Unfinished Business in Motor Carrier Deregulation

Thomas Gale Moore

After 90 years of increasingly stringent regulation of surface freight transportation, the U.S. government reversed course in 1980 and reduced controls on both the railroad and the trucking industries. Unlike federal legislation deregulating the airline industry, congressional measures failed to remove completely the economic controls over either mode of transport. Remaining regulation, especially of the motor carrier industry, continues to reduce efficiency and increase costs for shippers and consumers. Moreover, federal legislation left state controls untouched. Much remains to be done at both the federal and the state level.

In the late 1970s and early 1980s, the federal government reduced or eliminated regulation for many transportation industries. The most significant legislation occurred between 1977 and 1980 with the decontrol of air freight (1977), domestic passenger air transport (1978), and rail and truck freight transportation in 1980. Following partially freeing the bus industry in 1982 from federal and state oversight, reform petered out after the passage of the Surface Freight Forwarder Deregulation Act of 1986.

The Origins of Federal Regulation

Motor carriers were first subjected to federal regulation in 1935, when Congress put them under the control of the Interstate Commerce Commission. This legislation was the end result of a long period of state regulation and continued agitation by state regulatory bodies, the ICC, and the railroad industry to restrain trucking competition.

Railroads had recognized almost from their inception that motor carriers, trucks and buses, offered competition in the most lucrative portion of the railroad market—passenger transportation, short-haul monopoly transport, and the carriage of high-value manufactured goods. Between 1914 and 1931 pressure from railroads and court decisions based on railroad suits were the chief forces behind state regulation of trucks and buses. California, for example, inaugurated motor carrier regulation only after the railroads sued the state regulatory commission to extend economic constraints to trucking and bus lines.

Unfortunately for the railroad industry, the Supreme Court held in the mid-1920s that states could not regulate interstate transportation, which meant that motor carriers driving across a state boundary were exempt from any control. In effect this eliminated state limits on most trucking.

The trucking industry itself opposed federal regulation until the mid-1930s. After the Supreme Court held unconstitutional the National Industrial Recovery Act, which had permitted the motor carrier industry to establish rules of "good" conduct that restricted competition, the American Trucking Associations changed its stance on national legis-

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lation, and Congress passed the Motor Carrier Act of 1935.

Federal Regulation

The MCA grandfathered existing carriers but required new carriers to seek a certificate of public convenience and necessity from the Interstate Commerce Commission. The ICC demanded those truckers operating in 1935 to document meticulously their prior service to receive their certificates. Of some 89,000 "grandfather applications," the ICC granted fewer than one-third, and these with considerable limitations.

The commission was also hostile to new or existing truckers who wished to extend their authority. Only if no other carrier had authority to offer the proposed service did the commission consider a request for a new license. Even then, if an existing certificated carrier offered to provide the service, the ICC would deny the application. The effect was to prevent new competition with existing carriers on any particular route.

Purchasing the rights of an existing carrier became the only practical approach to entering a particular market. By the 1970s, route authorities were selling for hundreds of thousands of dollars. Since the commission disapproved of "trafficking" in rights, it was often hostile to mergers and purchases and attempted to restrict certificates as much as possible. The result was often bizarre. A motor carrier with authority to travel from city A to city B that had purchased another carrier or its rights to go from city B to city C was required to carry goods destined for city C through city B, even if the direct route from city A to city C was considerably shorter. In some cases, carriers had to go hundreds of miles out of their way. This added many wasted hours or even days to the transport.

Remaining regulation of the motor carrier industry continues to reduce efficiency and increase costs for shippers and consumers. Moreover, federal legislation left state controls untouched. Much remains to be done at both the federal and the state level.

The 1935 legislation required motor carriers to file all rates with the commission thirty days before they became effective; these tariffs were mandated to be open to inspection by all, including competitors. If a trucker, a regulated water carrier, or a railroad protested the tariffs, the ICC normally suspended the filing pending an investigation of their legality. If the proposed charge failed to cover the commission's estimate of the full cost of the transportation, the ICC rejected the proposal. To make matters worse, in 1948 Congress passed, over President Truman's veto, the Reed-Bulwinkle Act, which exempted carriers from the antitrust laws when they agreed on tariffs in rate bureaus. In other words, Congress authorized the commission to cartelize the trucking industry.

In attempting to curtail competition among motor carriers, ICC regulation also made the industry grossly inefficient. Carriers had to waste resources. Permissible routes and products were narrowly specified. Truckers with authority to carry a single product, such as tiles, from one city to another might not have authority to haul anything on the return trip.

One of the peculiarities of regulation was that Congress, yielding to strong political pressure, exempted agricultural goods from commission control. Farmers recognized that regulation of the transportation of their outputs and inputs would increase their costs, decrease service, and reduce net revenue from sales.

Regulation's Costs. In the 1950s the Supreme Court held that frozen fruits and vegetables and frozen and fresh dressed poultry were agricultural, not manufactured goods, and therefore free of federal controls. As a result, rates charged to haul these products fell sharply, while the service received by shippers improved. The Department of Agriculture found that charges for carrying fresh poultry fell by one-third on average, while rates for frozen poultry dropped an average of 36 percent. A DOA study also ascertained that tariffs for frozen fruits and vegetables declined by 19 percent.

Not only were rates lower without regulation, but service quality as seen by shippers was better. The Department of Agriculture, explaining that shippers preferred unregulated motor carriers, concluded: "Not only are the kinds of services offered expanded, but the quality of service improves also. In-transit time for motor carriers is reduced, sometimes by half. Schedules and routes are made to suit the shipper. Increased competition causes the carriers to be more eager to please and resolute to maintain good service."

Other research highlighted significant increases in costs and rates caused by regulation. The National Broiler Council testified in 1972 that regulated rates for carrying cooked poultry compared with unregulated charges for fresh dressed poultry, a similar product, were nearly 50 percent higher. The council also reported that in seven dimensions of service, such as quality of trucks, promptness of delivery, and reliability, its members much more often reported better service from the unregulated carriers than from the regulated ones.

Comparisons among heavily regulated trucking in West Germany and the United States and unregulated motor carriage in Great Britain, together with lightly regulated trucking in Belgium and the Netherlands, showed that charges in highly regulated countries were 75 percent higher than in free-market countries. In 1970 the United Kingdom, which had never imposed very restrictive regulation on road haulers, removed all economic controls over the trucking industry. After the limits on entry were abolished, sketchy data suggest that rates fell.

Movement to Reform

From the beginning, a number of economists had been critical of the imposition of regulation on motor carriers. In 1962 President John Kennedy was the first president to send Congress a transportation message recommending a cutback in regulation of surface freight transportation. The Johnson administration, however, was opposed to and defeated the congressional bill. The administration contended that the bill deregulated excessively broadly by eliminating all controls over agricultural shipments by rail as well as by truck. The next major effort at easing motor carrier controls was a 1971 Department of Transportation proposal to reduce regulation that the White House would not actively support because of opposition from the Teamsters union, one of the few unions sympathetic to the Republican party.

In November 1975 President Gerald Ford called for legislation to reduce trucking regulation. The administration's bill received no consideration in Congress, but the appointment to the ICC of several procompetition commissioners led to a change in commission attitudes. By the end of 1976, these commissioners were speaking out for a more competitive policy at the ICC, a position rarely articulated in the previous eight decades of transportation regulation.

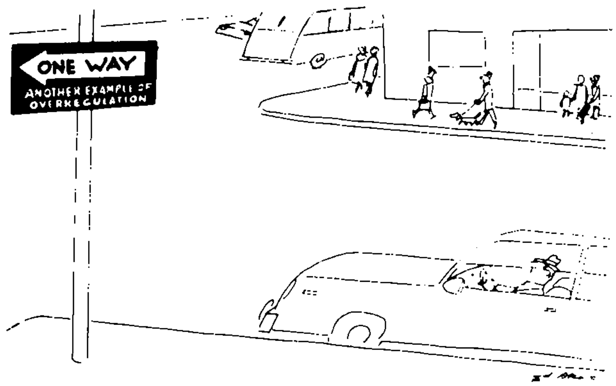
Under Ford the commission took the first actual deregulatory steps by issuing in June 1975 a rule prohibiting rate bureaus from protesting independent rate filings by members. At the very end of the Ford administration, the ICC approved, despite a strong dissent from the traditional regulators, a major expansion of the commercial zones (zones within which trucking is exempt from federal regulation) around major cities, and thus effectively deregulated a large new area.

The Motor Carrier Act of 1980 decontrolled trucking only partially, but together with a supportive ICC, it substantially freed the industry. The act shifted the burden of proof from the applicant to the protestor.

President Jimmy Carter followed Ford's lead by appointing strong deregulation advocates and supporting legislation to gut motor carrier regulation. After a series of ICC rulings that curtailed federal oversight of motor carriers and after the successful deregulation of the airline industry, Congress, under the spur of the administration, passed the Staggers Act, which diminished ICC control over railroads, and the Motor Carrier Act of 1980, which limited ICC authority over trucking.

Actual Reform

The Motor Carrier Act of 1980 decontrolled trucking only partially, but together with a supportive ICC, it substantially freed the industry. The act shifted the burden of proof from the applicant to the protestor. Formerly the applicant had to show that any requested new authority was "required by the present or future public convenience and necessity." The act now required the protestor to show that any requested new authority is "inconsistent with the public convenience and necessity." Furthermore, only those motor carriers having authority to offer the proposed service were permitted to file protests, and a diversion of revenue from existing carriers was not to be considered *in itself* as inconsistent with the public convenience and necessity. The act also required that the commission provide procedures permitting carriers to reduce limitations on their operating authority, such as gateway requirements, narrow property definitions, rigid territorial constraints, restrictions on return hauls, and restraints on service to intermediate points. The act provided as well for a zone of reasonableness (15 percent up or down) within which the commission could not suspend tariffs.



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Success of Deregulation

Studies of the effects of deregulation indicate that it has been highly successful. Rates have decreased; service has improved; shippers are pleased with the results. Motor carriers have experimented with new price and service options. Carriers have restructured routes, reduced empty backhauls, and simplified rate structures.

Service to small communities has improved, and complaints by shippers have declined. Increased competition has slashed freight rates and bolstered the willingness of trucking firms to go offroute to pick up or deliver freight. New nonunion firms and new nonunion subsidiaries of existing motor carriers have sharply eroded the strength of the drivers' union, the International Brotherhood of Teamsters.

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Shortly after regulation was relaxed, Harbridge House surveyed 2,200 manufacturers. Seventy-seven percent of the shippers surveyed favored deregulation of trucking. Sixty-five percent reported lower rail charges after deregulation. Shippers asserted that carriers were now much more willing to negotiate rates and services.

An ICC study found that the number of new firms increased, while the distribution of sizes was not affected. The number of entry applications rose from 6,746 in fiscal 1976 to 22,235 in fiscal 1980. In the first six months of fiscal 1981 the commission acted on another 14,096 applications. Of the over 9,500 motor property carrier applications filed during fiscal year 1987, only 56 generated protests.

By 1990 the total number of licensed carriers exceeded 40,000 compared with the 17,000 authorized in 1980. Moreover, the ICC has granted nationwide authority to over 5,000 freight carriers. Such a general grant was virtually unknown before 1980. Operating rights, which sold for hundreds of thousands of dollars when such certificates were almost impossible to secure from the commission, became almost worthless once new licenses were easily obtainable.

New trucking firms have largely operated as truckload carriers. Before the 1980 act, many of these new firms were owner-operators, unregulated agricultural carriers, or private carriers. The firms that have left the industry had been mainly unionized less-than-truckload carriers. While there has been a shrinkage in the total number of less-than-truckload truckers, competition has actually increased. The large ones that have survived have expanded into new territories and thus have increased competition with other less-than-truckload carriers in those regions. With thousands of firms having nationwide authority, competition has intensified acutely. Regional concentration, as measured by the percentage of traffic carried by the largest four or eight carriers, has increased only slightly since 1980.

Notwithstanding the increased options available to common carriers (truckers whose services must be available to the general public), contract carriers (truckers that offer specialized services to a limited number of shippers on a continuing contract basis) have taken an increasing share of the market. Contract carriers, which need not file rates, have also been given more flexibility in terms of the numbers of shippers they can contract with as well as the authority to serve broad classes of shippers. About two-thirds of all first-time applications for new authority are requests for a contract carrier license. In the first four months of fiscal 1987, for example, 2,051 applications were made for contract authority but only 936 for common carrier status.

Since 1980, intermodal carriage has surged sharply: from 1981 to 1986 it grew by 70 percent. The ability of railroads and motor carriers to work together to develop an extensive trailer-on-flatcar network is a direct result of the Motor Carrier Act and the Staggers Act, which partially freed the railroads.

The motor carrier industry has little utilized the rate zone provision and has instead opted for independent filings. Under ICC rules, rate decreases need only one day's notice, while increases require seven working days. Since 1980 the number of independent filings has increased sharply. Of the more than 1 million tariffs filed in 1986, 5,000 were criticized and 10,000, or about 1 percent, rejected. During fiscal 1987, truckers filed 1.2 million tariffs, compared with 394,000 in 1979. The more than 3 trillion tariffs on file at the ICC take up space and are generally ignored.

The General Accounting Office has testified to Congress that the Motor Carrier Act has had a favorable effect on the economy. From 1980 to October 1983, rates charged by less-than-truckload carriers fell as much as 10 to 20 percent, and some shippers disclosed declines of as much as 40 percent. Rates for truckload shipments have fallen farther, about 25 percent, and more quickly than rates for less-than-truckloads. From 1979–1980 to 1986, overall revenue per truckload ton dropped 22 percent. A survey of shippers indicates that in their opinion service quality improved on average.

The trucking industry has achieved these results mainly through improvements in efficiency—reduction of empty return trips, elimination of circuities, flexibility in pricing—and partially through reducing the proportion of drivers and helpers that it employs from 43 percent of its work force to less than 40 percent while cutting the pay of such employees by over 10 percent relative to wages of workers in the general economy. Before deregulation, ICC-licensed truckers paid unionized workers about 50 percent more than comparable workers in other industries, which suggests that unionized drivers are still earning a substantial premium.

Union members have been hurt through lower wages and a significant reduction in unionization. From the late 1970s to 1985, union contract wages slumped 12 percent, while the percent of motor carrier workers who were unionized plummeted from around 60 percent to 28 percent.

Economywide Savings. A significant gain from motor carrier deregulation coupled with partial deregulation of the railroads has been a substantial decline in the logistical costs of business, that is, the cost of managing inventories. Logistical costs are those outlays related to holding and moving supplies, parts, and outputs. All businesses must keep inventories, although they tie up capital and earn no interest. A reduction in the size of the inventories being held resulting from quicker placement can be an important saving to the economy.

According to one study, logistical costs of business and government in 1981 amounted to 14 percent of GNP. Improved transportation services, traceable to the Motor Carrier Act of 1980 and the Staggers Act, cut these costs by 1987 to 10.8 percent or by about $62 billion. Since trucks account for three out of every four dollars spent to ship goods, the partial deregulation of motor carriers played a significant role in this gain.

These savings stem from the ability of industry to adopt "just-in-time" manufacturing and of truckers to offer on-time delivery services. Without the partial deregulation that resulted from the 1980 act, these changes would have been impossible.

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Although some have disputed these large logistical savings, further studies by others have confirmed their magnitude. The Department of Transportation had the evidence reviewed and concluded that the gain to U.S. industry in shipping, merchandising, and inventories produced savings estimated between $38 and $56 billion per year.

Safety. The American Trucking Associations and the Teamsters have claimed that deregulation of the motor carrier industry has increased highway accidents and fatalities. DOT studies, however, have shown no effect on safety from economic deregulation. DOT testified in 1988 that "[f]atal accidents, fatalities, and injuries involving large combination trucks have been consistently lower since 1980 than they were in the prederegulation years of 1978 and 1979. The fatal accident rate per million miles driven by these trucks has fallen by one-third since that time." Between 1978 and 1989, federal statistics show that the fatal accident rate per 100 million vehicle miles traveled shrank 40 percent.

A California study of safety concluded that safety was closely related to the number of inspections but not to regulation. The California Public Utilities Commission reported that accident rates have receded since 1977 for the nation, the western states surveyed, and California, regardless of changes in state controls. In addition, accident rates in Arizona, which deregulated trucking in 1981, followed the same trends as other western states. The California commission also found that in California truck-at-fault fatal and injury accident rates were highest during the most intense period of regulation (1976 to 1980), then declined. Finally, carriers subject to state regulation were disproportionately responsible for truck-at-fault fatal accidents, while interstate for-hire carriers appeared to be responsible for a lower proportion of such accidents.

Current Issues

Continued regulation adds significantly to shipping costs within the United States. While transportation accounts for an average of 20 percent of the cost of a delivered product, the remaining economic regulation adds between 20 to 40 percent to that cost. Eliminating federal regulations alone might save about $28 billion annually on logistical costs. Total decontrol of state as well as federal regulation would bring additional savings, perhaps as much as $12 billion each year.

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The result of these remaining controls is inefficiency. These constraints make it cheaper in some cases to ship products from overseas than to ship the same goods within the United States. Domestically produced goods are shipped on average eleven times from raw materials to final consumer; on the other hand, imported products may have to be shipped only once or twice within the country. U.S. costs of transport can significantly handicap domestic goods competing with imported products. For example, it costs about 40 percent more to ship blue jeans from El Paso, Texas, to Dallas than to transport the identical jeans from Taiwan to Dallas.

Posting of Rates. Although reduced regulation has cut rates considerably, the obligation to file tariffs remains. This has caused a number of significant problems. At best it results in wasteful, unnecessary paper work. Second, perhaps as a result of the rate-filing requirement, charges for moving regulated goods are still higher than those for unregulated goods. For example, the movement of certain types of animal feed including livestock and poultry rations are exempt from oversight, but the ICC still regulates the tariffs for dog food. A rancher benefits from lower charges on provisions for his livestock, but must pay more to nourish the dog who helps herd his cattle or sheep. Tariffs for trucking dog food are 10 to 35 percent higher than unregulated livestock feed rates. Chicken, turkey, and fish TV dinners can be carried free of regulation, but a frozen dinner with a hamburger patty instead of a chicken leg requires trucking rates that are 20 to 25 percent higher. When the ICC ruled that used beer bottles and kegs were exempt under the "used, empty shipping containers" provision, costs to haul the empties dropped 20 to 30 percent.

Even if the filing of tariffs did not lead to higher charges, the requirement adds to paperwork, confusion, and absurdity. For example, motor carriers must publish rates for peanuts "roasted and salted in the shell," but a trucker carrying peanuts "shelled, salted, not roasted or otherwise" is exempt from any need to file. Truckers must submit tariffs for hauling show horses but not exhibit horses; motor carriers must list their prices with the ICC to deliver railroad ties cut lengthwise but not if they are cut crosswise!

Although motor carriers can file rate decreases effective in 24 hours, truckers have increasingly resorted to negotiated rates between themselves and shippers. In most cases such charges have gone unchallenged. If a motor carrier goes bankrupt, however, the trustees can and have brought suits to collect from shippers any difference between the published tariff and the negotiated charge. The ICC in a series of decisions on these negotiated rates held that it would be fundamentally unfair to the shippers to force collection, especially when the shipper assumed that the trucker had filed the tariff. In almost all cases the ICC ruled in favor of the shipper. The commisson claimed that its jurisdiction over unreasonable practices, read in conjunction with national transportation policy and the spirit of the Motor Carrier Act, gave it authority to find that the published tariff should not be applied.

In June 1990 the Supreme Court held that "[t]he ICC's *Negotiated Rates* policy is inconsistent with the [Motor Carrier] Act and is therefore invalid." The Court concluded that the Motor Carrier Act clearly required that motor carriers charge and shippers pay the filed rate. In other words, the ICC has no power under the act to modify a policy that directly conflicts with its governing statute.

As a result of this decision, negotiated rates to be valid must be filed with the commission. Besides increasing paperwork, such a rule will inhibit competition, since any rate published will be available to competitors and other shippers. This reduces the incentive to reduce charges to any one customer. Consequently, prices will be higher and the industry less competitive than it would be if freely negotiated rates were possible.

The ruling particularly disadvantages small shippers, most of whom assume that signing a contract with a motor carrier for a certain rate means that the price is final. For all other products or services a contract price is binding without any need to file paperwork with the government. The only objective served by publication of rates is to permit other carriers to protest lower charges.

Current law authorizes carriers to collude on tariff increases in rate bureaus. In most other industries such agreements would violate the antitrust laws. Although any single carrier can file separate charges, a rate bureau's filing for higher tariffs leads to pressures on carriers to boost their prices. The Motor Carrier Ratemaking Study Commission, established by the Motor Carrier Act of 1980, concluded that collective ratemaking leads to higher average wages, which are automatically passed on to shippers, protects the least efficient carriers, results in higher rates for shippers and higher prices for consumers, and does not and cannot ensure rate stability.

Future Federal Opportunities. Nonetheless, regulation does continue, and an ICC less sympathetic to competition and more regulation-minded could become quite restrictive. In fact, throughout the 1980s there was a congressional-administration struggle between those who wanted regulators who were promarket (the administration) and those who wanted proregulation appointees (many in Congress).

The ICC through its liberal interpretation of the Motor Carrier Act multiplied the benefits stemming from the 1980 legislation. The commission has refrained from accepting protests to discounted rates lodged by competing carriers. The ICC, under authority from the act, decontrolled contract carriage. The commission determined that reduced rates require only one day's notice. Unless the industry is totally deregulated, a future commission could roll these reforms back.

In its last term, the Reagan administration sent a bill to Congress to abolish Interstate Commerce Commission control over rates and entry of motor

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carriers. The Teamsters union and the American Trucking Associations vigorously opposed that proposal. The Bush administration has proposed abolishing all remaining controls on motor carriers, intercity buses, interstate rail passenger transport, interstate barge operations, ferries, pipelines (other than water, oil, or gas), carriers of household goods, freight forwarders, and freight broker services. Even with administration support, however, it will be a struggle to move legislation through Congress.

State Regulation. Only eight states do not regulate intrastate trucking. Other states have various restrictions, some quite onerous. Following the lead of the federal government, Florida, Arizona, Wisconsin, Alaska, Maine, and Vermont totally deregulated motor carriers in the early 1980s. New Jersey and Delaware had never imposed regulation on trucking. These states have been very satisfied with deregulation and have never seriously considered reregulation. The remaining 42 states, however, continue to impose controls on entry, rates, or routes or on all three. Although federal regulation is very important, about one-third of all trucking is local, mainly intrastate, and thus potentially subject to state controls.

The Department of Transportation studied the impact of deregulation on intrastate trucking in Florida and Arizona. About 90 percent of Florida shippers and receivers reported that service was at least as good after deregulation as before; 30 percent noted improvements, while only 10 percent claimed that service had become worse. Nearly 60 percent claimed that deregulation had kept motor carrier tariffs down. Seventy-six percent of Arizona respondents reported increased competition; nearly half claimed to have benefitted from the increased number of service options. About 50 percent of all respondents asserted that deregulation had held down rates, while only 10 percent claimed that it had resulted in higher charges. Comparisons for specific routes in Florida and Arizona show that intrastate rates increased less than interstate rates after state decontrol. In both states the premium paid for small shipments declined, and in Arizona an extra charge for service to remote areas largely disappeared.

Shippers, faced in many states with highly regulated intrastate carriers, position their distribution centers across state lines to be able to use interstate carriers. Texas, for example, is among the most strictly regulated states. New authority is almost impossible to secure. The four largest carriers control about 86 percent of all freight moved in the state.

Shippers, faced in many states with highly regulated intrastate carriers, position their distribution centers across state lines to be able to use interstate carriers. Although federal law exempts private trucking from interstate regulation, a majority of states prohibit these operators from hauling intrastate goods in the same vehicle as exempt goods.

Moreover, these state truckers are exempt from the antitrust laws and can set their rates collectively. The result is that freight rates paid by Texas shippers for intrastate movements are as much as 30 to 40 percent higher than interstate levels. To avoid these higher Texas charges, larger shippers employ interstate carriers by shipping from distribution centers in neighboring states. This maneuver, however, reduces their efficiency and increases their costs.

Procter and Gamble, for example, has a plant in Dallas and another in Alexandria, Louisiana. The Dallas plant does not serve Texas, its natural market, but supplies Louisiana, while the Alexandria facility supplies Texas. The company finds it cheaper to ship Crisco 600 miles from Jackson, Tennessee, to its customers in Tyler, Texas, than to ship it from Dallas, which is only 80 miles away.

Cargill testified in 1988 that it operated a flour mill at Fort Worth, Texas, which no longer supplied Lubbock, Texas, 290 miles away. Lubbock was supplied from Wichita, Kansas, 472 miles away from Lubbock, but at a cost of only $566. Supplying Lubbock from Fort Worth, although it is much closer, would have cost $728. Paper mills in Washington state, another state with strict regulation, use lumber from Idaho, Oregon, or British Columbia.

The Upjohn Company emphasized that importing ballpoint pens from Taiwan to the United States costs $135, but the charge for shipping pens from Chicago to Kalamazoo, Michigan, is $43 more or $178. Steel imported through Seattle and destined for Spokane is considered interstate and is carried at a tariff of $14 per ton. Steel that is produced in Seattle and shipped intrastate to Spokane pays a 31 percent higher rate or $18.40 per ton.

Federal Express operates its major hub from an airport in Tennessee. Virtually all of its traffic passing through the hub is interstate. About one-tenth of one percent of its business is intrastate Tennessee and is carried locally on the ground. The Tennessee state regulatory commission, on the basis of this small traffic, has asserted regulatory control over Federal Express. The state wants to control those intrastate packages that are traveling in the same vehicles with interstate shipments.

Private carriers complain that the most effective use a carrier can make of its equipment is to carry both intrastate and interstate traffic in the same vehicle. Although federal law exempts private trucking from interstate regulation, a majority of states prohibit these operators from hauling intrastate goods in the same vehicle as exempt interstate goods; this leads to higher costs for many shipments. Moreover, over thirty states prohibit the private carriage of goods from one wholly owned subsidiary to another wholly owned subsidiary. Under the Motor Carrier Act of 1980, private carriers have been free to engage in such compensated intercorporate hauling as well as single-source leasing and trip leasing; they can also now obtain supplemental for-hire operating authority. The net effect of these greater freedoms for private truckers has been to reduce empty backhauls from 28 percent to below 20 percent. Unfortunately, state limitations on private carriage have sharply curtailed the benefits that this decontrol of private trucking could provide.

A study sponsored by DOT projected that eliminating regulation by states of those carriers with interstate licenses would produce savings of $5 to $12 billion annually. The estimated loss to Texas shippers alone is about $760 million per year, a sum passed on to shippers and ultimately to consumers. Dan Oliver, former chairman of the Federal Trade Commission, calculated that Texas's intrastate trucking regulation cost consumers nationwide about $1 billion each year.

In addition to state economic regulation, the states impose a bewildering hodgepodge of highway tax laws, regulations, and fees on interstate trucking. The American Trucking Associations asserts that truckers must pay $1 billion every year in administrative paperwork simply to meet $8 billion of these taxes. The Department of Transportation calculates that the costs of the paperwork needed to deal with this lack of uniformity in state requirements run between $1 and $3.2 billion annually over and above the actual fees and taxes. These billions must be added to the approximate $3 billion or more lost from state economic regulation.

Simple preemption of state regulation is inadequate. The remaining ICC controls must be eliminated so that the trucking industry can be truly efficient and operate just as virtually all other industries in our market economy do.

Policy Implications

Several attempts have been made to complete the deregulation of the motor carrier industry. During the Reagan administration's first term, it refrained from proposing any change in regulation, primarily because it wanted to secure the continued political support of the Teamsters union. In 1987, however, the administration introduced legislation to eliminate the remains of federal regulation, to terminate antitrust immunity, and to abolish the Interstate Commerce Commission. This proposed act would also have preempted state economic legislation.

The Bush administration has supported complete deregulation, including the elimination of requirements to file tariffs and to secure operating rights; the legislation would also prohibit states from regulating interstate carriers. The National Transportation Policy statement issued in 1990 asserted that "the Federal transportation policy ... support[s] repeal of remaining laws imposing economic regulation on motor carriers." The Bush administration has failed to campaign adequately for eliminating the remaining ICC controls, however.

In February 1991 the Department of Transportation proposed the "Surface Transportation Assistance Act of 1991." This act would preempt state economic regulation: "No state ... shall have ... any law, rule, regulation, standard, or other provision relating to ... (1) intrastate rates, routes, or services of any interstate motor carrier, interstate motor private carrier, or interstate broker ... (2) the leasing, rental, or other sourcing of commercial drivers and motor vehicles by interstate motor carriers of property. ..." It would also harmonize registration fees, taxes, and charges for fuels. The Department of Transportation's legislation is embodied in Rep. Dennis Hastert's bill, the Safe and Competitive Trucking Act of 1991.

Preempting state regulation and coordinating state charges on trucking could save between $5 and $12 billion annually. This legislation would not, however, address the issue of the remaining ICC controls. Nor would it eliminate antitrust immunity for collective ratemaking. Politically it is undoubtedly easier simply to preempt state controls than to deal with ICC regulation. The American Trucking Associations, which strongly champions continued ICC control, is unopposed to preemption, because some nationwide less-than-truckload carriers would like the opportunity to compete within the heavily regulated states. Only state regulatory commissions and the Teamsters are prepared to fight the elimination of state controls.

Simple preemption, nevertheless, is inadequate. The remaining ICC controls must be eliminated so that the trucking industry can be truly efficient and operate just as virtually all other industries in our market economy do. The motor carrier industry would then mirror other industries: entrepreneurs could enter the industry without government approval, charge whatever the market would permit, and offer whatever service the trucker believed was economic. The result would be a lower-cost motor carrier industry and a more efficient transportation system in the United States. Consumers, shippers, and business, that is, the economy as a whole, would benefit.