffic are very unique. Other traffic is likely to require higher revenue-to-variable-cost ratios, causing traffic diversion, more complaints, and continued cross subsidies.

Further, the surcharge provisions make special allowances for surcharge cancellation if a class III railroad will be harmed or if service is necessary in the public interest. Another protectionist and anticompetitive provision permits the use of a negative surcharge to lower rates as long as the new rate is not less than the lowest total charge available over a competing route. Intramodal competition and efficient routing are not promoted by either of these limitations.

According to the ICC Office of Policy and Analysis, given the successful result of deregulated pricing and divisions in the agricultural transportation market, future regulatory reform should emphasize deregulated divisions. At the minimum, the division should be based on each carrier's share of relevant activities associated with the movement, such as mileage or number of terminals. This type of division would encourage efficiency since it would not be cost-based. Ideally, joint rates based on the sum of rates submitted by each carrier should be in place, with carrier options to agree on a lower rate. Chaos is unlikely since it would be in the railroad's interest to maintain a workable system of rates. Shippers wishing to avoid the uncertainty of fluctuating rates have the ability to enter into long-term, fixed-price contracts. These necessary changes in the divisions procedures will be difficult to make at any time because major, powerful railroads will continue to resist the change.

The feeder-line development program of the Staggers Act should be eliminated. The program authorizes the ICC to mandate sale of a line when service is inadequate. The line must be sold at the greater value of liquidation or going concern. Because the act does not specify whether the going-concern value is to be that of the buyer or seller, the railroad losing its line also may lose its ability to extract some of the consumer surplus in purchase negotiations. Even if this were rectified, it is inconceivable that the government would impose such a confiscatory regulation on any industry. The seller is forced to provide labor protection that could reduce the effective purchase price below a constitutional minimum. Class I and II railroads may not purchase lines under the program, which is unjustifiable discrimination.

Beyond its confiscatory nature, implementation will be subjective and costly. The determination of what constitutes adequate service, the level of financial effects, and the likelihood of improved service are highly judgmental. A carrier that loses several lines to such sales could find itself interlining with a large number of marginal class III carriers who receive special treatment in divisions and surcharge considerations. The extent to which the feeder-line development program is harmful will depend on the ICC, but the provision is ripe for change in the future. Voluntary sales should be encouraged on the premise that carriers are rational and will sell a line when the offered price exceeds the value of the line to the current owner.

The most comprehensive reform mandate of the Staggers Rail Act is the exemption provision. The ICC is urged to deregulate those aspects of railroad transportation that need not be regulated to satisfy the transportation policy and either are of limited scope or are not subject to railroad abuse of market power. Review of potential exemptions can be initiated by the ICC, on the suggestion of a shipper, or by the U.S. Secretary of Transportation. ICC flexibility is curtailed by the limited-scope or market-power-abuse criterion. Since product competition is excluded from consideration of effective competition, some markets that may be regulated adequately by market forces may be defined as market dominated by rail. The scope test is a big umbrella that could shelter many commodities from exemption. In the future, ICC exemption authority should be broadened to permit exemptions where competition of any kind will protect rational shippers from market abuse.

The Staggers Rail Act seeks to encourage increased private investment in an efficient and economically healthy industry, but further reform is necessary to meet all aspects of this policy. Future laws should seek to provide a rate of return competitive with comparable investment opportunities. Uneconomic risk associated with railroad investment should be minimized by the elimination of nonmarket sources of instability such as regulatory ambiguities. The stigma attached to the railroad industry as a policy instrument should be removed by provisions that recognize the for-profit nature of railroad operations. The goal of a private, efficient, and economic railroad industry would be supported further by provisions permitting increased management flexibility. This ability to manage should apply to operating decisions about labor use and plant rationalization, as well as to marketing decisions about price and service. Private capital will not be drawn to an industry where there is no opportunity for managerial response to a changing environment.

MOTOR CARRIER ACT OF 1980

The Motor Carrier Act of 1980 was signed into law by President Carter on July 1, 1980, after lengthy debate of several alternative bills. The industry historically has opposed deregulation and exerted considerable pressure to block reform. This act was designed to allow more competition to play a role in resource allocation in the industry. As with the Staggers Act, the compromise nature of the bill left many areas in need of future reform.

The act explicitly states that unnecessary regulation should be reduced. The ICC is to be given explicit direction for the regulation of the industry and well-defined parameters within which it may act pursuant to congressional policy. Further, the findings state that the ICC should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation enacted by Congress. While the intent of Congress was to eliminate administrative and de facto law by the ICC, there is no guarantee that Congress is the repository of all knowledge or even that the Congress represents the will of the people. Potential dangers exist with too much congressional control.

Many of the provisions of the Motor Carrier Act were designed to reform ratemaking regulation to encourage competition. However, the act did not achieve total deregulation of pricing decisions. The debate over the best method for liberalizing ratemaking drew many suggestions, most centering around the concept of a no-suspend zone of freedom bound by a rate yo-yo. The compromise position of the Motor Carrier Act was a 10 percent rate yo-yo with an ICC option to expand the zone by 5 percent each year. The section is too restrictive. Given the results of previous studies by the U.S. Departments of Agriculture and Transportation, the ICC, and academia, it seems that rates are inflated. Real and perhaps nominal rates are likely to fall after deregulation, with decreases projected in the range of 20 percent, according to ICC Chairman Gaskins. Observations since the implemention of the act have shown rate decreases, but not through yo-yo use. The limited use of the yo-yo may be related to the exposure of these yo-yo rates to antitrust actions.

The yo-yo is based on existing rates that may limit the ability of a carrier to react to a new entrant. The existing rates may be well above cost, but the carrier will be able to lower those rates only by the amount of the yo-yo, unless the carrier relies on rate bureau changes. Meanwhile, the new entrant may price very close to cost, undercutting the existing carrier's rates. A wider rate yo-yo or unregulated pricing should be implemented. If entry is free or relatively free, there should be no problems on the upside limit. Rates could be subject to antitrust laws that would limit predatory pricing. Further pressure to widen the yo-yo is likely. Since a 20 percent yo-yo was first proposed (U.S. Senate bill 796), the ICC considered 25 percent and the Federal Trade Commission recommended 30-35 percent--both in Ex Parte No. MC-137, No Suspend Zone-Motor Carriers of Property.

When the ICC makes rate evaluations, it must ensure that rates yield a net income adequate to support prudent capital outlays, cover depreciation, assure repayment of a reasonable level of debt, permit the raising of needed equity capital, attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the United States, and account for reasonable estimated or foreseeable future costs. The adjustment of rates to a standard-of-debt level can be distortive. It has been shown that, when rates are adjusted to support a level of debt, incentives are created that can lead to overinvestment and to lack of cost control.

Ratemaking will also be influenced by the reform of rate bureaus, as initiated by the Motor Carrier Act. More change should be effected in rate bureaus. There is no reason to continue antitrust immunity for collective ratemaking. Efficient carriers merely reap monopoly profits and inefficient carriers are sustained in business. It is hoped that carriers will use the rate yo-yo mentioned earlier and will cause the elimination of the rate bureaus on a voluntary basis. Carriers could be encouraged to break away from the rate bureaus by ICC adoption of a relatively low rate-of-return standard for collectively filed general rate increases requested under the rule-ofratemaking section. Rate bureau ratemaking functions, except for the actual individual participants in joint rates, are not necessary and only contribute to higher, cartelized prices.

The 30-day notice requirements retained in the Motor Carrier Act should be shortened or eliminated. The ability to change rates rapidly to reflect demand and supply conditions is extremely important in optimally allocating resources among transportation modes. The motor carriers will compete against more liberal notice requirements for other modes and the flexibility of private carriage. Equity would demand similar treatment for all competing modes. Shippers wishing to retain rate stability can employ contracts. Alternatively, new and innovative tariffs could be filed that have a range of rates from point A to point B. The rate at any given time could depend on the value of an easily known trigger, such as a date or commodity production index, that would satisfy the notification criterion.

The influences on carrier flexibility are mixed. Like the Staggers Act, the Motor Carrier Act allows carriers to offer a mix of liability combinations to its customers. The new act authorizes the ICC to prescribe joint rates and through routes for motor-motor and motor-water movements when the ICC considers it desirable in the public interest. Although many have advocated this as a way to enhance and encourage intermodalism, dictation of routes and rates should be eliminated. The mandate of such rates imposes a regulatory burden on the carriers, increasing rather than decreasing regulation. The ICC should advocate the voluntary development of joint rates with eased ICC standards for approval.

Several aspects of the Motor Carrier Act relate to the use of transportation as an instrument of social policy. The provisions of the act that allow a motor carrier to provide transportation of recyclable materials without charge or at a reduced rate and direct the ICC to consider the effect of a rate on the movement of traffic are discriminatory. The special consideration for the provision of rural services and the reasons behind the small-community service study are basically not transportation issues but social problems. Social policy restrictions are inefficient and should be replaced by direct forms of aid.

Although the Motor Carrier Act attempts to lessen the regulation of intermodal and intramodal competition by lessening many restrictions on entry, it is clear that entry decisions remain in the ICC's discretionary realm since entry must be consistent with national transportation policy. A master certificate approach would have broadened and simplified entry. The case-by-case approach will not provide the same level of substantial operating freedom and increased competition. Master certificated entry should be pursued by both the administration and the ICC in the future. A good case has not been brought in support of limited entry to the motor carrier industry. As long as the ICC maintains a procompetitive posture, virtually free entry can be allowed via administrative law, albeit on a case-by-case basis, but easier entry provisions should be legislated.

Eased entry is allowed in a number of cases without a specific finding of a public need, in particular for packages weighing less than 100 lb. The generic operation is actually a terminal less-than-truckload (LTL) as opposed to a truckload operation. As future technology allows larger shipments to be handled as a 100-lb shipment, free entry into those markets should be encouraged. The provision of eased entry in the market for larger LTL shipments would have created incentives to develop such technologies.

The restriction of 100 lb from one consignor at one location to one consignee at one location on any day makes no economic sense. A carrier obtaining a fitness-only certificate to carry packages weighing less than 100 lb incurs a heavy burden. If the carrier operates one or more vehicles with a gross vehicle weight rating of 10 000 lb or more, that carrier will then be subject to commercial motor vehicle regulations issued by the U.S. Department of Transportation for all operations. The provision is unfair and could preclude some operators from participating in the industry.

The changes taking place in certificate and entry restrictions raise many political and economic issues. Expanded authority to serve intermediate points and county-based territorial limits, as well as two-digit standard industrial classification authority, should imply an option to serve, but the common carrier obligation is undefined. Free entry and competition should ensure that obtaining nondiscriminatory service is not a problem without maintenance of the common carrier obligation.

Conditions for protest of entry have been limited, but protests should not exist at all. Given the competitive nature of the trucking industry, the market should determine which carriers participate. Of course, a market-minded ICC could ignore protests and lower the expected future number of contested entry applications.

Unlike the Staggers Act, the Motor Carrier Act does not authorize the ICC to make commodity exemptions where competition is an adequate regulator. Such a provision would have strengthened the Motor Carrier Act. For equity and economic purposes, the ICC should have exemption authority for both modes. The act legislated some new agricultural exemptions, but, given the quality performance of the exempt agricultural carriers, the agricultural exemption should be expanded to include all agricultural and many nonagricultural products.

One agricultural product-related change enables owner-operators to carry the same weight of processed food, edible food, and fertilizers as the weight of exempt products carried. Unfortunately the provision discriminates against fleet owners by requiring that the owner of the truck be in the vehicle. Artificial constraints like this champion the "little guy," but impose a noneconomic, competitive disadvantage on their competitors.

Not all aspects of exempt motor carrier service have moved toward deregulation. Ironically, the deregulated portion of the motor carrier industry is becoming more regulated in some areas while the regulated segment is becoming less regulated. Increased scrutiny of cooperatives and restriction of their services will increase the transportation cost to users of the system. The ICC is given the power to require the use of written contracts for the interstate movement of exempt agricultural products and for brokerage services provided in connection with such movements. Increased regulation contradicts the reform goals of the act.

Restriction of intercorporate hauling to subsidiaries that are 100 percent owned is unduly restrictive. The definition should be 51 percent or controlling interest. Defining the corporate family as only wholly owned entities may cause inefficient private operations and reduce the real impact of this provision. Given administration and shipper support, it would seem that a future legislative thrust will materialize in this direction.

The Motor Carrier Act embodies some attempts to stimulate the growth of the trailer-on-flatcar (TOFC) concept. Regardless of any benefits attached to TOFC, there is no reason that TOFC applications should be expedited relative to applications related to any other branch of motor carrier service. Entry into TOFC feedership by independent motor carriers and also by rail-affiliated motor carriers should be facilitated, and key-point restrictions on rail-affiliated motor carriers should be removed. If the ICC option, which is included in the Staggers Act to exempt truck service provided by railroads incidental to TOFC, is implemented, then all motor carriers will have the ability to feed trailers to railroads at hub terminals. Terminals could take advantage of any economies of scale in operation and may generate sufficient carloadings to various destinations in short time periods to allow run-through, dedicated TOFC trains.

The evidence of labor advocacy is evident in the act's establishment of a job bank. The motor carrier job bank to be maintained by the U.S. Secretary of Labor is a political element to protect workers in case of adverse impacts caused by regulatory reform. It is not the government's role to provide such a special service beyond the normal limits of the U.S. Department of Labor's job bank.

CONCLUSIONS

Although many provisions of the Staggers Act and the Motor Carrier Act are positive steps toward increased reliance on competition as an economic regulator, the bills certainly do not eliminate all of the regulatory problems. The two industries continue to be saddled with restrictions on their management flexibility and profitability. In addition, inequities in the rules governing the two modes remain, causing uneconomic impediments to intermodal competition.

Both industries continue to be used for public policy purposes, especially in the key areas of energy conservation, small-community service, agricultural support, and recycled materials. The continuing use of transportation regulation as a policy tool is uneconomic and will serve to discourage private investors. Further reform should be aimed at the elimination of all nontransportation policies from transportation regulation.

Major differences between the bills exist in ratemaking sections. Differences in notice time, exemptions, rate yo-yo's, and control of intrastate rates may cause uneconomic modal choices. The existence of a longand short-haul clause for the railroads, but not for the motor carriers, will cause some major competitive problems in intermodal operations. Yearly car supply problems will be increased by the repeal of demand-sensitive rates for railroads while motor carrier rates for the products fluctuate. An income transfer will be made from the railroads to the agricultural sector, and railroads will remain unable to meet the prices of their competitors to improve their car use.

Further changes are necessary to achieve an appropriate atmosphere of competition for the rail and motor carrier industries. Given the past history of bipartisan support for regulatory reform and the new administration's transportation advisory group, it seems very likely that the deregulatory thrust will be continued by the Reagan Administration. The commitment to reform seems strong on the part of the ICC, Congress, and other powerful determinants of policy.

The focus of future legislation and current interpretation of the new bills should be on increased management flexibility, improved equity between the modes, reduced social policy provisions, and maximized competitive exposure. Multimodal ownership should be allowed and encouraged. The greater the reliance on competition as a regulator, the better will be the chances of developing an efficient, independent, and healthy transportation system able to meet the nation's needs.

REFERENCES

1. U.S. Imports and Exports of Coal Both Rising. Journal of Commerce, Nov. 1980.
2. W.B. Allen. The Economics of Plans I, II, and V TOFC Movements: Report to the Office of Policy Review. U.S. Department of Transportation, P-50, Oct. 1980.