

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

Wednesday, 7:30 p.m.
September 22, 1965

EXECUTIVE

7N

FG 11-3

FG 155

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FG 999-15

TO: THE PRESIDENT

FROM: Joe Califano *gjc*

I have just been over the first cut of the proposals and ideas in the area of transportation for the 1967 legislative program. The proposals are not imaginative enough and will not give you the opportunity to select a variety of alternatives. In my opinion, this is an area where there are major things to be done that will not cost a lot of money. Charlie Schultze agrees, as does Art Okun of the Council of Economic Advisers. Furthermore, it is my understanding that you have asked Secretary Connor and Secretary Boyd to come up with an imaginative transportation program.

Unless you have some objection, therefore, I am planning to have a meeting with Secretaries Connor and Boyd on Saturday morning and ask them to consider and prepare papers on the following ideas:

1. A Department of Transportation (or some reorganization of the executive transportation functions).
2. Reorganization of the regulatory transportation functions.
3. Program of deregulation to make transportation rates more competitive and rational.
4. A major highway safety program (present projections are that over 50,000 people will be killed on the highway this year -- almost every American has a friend or relative who has been seriously injured in an automobile accident).

Fully developing some proposals obviously involves no commitment to carry them out, but if we are to have for your consideration a full range of alternatives, we must have imaginative, low-cost programs from which to choose. These proposals are in line with your ideas about improving administration and, in the case of deregulation and competition, could put you in the position of getting the Federal government out of some of its current activity.

Approved ✓

Disapproved _____

Hooray! - L

Aug 27 1965

EXECUTIVE

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MC

FG11-1

NOTE FOR MR. CALIFANO

Re: Transportation Meeting, September 25, 1965

1. All reasonable proposals should be developed for consideration -- regardless of their political prospects.

2. All reasonable proposals should be presented, explained, and supported with whatever facts are available for decision by the President. For proposals lacking solid analytical and factual support, an estimate should be provided of the minimum time required to provide such backing and the scope of any necessary investigations should be outlined.

3. Recommendations to be made to the President for his 1966 transportation program are not to be communicated to the regulatory agencies or to executive branch operating agencies. They may, of course, be requested to provide statistics or other facts needed in connection with the development of recommendations.

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET

DATE 9/24/65

TO: Mr. Califano, The White House

FROM: Bill Capron

REMARKS: Here are copies of the

agenda for the Transportation Meeting

tomorrow morning - these without

comment and recommendations.

Attachments

* Ask for on Transportation

7 also
2/14/66

TRANSPORTATION PROGRAM

Agenda for Meeting
on
September 25, 1965

THIS IS
UNEXPURGATED
VERSION OF Agenda

I. REGULATION

A. The 1965 Task Force Report proposes to:

1. Simplify procedures in abandonment of redundant rail freight service.

Comment: Does not go far enough. Recommendation: Develop supporting material. See attached paper A.

2. Require ICC to emphasize cost impact of technological and service innovations in rate making.

Comment: Goes in right direction; needs specific standards for implementation. Would be more likely to occur in a fundamental way if we adopt the more comprehensive changes proposed below. (Section B)

Recommendation: See attached paper A.

3. Repeal "rule of three" on exempt water traffic.

Comment: Good

Recommendation: Concur

4. Repeal June 1, 1939 limit on list of exempt bulk commodities.

Comment: Good

Recommendation: Concur

5. Create joint boards on through routes and joint rates.

Comment: Effectiveness doubtful unless compulsory. Explore alternative approaches to transport integration.

Recommendation: See attached paper A.

6. Impose control of international air rates.

Comment: Contrary to general policy of greater reliance on competition.

Recommendation: Explore alternative means of breaking international rate cartel.

B. Additional proposals that should be evaluated and presented for Presidential decision:

1. Repeal long and short haul provision of IC Act.

Comment: Existing law is archaic; was most valuable under 19th century conditions of single mode monopoly.

Recommendation: Estimate impact of repeal. See attached paper A.

2. Repeal requirement of IC Act that rates be based on "reasonable classifications" of property.

Comment: A necessary condition for reorienting rate regulation toward a cost basis.

Recommendation: Estimate of impact of repeal needed. See attached paper A.

3. Amend IC Act to require rail and motor carriers to accept shipper-owned or -leased equipment at cost-based rates.

Comment: Another basic step toward cost-based rates.

Recommendation: Estimate of impact needed. See attached paper A.

4. Limit liability of common carriers for loss or damage of property.

Comment: Present law a major factor in cost and rate inflation; a barrier to rate simplification.

Recommendation: Estimate of impact needed. See attached paper A.

5. Eliminate rate regulation of all unsubsidized domestic passenger transportation.

Comment: Little impact on rail and bus services. More competitive pricing would result.

Recommendation: Impact on domestic air transport needs full scrutiny. See attached paper A.

6. Deny carriers right to request suspension of proposed rates or place burden of proof on complaining carriers.

Comment: Would facilitate rate adjustment to changing markets. Limited experience supports change. Would minimize carrier harassment of competitors.

Recommendation: Develop available support evidence. See attached paper A.

7. Prohibit mixing rules on container shipments.

Comment: Moves toward more general effect of item 2 above -- cost-based rates. Recommendation: Estimate effects. See attached paper A.

8. Eliminate economic regulation of small shipments.

Comment: Another step toward market pricing with more limited immediate impact. A testing device.

Recommendation: See attached paper A.

9. Liberalize motor and water carriers operating rights.

Comment: Would remove artificial and uneconomic restrictions on operations. Recommendation: See attached paper A.

10. Revise IC Act to facilitate voluntary reorganizations.

Comment: May be badly needed alternative to merger. Recommendation: See attached paper A.

11. Review merger policy, develop action proposals.

Comment: Basic review of antitrust policy in transport area overdue. Several reform measures appear to be available.

Recommendation: Develop comprehensive evaluation program. See attached paper A.

II. REORGANIZATION

A. The 1965 Task Force Report proposes to:

1. Create a Department of Transportation.

Comment: Good. Needs detailed evaluation of possible constituents and structural development.

Recommendation: Develop plan in substantially greater detail. Bureau of Budget staff to collaborate.

2. Create a National Transportation Council.

Comment: Seriously unrealistic: Membership of regulatory agencies (chairmen?) would create conflict of interest problems in advising the President on transport policy; could not supplant Interagency Merger Committee in recommending executive branch positions on merger cases; program agency membership makes it inappropriate as an instrument for "review of transportation budgets", "navigation works."

Recommendation: Better alternatives are available. Substantial further evaluation needed. May be useful as a sounding board, but not as a policy or action group. See attached paper B.

3. Reduce ICC membership from 11 to 5 or 7, provide Presidential appointment of Chairman.

Comment: Good, but not bold enough.
May be a fallback position.

Recommendation: Consider more far-reaching alternatives, e.g., B.2 below.

4. Transfer ICC Safety Functions.

Comment: Good. Where are they to be transferred?

Recommendation: Elimination of some ICC "safety" work should be evaluated also.

B. Additional proposals that should be evaluated and presented for Presidential decision:

1. Create a mechanism for review of all Federal transport investment proposals.
[Only needed if Department of Transportation is not created.]

Comment: Needs detailed development. Recommendation: See attached paper B.

2. Consolidate and reorganize transportation regulatory agencies as a single agency, devoid of all promotional and administrative functions.

Comment: More comprehensive and permanent than A.3 above. Another alternative might be a transportation court of appeals (compare Tax Court, Court of Customs and Patent Appeals). Could be a bargaining counter for a Department of Transportation.

Recommendation: Various proposals need detailed evaluation, should be ranked in order of comprehensiveness, fallbacks indicated. Bureau staff could collaborate. See attached paper B.

3. Review the division of safety responsibilities between CAB and FAA.

Comment: Consolidation of most responsibilities in FAA would be desirable and consistent with 2 above, but an adjudicatory element should reside in the Board.

Recommendation: Further evaluation for possible action in connection with the proposal for a Department of Transportation.

III. HIGHWAY SAFETY

The 1965 Task Force Report proposes to

Establish a Highway Safety Center in Commerce (Department of Transportation), (a) to develop a program (b) to collect and evaluate accident and related data, and (c) to establish a "causal investigation program."

Comment: Good, but needs further development (which may be underway). A time schedule for implementation is needed. Need for legislation doubtful.

Recommendation: Drastic organizational changes appear to be necessary. See attached paper C.

IV. HIGHWAY FINANCING

A. The 1965 Task Force Report proposes to:

1. Give ambiguous endorsement of the increased truck taxes proposed by the Administration last year.

Comment: Not clear what is recommended in view of the subsequent discussion of alternatives. What "factors" have been introduced by the "passage of time" that make examination of alternatives desirable?

Recommendation: Factual support for Administration proposals should be reviewed and strengthened, if possible. Alternative forms of truck taxes should be developed. Waybill taxes on the shipper may be feasible.

2. Transfer excise tax on new automobiles to the Highway Trust Fund.

Comment: Totally ignores the problem of tax equity among highway users.

Recommendation: Use of automobile excise taxes should be considered only as a source of support for beautification programs which are of value primarily to automobile passengers. Consult Treasury.

3. Reduce proposal for diesel fuel tax increase from 3 cents increase to 2 cents.

Comment: Sole justification is political acceptability.

Recommendation: Will not solve either equity or financing problems. Other alternatives should be developed for consideration.

B. Additional proposals that should be developed and presented for Presidential decision:

1. Impose differential user charges to reduce traffic peaking in congested urban areas.

Comment: Rejected by Task Force Report on basis of difficulties in administration and intrusion on State and local jurisdictions.

Recommendation: The administration and jurisdictional problems are precisely what need to be explored, solution developed. Satisfactory charging systems, combined with restrictive parking measures might eventually be made a condition of Federal aid. A sound economic basis for marginal cost pricing and resource conservation exists in this area. Consult Treasury and Bureau of the Budget.

2. Reaffirm Administration's highway user charge proposals.

Comment: Support, at least until acceptable alternatives are developed.

Recommendation: Review existing documentation.

V. RESEARCH

The 1965 Task Force Report

The discussion does not make clear, specific recommendations. Hints of need for additional funds and amendatory legislation are made, but the desirability of proceeding along these lines seems to be questioned.

Recommendation: The Under Secretary of Commerce should develop a detailed outline of a research program for consideration during 1966 and for action in connection with the fiscal 1968 budget. Project priorities should be established, a time schedule for performance should be set, and recommendations as to availability of qualified personnel and institutional resources should be made.

Comment: The 1962 Highway Act does not assure the compatibility of highway plans with over-all community development plans. Nor is there adequate assurance that local planning agencies, as against local highway departments and city governing bodies, will be consulted on highway proposals. Moreover, the present Federal organization is totally inadequate for a cost/benefit evaluation and assessment of trade-offs as between the highway and mass transit solutions of urban commuter problems.

Recommendation: Re-evaluation of these problems is needed. See Section B below.

B. Additional proposals that should be evaluated and presented for Presidential decision:

1. Amend the Federal-aid Highway Acts to require that urban highway plans be found compatible with comprehensive community development plans.

Comment: Could be done now as a separate action, might be more effective if done in connection with 2 below.

Recommendation: Develop a legislative proposal.

2. Assign urban highway and mass transit planning responsibility to HUD; transit research, financing, and possible surveillance of operations to new bureau in Commerce (later in a Department of Transportation).

Comment: Operating agencies, e.g., Bureau of Public Roads, Urban Renewal Administration, are not objective, unbiased planners; planning should be integrated, not fragmented among various clientele agencies.

Recommendation: Need detailed evaluation. Bureau of the Budget to be consulted.

*See
Presidential
paper*

IX. HIGHWAY TOLL FACILITIES

The 1965 Task Force Report proposes to:

Empower Commerce to control construction and regulate the amount and duration of tolls on Interstate bridges and tunnels.

Comment: Acceptable.

REORIENTATION OF TRANSPORT REGULATIONS

Comments Keyed to Items in Chapter 4 of Commerce Task Force

1. Facilitate abandonment and discontinuance of rail freight service. Probably a better route to elimination of excess capacity than merger. The real problem is not main line consolidation, but reduction of high-cost, under-used branch lines and services.

Further exploration of requirements relating to guarantees of substitute through truck-rail service and rates appears to be necessary. What have been the consequences of any recent abandonments? Carrier consequences? Community consequences? (See Commerce study of Rutland abandonment.) What minimum traffic must be offered to require substitute service? What costs must be compensated in rates as a condition of guaranteed service? What minimum service should be required when minimum traffic and adequate rates have been agreed upon? What minimum non-rail service should be required as a basis for complete abandonment of rail or rail-truck or rail-water service?

2. Relate rate-making to technological and service innovations. The proposal speaks of "due consideration" of the cost impact of innovations in rate making. What standards can be established to give this proposal meaning? How is the portion of productivity gains available for rate reduction to be determined? Under what circumstances should other criteria constitute a basis for modifying or rejecting productivity increases as justification for rate reductions? What safeguards are necessary to assure widespread dissemination of benefits of technological change? (Explore Canadian experience with contract rates.)
3. Repeal "Rule of Three" on exempt water traffic. No comment.

4. Repeal the June 1, 1939 limit on list of exempt bulk commodities. No comment.
5. Create Joint Regulatory Boards on through routes and joint rates. Can this proposal be effective if it is not made obligatory for all modes? What are the alternative methods of obtaining more fully integrated transport service? Have they been explored?
6. Impose control of international air rates. This is a move against the market decision-making process and is contrary to the policy of deregulation. Is there a more direct and effective way of breaking up the international rate cartel?

The following additional proposals should be explored with a view to determining more precisely what information would be needed to make a firm case for their presentation or rejection.

1. Repeal Long and Short Haul Provision of the IC Act (Par. 1, Sec. 4). This provision appears to be largely archaic. The case for its repeal would appear to depend on identifying those areas and commodities with respect to which it is currently used. (Wheat; Intermountain territory.) What kinds of shippers and places would be affected by repeal and how much? How much would repeal reduce the workload of the Commission? How would carrier costs and services be affected? What other provisions of law would be affected by this proposal? Would other proposals, if carried out, make this proposal less significant? Would the competitive position of rail carriers be enhanced or impaired by this change?

2. Repeal the requirement of the IC Act that rates be based on "reasonable classifications" of property. /Sec. 1(6); Sec. 216(b); Sec. 305(a)(b); Sec. 404(a)7. Can this proposal be made sufficiently specific so as to reduce the opposition of carriers and shippers? For example, if the law were amended to limit the current list of criteria to density and volume, would this reform be acceptable? What effect would this change have on traffic moving at rates producing net revenue? on traffic moving at depressed rates? on the rates and revenues? and consequently on shippers and regions? How would these conclusions be modified, if this change were made contingent on (a) limitation of common carrier liability, and (b) a requirement that carriers accept the vehicles of all shippers and move their shipments at cost-based rates? (See items 3 and 4 below.) How would these changes affect the competitive positions of the different modes (rails and motor carriers in particular, and freight forwarders)?

3. Amend the IC Act to require rail and motor carriers to accept shipper-owned or-leased equipment at cost-based rates. (par. 2). What would the effect be on the supply and distribution of rolling stock? Would the "shortage" of freight cars be reduced or eliminated? Would shippers be encouraged to adopt technological advances tending to reduce damage? to reduce transportation costs? to provide a wider variety of specialized equipment? To what extent would railroad capital be released to be employed on right-of-way, other needed improvements? Would this proposal improve car utilization? Would it encourage more compatible loading and unloading by shippers and consignees? To what extent would the competitive position of various shippers be affected?

4. Limit liability of all common carriers for loss or damage of property. This elderly common law doctrine greatly increases transport costs. It has been effectively curtailed with respect to the movement of household goods. Regular insurance procured by shippers or consignees is believed to be cheaper, and settlements are likely to be more prompt. What would the cost impact be? Would costs vary substantially among shippers? Would carriers cease to exercise reasonable care? Cease to search for protective technology? What would be the impact on rates (taken in conjunction with items 2 and 3 above)? Would not the underwriters develop testing facilities and rating bureaus? Commission workload? Would this improve or worsen the competitive position of common vs. contract and private carriers?

5. Eliminate rate regulation of all unsubsidized domestic passenger transportation.

What would be the impact on subsidized domestic air transport? Specially between medium density traffic points where they compete with trunk carriers? Would this have any necessary impact on air safety? How would other modes be affected? Would service patterns be affected? If so, how?

6. Deny carriers the right to request suspension of proposed rates. This should permit much more rapid adjustment to changing traffic and technological conditions. Might encourage rate experimentation. Most suspensions are now instigated by competing carriers. What are the statistics? What proportion of the proposed rates are upheld? disapproved? substantially modified? How would this proposal affect regulatory workload?

Alternate Proposal. Deny carriers the right to request suspension for ninety days and then place the burden of proof on the complaining carrier. Analysis as above.

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- 5 -

7. Prohibit imposition of mixing rules on container shipments whether by the regulatory agencies or the carriers. This would be consistent with items 2 and 3 above (and with item 2 of the Commerce Task Force Report). It should encourage adjustment to cost-based rates. What impact would it have on carrier revenues? On various shippers? On freight forwarders? On costs and tariffs? On documentation and on the elapsed time of transport movements?

8. Eliminate economic regulation of small shipments (less than 300 pounds). What would the impact be on carriers? Motor carriers? Freight forwarders? REA? UPS? Post Office? Bus companies? Airlines? On Shippers? On documentation? On Service? On Tariffs? On rate making?

Would analysis of the impact of this change during a trial period provide an adequate basis for extending exemption to 5,000 lbs. or 10,000 lbs. later? Criteria should be formulated to provide the basis for such a study.

9. Amend the IC Act (Parts II and III) to provide that after (some date to be specified) all operating rights would be granted as (or converted to) irregular routes -- without commodity, point or directional restrictions -- and that an adequate basis for authorization would be a finding "consistent with the public interest." This change should ultimately have a major impact on underutilization of capacity, on costs, on rates and on profits. Can these effects be estimated? What will the impact on common carrier services be? How much complete common carrier service is now available to occasional shippers? small communities? Would this change have an impact on equipment utilization? on leasing of equipment? What would be the impact on "illegal for-hire carriage"? Would these proposals be more acceptable if coupled with temporary restrictions on new entry? If so, what form should such restrictions take?

10. Revise the IC Act to reduce the influence of senior security holders in voluntary reorganization proceedings. Various methods of facilitating voluntary reorganization should be explored. The objective is to reduce obstruction by bondholders of capital adjustment to accord with real assets. To what extent have current senior security holders acquired their paper at prices below face value? Does this provide a formula for reorganization? What other bases are available? Does the regulatory process impede voluntary reorganization? If so, what corrective action could be taken? To what extent is this an alternative to merger that may be in the public interest to a greater extent than merger?

11. Transport Merger Policy. Several of the recommendations already made have been noted as alternatives to mergers. They may be in the public interest to a greater extent than merger and more relevant to the solution of underlying problems. One of these was abandonment of service; another was facilitation of voluntary reorganization. These and other proposals should be made the subjects of intensive investigation. The immediate research program of U.S.T. should include the review of merger criteria in the regulatory acts and other statutes. For example, what would be the impact of requiring that dominant weight be given the effects ^{on} the quality and quantity of transport service in adjudicating merger proposals? Would there be regions or commodities without competitive transport services if rail consolidation resulted in only one rail carrier?

If intra-modal mergers are facilitated, can inter-modal mergers be allowed without greater restrictions? Should they be prohibited? Should inter-modal grandfather operating rights be withdrawn as a condition of intra-modal merger? Are there specific combinations of modes that should not be permitted?

Should the labor protective provisions of Federal law be re-evaluated to determine whether preferable alternatives are available, e.g., retraining and relocation programs.

In the light of the recent N&W-C&O merger proposal, should the Interagency Merger Committee or the Under Secretary be given power to initiate merger proposals? Alternatives to mergers proposed by carriers -- including non-merger alternatives? The Committee, in recommending opposition to Penn-Central merger, was influenced in part by the belief that an interim four-system plan for the Northeast would provide better competitive balance in the short run and, if a two-system structure proved inevitable in the long-run, more choices than would the three-system plan forecast by the Penn-Central merger. With the N&W-C&O announcement, we are already confronted with the prospects of a two-system solution, probably not the best one.

The significance of "bigness", i.e., monopoly, in the transport field should be reviewed to determine whether it need be given as much weight in merger deliberations as it has heretofore. The implication is that growing inter-modal competition may have made intra-modal monopoly less significant.

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM FOR MR. CALIFANO

Subject: Transportation Organization

Bureau staff have reviewed the memorandum sent to the President on June 30 by Mr. Halaby concerning transportation organization in the executive branch. Because of rapidly developing issues in the international air transport area, we have not yet prepared comments for the President on all of the points discussed in the Halaby letter. We expect to do so after further clarification of some of the international aviation issues. In the meantime, this memorandum outlines our current thinking on the problems raised in the memorandum to the President.

Mr. Halaby's letter highlights an important problem, the diffusion of transportation responsibilities among Government agencies, which was of great concern to two of the 1964 Presidential task forces -- the Task Force on Government Reorganization and the Task Force on Transportation. Both groups pointed out that transportation activities are widely dispersed among agencies, including the regulatory commissions. Policy making is consequently difficult and often ineffective.

The Secretary of Commerce and the Under Secretary for Transportation have important transportation functions. The Secretary is the President's principal adviser on transportation policy. Because of the existing statutory division of transportation functions, however, the Department cannot exercise effective leadership in all Government transportation activities, not even in the policy area. To remedy this diffusion, both task forces recommended the creation of a Department of Transportation. I am in agreement with the task forces and Mr. Halaby that this represents the best long-run solution to this organization problem. Since it may not be expedient at this time to take such a far-reaching step, the President may wish to consider certain transitional moves that might facilitate ultimate creation of a new Department of Transportation and meanwhile produce better solutions for some current pressing problems.

National Transportation Council

We have serious reservations concerning Mr. Halaby's suggestion that the President establish a National Transportation Council or committee. We understand that Under Secretary Boyd is already considering the formation of both a broadly based interagency transportation committee and a public advisory committee. Given the existing statutory diffusion of authority in the transportation field, we doubt that meaningful agreement on significant policies can be achieved by interagency consensus. More likely, any "policy" statements from such a group will be compromises stated in language geared to the most acceptable common denominator.

If Mr. Boyd establishes such an interagency committee it should be only after careful consideration of such questions as:

- (1) What kinds of issues are to be considered by the group?
- (2) How is agreement to be reached -- majority vote, consensus?
- (3) Is the committee advisory to the Secretary of Commerce or to member agencies?

If the committee is to be established we believe it is preferable that it serve in an advisory capacity to the Secretary. This would facilitate the President's reliance primarily on a single officer for policy views in the transportation area and enhance the role of the Secretary as the President's principal transportation adviser.

Although we have doubts concerning the efficacy of an interagency group with a broad general charter, there is a definite role for interagency consultation and action with respect to certain specific transportation functions. Enlarging the charter of the existing Interagency Committee on Transport Mergers, as discussed in the following section, would be preferable to establishing a new group with broad, and correspondingly vague, responsibility.

Interagency Committee on Regulatory Policies

Regulatory agencies generally and transportation regulatory agencies in particular take the position that policy can only be made on a case by case basis through formal proceedings. The Bureau of the Budget, other agencies in the executive branch and many experts,

in the transportation field at least, have long believed that policy should be the result of a continuing planning and review process based on general economic, political and other considerations related to national objectives. Certain Federal agencies, however, lend support to the ad hoc method of policy formulation by participating in a wide variety of regulatory cases where their parochial interests are involved; the Department of Defense, the Department of Agriculture, the General Services Administration, the Tennessee Valley Authority and the Atomic Energy Commission are among such agencies.

A more effective approach, consistent with executive leadership in the formulation of transportation policy, is exemplified by the Interagency Committee on Transport Mergers established in 1962. This Committee, under the chairmanship of the Under Secretary for Transportation was charged with (a) developing criteria, relevant to the contemporary scene, for the evaluation of transport mergers proposed by carriers, and (b) evaluating individual merger proposals and recommending an executive branch position to the Department of Justice for presentation in regulatory proceedings. Within the limits of its charter, this Committee has functioned well. Its effectiveness, however, has been circumscribed in two ways: First, the Committee was restricted in the development of criteria to the framework of existing antitrust policy. We believe this framework badly needs review in the light of modern economic conditions. Second, the Committee's scope was limited to (a) intra-model mergers and (b) mergers proposed by carriers. It was thus estopped (a) from initiating proposals for merger that might be more in the public interest than those proposed by the carriers and (b) from preparing non-merger alternatives which might achieve all the good results predicted for mergers without the risk of side effects adverse to the public interest. The Bureau of the Budget believes that serious consideration should be given to lifting these limitations on the Committee's activities.

The Bureau also looks favorably on further expanding the responsibilities of the Committee to include regulatory policy issues other than those involving mergers. There is the same urgent need for development of coordinated executive branch positions on major regulatory issues involving rates, operating rights, financing and rate of return, entry and exit, and other aspects of the economics of regulated transportation. This view rests on the proposition that transportation policy is made not only by legislation but also, and perhaps to a greater extent, by regulatory proceedings and subsequent court actions thereon. At the present time, insofar as the executive branch is concerned, these policy developments often occur by default.

Transportation Investment Review Board

One of the major problems in transportation results from Federal investment decisions being made by specialized or narrowly oriented program agencies with little or no regard for (a) the Nation's overall transportation requirements; (b) their impact on overall economic growth; (c) the effects of facilities and services provided for the benefit of one mode on other transportation modes; and (d) the relationships between costs and benefits of individual investment proposals or between different proposals. There is no effective process for comparative evaluation of the investment programs of various operating agencies like the Federal Aviation Agency and the Bureau of Public Roads in terms of their contribution to the achievement of national transport goals and other national objectives. The Department of Commerce does not have the authority to assess, for example, the value of Federal funds being invested in airport construction as compared to more active assistance to the railroads, nor does any other Federal instrumentality -- not excepting the Bureau of the Budget.

To provide a sounder basis for decision-making on Federal transportation investments, the Bureau proposes that steps be taken to create a Transportation Investment Review Board. This Board would be advisory to the Bureau of the Budget and the President. Its chairman should be the Secretary of Commerce with membership from the Council of Economic Advisers, the Treasury, and perhaps the Office of Science and Technology. For maximum effectiveness this Board should be established by legislation.

The Bureau of the Budget should participate as an observer and adviser. If additional representation is desired, it might be drawn from among the Nation's experts on public investment analysis. Members should probably not be representatives of the various transportation industries nor of Federal agencies with major transportation investment programs. They can be heard in connection with the Board's deliberation on investment proposals. The Board's major function should be to apply objective evaluation standards to individual agency investment proposals and to make recommendations for the approval, revision, or disapproval of such programs.

Before such a Board is created, however, a comprehensive set of objective investment criteria should be developed. This is a difficult task which will require a period of concentrated effort by knowledgeable individuals both within and without the Government of whom there are now a substantial number. A first step might be to establish a task force that would be charged with developing criteria to be used in future transportation investment analysis by the proposed Transportation Investment Review Board. The Board's

analysis in turn will provide invaluable experience for any future Department of Transportation.

(signed) Charlie
Charles L. Schultze
Director

August 16, 1965

MEMORANDUM FOR MR. ROBERT TAYLOR

Subject: Federal organization for highway safety

Pursuant to your request, here are our recommendations for organizational changes to strengthen the Federal effort in highway safety.

1. The President issue an Executive order assigning leadership responsibility for the Government's efforts in traffic safety to the Secretary of Commerce. The Interdepartmental Highway Safety Board, on which all agencies with a major interest in traffic safety are represented, has been unable to provide leadership. A single official is needed to whom the President can look to develop recommendations and programs. The Secretary of Commerce is the logical selection because of his responsibilities for transportation policy and for highway construction (Public Roads) and establishment of standards (Bureau of Standards). The alternative -- DOT -- has only a small program and does not have the best capability for this assignment.

We expect that a small staff, reporting to the Under Secretary for Transportation, would be established to plan a long-range Federal program, monitor and coordinate activities in Commerce and other agencies, and provide a point of contact for those outside the Government.

2. The Interdepartmental Highway Safety Board be reestablished as an interagency committee to advise the Secretary of Commerce. An interagency group will be helpful to give advice and facilitate coordination.

3. The President's Committee on Traffic Safety be reconstituted to report to the President through the Secretary of Commerce, its staff should be employees of the Department of Commerce, its membership should be confined to individuals with expert knowledge, and its advisory Council should be abolished. These recommendations are designed to bring the President's Committee under control. The President's Committee is composed primarily of civic leaders who know little about the field. It is guided by an Advisory Council which represents the motor vehicle industry and associated interests, and operated on a mixture of Federal and private funds by a professional staff which is paid by and responsive to private interests rather than the Government.

We gave thought to recommending abolishing the President's Committee, but decided that it might be considered an incongruous step at a time when the Federal Government's role was being expanded.

4. A new advisory group, composed of industry representatives and representatives of associations of State and local officials, be created to advise the Secretary of Commerce.

5. The Secretary of Labor be given leadership of programs relating to Federal employees' traffic safety. A reorganization of Federal highway safety activities must take account of the differing responsibilities of agencies with public impact programs (Commerce, HEW) compared to agencies with internal programs designed for Federal employees (Labor, DOD, Post Office). Governmentwide responsibility for employee safety is vested in the Secretary of Labor, and we believe it would be unwise to try to separate highway safety from other safety programs. Under the overall guidance of the Secretary of Commerce, the Secretary of Labor should continue to encourage Federal employee highway safety programs.

The only recommendation which can be expected to cause reverberations is the proposal to reconstitute the President's Committee. With its ties to various groups and interests, the Committee has a certain potential for causing mischief.

On the one hand, it would be possible to defer changes in the structure of the President's Committee. The other organizational recommendations do not hinge significantly on changes in the Committee. The Secretary of Commerce would probably not be hindered in designing and promoting a more aggressive Federal program. It would be possible to obtain some measure of control, such as requiring the Committee to report to the President through the Secretary of Commerce, without a fundamental shakeup in the Committee's structure.

On the other hand, we have five reasons for recommending fundamental changes in the structure and organization of the Committee:

1. The Committee is not responsible to any agency head, reporting only to the President. In practice this means that it operates independently.

2. The real force behind the Committee rests with the Advisory Council. The Council inappropriately finances part of the Committee's operations.

3. The Council has influenced the Committee towards restraining the role of the Federal Government in traffic safety activities.

4. The existence of the Committee gives the public a false sense of the nature of the Federal effort. Its program -- of indeterminate value -- obscures and confuses the public as to the efforts of other Federal agencies in traffic safety.

5. If a general reorganization of highway safety responsibilities is to be undertaken, it makes sense to make constructive changes in the President's Committee at the same time.

(signed)
William M. Capron
Assistant Director

TRANSPORTATION PROGRAM

Agenda for Meeting
on
September 25, 1965

I. REGULATION

A. The 1965 Task Force Report proposes to:

1. Simplify procedures in abandonment of redundant rail freight service.
2. Require ICC to emphasize cost impact of technological and service innovations in rate making.
3. Repeal "rule of three" on exempt water traffic.
4. Repeal June 1, 1939 limit on list of exempt bulk commodities.
5. Create joint boards on through routes and joint rates.
6. Impose control of international air rates.

B. Additional proposals that should be evaluated and presented for Presidential decision:

1. Repeal long and short haul provision of IC Act.
2. Repeal requirement of IC Act that rates be based on "reasonable classifications" of property.
3. Amend IC Act to require rail and motor carriers to accept shipper-owned or -leased equipment at cost-based rates.
4. Limit liability of common carriers for loss or damage of property.
5. Eliminate rate regulation of all unsubsidized domestic passenger transportation.
6. Deny carriers right to request suspension of proposed rates or place burden of proof on complaining carriers.
7. Prohibit mixing rules on container shipments.
8. Eliminate economic regulation of small shipments.
9. Liberalize motor and water carriers operating rights.
10. Revise IC Act to facilitate voluntary reorganizations.
11. Review merger policy, develop action proposals.

II. REORGANIZATION

A. The 1965 Task Force Report proposes to:

1. Create a Department of Transportation.
2. Create a National Transportation Council.
3. Reduce ICC membership from 11 to 5 or 7, provide Presidential appointment of Chairman.
4. Transfer ICC Safety Functions.

B. Additional proposals that should be evaluated and presented for Presidential decision:

1. Create a mechanism for review of all Federal transport investment proposals.
[Only needed if Department of Transportation is not created.]
2. Consolidate and reorganize transportation regulatory agencies as a single agency, devoid of all promotional and administrative functions.
3. Review the division of safety responsibilities between CAB and FAA.

III, HIGHWAY SAFETY

The 1965 Task Force Report proposes to:

Establish a Highway Safety Center in Commerce (Department of Transportation), (a) to develop a program, (b) to collect and evaluate accident and related data, and (c) to establish a "causal investigation program."

IV. HIGHWAY FINANCING

A. The 1965 Task Force Report proposes to:

1. Give ambiguous endorsement of the increased truck taxes proposed by the Administration last year.
2. Transfer excise tax on new automobiles to the Highway Trust Fund.
3. Reduce proposal for diesel fuel tax increase from 3 cents increase to 2 cents.

B. Additional proposals that should be developed and presented for Presidential decision:

1. Impose differential user charges to reduce traffic peaking in congested urban areas.
2. Reaffirm Administration's highway user charge proposals.

V. RESEARCH

The 1965 Task Force Report:

The discussion does not make clear, specific recommendations. Hints of need for additional funds and amendatory legislation are made, but the desirability of proceeding along these lines seems to be questioned.

VI. AVIATION AND WATERWAY USER CHARGES

A. The 1965 Task Force Report:

Gives qualified support to administration proposals, discusses alternatives in general terms and suggests serious consideration of direct taxes on air shippers and travellers.

B. Additional proposals that should be developed and presented for Presidential decision:

Design and carry out a comprehensive study of inland waterway traffic, carrier operating costs -- including transfer costs --, cost impact of possible user taxes, and consequent effect on demand.

VII. HIGHWAY BEAUTIFICATION

The discussion is not decisive, suggests general fund financing, speaks of programs still to be developed and presented.

VIII. HIGHWAY-MASS TRANSIT COORDINATION

A. The 1965 Task Force Report:

No new legislation is recommended. Continuation of existing administrative coordination is deemed satisfactory.

**B. Additional proposals that should be evaluated
and presented for Presidential decision:**

1. Amend the Federal-aid Highway Acts to require that urban highway plans be found compatible with comprehensive community development plans.
2. Assign urban highway and mass transit planning responsibility to HUD; transit research, financing, and possible surveillance of operations to new bureau in Commerce (later in a Department of Transportation).

IX. HIGHWAY TOLL FACILITIES

The 1965 Task Force Report proposes to:

Empower Commerce to control construction and regulate the amount and duration of tolls on Interstate bridges and tunnels.

✓
October 14, 1965

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* Jack Forces

FOR Jack Valenti

FROM Joe Califano

Please give me your ideas on any-
thing you think we should add.

re filed
8/32/66

EYES ONLY

October 13, 1965

FOR Bill Moyers

FROM Joe Califano

Read this in the background of all the detailed memoranda you have read on each task force.

Please give me your ideas on anything you think we should add.

Attach.

EYES ONLY

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

October 12, 1965

FOR THE PRESIDENT

FROM Joe Califano *jc*

This is a status report on our preparations for next year's legislative program.

Task Forces

Beginning in early August we set up 14 separate in-house legislative task forces at the Cabinet and Sub-cabinet level. The subjects, the Chairman and the White House representatives are as follows:

<u>Topic</u>	<u>Chairman</u>	<u>White House Representative</u>
Transportation	Boyd	White
Labor	Wirtz	White
Air and Water Pollution	Ackley	
Population and Family Planning	McPherson	
Income Maintenance	Ackley	Califano
Tax Reform	Fowler	McPherson
Education	Keppel	Cater
Public Assistance	Cohen	Cater
Urban Affairs and Housing	Weaver	McPherson
Health Care	Cohen	Cater
Agriculture and Rural Life	Freeman	McPherson
Civil Rights	Katzenbach	White & McPherson
Crime	Katzenbach	Califano
Foreign Aid	Rusk	Bundy

As these task forces were launched, I met personally with the heads and members of each and charged them as follows: (a) Develop the most creative and imaginative ideas; (b) Develop these ideas without concern for politics; (c) Present the ideas simply and clearly, with alternatives and their costs; (d) Develop a set of matching national goals; and (e) Keep the reports closely held to avoid leaks. We stressed the need for each Cabinet officer to participate directly in the idea-gathering process and to use the best minds they could find.

*rec'd
12/30/65*

THE WHITE HOUSE
WASHINGTON

LF

Mr. President:

Through Bill Moyers.

vm
2:10 pm
10-13 -65

*Del to Calif
10-15-65*

In addition, we have three outside groups:

1. Intergovernmental Relations -- a group of experts under Charlie Schultze studying ways to improve Federal-state-and local Government relations, one of the keys to successful implementation of your Great Society programs.
2. Urban Affairs -- a group of experts who will begin meeting on Friday with Harry McPherson and me to review our in-house task force reports and some other proposals (including Walter Reuther's).
3. Foreign Aid -- the Clifford group working with Bundy.

Other Resources

Outside the task force framework we are getting ideas from the following resources:

- . The Departments and Agencies (Post Office, for example, has come up with a plan to revitalize the parcel post system; Justice has a proposal for overhauling the "equal time" laws).
- . Heads of Agencies (John Gronouski has evolved a plan for revising the lobbying laws, and in line with your instructions, I have asked Nick Katzenbach to appraise it; Len Marks is working on your idea of a bi-partisan task force to approve the release of USIA films for domestic showings; Esther Peterson is working with me on possible consumer legislation).
- . The business, labor and intellectual community (illustrative are Walter Reuther's plan for the cities; MIT Professors Ekhaus' and Wood's low income housing proposals; Dean Kingman Brewster's ideas on a national youth service program).
- . Commissions that were set up when we arrived such as the Merchant Marine Committee and the Automation Commission.
- . Citizens at large, who responded to Dick Goodwin's call for ideas.

Legislative Inventory System

In addition, we have set up a legislative inventory system. Under this, we are cataloguing all of the legislative pledges you made in various messages and speeches. We will then tally those items which have been passed, are awaiting passage, have not been passed, or have not been proposed. Out of this will come items we should clean up in next year's program.

Where We Now Stand

We are now in the midst of an evaluation period. A number of task force reports have already come in -- Labor, Health, Transportation, and Urban Affairs. The others are due soon.

To be sure we fully understood the impact of these reports (and of the other miscellaneous proposals) a critical and objective analysis was in order. I asked Gardner Ackley, Charlie Schultze and their top experts, to review each report with me. Out of this process we get a breakdown of the strengths and weaknesses of each idea and generate other yet unexplored ideas. Thus armed, we sit down with the responsible Cabinet officer and ask him to refine and flesh-out the most attractive proposals.

We will repeat this cycle with each report to be sure we get the gold and not the dross.

We will then meet on each set of proposals with all the interested agency heads to get their views.

When we have completed this distillation process, we will be prepared to give you a briefing and a book in which you will have arranged on a single page, for each legislative area, the alternative proposals and their costs so that you can select those programs you consider best. This will be ready for you by early December.

My main concern throughout has been to develop the fullest range of alternative proposals (with their costs) for your review. My main objective is to give you a program in which you can provide for the needs of the American people -- and yet at the same time fulfill these needs prudently at the lowest possible cost. In short, the President will be the great provider, as well as the great economizer.

Some of the Key Ideas so Far Developed

Our evaluation process has thus far centered on transportation, health and labor. We will be meeting continually on the other task force reports from now on.

Transportation and Health

In the transportation area, the following proposals emerged with the objective of streamlining our Government and getting us out of the old, outmoded regulatory structure. These plans are now being fully developed by Alan Boyd.

- . A Department of Transportation.
- . Reorganization of the regulatory transportation functions.
- . Program of deregulation to make transportation rates more competitive and rational.
- . A major highway safety program.

In the health area, John Gardner, Wilbur Cohen and Doug Cater are working on the ideas to provide the buildings, medical personnel and equipment necessary to raise the quality and lower the cost of medical care for our citizens, and to achieve the full promise of medicare. The key proposals are:

- . Alternative programs to give us more and better hospitals, lower cost hospitals, and lower cost hospital care, particularly in urban areas, including some funds for experimental, pilot programs seeking new vistas in hospital care.
- . A program to provide the country with more trained doctors, nurses, medical technicians, and paramedical personnel.
- . A program of child medical care to start the country on the road toward a Great Society where no child will be inhibited in the development of his talents by lack of adequate medical care.
- . A quick results program to eradicate diseases that we have the capability to destroy -- rheumatic fever and venereal disease, for example.

Other Areas

Representative of the other proposals that we are working on are:

- . A "Marshall Plan" for our cities to make them safe, healthy and comfortable.
- . A demonstration program for a few competitively selected cities.
- . An agricultural program to improve the quality of rural life and to stem the flow to the cities.

- . A consumer legislation program to help each housewife in America get more for her dollar -- and know what she is getting for her dollar.
- . A tax reform program to continue our unparalleled prosperity.
- . A coordinated civil rights -- Central City program to try to reach the heart of the Negro man and his family. This Fall's civil rights conference here as well as the recent reorganization of our civil rights activities will help greatly.
- . An all-out effort to bring into the ranks of the working force the "employable unemployed" and to build incentives into our welfare programs so that our tax consuming citizens can become tax producing.

Operation TRIM

But perhaps the most far-reaching step will be in the direction of organizing our Government for the Great Society. This year the President and the Congress have been the Great Providers. Next year, the President and the Congress should be the Great Managers, the Great Administrators -- the architects of efficient, effective government. Thus, you can go to the country at the end of the 89th Congress with the first session on vast new programs and the second session on economy, efficiency and good management. You have already taken the first major step in the introduction of the new planning - programming- budgeting system.

Kermit Gordon has described this as "Operation TRIM". TRIM (Tighten, Reorganize, Invigorate, Modernize) can serve as the hub around which many of your proposals can revolve.

Much of the groundwork for TRIM has already been laid by last year's task forces on Reorganization and Cost Reduction. Some of the ideas which we are now exploring and which show real promise are:

- . A new Department of Natural Resources to place the many activities in this field under one roof.
- . A reshaping of HEW to make it more responsive.
- . A merger of the Small Business Administration into Commerce.
- . The creation of a single banking agency out of the three we have today.

- . The introduction of much greater flexibility into our Civil Service System (particularly at higher levels).
- . Greater emphasis on cost reduction throughout Government.

Special Messages

Your State of the Union Message obviously depends on the programs you approve. We plan to have Dick Goodwin prepare the draft of that message.

I am also reviewing the special messages you presented last year with a view towards the kinds of messages you should deliver at the next session. We have already staked out some areas in which special messages or letters will be forthcoming -- for example, the Supersonic Transport, the Asian Bank. There will be a host of others. As was the case last year, all will be integrated and consistent with the State of the Union address so that, taken together, the Johnson messages will be another eloquent statement of your public policy.

THE WHITE HOUSE
WASHINGTON

October 13, 1965

BILL:

As you know, this is an extremely sensitive paper and I would appreciate it if you would see that it reaches the President directly.

Joe Califano

OFFICIAL USE ONLY

EXECUTIVE
FG 9.99-15
FG 155

THE UNDER SECRETARY OF COMMERCE
FOR TRANSPORTATION
WASHINGTON, D.C. 20230



October 22, 1965

MEMORANDUM FOR Honorable Joseph A. Califano, Jr.
 Special Assistant to the President
 The White House

SUBJECT Submittal of Position Papers Dealing with
 Reorganization of Executive and Regulatory
 Agencies Dealing with Transportation

Attached are the two papers dealing with transportation organization which you requested at the meeting with the Transportation Task Force on September 25.

1. A Department of Transportation and Related Organizational Issues.

This summary paper recommends the creation of a Department of Transportation as the organization approach best suited to meeting the need for improved transportation policy formulation and program implementation within the Federal Government. The most appropriate alternative if the decision is against seeking the creation of a Department of Transportation is a strengthening of the consultative mechanism within the Government through the establishment of a National Transportation Council. Other alternatives are also considered.

2. Reorganization of Regulatory Activities.

This paper recognizes the desirability of a single transportation regulatory agency as a long-range objective. It discusses in some detail the need for a new regulatory philosophy prior to the merger of the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Maritime Commission. Some alternative regulatory and related procedural policies are suggested as suitable for a single transportation regulatory agency. An interim policy of Presidential appointment of the ICC Chairman plus the transfer of safety and subsidy functions from regulatory agencies is suggested.

It is our belief that the reform of the administrative and regulatory structure of the Federal Government affecting transportation should proceed in four phases:

filed
8/23/66

TRANSMITTAL FORM - U.S. DEPARTMENT OF COMMERCE
OFFICE OF THE UNDER SECRETARY
FOR TRANSPORTATION

FORM CD-82
(8-2-60)

DATE 10-22-65

TO : Mr. Califano

FROM: Mr. Boyd

Ten copies of the two papers were
handcarried to you this afternoon.

DO NOT USE FOR PERMANENT RECORD INFORMATION

USCOMM-2361-P65

OFFICIAL USE ONLY

2

1. Concentration of transportation agencies and transportation functions other than economic regulation in the Executive Branch in a Department of Transportation.
2. Interim reforms of the Interstate Commerce Commission to include the Presidential appointment of its Chairman.
3. Reform of the philosophy of transport regulation which would simplify procedural and substantive aspects of regulation to emphasize competition and economic performance rather than judicialized procedures based on the assumptions used in the regulation of monopoly.
4. Design of an organization and procedural aspects which would concentrate regulatory authority in a single transport regulatory agency in accordance with a suitable regulatory philosophy.

We have not gone into a detailed organizational study of the proposed Department of Transportation, except for the compilation of some budgetary and employment data on the various agencies and collection of present legislative authority and functional statements concerning the various transportation programs. This subject has already been explored in considerable depth by two Presidential Task Forces in 1964, one dealing with Government Organization, the other with Transportation. Both groups recommended the creation of the Department of Transportation.

We have also discussed this problem in detail with representatives of the Bureau of the Budget, including the Office of Management and Organization, with whom we are in agreement on major organizational philosophy. The Bureau's staff have reviewed the papers in draft form and we have had the benefit of their comments, but we have not sought specific concurrence in regard to these papers.

The foregoing indicates to us that there is ample study and consensus to enable a decision to be made on the general merits of the Department of Transportation. More detailed study of the complete organizational impact of the idea should await a favorable decision on the policy of creating the new Department. Should the decision be in favor of a Department of Transportation, this Task Force will assist in every possible way with the conduct of the necessary detailed studies and justifications.


Alan S. Boyd

Attachments

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EXECUTIVE

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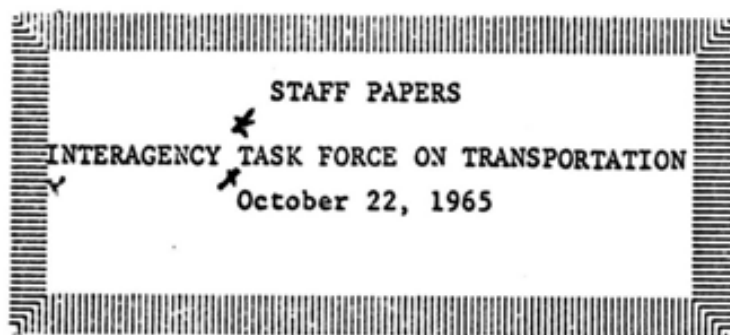
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OFFICIAL USE ONLY

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WASHINGTON, D.C. 20230

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OFFICIAL USE ONLY

2

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Alan S. Boyd

Attachments

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A DEPARTMENT OF TRANSPORTATION AND RELATED ORGANIZATIONAL ISSUES

Transportation, a single purpose function as it operates in the National economy, is dependent on a variety of Federal promotional and regulatory programs which are administered as though it were a multi-functional activity. This lack of administrative coordination among a great number of transportation programs has resulted in distortion of development, in wasteful competition in some instances and lack of adequate service in others, in opposing purposes among Federal programs, and no clear relationship between transportation and other great policies of Government. Moreover, the fragmented Federal transportation policies have created vested interests in the economy which have distorted both investment policy and regulatory purposes to their own ends.

Some of the uneven results of this absence of coordinated policy are little short of National tragedy. While the expenditure of vast sums of Federal money has supported the development of excellent highway systems, outstanding waterways, and a nationwide system of airways and airports, the railroad system has deteriorated in certain areas to the point where shippers cannot get service for growing industries, where travelers have no choice as to mode of travel, and where urban locations are threatened with loss of vital commuter services. During the time that highway development has attained its highest level, mass transportation in our cities has atrophied. This has distorted urban development hastening the decline of downtown areas and spurring the suburban economies.

Regulation too is hampered by lack of consistent Federal policies. While billions are expended on express highways, regulatory restrictions hamper the use of them by the common carrier system whose duty it is to

give the public the best possible service. Communities have faced difficulties in having needed carrier services on Federally improved waterways. Because of regulatory restrictions, the results of scientific and technological advance cannot be reflected in carrier rate policy without long Court action.

A case could be made that the Federal Courts have done more to advance a sound coordinated National transportation policy than have the other branches of Government. The failure of Executive Branch policy is epitomized in the struggles to establish some order following the implementation of the Hoover Commission recommendations in 1949. Then a major concentration of promotional programs was placed in the Department of Commerce under the nominal supervision of an Under Secretary for Transportation. This effort foundered on two major difficulties: (a) absence of a means of controlling and administering programs on a uni-functional basis, and (b) absence of ability to generate major policy decisions in the Executive Branch, particularly at the Presidential level.

Transportation policy will continue to founder until the decision-making process is adequately organized and made accessible to the President. The best way to accomplish this is through representation of transportation at the Cabinet level.

Transportation meets every criterion for the creation of a Cabinet Department. It is a large function in the National economy and has important relationships to social welfare. The total sum spent on transportation in the economy is equal to one-fifth of the Gross National

Product, and the inputs of transportation are a vital part of the National productive effort. Transportation figures largely in Federal administration with more than 50,000 persons in direct promotional programs and possibly 10,000 others in directly related activities. The Federal budget for transportation is over \$6 billion. By its nature transportation is uni-functional and can be administered most effectively through a coordinated organization far better than through scattered and independent bureaus dealing with individual modes. Extensive research could extend the uni-functional nature of transportation through improved coordination in transportation systems, involving both governmental and private investment.

The two alternatives for dealing with the fragmented responsibility in transportation and improving the Government's capability to provide the comprehensive coordinated policy necessary to cope with the Nation's ever increasing transportation problems are:

1. Creation of a Department of Transportation, bringing together the principal agencies providing facilities for the public or otherwise promoting transportation development.
2. Strengthening the consultative mechanisms within the Executive Branch to coordinate promotional and regulatory agencies dealing with transportation policy, accompanied with some limited transfers of programs to the Department of Commerce which would assume leadership in any consultative mechanisms.

The preferred alternative is the creation of a Department of Transportation. If it should be decided to undertake a more limited approach,

a National Transportation Council should be formed. Such a Council should be chaired by the Department of Commerce with its membership consisting of the heads of principal Federal agencies and departments having transportation responsibilities. This could be accompanied by some limited transfers of functions to the Department of Commerce to strengthen its present functions in land and maritime transport. The policies and programs of the agencies within Commerce could then be coordinated through a National Transportation Council with air and inland water promotional agencies, with the transportation regulatory agencies and with other Departments such as State and Defense which have special interests in transportation problems.

A more detailed discussion of the two alternative organizational approaches follows:

A Department of Transportation

Two recent Presidential task forces, those on Organization and Transportation, have recommended the creation of a Department of Transportation. Thus the need has been recognized both from the standpoint of overall administrative efficacy and from the needs of transportation policy. Staff consultations with the Office of Management and Organization in the Bureau of the Budget indicated an agreement in principle that one of the major difficulties in transportation policy formation lies in organizational dispersion of Federal programs, and that a Department of Transportation is an appropriate organizational solution.

The dispersal of programs dealing with transport investment, operation of facilities, safety, and research programs is well known and has

been widely documented for many years. Realization of the effects of this dispersal led to the favorable report of the Hoover Commission toward the location of major transportation responsibilities in the Department of Commerce and the adoption of Reorganization Plan No. 21 of 1950 establishing the Office of the Under Secretary for Transportation.

A Department of Transportation is a specific antidote for dispersal of responsibility for policy making. This would bring the major programs under a single Secretary who would have the central responsibility within the Government for policy formulation and for establishing programs and planning concepts, organizational arrangements, and other means of administering all transportation programs to achieve coordinated policy objectives.

Included in a Department of Transportation would be the present activities of the Department of Commerce in the transportation field, the Bureau of Public Roads, the Maritime Administration, the St. Lawrence Seaway Development Corporation, the Great Lakes Pilotage Administration, and the Office of Emergency Transportation. Other additions would be the Federal Aviation Agency, the Mass Transportation program in the Department of Housing and Urban Development, Alaska Railroad, and the Coast Guard. Consideration should also be given to the transfer of the rail and motor safety functions of the Interstate Commerce Commission and of the aviation safety functions of the Civil Aeronautics Board. The car service functions now residing in ICC and the local service airline subsidy program now administered by the CAB should also be considered for inclusion in the new Department of Transportation.

The Weather Bureau and Coast and Geodetic Survey which have recently been brought together in the Environmental Sciences Service Administration have important relationships to transportation and should be considered for inclusion in a Department of Transportation.

The discussion will now proceed to examine first, those functions which should definitely be part of a Department of Transportation; second, those which should not be considered at this time; and third, those which should be studied further before a decision is reached as to whether or not to include them.

AGENCIES DEFINITELY RECOMMENDED FOR INCLUSION

Bureau of Public Roads, Department of Commerce

The Federal Aid Highway Program is well established with more than 40 years administrative experience. It is basically a grant-in-aid program to the states for the development of interstate, primary, and secondary roads with extensions in urban areas. It is funded by a series of taxes on highway users totaling about \$4 billion a year. The Bureau employs about 4500 persons. The Interstate program is the most structured element in terms of program objectives, scheduled for completion in 1972 at a total cost of about \$50 billion. The two principal policy problems confronting the Federal-aid highway program are:

- (a) Highway policy and planning for Post 1972--the period following completion of the Interstate program.

(b) Coordination with regional planning objectives including mass transportation, comprehensive planning, and environmental effects of highways.

The Maritime Administration, Department of Commerce

The Maritime Administration administers a program of operating differential-subsidy for American flag shipping lines on essential foreign trade routes. It also provides construction-differential subsidy so that American merchant ships can be built in American shipyards in competition with foreign yards. An extensive program of marine insurance, officer training, and reserve fleet administration is maintained by the agency. Its budget averages about \$350 million annually and it has 3500 employees. There has been an increasing dissatisfaction with the performance of the Nation's maritime program, and there is a growing belief that subsidy in its present form is not the answer to the Nation's maritime ills. An interagency task force has recently completed work on a proposed new policy and program for the maritime industry. While this policy has not been officially adopted by the Administration, there is little doubt that basic changes in the present programs are necessary if the U.S. Merchant Marine is to survive.

Federal Aviation Agency

This Agency operates and maintains a common civil-military system of air traffic control in the United States. It has 45,000 employees, and an annual budget of about \$800 million. It also provides grants-in-aid for airport construction through the Federal Aid Airport program, certifies aircraft and airmen, has broad responsibilities in the field of aviation safety and is charged with the promotion of civil aviation in the U.S. and abroad. It was formerly in the Department of Commerce as the Civil Aeronautics Administration but became independent and was consolidated with several other aviation agencies as a result of the Federal Aviation Act of 1958. The Agency has the responsibility for basic policy decisions with respect to kinds of airway systems the U.S. will develop in the future and for the development of a National Airport Plan.

Coast Guard, Treasury Department

The Coast Guard is transportation oriented. It provides for search and rescue for vessels and aircraft. It patrols the sea-lanes and inland waterways, maintains port security, operates navigation aids such as lighthouses and radio stations, operates an iceberg patrol in the North Atlantic, and administers a program for small boat safety. It is prominent in safety regulation of vessel operation. This includes licensing and certification of seagoing personnel, manning standards of vessels, life-saving and emergency procedures and facilities, inspection of vessels for seaworthiness, loading and freeboard standards, dangerous cargo control, conditions aboard a vessel affecting safety and the investigation of accidents and determination of liability through administrative procedures. Its current budget is about \$400 million and it has 31,000 military and 3,700 civilian employees.

The St. Lawrence Seaway Development Corporation

This agency, a wholly owned Government Corporation, is under the supervision of the Secretary of Commerce by virtue of its organic act which empowers the President to delegate his supervision to one of the Executive departments. The agency was supervised by the Secretary of Defense during its construction phase when it was dependent on the Corps of Engineers for construction services. The Corporation cooperates with Canada in operating the Seaway and negotiates with Saint Lawrence Seaway Authority of Canada to establish toll charges on the Seaway and for division of toll revenues between the two countries. Its principal policy problems involve the level of tolls necessary to recover its costs.

The Great Lakes Pilotage Administration

The Great Lakes Pilotage Administration is currently located in the Department of Commerce. It supervises the licensing of pilots capable of navigating vessels on the Great Lakes and has the responsibility for maintaining an adequate system of pilotage. Determinations regarding the number and location of pilot pools are made in cooperation with the Government of Canada.

Safety Functions of the Interstate Commerce Commission

The Interstate Commerce Commission regulates motor carrier and railroad safety, the latter under a variety of statutes. At the present time the field staffs which carry out the principal safety functions

are coordinated with other ICC activities. These safety functions, however, are not by their nature related to the economic regulatory functions of the Commission and increase the heavy burdens on the staff and members of the Commission. Historically the principal problem in the ICC safety area has been one of inadequate resources in relation to the magnitude of responsibility. These safety responsibilities should be removed from the Commission, and brought within a Department of Transportation as a part of a comprehensive transportation safety effort.

Car Service Division of the Interstate Commerce Commission

The Commission has responsibility for distributing the Nation's rail car supply in times of shortage through car service orders. These orders are implemented under a delegation to the Association of American Railroads. The issue of inadequate car supply is a very controversial one which appears to be growing in intensity.

Subsidy Functions of the Civil Aeronautics Board

While domestic and international trunk airlines of the United States are eligible for subsidy under the Federal Aviation Act, no trunkline has received subsidy for several years. The local service airlines receive approximately \$68 million annually in subsidy. In addition the Alaskan and Hawaiian carriers combined receive about \$10 million. Helicopter subsidies have been at a level of \$4 to \$5 million, but will be terminated at the end of this calendar year. These subsidy programs

could be administered in a Department of Transportation on the same basis as present administration of maritime subsidies.

The Mass Transit Functions of the Department of Housing and Urban Development

This program was inaugurated in the Housing Act of 1961 and expanded in the Urban Mass Transportation Act of 1964. Demonstration and capital grants-in-aid are extended for mass transportation through State and local public bodies. The development of Federally aided mass transit proceeds simultaneously with highway development aided by the Bureau of Public Roads. Coordination of policy, planning, and physical activity is essential. In terms of research and development and regional planning, this function is also related to the high-speed ground transport effort of the Department of Commerce. Mass transit is a beginning Federal program, which could easily be transferred without a great amount of administrative difficulty or disruption of personnel. As a function it definitely belongs in the Federal transportation complex centered in a Department of Transportation.

Alaska Railroad

This facility is operated by the Department of the Interior as a division of the Office of Territories. It is likely that this enterprise will require some kind of continuing Federal support for the foreseeable future, probably in the form of capital contributions. Basic policy issues involve the relationship of the railroad to ICC regulation, and the question of whether it ought to be incorporated.

ACTIVITIES NOT CONSIDERED FOR INCLUSION AT THIS TIME

The Navigation Functions of the Corps of Engineers

Multiple purpose water resources development, emphasizing river basin planning, appears to be the central focus of the Corps of Engineers.

These activities are being coordinated through a National Water Resources Council made up of principal water resource agency officials. It would not appear practical to arbitrarily separate the administration of port, and inland waterway navigation functions from the basic resource development and conservation activities. The Department of Transportation could, however, prepare evaluations of overall water transportation needs, assess the need for waterway increments in major regional projects and insure that planning for waterway development was considered in the context of of the Nation's total transportation system.

The Safety Functions of the Civil Aeronautics Board

The Civil Aeronautics Board now has a major responsibility in the area of aviation safety--the determination of the probable cause of aviation accidents. From time to time it has delegated some portions of this function to the FAA, particularly in the field of general aviation, but the CAB has retained the responsibility with regard to air carrier accidents. This function is not directly related to the economic regulatory functions of the CAB, and could logically be carried out elsewhere. There has been considerable reluctance to assign this to the FAA since in many cases it would be tantamount to having the FAA investigate itself. However, if other transportation safety functions are centralized in a Department of Transportation, this CAB function should be studied further.

The Panama Canal

Elements of National security and diplomacy are involved in this historic function, which might become confused in a transfer to a new Department. Particularly sensitive is the issue of Panamanian sovereignty. A complicating factor is the current project for studying the need for a new sea-level canal, involving the possible use of atomic energy in the construction process. Pending a final determination of these sensitive issues, it would seem inappropriate to make a major change in the organizational arrangements involving the Canal. The Department of Commerce and later a Department of Transportation should continue to be represented on the Board of Directors of the Panama Canal Company and should be responsible for basic studies of economic justification of the new sea-level canal. Present plans call for a Department of Commerce study of shipping needs.

FUNCTIONS WHICH SHOULD BE FURTHER CONSIDERED FOR INCLUSION

The Environmental Sciences Services Agency

This Agency, recently formed by the merger of the Weather Bureau and the Coast and Geodetic Survey is now located in the Department of Commerce. Most of its activities serve transportation and in many areas the extent of the service provided and the most demanding requirements for accuracy and timeliness are imposed by transportation users. It should definitely be considered for transfer to a new Department of Transportation. Because of its recent reorganization and its relationship to scientific policies, more study should be given to this possibility.

Consultative Mechanisms and Limited Reorganization

A basic purpose of a Department of Transportation would be to provide a consistent administration and policy for Government activities in land, water, and air transportation. It would draw together the now dispersed agencies dealing with all transport modes. If it does not prove feasible to take so fundamental a step as the creation of a new Department, there are limited and partial steps which should be taken to improve the administration of transportation policy.

Presently, the Department of Commerce has the major agencies and program responsibilities in land and maritime transportation. In land transportation, the highway policies of the Bureau of Public Roads have a definite relationship to the mass transit and comprehensive planning responsibilities of the Housing and Home Finance Agency and the safety functions of the Interstate Commerce Commission. These programs are also related to the effort of the Department to develop high-speed ground transportation. Problems of coordination will intensify and will require the strengthening of the Department's role in policy for land transportation.

A stronger role in land transport policy would follow the trend in the maritime area. Following the transfer of the Maritime Administration activities to the Department in 1950, the St. Lawrence Seaway and the Great Lakes Pilotage programs were placed in Commerce, thus making possible some coordination in policy and administration. The major maritime activities now outside Commerce are the Coast Guard and the Panama Canal.

A National Transportation Council involving high policy making officials would be necessary to strengthen policy, even with a strengthened role for the Department of Commerce.

Two levels of consultation are required under present Federal transportation organization: consultation to coordinate the dispersed transport programs, and consultation to relate transportation policy to other more general governmental policies. Prior to the establishment of a Department of Transportation, an intensification of the consultation among now independent transportation agencies will be necessary to prepare for the improvements in policy making inherent in a more formalized organization.

At the same time the impacts of transportation on anti-trust policy, labor relations, basic research and development, defense, foreign relations, taxation and finance, and other general policies of the Government must be assessed and reflected in policy. Consultation among governmental agencies in a National Transportation Council is essential for this purpose.

Two alternative approaches to overall consultative arrangements, combining transport and non-transport problems, are considered. The first approach is an overall high-level consultative body in the form of a National Transportation Council consisting of major transportation officials, including regulatory chairmen and heads of principal non-transport agencies with important relationships to transportation. This is the preferred alternative.

The other alternative is the creation of a limited number of high-level interagency consultative bodies dealing with broad functional areas such as antitrust and merger policy, investment analysis, international transportation, regional planning, and similar areas. The Interagency Committee on Transport Mergers is an example of such a group now functioning. Consultative bodies in the fields of international aviation and water resources also provide useful experience.

Complete reliance on segmented interagency committees as a basis for policy making would compound the fragmentation so characteristic of transportation policy at present. The mere number of committees would disperse executive attention so that basic matters of policy would be handled by alternates, substitutes, or even staff without adequate authority. The most serious disadvantage would be the lack of focus on overall transportation policy by a group with sufficient prestige to reflect Administration policy. The National Transportation Council, consisting of the leading Federal transportation executives, is recommended as the appropriate solution for present consultative needs, pending the organization of a Department of Transportation. Such a Council should be formed by Executive Order, or Presidential letter as appropriate.

Another proposal that has been made is the creation of a Transportation Investment Review Board, as an interagency body. Consisting of the heads of transportation agencies and representatives of the Executive Office of the President, such a Board would appraise

investment programs for overall economic effectiveness. The need for such review is unquestioned, but there is lacking the means of sophisticated benefit-cost and other analyses to demonstrate clearly the alternative choices in investment policy. Because of the divergencies of viewpoint among promotional agencies, such a process of analysis would have to be located centrally to assure adequate objectivity. Under a consultative arrangement such a process would most logically be located in the Executive Office of the President, say in the Bureau of the Budget or the Council of Economic Advisers. A Department of Transportation would be a more appropriate location, but in this event no consultative review board would be needed.

Without such centrally developed studies, an interagency Investment Review Board would have no adequate basis for its deliberations. There is the possibility that it might become an agency for consensus and division of budgetary resources along pragmatic lines, possibly using a set formula based on past expenditure experience.

A National Transportation Council should be formed in the near future, whether or not a Department of Transportation is approved. It should replace all other interagency mechanisms for the coordination of transportation policy, and any supplemental interagency committees that might be formed for a limited purpose should report to the Council. The Council should be under the Chairmanship of the Secretary of Commerce and should include the Secretary of Defense, the Secretary of State, the Administrator of the Federal Aviation Agency, the

Administrator of the Housing and Home Finance Agency, and the Chairmen of the three regulatory agencies in transportation, the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission.

The Council would develop and propose to the President policies and programs to assure the development of a healthy, balanced national transportation system, identify major international problems and develop solutions for them, and serve to coordinate Federal programs involving interagency relationships. The Council might sponsor studies and examine financial and investment policies of the Federal Government, but it would not be involved as such in the process of budgetary review. It might consider regulatory policy, but in such cases the heads of appropriate regulatory agencies would not participate in discussions involving particular cases. Other Federal departments and agencies might participate as their interest was involved.

Summary

Fundamental cure for the present dispersal of transportation policy responsibility in the Federal Government is essential. The most basic approach is the formation of a Department of Transportation. Less desirable, but worth consideration if the Departmental approach is not feasible, is the strengthening of the coordinative role of the Department of Commerce. This would be a substantive contribution to effective policy making and a suitable interim step toward the eventual organization of a Department of Transportation.

Pending further organizational steps, a National Transportation Council, consisting of leading Federal transportation officials should be formed to organize consultation about important policy matters in the field. Alternatives, such as segmented committees or an investment review board do not provide a sufficient concentration of authority for fundamental policy consideration.

October 22, 1965

OFFICIAL USE ONLY

REORGANIZATION OF REGULATORY AGENCIES

Introduction

Proposals for basic organizational reform among the transportation regulatory agencies have been under consideration for many years. Some partial reforms have been accomplished with respect to the Federal Maritime Commission and the Interstate Commerce Commission. There is general agreement that much more needs to be done to assure better administration of regulation and to bring regulatory policy within the framework of a generally consistent national transportation policy embracing both regulation and promotion of transportation.

In the Executive Branch, Presidential task forces dealing both with transportation and organization of the Federal structure have addressed this problem. The staff of the Task Force on Transportation, under the Chairmanship of the Under Secretary for Transportation, have recently consulted with representatives of the Bureau of the Budget. They are in agreement that a long-run desirable objective in regulatory organization is a single transport regulatory agency, but that such an agency would not be feasible if established to administer the present regulatory laws. It is their belief that the concept of regulation itself would have to be changed in a fundamental way prior to the design of a single regulatory commission for transportation. Pending such a regulatory policy, regulatory organizational reform should be directed toward creating an administrative framework within which executive leadership can be made more effective in the Interstate Commerce Commission. The necessary first step in this direction would be legislation requiring the appointment of its Chairman by the President and the assignment of executive powers to the Chairman.

Staff study at this time should be directed toward:

1. Outlining the problems involved in reorganizing the regulatory agencies within the present statutory framework.
2. Developing the regulatory concepts suitable for a single transport regulatory agency.
3. Providing justification for an improved administrative structure for executive leadership in the Interstate Commerce Commission as a prelude to consolidation of the regulatory agencies.

Problems Involved with the Single Agency

Problems to be encountered in consolidating all transportation regulation into a single agency include:

1. Existence of uncoordinated regulatory objectives in separate statutes.
2. Problems of workload for a Commission of limited membership inherent in the philosophy and method of regulation in present statutes.
3. Disparate procedural traditions and precedents stemming from each agency's long history of independence and from fundamental scope of regulation.

On the favorable side, there is, first, a parallelism of regulatory standards and objectives in many provisions of the separate statutes and, second, a common body of administrative procedure ^{the} in/Administrative

Procedure Act. The objectives of a longer-range effort to consolidate the three agencies would be to remove the diversities of conditions in present laws and capitalize on common features. Above all, a simplification of procedures and processes would be necessary to reduce and manage the workload of regulation.

Time would not permit a detailed analysis of the three basic regulatory statutes to determine the full scope of divergence of regulatory objectives and standards. A diverse body of statutes beginning with railroads in 1887 with major amendments in 1908, 1910, 1920, 1940, and 1958, with separate statutes for motor transportation beginning in 1935, water carriers in 1940, maritime affairs in 1916 and 1936, and aviation in 1938 and 1958, could be expected to present management difficulties if thrown into a single agency for administration.

The loose collection of statutes contained in the Interstate Commerce Act has internal inconsistencies. The Interstate Commerce Act is bound together after a fashion by a Declaration of National Transportation Policy which prescribes impartial regulation in accordance with very general enumerated standards. The Federal Aviation Act imposes upon the Civil Aeronautics Board no such obligation, but does command it to promote air transportation. Similar promotional language is in the maritime statutes. Variations also exist with respect to rate-making standards, exemptions from regulation, certification, suspension of rates, and many other regulatory objectives.

Regardless of divergencies in regulatory objectives and standards, however, the content and conduct of regulatory activity inherent in the

present statutes also renders the efficient operation of a single transportation commission difficult if not impossible. The statutes impose a considerable burden of workload on the individual commissioner. He must hear very detailed cases, supervise the preparation of opinions, and participate in the management of his agency. This burden of action is particularly acute in the Interstate Commerce Commission. There has been a trend in that body to delegate more and more detailed matters to employee boards and to employees. Nevertheless, it is apparently necessary for the Commission itself to consider many hundreds of cases each year, including numerous appeals from employee boards which appear to be necessary under present law. In view of the combined workload of each of the regulatory bodies, administration of the present statutes in a single commission would require nearly as many members as in the separate bodies today. Undoubtedly such a commission would organize specialized panels to deal with separate statutory problems and the purpose of unification would largely be nullified. Indeed, the Interstate Commerce Commission today operates in divisions, with division decisions appealable to the full Commission.

Administrative lawyers have often noticed procedural differences between the ICC and the CAB. No detailed study was made of such differences, but their existence would undoubtedly handicap the creation of a common administrative approach to transport regulation.

Because of the threefold difficulties discussed, reforms in regulation would have to embrace coordination of statutes, restructuring the regulatory process to make it manageable by a limited-membership transport commission, and to create a single administrative procedure. Criteria for such reform are next discussed.

Criteria for Regulatory Reform

The mass of regulatory problems confronting the regulatory agencies is as much a problem of management as of administrative adjudication. In fact, there is a potential conflict between the management efficiency and the processes thought necessary by administrative lawyers to assure protection of private rights. Some guiding principles are necessary to tip the scales in favor of one or the other of the two conflicting objectives if consistent regulation is to be achieved.

Achievement of economic objectives in regulation leads inevitably to a primary emphasis in managerial efficiency in the regulatory process. To the extent possible, economic conflicts should be resolved in the marketplace rather than in the courts and regulatory bodies. Economic criteria should be used where competition is regulated and where actions proposed by carriers are in dispute. Procedures should be devised to expedite the use of such criteria. Considering the manifold benefits of economic efficiency to the public interest, it would appear reasonable, just and in the public interest if all essential procedures should be reduced to a finding of fact concerning economic performance.

Two alternative policy changes may be considered with respect to carrying out these objectives. Both are based on doctrines of prima facie

showing. The first alternative: Any submittal by a carrier would be considered prima facie reasonable. This would include all matters now subject to regulation except mergers, proposals to increase rates, fares or charges and abandonment for discontinuance of service. The burden of proof would be placed on protestants.

The second alternative: Matters in dispute such as rates, certifications or any matter involving competition among carriers, would be assessed on the basis of prima facie showing of performance.

In a prima facie showing of performance a carrier would be bound to submit written evidence in a standard form and meet criteria promulgated by the regulatory body on any matter in dispute. The evidence so presented would be prima facie evidence in deciding the case. Such a standard could be applied to cost justification of rates, to financial regulation, to adjustment of certificates based on performance criteria, and other aspects of regulation involving detailed findings.

The first alternative is an extremely broad proposal which would apply roughly the same standards to all carrier actions as now apply to uncontested rate filings. With the burden on protestants or the regulatory body to challenge any proposal, a specific group of standards might have to be devised to assess the performance of a challenged carrier proposal. The second alternative is a less drastic one but if administered properly would also bring about a significant amount of deregulation. The burden would be placed upon the regulatory authorities to develop standards and criteria useful in assessing economic performance. Cases would be decided on the routine basis of determining whether the submittals of

evidence conformed to the standards set forth. For purposes of illustration, there is attached at the end of this paper a proposed amendment to the National Transportation Policy of the Interstate Commerce Act which would bring about the first alternative as it would apply to the ICC.

The second alternative would require amendment to a number of the substantive regulatory statutes. The remainder of this discussion is devoted to the second alternative, the prima facie standard of performance.

The prima facie standard would place the burden on the regulated carrier to prepare the evidence and to conform to the regulatory criteria set forth. The regulatory body would have the burden of declaring its basic policies concerning criteria for the submittal of evidence and for determining rules to implement such policies and criteria. From the standpoint of the carrier, a well-conceived prima facie process has the advantage of taking the guesswork out of regulatory standards, since once the evidentiary criteria of the regulatory body were met, the decision would be almost automatic. Moreover, the system offers a flexibility in regulatory administration which will enable the carrier to utilize modern management techniques in its approach to regulatory problems. Thus, if a cost standard is imposed, such standard could be adapted to the management needs of the carrier as well as its regulatory problems.

From the regulatory standpoint, the prima facie standard places determination of fact on a strictly administrative level; that is, the

evidence presented does or does not conform to the rules. The time of the regulatory officials could be utilized in examining basic policies governing standards and the investigation of serious problems confronting the transportation industry. Almost all implementing decisions would be delegated to the staff of the regulatory commission.

Effective use of this procedural innovation would permit the eventual organization and successful operation of a single transportation regulatory commission. Specific legislative enactments and policy changes would be necessary to provide the essential policy background for the use of this procedure. Such legislation would involve the following objectives:

1. Regulation must recognize that the principal issue in transportation today is the introduction of benefits from competition and rapidly advancing technology. These should be assessed from the regulatory viewpoint only in terms of costs and performance, the true measures of economic efficiency.
2. Regulatory standards governing major objectives such as ratemaking, discrimination, control of entry and abandonment, finance, merger and organization, and exemption should be modified to reflect the primacy of economic efficiency and administrative emphasis in regulation.
3. The regulatory process should concentrate on planning and policy determinations, including the use of key policy decisions in place of numerous decisions by the members themselves dealing with details. Through rule-making and the establishment of economic criteria, detailed matters should be delegated.
4. Industry should participate in the formulation of many standards which involve managerial efficiency. This might include costs, accounting reports, technical standards of performance, and similar matters. Procedures

should be devised to enable an interchange of information between the agencies and the industries they regulate to update standards involving managerial efficiency and which keep the agencies informed of carrier activity.

5. Establish by legislation the prima facie showing of performance doctrine as a key procedure in administering the amended regulatory statutes.

Organizational Change in the Interstate Commerce Commission

Because regulatory statutes today do not meet the criteria necessary for a single transportation commission, present organizational objectives must be more limited. The most serious weakness in the present regulatory structure is the absence of an administrative framework suitable for the exercise of strong executive leadership in the Interstate Commerce Commission. Strong chairmen exist in the Civil Aeronautics Board and the Federal Maritime Commission. These chairmen provide leadership and an effective link with the Executive Branch to provide coordination between regulatory and promotional policies. The Interstate Commerce Commission follows the custom of rotating its chairmanship annually. This defeats both the objectives of strong and consistent leadership and effective coordination of overall transportation policy with the President.

Legislation should be enacted, either directly or in the form of a reorganization plan, to provide for the Presidential appointment of the Chairman of the Interstate Commerce Commission, together with assignment to him of executive powers. Some parallel reorganization within the Commission should take place so that the Chairman's leadership could be effective and that under his leadership procedures could be

evolved to meet economic objectives in regulation in an efficient manner.

Safety Regulation

Regulation by independent agencies should be limited to economic objectives, so that a workload of other activities would not interfere with the basic need to achieve economic efficiency through the regulatory process. Safety is one of the main functions not related to either the regulatory process or economic objectives. Safety is closely allied with the operating aspects of a carrier enterprise. Safety standards primarily involve engineering and other physical operational aspects including testing and research. The determination of liability for accidents involves different skills and knowledge than the assessment of economic criteria.

Testing, research, promulgation of standards, and enforcement of safety are functions suitable to the executive type of management and are appropriately located in Executive Branch agencies. The success of the Coast Guard and the Federal Aviation Agency in dealing with water and air safety indicates the success of a similar agency in dealing with railroad and highway safety. Hence, the motor carrier and rail safety functions of the Interstate Commerce Commission should be located in an Executive Branch agency, preferably the Department of Commerce pending the creation of a Department of Transportation. More study should be given to the processes of organization necessary to implement such functions. A primary difficulty is the existence of a field staff in ICC, which is often not separated from field staffs doing other regulatory work. Organizational aspects of the field work should be explored thoroughly.

The study should also look into the necessary adjudicatory procedures necessary to determine liability for accidents. The alternatives to be considered are the retention of this function in the ICC or the creation of a safety panel in the Executive Branch, say in the Department of Commerce or the Department of Justice. A similar problem confronts the transfer of safety functions from the Civil Aeronautics Board. The study of safety regulation should combine consideration of adjudication of liability for both air and surface carrier accidents.

The Car Service Function of the ICC

The ICC has authority to move railroad cars around the country in periods of shortage to assure that shippers are served to the extent possible. Such "Car Service Orders" are frequently invoked. A basic delegation of responsibility for carrying out car service orders is granted the Association of American Railroads which maintains the key organization for car distribution and accounting. The lodging of this function in an Executive agency should offer no difficulty, in view of the extensive participation of the AAR in any event. Moreover, this function is closely related to emergency transportation planning, a function at least partially staffed in the Department of Commerce.

Subsidy Administration

Reorganization of the Maritime Administration in 1961 brought maritime subsidies within the purview of the Department of Commerce, including the establishment of a board to adjudicate claims for subsidy. A similar policy would provide consistent administration of aviation

subsidies, now lodged in the Civil Aeronautics Board. Further study should be given to the process of adjudicating claims for subsidy to determine if this function should be a part of the regulatory function.

Summary

This paper has examined the proposition that the three transport regulatory bodies should be combined into a single regulatory commission. It has found that present regulatory statutes do not permit feasible operation of such a commission. Specific regulatory objectives and standards for such a development were outlined. An interim program was then developed providing for the appointment of the ICC Chairman by the President, along with assignment of executive functions to the Chairman, and separation of safety and promotional functions from the regulatory agencies. Studies of rail and highway safety organization were recommended, as well as further consideration of the problems of adjudicatory functions connected with accident liability and subsidy claims.

October 22, 1965

DRAFT AMENDMENT TO NATIONAL TRANSPORT POLICY, INTERSTATE COMMERCE ACT,
TO REVISE PROCEDURES AND OBJECTIVES OF REGULATION

NATIONAL TRANSPORTATION POLICY *

/September 18, 1940./ /49 U.S.C., preceding § 1,301,901 and
/1001./ It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the regulatory provisions of this Act, so administered as to recognize and /preserve/ promote the beneficial inherent /advantages/ capabilities of each; to promote safe, adequate, economical, technologically advanced, and efficient service and foster consistent with realistic and fair principles, sound economic conditions in transportation and among the several for-hire, regulated carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, including those directed toward the prompt, economic, and more complete utilization, movement, and return of equipment, facilities, and instrumentalities, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;-- all to the end of developing, coordinating, and preserving a for-hire, regulated national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view of carrying out as a clear, affirmative, and substantive mandate the above declaration of policy.

Except as hereinafter indicated, in any proceeding, formal or informal, involving any proposal, as defined herein, required to be filed with the Interstate Commerce Commission, such proposal, when and as filed and thereafter, shall be presumed prima facie to meet the applicable statutory standards and the above declaration of policy, and to be otherwise lawful in all respects, and the burden of proof to the contrary shall rest with any opposing parties and/or the Commission: Provided, however, that the burden of proof as to proposed increases in rates, fares, or charges, proposals to abandon or discontinue service, and proposed consolidations or combinations pursuant to section 5(2)(a) involving carriers by railroad only shall remain unchanged. The term "proposal" shall embrace every temporary, permanent, or special type of application for affirmative authorization or approval as well as any tariff filings contemplated by this Act.

To insure prompt disposition of formal proceedings contemplated by this Act, a finding by the Commission that due and timely execution of its functions is warranted shall permit it (1) to authorize the omission of recommended reports and orders by hearing officers and (2) to adopt such other expedited procedures as may be appropriate. Such a finding shall not be overturned unless clearly erroneous.

Any provisions of law, including but not limited to the Interstate Commerce Act and the Administrative Procedure Act, inconsistent with the foregoing are hereby superseded.

* Brackets indicate deletions, underlining indicates proposed new language.

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

NOV 9 1965

MEMORANDUM FOR MR. LEE C. WHITE

Subject: Reorganization of the Maritime Administration as an
independent agency

Eight bills have been introduced in the House by Congressmen Mailliard (R:California), Garmatz (D:Maryland), Pelly (R:Washington), Downing (D:Virginia), Reinecke (R:California), Bonner (D:North Carolina, deceased), Lennon (D:North Carolina), all members of the House Merchant Marine and Fisheries Committee; Congressman Cramer (R:Florida); and Senator Magnuson (D:Washington), Chairman, Senate Commerce Committee, to establish the Maritime Administration as an independent agency.

I believe you should keep this matter under close surveillance because:

- The bills will carry over to the next session and apparently will be given consideration as vehicles for investigation of all aspects of the maritime policy task force report and the inadvertent publicity.
- Larger expenditures under existing programs could easily result from removal of the Maritime Administration from departmental control.
- Separation of the Maritime Administration from Commerce would be a move against the thrust of probable Administration reorganization plans, e.g., a Department of Transportation.

Bills appear to reflect in part the disappointment and anxiety of the ocean carriers and maritime labor over the task force report. They may also reflect the desire of some Congressmen to seize initiative on maritime policy. The guiding hands of the Secretary of Commerce and the Under Secretary for Transportation in the task force effort are well known.

Charles L. Schultze

Charles L. Schultze
Director

BB FORM
NO. 38

ROUTE SLIP

(Fold Here)

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET

DATE Nov. 29, 1965

TO: Mr. Lee C. White

FROM: P. S. Hughes

REMARKS:

For your information.

File

1-2-20-1/11/11

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

EXECUTIVE
FG 600/TX
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FG 11-1
FG 11-9

NOV 24 1965

MEMORANDUM FOR MR. CALIFANO

Subject: Transportation reorganization

Attached are two memoranda regarding the Transportation Task Force Report. Also attached are the comments of the Office of Science and Technology, as requested by that Office.

La Hughes
Phillip S. Hughes
Assistant Director for
Legislative Reference

Attachments

Copy sent Lee White 11/24/65

XX

Task Force on Transportation

11/24/65

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

November 24, 1965

MEMORANDUM FOR MR. CALIFANO

Subject: Transportation reorganization


Attached are staff papers on "Transportation Reorganization" in general, "Reorganization of Regulatory Agencies," and "Highway Safety" reorganization. These papers outline the Bureau's views on those portions of the Interagency Task Force on Transportation which deal with organizational problems.

In summary, staff endorse the report's principal recommendation favoring creation of a Department of Transportation.

With respect to the National Transportation Council, we believe it should be established in an advisory capacity to the Secretary to enhance his position as the President's principal transportation adviser. In this context it should be useful as a communications device. We doubt, however, that it will be very effective as a means of developing transportation policy. Like other interagency committees, it is likely to take a compromising and "least common denominator" approach to transportation problems.

We agree with the report's conclusion that a single regulatory agency is not feasible at the present time and agree also that the desirable first step to be taken now is the establishment of a Presidentially appointed "strong" Chairman for the ICC. Otherwise, in the regulatory area, we suggest moving with some caution.

Finally, in the area of highway safety, we concur in the unequivocal assignment of highway safety responsibilities to the Secretary of Commerce. While we agree that the existing President's Committee for Traffic Safety should be converted into a public advisory committee staffed by the Commerce Department, we believe that this advisory group should be advisory to the Secretary of Commerce rather than the President's Council on Traffic Safety.


Phillip S. Hughes
Assistant Director for
Legislative Reference

Reorganization of Regulatory Agencies

We agree with the major conclusion of the report that a single regulatory agency would not be feasible under present regulatory laws and concepts. We also agree, as recommended in the report, that the most desirable immediate step in this area should be to establish a "strong chairman for the ICC." This reorganization would move the Commission in the direction already taken by the other regulatory agencies to strengthen their internal administration. The reorganization would also establish a single channel of communications between executive agencies and the Commission. The move can be justified on its merits and need not be based "on a justification as a prelude to consolidation of the regulatory agencies." (page 2).

The report recommends that the ICC's safety functions be transferred to the Department of Commerce "pending the creation of a Department of Transportation." It is not clear if this recommendation applies if a decision is made not to create a new department. In any case, if a Department of Transportation is to be created in the near future, there would be no advantage to transferring these functions before the new department is brought into being. If there is a decision not to create the Department of Transportation, the ICC's railroad and motor carrier safety activities should be considered as part of an examination of all transportation safety functions.

As discussed in the report, further study is also required on the question of the relationship of the CAB's subsidy functions to its regulatory responsibility. While it may be possible to transfer these subsidy functions even without a decision to create a new department, further review of this issue is required. It may well be that the Maritime Administration example is not the most appropriate method of handling transportation subsidies. A procedure which allows the President's key transportation official to determine the level of subsidy but leaves to the regulatory agency the determination of the eligible claimants may be preferable to the Maritime arrangement.

The report outlines a number of significant and difficult problems with respect to regulatory concepts which must be carefully thought through before action can be taken toward moving to a single commission. If a decision is made to undertake this review it will be a lengthy and costly one. The complexity of such an undertaking should not be underestimated. However, we believe the feasibility of establishing a single regulatory commission can be made only after such a thoroughgoing review has been undertaken. It may be desirable initially to expend some effort in trying to gauge the possible benefits resulting from a single commission against the costs of the necessary preliminary work.

Transportation Reorganization

We endorse the report's principal recommendation favoring creation of a Department of Transportation. As noted in the report, this reorganization was recommended previously by the task force on Government Reorganization and is currently among the reorganization proposals to be reviewed by the President. We believe that such a department is necessary to end the existing diffusion of transportation responsibilities and to provide the proper organizational basis for forming national transportation policies.

Specific comments

A question arises on the intent of the report with respect to those elements recommended for inclusion in the department. The report contains some apparent inconsistencies. For example, on page 5 it is stated that "consideration should be given to the transfer of the rail and motor safety functions of the ICC ... The car service functions now residing in ICC and the local service airline subsidy now administered by the CAB should also be considered for inclusion in the new Department of Transportation." These activities are discussed later in the report, however, under the heading "Agencies definitely recommended for inclusion."

A strong case can be made for inclusion of the ICC's car service and railway and motor safety functions in a Department of Transportation. With respect to CAB subsidy functions, while we agree that the Department of Transportation should have a strong voice in their award, a review of alternative means of accomplishing this is required.

Mass Transit

There is, we believe, a serious question on the issue of transferring the mass transit functions of DHUD to the new department. While there may be substantial gains in more closely integrating mass transit and highway development, these must be compared with possible increased difficulty of coordinating mass transit and highway planning with other aspects of urban development. A careful review of the planning processes involved and the manner in which desired objectives are achieved at the local level, should be undertaken before a decision is made on the proposed transfer.

Corps of Engineers

While it does not appear practicable, as stated in the report, to separate the administration of port and inland waterway navigation functions from the basic resource development and conservation activities of the Corps, the report understates the necessity for bringing waterways' improvements into a much closer relationship with

other transportation investments. In addition to the new department's planning functions outlined in the report, some form of veto authority over individual project proposals would appear to be necessary if the department is to carry out its role effectively.

Environmental Science Services Administration

We agree that additional study should be given to the future role of ESSA in view of the fact that a substantial amount of its resources are devoted to aviation weather activities and maritime related coast surveys, charts, and weather activities.

National Transportation Council

In view of the high degree of independence of the economic regulatory agencies, it would be desirable to increase the communication channels between the commissions and executive agencies. The proposed National Transportation Council might serve as a useful communications device. In establishing the Council, we believe it is preferable that it serve in an advisory capacity to the Secretary. This would facilitate the President's reliance primarily on a single officer for policy views in the transportation area and enhance the role of the Secretary as the President's principal transportation advisor. If a National Transportation Council is to be created it should be done, as recommended in the report, by Executive order or Presidential letter.

We have some doubts as to the effectiveness of the proposed National Transportation Council as a means of developing viable transportation policies. Even with the proposed high-level membership, the Council would suffer from the well known handicaps of all interagency groups which attempt to formulate policy. We doubt that meaningful agreement on significant policies can be achieved by interagency consensus. More likely any "policy" statements from such a group will be compromises stated in language geared to an acceptable common denominator.

Highway Safety

We are in general agreement with the organizational recommendations contained in the report on Highway Safety. In most cases these recommendations are essentially parallel to and in harmony with recommendations contained in a recent Bureau of the Budget study of organization for Highway Safety.

The unequivocal assignment of major highway safety responsibilities to the Secretary of Commerce is highly desirable as a means of ensuring that adequate supervision and direction is given to the new Traffic Safety Program. Such an assignment, combined with a new staff directly responsible to the Under Secretary for Transportation should help to remove many of the organizational deficiencies which have caused existing traffic safety efforts to lag. The program outlined appears to make adequate use of specialized agency skills and take account of responsibilities of agencies other than Commerce, while giving adequate authority to the Commerce Department to ensure strong central planning, direction and review.

We agree, in general, with the major points made in the organizational analysis beginning on page 24, particularly with respect to the deficiencies caused by the lack of a focal point of responsibility and the inability of existing committees adequately to carry out required actions. It is important that, as recommended, the new unit charged with overall program responsibility report directly to the Under Secretary and not be an element in the Bureau of Public Roads. The new program involves a broader concept of the traffic safety problem than has been the case in the past and those charged with conduct of the program should not be within one of the functional elements involved.

Specific Comments

Page 30

We concur in the recommendation to change the charter of the Inter-departmental Highway Safety Board. Under existing arrangements the Board is advisory to its members, not to the Secretary of Commerce. The report recommends that a new Executive order clearly assign overall responsibility for the Federal effort to the Secretary of Commerce. The relationship of the committee and the Secretary is not made clear in the report. In conformance with the concept of the overall responsibility of the Secretary, the new interagency committee should clearly be advisory to him. With this arrangement there would be no reason to title the new group the President's Council on Traffic Safety. The group will not report to the President; rather, the President will hold the Secretary of Commerce responsible for the success of traffic safety programs.

Page 30

We agree that the existing President's Committee for Traffic Safety should be converted into an effective public advisory committee, with staff provided solely by the Commerce Department. A radical change in the status of the President's Committee is long overdue.

We disagree, however, with that part of the recommendation which would make the new National Public Advisory Committee advisory to the new interagency group - the President's Council on Traffic Safety. The report notes that the advisory committee would give advice on emphasis and priorities for Federal effort and suggest new policy approaches. This is clearly advice bearing directly on the Secretary of Commerce's role as the key responsible official. Since the Secretary of Commerce will be responsible for the overall traffic safety effort, it is desirable that advice be given directly to him. He, in turn, could call on the advisory group to give advice to his interagency committee when appropriate.

Page 24

The report makes the point that "traffic safety activities may be identified either as employee oriented (Federally operated vehicles) or public oriented (vehicle operations by the general public) ... this emphasis does not imply that internal safety programs of the Federal establishment are unimportant but assumes that the Government's internal safety effort should be superior to the practices and actions recommended for publicly oriented programs." There is no discussion in the report, however, of means of achieving the desired superiority of Government programs. It is certainly doubtful if they have such a status at the present time.

Currently, the Secretary of Labor has an overall responsibility for Federal employee safety programs. This responsibility, however, is not specific with respect to traffic safety. We believe that the Secretary of Labor should be given a clearer responsibility for Federal employee oriented traffic safety programs. We recommend that the role of the Secretary of Labor with respect to Federal employee programs be detailed in the Executive order giving the Secretary of Commerce overall responsibility for traffic safety programs.

Under these arrangements the Secretary of Commerce would rely on the Secretary of Labor for enlisting the support of Federal agencies in traffic safety activities. One of the important tasks of the proposed traffic safety staff of the Under Secretary would be to establish close liaison with the Labor Department and Federal Safety Council staff.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY
WASHINGTON, D.C. 20506

November 19, 1965.

MEMORANDUM FOR

Mr. Joseph Califano

SUBJECT: Report to the President on Highway and Traffic Safety
by Under Secretary of Commerce for Transportation

In spite of the high economic and social costs of highway accidents, the efforts to understand the problem and to explore means for coping with it have been relatively meager. The lack of an imaginative and articulate community of safety experts has made the task of the Department of Commerce exceptionally difficult. Nevertheless, the approach taken by the Under Secretary is sound and his report deserves consideration by the President.

The findings reported on page 2 of the report accurately reflect our own conclusions and we would recommend that they be endorsed by the President in the near future.

The program areas delineated on page 3 provide a good framework for a national effort. Particular emphasis should be given to the immediate need for focusing responsibility within the Federal Government. May I suggest that the second program area listed, namely, information and research programs, be broadened to include development, demonstration and evaluation activities as well.

As indicated in the report, action on three time-scales is warranted. First, immediate steps can be taken by reprogramming available funds within existing authority. Second, FY 66 legislative proposals must be more clearly defined, and FY 67 program and budget changes made. Finally, an effort must be made to begin the formulation of longer term objectives and the evaluation of long term strategic programming decisions.

The specific proposals for immediate action appear well justified. I suggest, however, that the proposed safety task forces be asked to explore program needs throughout the whole research-development-demonstration-evaluation-implementation process.

Obviously, the Surgeon General of the Public Health Service should be brought into the discussion at the earliest opportunity because he must carry out a large part of the highway safety program. Assignment of overall program planning responsibility to the Secretary of Commerce should in no way prevent the participation of the Surgeon General in the planning process or limit his responsibility for conduct of a large and important part of the program.

Intermediate and long term proposals reflect the complex nature of the safety problem. More detailed development of these and alternative proposals should be undertaken using both government experts and non-Government consultants who can bring their specialized knowledge to bear on the tasks.

Program cost estimates are not unreasonable. Annual expenditures of tens of millions of dollars in the near future are to be expected and appropriations in excess of \$100 million may be required a few years hence. On the other hand, tens of thousands of lives, millions of serious injuries, and billions of dollars in property damage are at stake in each of these years. Can we afford not to spend a few thousand dollars in order to save the life of a productive member of our society or a few hundred dollars to prevent the sustaining of a disabling injury?

If we make a determined effort now, I am confident that we will begin to see beneficial results throughout the nation within five years. The fact that the ultimate impact lies further in the future should not be considered cause for delay.


Colin M. MacLeod
Deputy Director

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Deputy Director

Whose that character straight & tall
Why it's none other than Henry Hall,
No Carolina's gift to order & clarity
^{who has}
~~Is that guy with~~ a big shining heart full of
charity.

Tho' Henry's a sweet & gentle arm-twister,
I'd advise don't get on his wrong list, mister!
For aroused, he's a roaring lion
This 5-year disciple of O'Brien.

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THE UNDER SECRETARY OF COMMERCE
FOR TRANSPORTATION
WASHINGTON, D.C. 20230



DEC 3 1965

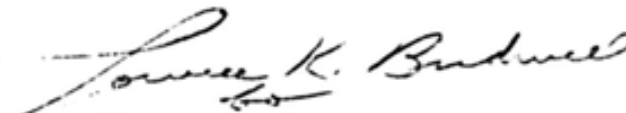
MEMORANDUM FOR

Honorable Joseph A. Califano, Jr.
Special Assistant to the President
The White House

Attached are:

1. Two copies of a memorandum setting forth a comprehensive legislative program in the area of transportation regulation.
2. Copies of 7 staff papers on various subjects dealing with transportation regulation.

The memorandum proposing a legislative program is in response to your request for further detailed staff studies to follow up the recommendations of the Transportation Task Force. The staff papers are part of the support for the legislative program. There are 7 additional staff papers which are currently being prepared. These will be forwarded to you as soon as they have been put into final form. The recommendations for the legislative program are based on the work that has been done in preparing all of the papers.


Alan S. Boyd

Attachments



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DEC 3 1965

MEMORANDUM FOR

Honorable Joseph A. Califano, Jr.
Special Assistant to the President
The White House

SUBJECT

A Program of Legislative and Administrative
Proposals for Transport Regulation

This memorandum presents an extensive program of changes in regulatory statutes and administrative actions applying to transportation regulation. It supplements and is coordinate with the previous submittal dealing with transportation organization in the Federal Government.

The content and format of this series of proposals is geared to assist in the practical formulation of a legislative program in the next session of Congress and to furnish sufficient material to justify a comprehensive program before the Congressional Committees. Specifically the program:

1. Provides a range of legislative and administrative proposals covering major objectives of transport regulation.
2. Provides alternative courses for consideration with respect to various proposals for legislative or administrative action. The course preferred by this Department is given along with the total range of alternatives.
3. Provides a fundamental approach to each major area of regulatory concern so that a basis of policy toward other regulatory amendments than the President's program may be available. About 70 legislative proposals for regulatory change are introduced into each Congress.
4. Provides a basis for extensive staff studies to support a broad effort to achieve legislative and administrative change:
 - A. Staff papers are being completed specifically to accompany this memorandum and provide detailed support for the proposals advanced. These papers are listed in an attachment, and those completed accompany this memorandum.

- B. More fundamental research is being made into the subjects of transportation costs and railroad mergers.

This program is designed to be flexible, to be within the practical possibilities of defense before Congressional Committees, and adjustable to political realities without sacrifice of basic principles. Underlying all the proposals and alternatives are two basic principles:

1. The criterion of economic efficiency whereby regulatory provisions and processes are modified to utilize solely economic performance data in the formulation of regulatory decisions, and to judge the existence of legislative provisions and proposals in the light of their relation to the economic performance of transportation.
2. Efficiency of regulatory administration, centering on the long-run objective of combining the ICC, CAB and FMC into a single regulatory agency with limited membership. Regulation as such must be simplified before such an administrative reform is possible. New procedural innovations must accompany substantive change to make the regulatory process work in a single agency.

Six general areas of regulatory concern are involved. In each area a basic proposal is advanced which covers the entire area and advances the two major criteria of economic efficiency and efficiency of regulatory administration. A number of other proposals in each area are considered in relation to the basic proposals. A statement of the 6 basic proposals follows, after which detailed alternatives and recommendations on a number of specific legislative items are discussed.

1. National Transportation Policy

Rewrite the National Transportation Policy in the Interstate Commerce Act to introduce general procedural changes in regulation to provide that any carrier proposal as filed shall prima facie be assume to meet the standards of the Act. Exceptions to this would be situations involving rate increases, proposals to abandon or discontinue service, and merger proposals.

2. Rates and Discrimination

Maintain controls on maximum and minimum rates as well as control of discriminatory rates and practices,

but in the control of rate levels establish cost (or some similar concept of economic performance) as the sole legislative criterion.

Maintain control over situations involving regional discrimination. This should be done by requiring that improved rates which are based on economic performance be extended widely throughout the economy. Discrimination should not be eliminated through the process of raising rates to common levels above what would otherwise be justified on the basis of economic performance.

Develop effective economic performance criteria and procedures that can implement this policy in detailed regulatory administration.

3. Control of Entry and Abandonment

Maintain present controls on original entry but liberalize scope of control over the adjustment, extension, or discontinuance and abandonment of certificated service. Utilize rule making and other criteria establishing procedures to establish performance tests of service with existing carriers under liberalized provisions.

4. Merger and Carrier Organization

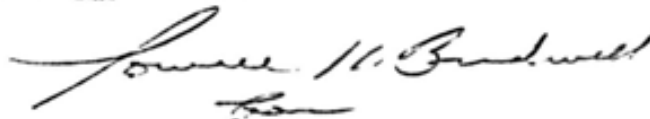
Retain existing provisions governing merger, but assist the Interstate Commerce Commission in its merger decisions by developing an overall plan of merger alternatives based on efficiency and other public interest criteria.

5. Exemptions

Maintain existing exemptions as a base, but give the regulatory agencies authority to utilize their regulatory processes to adjust the exemptions in line with general criteria established by legislation.

6. Procedural Aspects of Regulation

Build into substantive legislative proposals procedural changes to establish evidence of performance as the primary test of regulatory decisions, and in addition make regulatory procedures uniform from one agency to another.



Alan S. Boyd

OVERALL POLICY CHANGES AND REDIRECTION

The National Transportation Policy in the Interstate Commerce Act is presently something more than a mere set of guidelines but something less than a substantive mandate. Independent of revisions of specific statutory revisions or concurrently therewith, it may prove appropriate to revise the Policy itself to correct at one fell swoop a number of areas in need of reform. The following amended version of the Policy (additional language underscored; deletions in parentheses) would achieve such results by (1) according substantive strength to the Policy, (2) construing such mandates in favor of the for-hire, regulated carriers, (3) promoting beneficial capabilities rather than preserving so-called "inherent advantages" which are difficult, if not impossible, to measure, and (4) favoring the prompt utilization of equipment in light of the perennial car shortage problem. In addition, except as to such major public interest questions as rate increases, abandonments and discontinuances of service, and rail consolidations, all other proposals, as filed, would be presumed lawful and the burden of proof would be shifted to those alleging the contrary. Finally, the procedure of the ICC would be eased by a provision permitting the use of expedited procedures. Present language of the Policy in parentheses would be omitted.

Department of Commerce Recommendation

As indicated hereinafter, a direct approach of specific statutory reform is favored. Procedural simplifications can also be enacted separate from the above revised policy or together with specific statutory revisions. The revised Policy is submitted essentially as an alternative approach.

NATIONAL TRANSPORTATION POLICY

(September 18, 1940.) (49 U.S.C., preceding 1, 301, 901, and 1001.) It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the regulatory provisions of this Act, so administered as to recognize and (preserve) promote the (inherent advantages) beneficial capabilities of each; to promote safe, adequate, economical, technologically advanced, and efficient service and foster, consistent with realistic and fair costing principles and concepts, sound economic conditions in transportation and among the several for-hire, regulated carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, including those directed toward the prompt, economic, and more complete utilization and movement of equipment, facilities, and instrumentalities, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;-- all to the end of developing, coordinating, and preserving a for-hire, regulated national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view of carrying out as affirmative and substantive mandates the above declaration of policy.

Except as hereinafter indicated, in any proceeding, formal or informal, involving any proposal, as defined herein, required to be filed with the Interstate Commerce Commission, such proposal, when and as filed, and thereafter, shall be presumed prima facie to meet the applicable statutory standards and the above declaration of policy, and to be otherwise lawful in all respects, and the burden of proof to the contrary shall rest with any opposing parties and/or the Commission: Provided, however, that the burden of proof as to proposed increases in rates, fares, or charges, proposals to abandon or discontinue service, and proposed consolidations or combinations pursuant to Section 5(2)(a) involving carriers by railroad shall remain unchanged. The term "proposal" shall embrace every temporary, permanent, or special type of application for affirmative authorization or approval as well as any tariff filings contemplated by this Act.

To insure prompt disposition of formal proceedings contemplated by this Act, a finding by the Commission that due and timely execution of its functions is warranted shall permit it (1) to authorize the omission of recommended reports and orders by hearing officers and (2) to adopt such other expedited procedures as may be appropriate. Such a finding shall not be overturned unless clearly erroneous.

Any provisions of law, including but not limited to the Interstate Commerce Act and the Administrative Procedure Act, inconsistent with the foregoing are hereby superseded.

RATES AND DISCRIMINATION

The basic proposal is to provide that a standard of cost be the sole standard for determining a reasonable minimum rate. The only limitation on cost as a standard would be the retention of prohibitions against unreasonable discrimination and undue preference and prejudice, but these provisions would also work within a standard of cost oriented rates. The effect of this basic proposal would be to allow competitively indexed rates to go into effect unless they were below cost.

Several alternative approaches are possible with respect to amending the regulatory statutes to accomplish this objective. They range from outright repeal of all standards but the cost standard, to complete dependence on procedural innovations.

A. Direct repeal of all statutory standards but cost.

Illustrative of this approach is the following language rewriting the ICC rule of rate making in Section 15a. Comparable provisions could be placed in the Federal Aviation Act:

In determining a reasonable level of minimum rates the Commission shall be guided solely by the costs of performing the services involved in accordance with fair and reasonable cost concepts, and the Commission may establish rules for the preparation of cost evidence which may used as prima facie evidence of the reasonableness of minimum rates.

This approach repeals all of Section 15a and provides that only prima facie submittals of cost evidence shall govern the level of minimum rates. The principal problem involved here is the ability of the regulatory agencies to promulgate rules which reflect modern cost standards in industry.

sole
criteria
is cost

REVISION
TO SECTION
19A ICC ACT
COST
CRITERIA
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FACIE

Otherwise, the agencies could utilize arbitrary standards which could freeze the art of cost finding in transportation to some outmoded concept preferred by the agencies. The phrase "in accordance with fair and reasonable cost concepts" might help inform the agencies of the legislative intent to adopt modern competitive cost standards. The meaning of this would have to be spelled out clearly by Administration spokesmen in hearings to establish a legislative intent.

B. Adding a cost standard to supplement the existing rule of rate making. Illustrative language is as follows:

Amend section 15a by adding a new paragraph (4) thereto as set forth below and amend sections 216(i), 307(f), and 406(d) along similar lines:

Supplement
(1) Discrimination
(2) ETC
+
CO905

(4) Notwithstanding the provisions of subsections (2) and (3), no rate shall be found to be lower than a reasonable minimum rate if it shall appear to yield a reasonable net revenue on the traffic of the carrier to which it applies and if there is a reasonable competitive basis advanced therefor, provided, however, that the foregoing shall be without prejudice to any findings not inconsistent therewith as may be warranted under other standards of lawfulness in the Interstate Commerce Act and related acts.

This has the advantage of building on the existing foundations in the rule of rate making and may be politically more palatable. It clearly preserves other protections of the Act such as prohibitions against discrimination. It confines application of a standard to competitive situations, and does not yield a cost standard as such, although one is strongly implied. On the other hand, this approach by itself does not provide procedural relief by providing for a prima facie evidence procedure to utilize cost standards.

C. Procedural innovations in declarations of policy.

Such procedural innovations would shift the burden of proof and provide for prima facie validity of carrier proposals. Amendment of the National Transportation Policy in the Interstate Commerce Act discussed in a previous section is illustrative of this approach.

Department of Commerce Recommendation

Consider changes both in the rule of rate making and in general policy declarations governing procedure. A substantive change is desired in rules of rate making, and the direct approach should be tried. Procedural simplification is needed to prepare for the ultimate objective of a single transport agency, and some attention should be given this issue as a general matter, in a context of substantive change in rate making and control of entry.

Geographic Discrimination

Alternatives

A. Rely on present anti-discrimination provisions in regulatory legislation, plus reliance on competitive spread of cost-based rates which will generally lower transportation costs.

B. Provide special language in cost-based rate amendments to provide for extension of rates to other geographic areas.

Department of Commerce Recommendation

A specific recognition of the problem of geographic adjustments necessary under a regime of cost-oriented rates should be made. One

possibility is to provide that any cost-based rate for a given commodity or service should be prima facie evidence of the reasonableness of other rates for the same commodity or service. Both politically and from an economic standpoint, some guarantee of extended benefits from rate innovations is justifiable.

Other Rate Proposals Considered

1. Create Joint Boards on through routes and joint rates.

Department of Commerce Recommendation

This should be included in a transportation program. The regulatory chairmen have approved it and have developed a draft bill ready for introduction. It will provide a body of experience preparatory to the formation of a single regulatory commission.

2. Repeal long and short haul provisions of Interstate Commerce

Act.

Department of Commerce Recommendation

This should not be included in a transportation program. Its inclusion will alienate important political groups, and many of the objectives of the proposal are being met now through liberalized regulation by ICC under recent amendments.

3. Repeal requirement of Interstate Commerce Act that rates be based on "reasonable classifications" of property.

Alternative approaches

- A. Consider an integral part of cost-oriented rate proposals as discussed in basic proposal for cost as single standard for minimum rate control.

B. Repeal of provision as suggested.

Department of Commerce Recommendation

Repeal of provision is unnecessary except possibly to tidy up Interstate Commerce Act after its amendment to cost-based rate standard. In *All States Freight v. NY, NH & H RR* (379 U.S. 343, 1954) the Supreme Court relegated the classification provisions of the Interstate Commerce Act to class rates which carry a relatively minor portion of rail and motor traffic and are susceptible to conversion to commodity rates at any time by either mode. Some individual motor carriers may have a larger proportion of their traffic in class rates.

4. Amend Interstate Commerce Act to require rail and motor carriers to accept shipper owned or leased equipment at cost based rates.

Department of Commerce Recommendation

It does not appear necessary for specific legislation in this limited area since other Department recommendations herein which contemplate regulation of rates and services based solely on cost standards largely embrace the substance of this proposal. To the extent that the instant proposal involves the payment of allowances to shippers by carriers for the use of shipper owned or leased equipment, the test of the maximum reasonableness of such allowances is, by ICC and court precedent, already a cost-oriented matter. The granting of allowances is permissive; a carrier is not required to grant one. Insofar as the suggested amendment pertains to the mandatory acceptance by a railroad of truck-tendered

10(a)

trailer-on-flatcar traffic, the ICC proposal to this effect is now on appeal to the Supreme Court. Presumably, if the ICC's decision is upheld, it would have equal power to require a motor carrier to accept rail tendered traffic. Presently, the ICC is without power to require through routes and joint rates between motor carriers and railroads.

5. Limit liability of common carriers for loss or damage of property.

Department of Commerce Recommendation

"Released rates" have grown substantially in number and now afford carriers the essence of the relief proposed without the need for further legislation. Carriers are presently free under "released rate" statutory provisions to establish low rates with low liability. The law merely requires that the carrier have also available, for possible shipper use, a higher rate with greater liability; the difference being largely a matter of costs. Improved packaging methods also lessen any need for this proposal. Finally, as a matter of elemental fairness, it is difficult to justify a limitation on carrier liability on a shipment under its control and supervision.

6. Deny carriers right to request suspension of proposed rates or place burden of proof on complaining carriers.

Alternatives

- A. Repeal suspension provision
- B. Reduce period of suspension
- C. Change burden of proof from proponent to opponent of change
- D. Make uniform the exemption provisions in the Interstate Commerce Act and the Federal Aviation Act.

Department of Commerce Recommendation

A uniform suspension period of 60 days should be applied to carriers subject both to the Interstate Commerce Act and the Federal

Aviation Act. With the minimum rate standard reduced to cost standard, in accordance with a previous recommendation, a lesser time would be appropriate and a more certain basis for determining the appropriate rate would be available. For the latter reason, there appears to be no basis for changing the burden of proof, or distinguishing among classes of litigants--carriers and shippers--with respect to the burden of proof.

7. Eliminate rate regulation of all unsubsidized domestic passenger transportation.

Alternatives

- A. Repeal regulation of passenger rates, at least to extent of control over minimum rates.
- B. Utilize same standards of minimum rate control as recommended for general application; that is, use a prima facie cost standard as the sole standard of a reasonable minimum rate.

Department of Commerce Recommendation

The cost standard should apply uniformly to freight and passenger transportation minimum rates and fares. There is no essential difference in the principles applicable to either.

8. Prohibit mixing rules on container shipments.

Department of Commerce Recommendation

This proposal deals with a rather limited area of regulation where no serious need for legislation appears. As with a number of

other proposals, the cost-oriented concepts advanced heretofore will eliminate or lessen substantially the use of rules requiring that loadings consisting of different commodities shall be limited to certain percentages. The carriers themselves construe such rules in a manner which permits its easy satisfaction.

9. Eliminate economic regulation of small shipments.

Alternatives

- A. Provide exemption from regulation.
- B. Provide partial deregulation, e.g., minimum rate deregulation of shipments less than 10,000 pounds (the ICC statistical yardstick for less-than-carload and less-than-truckload shipments).
- C. Increase parcel post size and weight limitations.
- D. Coordinate regulation of small shipments with a general regulatory policy favoring cost-oriented rates.

Department of Commerce Recommendation

Alternative "D" is favored, particularly in view of the importance of cost as a factor in this type of service.

10. Impose control of international air rates.

Department of Commerce Recommendation

The Civil Aeronautics Board should have its powers to deal with the international aviation consortium considerably increased by the national interest. A bill has been introduced during the last session to accomplish this.

CONTROL OF ENTRY AND ABANDONMENT

The basic proposal would provide a liberalized procedure for extending and contracting common carrier services of existing carriers. It would leave essentially intact controls on new entrants but would allow carriers already in existence to have greater freedom to extend or contract their business. The need for the legislation stems from the unusually detailed regulation over authorized service by motor carriers, water carriers, and airlines, and the need to adjust abandonment of unprofitable lines by railroads.

In its essentials the proposal would permit temporary authority to modify routes or service with respect to areas or commodities having reasonable relationships to existing certificate provisions. Such reasonable relationships would be outlined by the regulatory agencies by rule making, and temporary authority would be granted at once on showing that the proposed certificate amendments met the agency rules. Following issuance of temporary authority, carriers would prepare for the agency specific data on performance in any new service. If such evidence showed that performance met the agency criteria as detailed in its rules, modifications of service would mature automatically into permanent certification.

Both substantive amendment and procedural shifts in the burden of proof from carriers to protestants would be involved in these changes.

Alternative approaches to this objective involve on one hand the preparation of substantive legislation to liberalize amendment of carrier certifications, or reliance on procedural innovation.

Illustrative language to implement the recommendation substantively is as follows:

Amend Section 206 of the Interstate Commerce Act by adding the following language:

Modifications of authority to serve routes, points, territories and commodities or trades shall be granted by the Commission upon a showing that such modifications are reasonably related to existing certificates of applicants and that carriers have demonstrated capacity to perform increased service in an efficient manner. Reasonable relationships to existing certificates should be determined by the Commission on the basis of general rules which take into account scope of existing routes, points served, territories, and commodities and trades served by applicant. Modifications of authority shall be granted automatically for a temporary period in the discretion of the Commission upon a showing by applicants of meeting terms of the Commission's rules, and shall be made permanent upon a further showing of performance for a test period as determined by the Commission and on the basis of rules governing submittal of such evidence.

Alternatively, procedural amendments could liberalize all entry requirements by changing the burden of proof from applicants to protestants or the regulatory agency, and by considering all applications to be prima facie lawful unless proved otherwise. Amendments to the National Transportation Policy suggested in connection with the previous discussion of rate proposals would accomplish this purpose.

Department of Commerce Recommendation

As in the case of rate liberalization, a combination of substantive and procedural changes is necessary to improve control of entry to further the economic performance of the transportation industry.

Prima facie performance showings should be sufficient to justify modification of routes and services by all classes of carriers. Burden of proof and other procedural aspects should be changed to conform to such a substantive performance standard.

Abandonment of Railroad Lines

The proposal is to liberalize abandonment of rail lines along one of three alternative approaches:

1. Grant carriers absolute right to abandon but empower ICC to regulate timing of abandonment, limited by a specified term of years, for example, 10 years.
2. Allow abandonments to be effective automatically in the absence of affirmative action by the Commission to hold hearings, and limit the duration of authority to order continuance for the Commission to a specified term of years. Shift burden of proof to protestants. This is in effect the same procedure now in use for rail passenger train discontinuances.
3. Maintain present law governing abandonment but provide for a prima facie showing of economic loss which would justify abandonment.

Department of Commerce Recommendation

Alternative No. 2 is preferred because it is close to the procedures now in effect for train discontinuances which have proved effective. The Commission's powers to order continuance of service on lines, however, should be 3 years for abandonments as contrasted to the one year limit for discontinuances in the present law.

MERGER AND CARRIER ORGANIZATION

No legislation is recommended to amend either the Interstate Commerce Act or the Federal Aviation Act with respect to mergers. Some consideration should be given to legislation providing financial incentives for limited merger activity, but because of the technical complexities involved in railroad organization and related tax laws, caution should be used in endorsing specific proposals.

With respect to merger itself, the present statutes possess sufficient and desirable generality, so that carrier initiative in proposing mergers is not handicapped, and the regulatory agencies retain sufficient powers to protect the public interest. Present law appears to afford the regulatory agencies ample authority to formulate such administrative criteria or procedures as may be appropriate.

The Interstate Commerce Commission is handicapped by outmoded procedures, which can be modified by the agency itself, and by the absence of sufficient capacity to develop public interest evidence to offset fully the positions of the merger proponents. The greatest contribution of the executive branch is potentially the preparation of public interest positions in merger cases, supported by evidence based on original research.

Financial Incentives for Merger

Two kinds of financial provisions might accelerate merger activity for marginal railroads such as Erie-Lackawanna and Boston and Maine. They are (1) voluntary reorganization of financial structure and (2) tax incentives.

Section 20(b) of the Interstate Commerce Act provides that the financial structure of a railroad may be reorganized by voluntary assent of 75 percent of the holders of each class of security. Some liberalization of this provision would assist railroads such as the Erie-Lackawanna and Boston and Maine adjust their debt structures to facilitate merger with a larger company. On the other hand, the impact of any liberalization on railroad securities generally cannot be foretold, but the value of many bonds held by fiduciaries would be affected. Because the present law is relatively liberal and could be made an effective part of any merger plan involving the marginal railroads, no change is recommended at this time.

Tax legislation proposed in H.R. 10542 appears designed to facilitate railroad mergers with marginal companies by extending loss carry forward provisions. Such legislation, if enacted, could be used in conjunction with voluntary reorganization to expedite merger actions by carriers. The precise effects of the present bill with respect to individual railroad problems are not clear. Deficiencies in the bill have been pointed out by the Treasury Department, and by individual railroads with respect to their needs. Because of the complexity of the problem it appears best at this time not to endorse a specific bill, but to favor generally reasonable amendments to the tax law that would assist in the problems of marginal railroads.

EXEMPTIONS

Studies of the agricultural exemption area show that an effective pattern of carrier service has emerged under the exemption and that carriers operating under the exemption are efficient, profitable, and render service that is superior and at lower rates than regulated carriage. For these reasons, the present scope of exemption should be retained, and the exemption legislation might be changed to allow regulatory permission to extend exempt carriage on a limited scope in the field of commodities related to agricultural production and processing.

Department of Commerce Recommendation

The language governing Section 203 (b)(6) which provides the agricultural exemption should be amended as follows:

With respect to any commodity not exempted under this paragraph or manufactured product thereof, the Commission may upon application or its own motion extend the exemption from this part after hearing. In extending such exemption the Commission shall take into account and specify in its order the extent to which adequate service cannot be made available by common carriers regulated under this part due to excessive seasonality of movement, market conditions in the commodity under consideration, need for rates more favorable than available from regulated common carriers, or other need for special services not available at suitable terms from regulated carriers.

Extension of Water Carrier Exemption

Alternatives

1. Extend to dry bulk commodities the same discretionary powers of extension recommended above for motor carriers of agricultural commodities.
2. Extend present exemption of dry bulk commodities to all such commodities by repealing limitation to commodities

in dry bulk trades on June 1, 1939, by repealing rule of three limiting exemption to carriage of three dry bulk commodities in a single vessel, and the "mixing rule" which brings dry bulk commodity rates under regulation if carried in the same vessel as regulated commodities.

Department of Commerce Recommendation

The Department favors outright legislative extension of the exemptions as provided in alternative 2. Bulk commodity carriage offers no difficulties of distinction as between types of service; a commodity is either carried in bulk or it is not. In agriculture on the other hand, there are infinite gradations of service ranging from the most obviously manufactured goods in regular channels of commerce to direct movements of raw produce off the farm. From the regulatory standpoint, the two exemptions offer separate regulatory problems and may be treated separately.

STAFF PAPERS TO ACCOMPANY MEMORANDUM

1. Factors Bearing on Cost as an Exclusive Standard for Minimum Rates

A summary evaluation of the role of cost in price theory, applications in transportation, and a review of leading cost criteria and cases used are under consideration by regulatory agencies. From these materials, conclusions are drawn respecting suitable procedures for expediting and liberalizing the regulation of minimum rates.

2. Classification as a Principle in Cost Based Rates

The original purposes and background of rate classification are explored. Then the relationship of classification to competitive rates is set against the original background, showing the deficiencies of classification as a competitive tool. Conclusions concerning classification as a principle are then offered.

3. An Analysis of the Small Shipment Problem

Details on the background of the problem, an economic analysis of the reasons for the problem, and alternative approaches to its solution are presented.

4. Regional Discrimination and Cost Based Rates

With cost a primary factor in extensive rate reductions by railroads, old regional economic patterns change. This problem is set off against basic economics of discrimination. Older standards of regulating discrimination are analyzed, and a newer approach is suggested, based on spreading the welfare resulting from improved transport costs.

5. Control of International Air Fares.

The problems encountered by the Civil Aeronautics Board in dealing with nationalized air carriers of foreign governments and the international air cartel are outlined, and a remedy suggested.

6. Deregulation of Airline Fares

The ancient problem of internal subsidy is analyzed in terms of modern air transportation. External subsidy problems of local service carriers are analyzed in terms of internal subsidy of regulated trunk carriers, technological developments, and evidence concerning trends in service needs.

7. Suspension

Data are shown concerning suspension practices by ICC and CAB. Motives for suspension are outlined, and it is shown that suspension is essentially a tool for keeping competitive rates up. Modifications in suspension to take this into account are recommended.

8. Control of Entry into Interstate Motor Freight Transport

Basic economic factors affecting transportation under entry control are traced. Reviews are made of the few studies of the problem and it is concluded that the economic evidence concerning the economic performance of carriers protected by entry control is not sufficient to draw substantive conclusions. Therefore, it is recommended that procedural innovations leading to the use of economic performance criteria and data be used in a liberalized policy of certificate adjustments for existing motor carriers.

9. Relaxation of Procedural Requirements to Abandon Railroad Service

Alternative suggestions for relaxing abandonment requirements are made against a background of past experience and available data.

10. Relaxation of Procedural Requirements to Suspend or Abandon Airline Service

The basic background of airline service suspensions is analyzed in terms of current aviation problems.

11. Topical Outline; An Administrative Approach to Railroad Merger Policy

Railroad merger criteria are examined against a background of planning doctrine, and an outline of a three phased plan for appraising existing and prospective railroad mergers is presented.

12. Legislative Standards for Common Ownership in Transportation

The legislative histories of present laws governing cross-modal ownership of transportation companies are analyzed. Absence of general standards is revealed, since each law reflects the limited circumstances which led to its enactment. More general standards for the regulation of common ownership are derived.

13. The Agricultural Exemption

Research findings concerning quality of service, levels of rates, and efficiency of firms in exempt motor carrier services are summarized and their implications analyzed.

14. Rules and Practices of Transport Regulatory Agencies

A comparison of the rules and practices of the ICC, CAB, and FMC is made. There follows an analysis of these rules and variations in terms of the provisions of the Administrative Procedures Act, the Administrative Conference, and recent suggestions for overall procedural reforms.

December 3, 1965 Commerce Transportation

Regulation action program

1. Amend National Transportation Policy to favor for-hire regulated carriers, among other things.
2. Add a cost standard to supplement rule of rate making.
3. Make procedural innovations in declarations of policy.
4. Recognize problem of geographic adjustments necessary and use cost based rates.
5. Create Joint Boards on through routes and joint rates.
6. Reduce period of suspension (to 60 days).
7. Use cost standard in determining reasonable passenger minimum rates.
- 7 8. Coordinate regulation of small shipments with general regulatory policy favoring cost-oriented rates.
9. Impose control over international air rates.
10. Liberalize procedure (thru temporary authority) for expanding and contracting common carrier services (primarily motor and water).

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IS THIS sole; ON ADDITION TO OTHERS.

IF APPLIED
TO OTHERS
TOO MUCH

COST
IS PRIMA
FACIE

THAT THERE
WILL BE

↓
BIG TRUCKS
WILL LIKE,
SINGLE TYPE WILL LIKE

No new cut/outs
very difficult to get
need showing!

REDIRECTION OF REGULATION OF TRANSPORTATION

Agenda for Meeting of December 11, 1965

I. General Policy

A. Should the President submit a special message on transportation problems?

B. Should the President sponsor an entirely new declaration of transportation policy implementing his "more competition less promotion and regulation" position? Or try to patch the statement in the IC Act?

C. If there is to be a special message, should it mention work being initiated to produce later recommendations for legislative reform, e.g., general standards to control common ownership? Or only proposals to be implemented by legislation to be submitted at the next session, e.g., revision of rate suspension provisions?

It is hereby declared to be the national transportation policy of the Congress to foster competition within and between all modes of transportation so as to provide users of transportation with efficient, fast, safe and convenient transportation services at the lowest cost consistent therewith.

To this end:

1. Regulations shall be limited to the minimum necessary to assure charges reasonably related to the costs of providing services, including profit.

2. Public investment in transport facilities and services and subsidies to the carriers shall be limited to amounts (a) necessary to rectify inequities from past or existing public policies and programs, or (b) justified for a specified period to facilitate the development and introduction of new technology or the development or redevelopment of depressed areas.

3. Taxation shall be equitable as among all modes.

4. Users, except as provided in 2 above or as necessary to prevent discrimination not based on bona-fide differences in the cost of providing services, shall pay the full cost of the services received either in rates or in user charges or both.

INLAND WATER

RR MORE COMPETITIVE

- ③ UNLEASH CT CARR
- ① USER CHGS (TAKE-OFF)

GROWTH
EFFICIENT OP.
FREE COMPETITION
CARRYING TECHNOLOGY

MODERNIZE

HIGHER PRFTS

20% OBNP

Commerce Transport Regulation Program

TARGETS

RAINFALLS

* Indicates Commerce choice.

NO REGULATION REP. (A)
ICC CHAIRMAN - PRES.
LIKE CAB; MAINTAIN COM.
FED

ICC
AIP
INDV

- *1. Change National Transportation Policy statement contained in Interstate Commerce Act. It's amended in detail to favor for-hire regulated carriers.

LOW COST

- *2. Direct repeal of all statutory standards but cost.

COST
P.F.

- *3. Add a cost standard to supplement rule of rate making.

OTHER
SUPPORTIVE

- *4. Procedural innovations in declarations of policy.

- 5. Rely on present geographic antidiscrimination provisions but rely more on cost-based rates.

- 6. Provide special language in cost-based rate amendments to provide for extension of rates to other geographic areas.

- *7. Recognition of problem of geographic adjustments necessary -- possibly cost-based rate for given commodity should be prima facie evidence of reasonableness of other rates for the same commodity.

- *8. Create Joint Boards on through routes and joint rates.

- 9. Repeal long- and short-haul provisions.

GTR.
Flexibility
FOR
RATE
MAKING

slow going time
IMPAIRED GROWTH
MUST BE BOUND TO
HOLDING
PROFITS FOR INDUSTRY

COST → RATE MAKING
BASE

→ IS CRUCIAL

- 2 -

10. Repeal requirement of IC Act that rates be based on reasonable classifications.
11. Consider #10 as a part of cost-based rates covered in proposal that cost be used as a single standard for minimum rate control.
12. Amend IC Act to require rail and motor carriers to accept shipper owned or leased equipment at cost-based rates. *Signif. ch. case pending - no comment. shes lost of*
13. Limit liability of common carriers.
14. Repeal rate suspension provision
- *15. Reduce period of suspension (to 60 days). *File as RMP. Presumed 21617. SUSPENDED 60 DAYS GIVES OPPONENTS TIME*
16. Change burden of suspension proof from proponent to opponent.
17. Make suspension exemption provisions uniform for IC Act and Federal Aviation Act.
18. Repeal regulation of minimum passenger rates for unsubsidized passenger carriers. *(some airline effort)*
- *19. Use cost standard in determining reasonable passenger minimum rates.
20. Prohibit mixing rules on container shipments.

21. Exempt small shipments from regulation.
22. Provide partial deregulation (based on less than 10,000 pound shipments).
23. Increase parcel post size and weight limits.
- *24. Coordinate regulation of small shipments with general regulatory policy favoring cost-oriented rates.
- *25. Impose control over international air rates.
- *26. Liberalize procedure (thru temporary authority) for extending and contracting common carrier services of existing carriers.
27. Amend IC Act to liberalize carrier certification.
- *28. Amend procedural aspects of IC Act by changing burden of proof from applicants to protestants or the regulatory agencies in entry cases.
29. Grant rail carriers absolute right to abandon but empower ICC to regulate timing of abandonment (example - 10 years).
- *30. Allow rail abandonments to be effective automatically in the absence of action by the ICC. Shift burden of proof to protestants.

31. Add amendment that would enable railroad to justify abandonment if a prima facie showing of economic loss.
32. Voluntary reorganization of financial structure in merger cases so 75% ratio of each class of security holder unnecessary.
33. Establish tax incentives to facilitate railroad mergers of marginal companies to provide for tax loss carry forward.
- *34. Change agricultural exemption provision legislation to permit ICC to extend scope of exemption to other commodities related to agricultural production and processing.
35. Extend water carrier exemption of dry bulk commodities in a manner similar to #34.
- *36. Extend water carrier exemption of dry bulk by repealing limitation to commodities as of June 1, 1939 and repeal rule of 3.

HIGHWAY SAFETY

PACHAGO

60000000
EFFORT

HIGHWAY SAFETY

Agenda for Meeting of December 11, 1965

I. Organization

A. Should overall executive branch responsibilities for Federal highway safety programs be given the Secretary of Commerce? Central staff support created in the Department -- the proposed Highway Safety Services Administration?

IF NOT
TRANSITION
IN
HERE

B. Should the existing coordinating groups be reconstituted, their responsibilities redefined and their hierarchical status changed to facilitate the effective functioning of the proposed HSSA.

-- Interdepartmental Highway Safety Board to be called "Interagency Highway Safety Committee", to report to the Secretary of Commerce whose powers would be clarified and strengthened, to be concerned solely with impact of Federal safety programs on general public.

yes

- Federal Safety Council to function with guidance from HSSA, to be concerned in the highway safety area solely with internal Federal programs and to report to the President. Secretary of Labor to continue as chairman.

TO GIVE POLICY GUIDANCE HHS

-- President's Committee for Traffic Safety to be called "National Public Advisory Committee on Highway Safety", to consist of representatives of the general public

yes

especially traffic safety experts rather than spokesmen of interests groups, with a public chairman (Hearst?) reporting to the Secretary of Commerce, and financed entirely by the Federal Government.

II. Programs

A. Should there be a special message on highway safety or should new safety proposals be made part of a general transportation message? *over*

B. Should initial research be undertaken primarily through contracts?

C. Should the proposed Research Facility be deferred pending results of initial research, including data collection and analysis, to permit more confident judgments on nature, scope and duration of the program? *planning stage*

D. Should improvement of State and local safety programs be generated by Federal statutory restrictions on interstate movement of vehicles, drivers licensed in States not meeting minimum Federal standards. *might feel & go to improve quality*

E. Are plans developed for coordination of existing highway safety programs -- e.g., GSA, HEW, ICC? Have related budgeting problems been solved? *Set Commerce & go*

III. Financing

A. What is the appropriate first year funding of direct Federal programs? (Approximately \$11 million is now being expended for activities other than road building.)

B. What is the appropriate augmented funding of safety construction projects financed by the Trust Fund?

-- Diversion from secondary roads program?

C. Should greater consideration be given funding of State and local safety efforts through locally imposed user charges? Possibly with Federal matching grants?

November 24, 1965

MEMORANDUM FOR MR. CALIFANO

Subject: Transportation reorganization

Attached are staff papers on "Transportation Reorganization" in general, "Reorganization of Regulatory Agencies," and "Highway Safety" reorganization. These papers outline the Bureau's views on those portions of the Interagency Task Force on Transportation which deal with organizational problems.

(1)
CREATE
DEPT.
TRANSP.

In summary, staff endorse the report's principal recommendation favoring creation of a Department of Transportation.

(2)
COUNCIL
NOT
USEFUL

With respect to the National Transportation Council, we believe it should be established in an advisory capacity to the Secretary to enhance his position as the President's principal transportation adviser. In this context it should be useful as a communications device. No doubt, however, that it will be very effective as a means of developing transportation policy. Like other interagency committees, it is likely to take a compromising and "least common denominator" approach to transportation problems.

(3)
LATER
TEND ONE
REB. (A)
FOLTIME
DEWING
ICC CHW.

We agree with the report's conclusion that a single regulatory agency is not feasible at the present time and agree also that the desirable first step to be taken now is the establishment of a Presidentially appointed "strong" Chairman for the ICC. Otherwise, in the regulatory area, we suggest moving with some caution.

HI SAFE
SEC.
COMMITTEE
TO HAVE
ROLE.
RESTRUCTURE
OF ADVISORY GROUPS

Finally, in the area of highway safety, we concur in the unequivocal assignment of highway safety responsibilities to the Secretary of Commerce. While we agree that the existing President's Committee for Traffic Safety should be converted into a public advisory committee staffed by the Commerce Department, we believe that this advisory group should be advisory to the Secretary of Commerce rather than the President's Council on Traffic Safety.

Phillip S. Hughes
Assistant Director for
Legislative Reference

December 3, 1965

Supplemental Notes on Highway Safety Organization

There is obvious need for advisory instruments within the framework of the Highway Safety Services Administration (HSSA) proposed to be established by the Department of Commerce. We foresee a need for three such groups.

The first of these should be an interagency group concerned with the highway safety programs of the Federal Government which have a significant impact on the general public - with the impact of Federal driver and vehicle performance standards on the behavior of automobile manufacturers, other highway users and the public at large; with grants-in-aid and research programs and their effect on State and local governments. These constitute the substance of the expanded program under the general oversight of the HSSA.

This interagency committee should be concerned only indirectly with internal Government programs for Federal employee safety (relatively minor in effort and impact). Efforts in the internal employee effort should be spearheaded by the Secretary of Labor and his Federal Safety Council under his statutory authority over Federal employee safety programs in general.

The Federal Safety Council -- with added support -- is a particularly useful device for internal Federal programs because of its broad based membership -- all Federal agencies are represented -- and its scores of regional safety councils at the field level. These internal Federal programs should be carried on within whatever applicable guidelines are developed by HSSA as a result of the Government's external public programs. Close liaison should be established and guidance given by the HSSA to the Federal Safety Council staff and the Secretary of Labor should be a member of the interagency committee chaired by the Secretary of Commerce.

The third advisory group should be public in nature and concern itself with highway safety problems of the general public and all its component groups.

Creating these instruments, assigning them proper responsibilities, and establishing procedures for their operation are made difficult by the existence of two roughly similar groups which have not performed satisfactorily and which, except for public relations considerations, should be abolished. These existing groups are the Interdepartmental Highway Safety Board and the President's Committee for Traffic Safety. While the first is chaired by the Secretary of Commerce, the Executive Order establishing it does not make his authority clear. The Board is advisory to the "individual members and to other heads of executive agencies." The

powers and responsibilities of the existing Interdepartmental Highway Safety Board should be changed and, because of its poor image, probably also its name. Under new arrangements, the Chairman of the interagency committee should continue to be the Secretary of Commerce but he should have the authority to be a strong chairman, the Committee should be advisory to him and the Secretary should submit reports on behalf of the Committee to the President. If the President accepts any recommendations made by the Committee, he could refer them back to the Secretary and the new Highway Safety Services Administration which could implement them or further delegate responsibility to other Federal agencies such as GSA or HEW.

The name, composition, and responsibilities of the existing President's Committee for Traffic Safety should also be changed because of the unfavorable image it now has and because with the cloak of Presidential authority it has confused the highway safety issue and served private interests more than public interests. The President's name should not be used at all in title of a reconstituted public advisory group. One alternative name might be "National Public Advisory Committee on Highway Safety."

The various highway interests should have a voice in the new Committee, but greater stress should be given to naming individuals with expertise in the traffic safety field, not tied to any particular interest group. Its chairman should be a public person (perhaps the present chairman William Randolph Hearst, Jr.) but it should report to the Secretary of Commerce, not to the President. According to Mr. Califano this change would not offend Mr. Hearst. Hereafter this group should be financed entirely by the Federal Government as another step toward reducing the influence of special interest groups.

Transportation Reorganization

We endorse the report's principal recommendation favoring creation of a Department of Transportation. As noted in the report, this reorganization was recommended previously by the task force on Government Reorganization and is currently among the reorganization proposals to be reviewed by the President. We believe that such a department is necessary to end the existing diffusion of transportation responsibilities and to provide the proper organizational basis for forming national transportation policies.

Specific comments

A question arises on the intent of the report with respect to those elements recommended for inclusion in the department. The report contains some apparent inconsistencies. For example, on page 5 it is stated that "consideration should be given to the transfer of the rail and motor safety functions of the ICC ... The car service functions now residing in ICC and the local service airline subsidy now administered by the CAB should also be considered for inclusion in the new Department of Transportation." These activities are discussed later in the report, however, under the heading "Agencies definitely recommended for inclusion."

ICC
CAR SERVICE
+
SAFETY

A strong case can be made for inclusion of the ICC's car service and railway and motor (safety) functions in a Department of Transportation. With respect to CAB subsidy functions, while we agree that the Department of Transportation should have a strong voice in their award, a review of alternative means of accomplishing this is required.

Mass Transit

There is, we believe, a serious question on the issue of transferring the mass transit functions of DHUD to the new department. While there may be substantial gains in more closely integrating mass transit and highway development, these must be compared with possible increased difficulty of coordinating mass transit and highway planning with other aspects of urban development. A careful review of the planning processes involved and the manner in which desired objectives are achieved at the local level, should be undertaken before a decision is made on the proposed transfer.

SHOULD
MASS
TRANSIT
GO TO
NEW DEPT
OR STAY
IN HUD.

Corps of Engineers

While it does not appear practicable, as stated in the report, to separate the administration of port and inland waterway navigation functions from the basic resource development and conservation activities of the Corps, the report understates the necessity for bringing waterways' improvements into a much closer relationship with

other transportation investments. In addition to the new department's planning functions outlined in the report, some form of veto authority over individual project proposals would appear to be necessary if the department is to carry out its role effectively.

Environmental Science Services Administration

We agree that additional study should be given to the future role of ESSA in view of the fact that a substantial amount of its resources are devoted to aviation weather activities and maritime related coast surveys, charts, and weather activities.

National Transportation Council

In view of the high degree of independence of the economic regulatory agencies, it would be desirable to increase the communication channels between the commissions and executive agencies. The proposed National Transportation Council might serve as a useful communications device. In establishing the Council, we believe it is preferable that it serve in an advisory capacity to the Secretary. This would facilitate the President's reliance primarily on a single officer for policy views in the transportation area and enhance the role of the Secretary as the President's principal transportation advisor. If a National Transportation Council is to be created it should be done, as recommended in the report, by Executive order or Presidential letter.

We have some doubts as to the effectiveness of the proposed National Transportation Council as a means of developing viable transportation policies. Even with the proposed high-level membership, the Council would suffer from the well known handicaps of all interagency groups which attempt to formulate policy. We doubt that meaningful agreement on significant policies can be achieved by interagency consensus. More likely any "policy" statements from such a group will be compromises stated in language geared to an acceptable common denominator.

Reorganization of Regulatory Agencies

ICC CHAIRMAN
We agree with the major conclusion of the report that a single regulatory agency would not be feasible under present regulatory laws and concepts. We also agree, as recommended in the report, that the most desirable immediate step in this area should be to establish a "strong challenge for the ICC." This reorganization would move the Commission in the direction already taken by the other regulatory agencies to strengthen their internal administration. The reorganization would also establish a single channel of communications between executive agencies and the Commission. The move can be justified on its merits and need not be based "on a justification as a prelude to consolidation of the regulatory agencies." (page 2).

ICC SAFETY FUNCT
The report recommends that the ICC's safety functions be transferred to the Department of Commerce "pending the creation of a Department of Transportation." It is not clear if this recommendation applies if a decision is made not to create a new department. In any case, if a Department of Transportation is to be created in the near future, there would be no advantage to transferring these functions before the new department is brought into being. If there is a decision not to create the Department of Transportation, the ICC's railroad and motor carrier safety activities should be considered as part of an examination of all transportation safety functions.

CAB SUBSIDY
MARITIME
As discussed in the report, further study is also required on the question of the relationship of the CAB's subsidy functions to its regulatory responsibility. While it may be possible to transfer these subsidy functions even without a decision to create a new department, further review of this issue is required. It may well be that the Maritime Administration example is not the most appropriate method of handling transportation subsidies. A procedure which allows the President's key transportation official to determine the level of subsidy but leaves to the regulatory agency the determination of the eligible claimants may be preferable to the Maritime arrangement.

WANT TOWARDS
The report outlines a number of significant and difficult problems with respect to regulatory concepts which must be carefully thought through before action can be taken toward moving to a single commission. If a decision is made to undertake this review it will be a lengthy and costly one. The complexity of such an undertaking should not be underestimated. However, we believe the feasibility of establishing a single regulatory commission can be made only after such a thoroughgoing review has been undertaken. It may be desirable initially to expend some effort in trying to gauge the possible benefits resulting from a single commission against the costs of the necessary preliminary work.

Highway Safety

We are in general agreement with the organizational recommendations contained in the report on Highway Safety. In most cases these recommendations are essentially parallel to and in harmony with recommendations contained in a recent Bureau of the Budget study of organization for Highway Safety.

→ The unequivocal assignment of major highway safety responsibilities to the Secretary of Commerce is highly desirable as a means of ensuring that adequate supervision and direction is given to the new Traffic Safety Program. Such an assignment, combined with a new staff directly responsible to the Under Secretary for Transportation should help to remove many of the organizational deficiencies which have caused existing traffic safety efforts to lag. The program outlined appears to make adequate use of specialized agency skills and take account of responsibilities of agencies other than Commerce, while giving adequate authority to the Commerce Department to ensure strong central planning, direction and review.

We agree, in general, with the major points made in the organizational analysis beginning on page 24, particularly with respect to the deficiencies caused by the lack of a focal point of responsibility and the inability of existing committees adequately to carry out required actions. It is important that, as recommended, the new unit charged with overall program responsibility report directly to the Under Secretary and not be an element in the Bureau of Public Roads. The new program involves a broader concept of the traffic safety problem than has been the case in the past and those charged with conduct of the program should not be within one of the functional elements involved.

Specific Comments

Page 30

We concur in the recommendation to change the charter of the Inter-departmental Highway Safety Board. Under existing arrangements the Board is advisory to its members, not to the Secretary of Commerce. The report recommends that a new Executive order clearly assign overall responsibility for the Federal effort to the Secretary of Commerce. The relationship of the committee and the Secretary is not made clear in the report. In conformance with the concept of the overall responsibility of the Secretary, the new interagency committee should clearly be advisory to him. With this arrangement there would be no reason to title the new group the President's Council on Traffic Safety. The group will not report to the President; rather, the President will hold the Secretary of Commerce responsible for the success of traffic safety programs.

INTERDEPT
HIGHWAY
SAFETY
BOARD
TO ADVISE
SECT.
COMM.
NOT
ROADS OF
(A)

Page 30

We agree that the existing President's Committee for Traffic Safety should be converted into an effective public advisory committee, with staff provided solely by the Commerce Department. A radical change in the status of the President's Committee is long overdue.

We disagree, however, with that part of the recommendation which would make the new National Public Advisory Committee advisory to the new interagency group - the President's Council on Traffic Safety. The report notes that the advisory committee would give advice on emphasis and priorities for Federal effort and suggest new policy approaches. This is clearly advice bearing directly on the Secretary of Commerce's role as the key responsible official. Since the Secretary of Commerce will be responsible for the overall traffic safety effort, it is desirable that advice be given directly to him. He, in turn, could call on the advisory group to give advice to his interagency committee when appropriate.

Page 24

The report makes the point that "traffic safety activities may be identified either as employee oriented (Federally operated vehicles) or public oriented (vehicle operations by the general public) ... this emphasis does not imply that internal safety programs of the Federal establishment are unimportant but assumes that the Government's internal safety effort should be superior to the practices and actions recommended for publicly oriented programs." There is no discussion in the report, however, of means of achieving the desired superiority of Government programs. It is certainly doubtful if they have such a status at the present time.

Currently, the Secretary of Labor has an overall responsibility for Federal employee safety programs. This responsibility, however, is not specific with respect to traffic safety. We believe that the Secretary of Labor should be given a clearer responsibility for Federal employee oriented traffic safety programs. We recommend that the role of the Secretary of Labor with respect to Federal employee programs be detailed in the Executive order giving the Secretary of Commerce overall responsibility for traffic safety programs.

Under these arrangements the Secretary of Commerce would rely on the Secretary of Labor for enlisting the support of Federal agencies in traffic safety activities. One of the important tasks of the proposed traffic safety staff of the Under Secretary would be to establish close liaison with the Labor Department and Federal Safety Council staff.

E.O.
↓
SECRET
COMM

NOV 28 1955

MEMORANDUM FOR MR. CALIFANO

Subject: Commerce Highway Safety Program

This is in response to your request for the views of the Bureau of the Budget on the Highway Safety Program proposed by the Under Secretary of Commerce for Transportation.

SUMMARY EVALUATION

The report states the highway safety problem clearly and briefly, indicates the principal deficiencies in present Federal efforts and indicates the major components of a comprehensive program needed to get the problem under control.

Very large expenditures are contemplated and may be justified, but, in our view, expenditure estimates must be more solidly supported. Before large resource allocations are made, substantially more research and analysis are needed to establish the probable impact of many of the recommended actions and, therefore, the priorities for implementation.

The report suggests first-year appropriations of \$55 million for direct Federal programs and grants-in-aid (presumably added to a base of \$11 million, estimated as the present level of all Federal expenditures on highway safety other than road building). It foresees possible full funding of \$75 - \$420 million annually -- some of which might be borne by the Highway Trust Fund. In addition, the report contemplates a Federal capital expenditure of \$50 million for laboratory and testing facilities and annual expenditures of \$350 million from the Trust Fund for safety construction in lieu of current expenditures of like amount on system expansion.

NEXT STEPS

We suggest that:

1. The Department be instructed to draft a special message on highway safety for transmittal during the next session of the Congress.

25 GRANTS

2. The first year program (other than road building) be limited to (25 million, including the estimated \$11 million of direct expenditures now being made for highway safety by the Federal Government.

50 SAFETY
(HIGHWAY)

3. For safety construction programs to be financed from the Highway Trust Fund and to be limited in the first year to \$1 million above existing expenditures (mostly spot improvements), in the second year to \$75 million and in the third year to \$100 million, all to be deducted from secondary road funds. At the end of the third year the program should be reviewed on the basis of research, demonstration and tests proposed in the program.

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4. During the first year most of the research on technical improvements in the safety of the highway and the vehicle to undertaken through contracts.

NO FACIT

5. The proposed Research Facility, estimated to cost \$50 million, be deferred until better information has been developed on the need for such a Facility and the nature of the principal activities to be carried on in it.

Local use
Q165

6. Further consideration be given the funding of State and local efforts through locally imposed user charges (possibly with Federal matching grants) or through Federal statutory restrictions on interstate movements of vehicles and drivers licensed in States not meeting minimum Federal standards.

7. Implementing legislation, to the extent necessary and consistent with the above recommendations, be prepared by the Department for transmittal to Congress after delivery of the special message.

SCOPE AND CONTENT OF MESSAGE

The perspective of the report is established by the following premises:

1. The economic and social loss resulting from highway accidents (50 thousand lives, \$10 billion in property damages in 1965) need not and should not be tolerated by a rich Nation.

2. Highway safety programs lack coordination and strong Federal leadership which must now be supplied.

3. Gross ignorance of the kinds and causes of highway accidents must be ended.

4. Present expenditures are inadequate and probably misapplied because of limited understanding which must also be remedied.

a. Immediate Actions. As background for a Presidential message on highway safety early in the next session, the Department proposes:

(1) An immediate systematic inventory and analysis of available highway safety data;

(2) An evaluation by Public Roads of the "spot improvement program" with a progress report by December 1, 1965;

(3) Increased efforts by Public Health and Defense during 1966 on demonstration of techniques for the prompt removal of the injured from the scene of accidents;

(4) Establishment by Public Health and Public Roads of a pilot program for in-depth field investigation and reporting of accidents;

(5) Convening of a research conference of medical, engineering and other scientists by DOT, Commerce and H&M to make recommendations for highway safety research;

(6) Refinement of performance safety standards for Government vehicles through cooperative efforts of General Services, Bureau of Standards, Post Office and the Interstate Commerce Commission.

b. Intermediate actions. Commerce recommends for proposal in the President's special message:

(1) A permanent comprehensive accident data collection and analysis program. First year cost of \$1 million; ultimate cost up to \$13 million.

(2) Construction and equipment of a Federal Accident Research Facility. Approximate capital cost \$50 million. First year operations, \$9 million; ultimate cost up to \$10 million annually.

(3) A broad gauge program of field investigation of accidents. First year cost, \$650 thousand; ultimate costing up to \$10 million annually.

(4) Extension of emergency medical service program. First year cost \$5.5 million; ultimate cost up to \$23 million annually.

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6PN

(5) Emphasis on construction of safety features in new and existing highways. Annual expenditure of \$350 million from the Highway Trust Fund (perhaps by diversion, e.g., from secondary roads).

(6) Improvement of curricula and teacher training for driver education. First year cost \$2.5 million; ultimate cost up to \$53 million annually.

(7) Intensification of research on communication and traffic control systems. First year cost ~~\$6 million~~; ultimate cost up to ~~\$70 million~~ annually.

(8) Improvement of State vehicle inspection. First year cost \$3 million; ultimate cost up to ~~\$53 million~~ annually.

(9) Improvement of police enforcement activities. First year cost \$6 million; ultimate cost up to ~~\$22 million~~ annually.

(10) Improve State licensing. First year cost \$1 million; ultimate cost up to ~~\$30 million~~ annually.

(11) Establishment of a continuous program for systematic evaluation of all safety activities to improve their effectiveness by adjusting allocation resources among programs. Funded under other items.

(12) Establishment of a research program to develop vehicle safety performance standards. First year cost \$500 thousand; ultimate cost up to \$3 million annually.

c. Long range actions. The Department suggests:

(1) A long range program of education to change the attitudes of the public toward highway safety. A greater sense of personal responsibility for highway safety and property damage would be inculcated. First year cost \$300 thousand; ultimate cost up to \$2 million annually.

(2) The continuing modernization of the highway system will, of itself, reduce highway accidents and property damage.

DISCUSSION

The program recommended by this report appears to be sound on the basis of present knowledge. Our questions go to (a) the rate of implementation, (b) the priority of projects, and (c) the division of effort and responsibility between the Federal Government and

State and local authorities. The recommendations made above are directed largely to these points.

Comments and recommendations dealing with Federal organization and procedures are being provided in a separate memorandum.

(Signed) PHILIP S. LUCAS



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY
WASHINGTON, D.C. 20506

November 19, 1965

MEMORANDUM FOR

Mr. Joseph Califano

SUBJECT: Report to the President on Highway and Traffic Safety
by Under Secretary of Commerce for Transportation

In spite of the high economic and social costs of highway accidents, the efforts to understand the problem and to explore means for coping with it have been relatively meager. The lack of an imaginative and articulate community of safety experts has made the task of the Department of Commerce exceptionally difficult. Nevertheless, the approach taken by the Under Secretary is sound and his report deserves consideration by the President.

The findings reported on page 2 of the report accurately reflect our own conclusions and we would recommend that they be endorsed by the President in the near future.

The program areas delineated on page 3 provide a good framework for a national effort. Particular emphasis should be given to the immediate need for focusing responsibility within the Federal Government. May I suggest that the second program area listed, namely, information and research programs, be broadened to include development, demonstration and evaluation activities as well.

As indicated in the report, action on three time-scales is warranted. First, immediate steps can be taken by reprogramming available funds within existing authority. Second, FY 66 legislative proposals must be more clearly defined, and FY 67 program and budget changes made. Finally, an effort must be made to begin the formulation of longer term objectives and the evaluation of long term strategic programming decisions.

The specific proposals for immediate action appear well justified. I suggest, however, that the proposed safety task forces be asked to explore program needs throughout the whole research-development-demonstration-evaluation-implementation process.

Obviously, the Surgeon General of the Public Health Service should be brought into the discussion at the earliest opportunity because he must carry out a large part of the highway safety program. Assignment of overall program planning responsibility to the Secretary of Commerce should in no way prevent the participation of the Surgeon General in the planning process or limit his responsibility for conduct of a large and important part of the program.

Intermediate and long term proposals reflect the complex nature of the safety problem. More detailed development of these and alternative proposals should be undertaken using both government experts and non-Government consultants who can bring their specialized knowledge to bear on the tasks.

Program cost estimates are not unreasonable. Annual expenditures of tens of millions of dollars in the near future are to be expected and appropriations in excess of \$100 million may be required a few years hence. On the other hand, tens of thousands of lives, millions of serious injuries, and billions of dollars in property damage are at stake in each of these years. Can we afford not to spend a few thousand dollars in order to save the life of a productive member of our society or a few hundred dollars to prevent the sustaining of a disabling injury?

If we make a determined effort now, I am confident that we will begin to see beneficial results throughout the nation within five years. The fact that the ultimate impact lies further in the future should not be considered cause for delay.


Colin M. MacLeod
Deputy Director

TRANSPORTATION

I. A New Department

Objective: To place the scattered transportation policy functions now performed by more than 25 different Federal agencies under one roof -- in a new voice at the Cabinet table. This is a "must for the 20th century in a nation that spends \$120 billion a year -- one fifth of our GNP for transportation -- and that is embarking on large programs resulting from the miracles of new technology.

1. The new agency would include:

- A. Bureau of Public Roads (now in Commerce)
- B. The Maritime Administration (now in Commerce)
- C. The Federal Maritime Commission
- D. The FAA
- E. The safety functions of the ICC.
- F. The car allocation functions of the ICC.
- G. The safety functions of the CAB
- H. The Coast Guard (?)
- I. Mass transit of HUD (?)
- J. NASA aeronautical research functions (?)

Other options:

- 1. Continue the present structure
- 2. Fold in many of the functions not now in Commerce into Commerce
- 3. Create an Interagency Transportation Council

II. Regulatory Streamlining

Objective: To bring our outmoded, 19th century regulatory concepts up to date in this space age, and to provide the incentive for greater growth and profits of our railroads, trucks, and vessels on our waterways.

1. Revitalize the ICC by having the President appoint the Chairman.

2. Rewrite the National Transportation policy statement in the Interstate Commerce Act by recognizing (1) Technological advances (2) Realistic costing principles and (3) Carrier capabilities and economies. Streamlined procedural reforms would also be included.

3. Place rate making (maximum and minimum passenger and freight rates) on a cost standard basis which would be given prima facie weight. Other standards, many in the law since the early 1900's would be subordinated. (Railroads and smaller motor carriers will benefit.)

4. Create joint interagency boards to establish through routes and joint rates. (All modes of transportation and shippers will benefit.)

5. Take other steps to streamline the Interstate Commerce Act and enhance the timely and most efficient movement of goods (shorten the time new rates can go into effect; make it easier and less costly for shippers to use different modes of transportation for the same commodity; take steps to end the railroad car shortage by requiring rail and motor carriers to accept the shipper's equipment at cost-based rates).

6. Give the CAB to regulate rates and practices of U.S. and foreign airlines that fly to and from the U.S.

7. Make it easier for existing motor carriers to expand and for railroads to abandon unprofitable lines.

III. Highway Safety

Objective: To begin a concerted attack against a mass killer -- highway accidents which took 50,000 lives in 1965 (500 times greater than our Vietnam dead) and injured another 3 million Americans -- to reverse the death toll which may claim 250,000 more Americans by 1970.

1. Strengthen the Government's organization

- A. Issue an Executive Order to give the Secretary of Commerce major responsibility for leading the attack.
- B. Reveal the Committee for Highway Safety by giving it a public advisory character and making it report to the Secretary of Commerce.
- C. Make other organizational changes to strengthen the Government's internal highway safety program for its drivers and vehicles (the Federal Safety Counsel) and to promote overall Government activities (restructure the Highway Safety Board to an Interagency Highway Committee under the Secretary of Commerce's leadership).

2. A Federal Highway Safety Research Center -- plan the creation of a Federal Highway Safety Research Institute, which would go into the "whys" of accidents, and develop means to reduce accidents, and collect statistics, nationwide, on a comprehensive basis.

3. Corrective Highway Safety Features -- A \$25 million program for next year to build-in safety features to our new and existing highways, make "spot" changes to high accident density roads, and extend safety features to non Federal Aid highway systems.

4. Increased support -- Federal, state, and local -- for:

- . Improved medical service (helicopter evacuations from accident scenes)
- . Upgrading the quality of driver education and training
- . Expanded support for vehicle inspections
- . Improved police traffic supervision and advanced traffic control technology
- . Application of advanced technology toward safety performance standards for autos and components sold for use in interstate commerce.

IV. Supersonic Transport -- Laying the plans for hardware and flight

1. Authorization and go-ahead for the program.
2. Development and construction of prototype transports and engines, with a flight date in 1970 and delivery to airlines in 1974.

V. A "New" Maritime Policy

VI. Ship Safety Program

VII. High Speed Trains

TRANSPORTATION MESSAGE SCHEDULE

March 1

5:30 p.m. -- Boyd, Connor, Bridwell to bring their charts to Califano for pre-briefing. Schultze to attend.

6:00 p.m. -- Connor, Boyd, Schultze, Califano, to brief Congressional leadership in White House Mess. Bill Cotter, White House Fellow from Commerce to attend.
Also available for questions: McKee, Admiral Shields/Smith, Bush, Murphy, Weaver, Reynolds, Harlee, Barr, Cassiday.

March 2

Connor

9:00 a.m. -- Califano, Schultze and Boyd/to brief Government people in Indian Treaty Room.
Also available for questions: McKee, Admiral Shields/Smith, Bush, Murphy, Weaver, Reynolds, Harlee, Barr, Cassiday, Johnson.

BoB has sent out invitations to Government people and will handle clearance.

10:00 a.m. -- Connor, Boyd, Schultze, and Califano to brief press in Fish Room. Also available for questions will be: McKee, Admiral Shields/Smith, Bush, Murphy, Weaver, Reynolds, Harlee, Barr, Cassiday, Johnson.

Fleming will invite agency PIO's. He will set up Fish Room. He will reserve first two rows for the government briefers.

Schultze

12:00 noon -- Califano, Connor, Boyd,/will brief industry representatives in the Indian Treaty Room. Also available for questions will be: McKee, Admiral Shields/Smith, Bush, Murphy, Weaver, Reynolds, Harlee, Barr, Cassiday, Johnson.

We need transcripts of this meeting.

No press coverage.

UNITED STATES GOVERNMENT

Executive Office of the President
Bureau of the Budget

Memorandum

TO : The Director

DATE: February 11, 1966

FROM : Charles J. Zwick *C. Zwick*SUBJECT: Agencies to be transferred to the new Department
of Transportation

- I. From the Department of Commerce:
The Office of the Under Secretary of Commerce
for Transportation
Bureau of Public Roads
Maritime Administration
Office of Emergency Transportation
- II. Coast Guard
- III. Federal Aviation Agency
- IV. The car service and safety functions of Interstate
Commerce Commission
- V. The safety functions of the Civil Aeronautics Board,
including determination of probable cause and its
appeal responsibility.
- VI. Transfers to be made by Executive Order:
Alaskan Railway
Great Lakes Pilotage Administration
St. Lawrence Seaway Development Corporation.