

**THE MOTOR CARRIER ACT OF 1980  
AN ANALYSIS OF THE CHANGES**

**by**

**Wesley W. Wilson**

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2

## TABLE OF CONTENTS

|   | <b>Page</b> |
|---|-------------|
| INTRODUCTION .....                              | 1           |
| ENTRY .....                                     | 2           |
| RATES .....                                     | 5           |
| CONSOLIDATIONS, ACQUISITIONS AND MERGERS .....  | 7           |
| REPORTING REQUIREMENTS .....                    | 8           |
| INSURANCE AND SURETY BOND REQUIREMENTS .....    | 9           |
| COMMON VERSUS CONTRACT CARRIER REGULATION ..... | 10          |
| EXEMPTIONS TO REGULATION .....                  | 13          |
| CONCLUSIONS .....                               | 15          |

# THE MOTOR CARRIER ACT OF 1980 AN ANALYSIS OF THE CHANGES

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## INTRODUCTION

Current regulation of interstate motor carriers is provided for by two primary legislative acts: the Motor Carrier Act of 1935 and the Motor Carrier Act of 1980. The Motor Carrier Act of 1935 provided for extensive regulation of interstate motor carriers which was very similar to the already existing regulation of railroads.<sup>1</sup> Congress declared this legislation was passed "to recognize and preserve the inherent advantages of, and foster sound economic conditions in motor transportation and among motor carriers."<sup>2</sup>

On July 1, 1980, the Motor Carrier Act of 1980 was signed by President Carter which substantially changed some of the provisions of the 1935 Act and its various amendments. President Carter maintained that this new legislative action would cut consumer costs by an estimated \$8 billion annually and some hundreds of millions of gallons of gasoline annually.<sup>3</sup> The purpose of this Act as set forth by Congress is to "reduce unnecessary regulation by the Federal Government."<sup>4</sup> The National

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<sup>1</sup>Dudley. F. Pegrum, *Transportation: Economics and Public Policy*, rev. ed., edited by Lloyd G. Reynolds (Homewood, IL: Richard D. Irwin, Inc., 1968), p. 340.

<sup>2</sup>Robert C. Lieb, *Transportation: The Domestic System* (Reston, VA: Reston Publishing Co., Inc.), pp. 230-231.

<sup>3</sup>Robert M. Butler, "Motor Carrier Act of 1980 signed by President Carter at the White House," *Traffic World* (July 7, 1980), p. 66.

<sup>4</sup>Public Law 96-296.

Transportation Policy was amended "to promote competitive and efficient transportation services in order to:

- A. meet the needs of shippers, receivers, and consumers;
- B. allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public;
- C. allow the most productive use of equipment and energy resources;
- D. enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;
- E. provide and maintain service to small communities and small shippers;
- F. improve and maintain a sound, safe, and competitive privately-owned motor carrier system;
- G. promote greater participation by minorities in the motor carrier system;
- H. promote intermodal transportation."<sup>5</sup>

The remainder of this section will set forth the current regulation of common motor carriers of general freight relating to entry, rates, reporting, insurance, security issuances, and consolidations, acquisitions and mergers.

## ENTRY

The Motor Carrier Act of 1935 provided for the Interstate Commerce Commission to control entry into the motor carrier industry subject to the provisions of the Act. Before commencing operations as a common carrier, an operator has to obtain a certificate of

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<sup>5</sup>IBID.

public convenience and necessity.<sup>6</sup> To obtain a certificate under the 1935 Act, an operator had to be fit, willing, and able to perform the proposed service and had to prove that the proposed service was necessary for the present or future public convenience and necessity.<sup>7</sup>

The Motor Carrier Act of 1980 significantly changed these provisions. The operator must still be fit, willing, and able. However, the operator must now only show evidence demonstrating that the proposed service will serve a useful public purpose, responsive to a public demand or need.<sup>8</sup> Any protestor objecting to the security issuance must now prove to the satisfaction of the Interstate Commerce Commission that the proposed service is inconsistent with the public convenience and necessity.<sup>9</sup> This shifts the burden of proof from the applicant to the protestor. The Interstate Commerce Commission must also consider the National Transportation Policy as set forth by the Act as well as the effect of the proposed service on the existing carriers although the Commission may not find the diversion of revenue and traffic from an existing carrier to be in and of itself inconsistent with the public convenience and necessity.<sup>10</sup>

The 1980 Act further states that the test of fit, willing, and able is the only test when the application for authority relates to:

- 1) transportation to any community not regularly served by a common carrier of property;

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<sup>6</sup>49 USC Sec. 396

<sup>7</sup>49 USC Sec. 307

<sup>8</sup>Public Law 96-296

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.

- 2) transportation services which will be a direct substitute for abandoned rail services if such abandonment results in a community not having any rail service and if the application for authority is made within 120 days after the abandonment has been approved by the Commission;
- 3) transportation for the United States Government of property other than used household goods, hazardous or secret materials, and sensitive weapons and munitions;
- 4) transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds;
- 5) transportation by motor vehicle of food and other edible products (excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditions, and agricultural fertilizers provided that the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency) and provided that the total tonnage of these movements does not exceed the total tonnage of this owner-operator operating under the agricultural exemptions of this Act.<sup>11</sup>

Under the entry provisions, a common carrier's right to protest an application for operating authority is limited to:

- 1) common carriers possessing authority to handle the traffic for which authority is applied and which:
  - a) are willing and able to provide service that meets the reasonable needs of the shippers involved; and
  - b) have performed or solicited within the scope of the application during the previous 12-month period;
- 2) common carriers that have pending before the Interstate Commerce Commission an application filed prior in time for substantially the same service;

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<sup>11</sup>Ibid. For the agricultural exemptions see page 30.

- 3) parties the Commission grants leave to intervene upon showing interests that are not contrary to the National Transportation Policy.<sup>12</sup>

Contract carriers may not protest an application to provide service. However, if a carrier holds both common and contract authority, that carrier may protest to the extent of its common carrier authority.

### RATES

The Motor Carrier Act of 1980 also provided for Interstate Commerce Commission control over motor carrier rates. Under the 1935 Act, the duty to establish, observe, and enforce reasonable rates rests with the common carrier of property. These rates can change by filing the proposed rate 30 days prior to its effective date. The Interstate Commerce Commission could act, either upon its own initiative or upon complaint by an interested party, to suspend and investigate the proposed rate for a period of up to seven months. If the Interstate Commerce Commission found any rate to be unjust, unreasonable, or discriminatory they had the authority to set the minimum, the maximum or the actual rate.

The 1980 Act provides for greater pricing flexibility in the industry. The Commission may no longer suspend, investigate, revise, or revoke any rate proposed on the grounds that the rate is unreasonable too high or too low if:

- 1) the carrier notifies the Commission that it wishes to have the proposed rate given consideration pursuant to this subsection of the Act; and

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<sup>12</sup>Ibid.



- 2) the aggregate of increases and decreases in any such rate is not more than 10 percent above the rate in effect one year prior to the effective date of the proposed rate, nor more than 10 percent below the lesser of the rate in effect one year prior to the effective date of the proposed rate or the rate in effect July 1, 1980.<sup>13</sup>

The Commission has the power to change the 10 percent zone of rate freedom if it finds there is sufficient actual and potential competition to regulate rates and there are benefits to the carriers, shippers, and the public from further rate flexibility. However, the Commission may not increase the percentages by more than five percent in any one year period.<sup>14</sup>

When determining whether or not a rate proposed within 730 days of enactment falls within the zone of rate freedom, general rate increases obtained in the one-year period prior to the effective date of the proposed rate are not included in the calculation except for any portions in excess of 5 percent.<sup>15</sup> When a proposed rate is to take effect after 730 days of enactment, the 10 percent or Interstate Commerce Commission percentage relating to the upper limits on the zone of rate freedom will be increased or decreased by the percentage change in the Producers Price Index that occurs during the one-year period prior to the effective date of proposed rate.<sup>16</sup> The rates that are implemented under these procedures will be subject to anti-trust laws except for the docketing and publishing of such rates.<sup>17</sup>

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<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

The 1980 Act also provides for further rate-flexibility by allowing carriers to reduce rates in return for limited liability on the freight transported. The liability of the carrier must be established by written declaration by the shippers or by a written agreement between the carrier and the shipper. However, the Interstate Commerce Commission may require the carrier to have in effect, and keep in effect during the period of agreement surrounding the limited liability rate, another rate for the same service that does not limit the liability of the carrier.<sup>18</sup>

### CONSOLIDATIONS, ACQUISITIONS AND MERGERS

The 1935 Act provided for Interstate Commerce jurisdiction over consolidations, acquisitions, and mergers of motor carriers. Senator Burton K. Wheeler explained the reason for this provision, declaring:

"At present most truck operations are small enterprises. However, there are many rumors of plans for the merging of existing operations into sizable systems. In view of past experience with railroad and public-utility unifications, it is regarded as necessary that the Commission have control over such developments."<sup>19</sup>

The Interstate Commerce Commission will allow motor carriers to consolidate or merge their operations if the proposed action is found to be "in the public's interest."<sup>20</sup> The Interstate Commerce Commission must consider the effect of the proposed action upon transportation service for the public, the total fixed costs of the unified company and the

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<sup>18</sup>Ibid.

<sup>19</sup>James C. Johnson, *Trucking Mergers* (Lexington, MA: D. C. Heath and Company, 1973), p. 52.

<sup>20</sup>Ibid., p. 53.

interest of all the involved employees in the transaction. The Commission may not authorize such a transaction if total fixed charges are in excess of the combined fixed charges of the firms involved before the transaction.<sup>21</sup>

Originally an exemption was allowed if the combining carriers had a total number of less than 20 vehicles. However, due to administrative difficulties encountered by the Interstate Commerce Commission, the less than 20 rule was replaced by gross revenue stipulation. Now the exemption from the Interstate Commerce Commission jurisdiction exists if the combining firms have total gross revenues of less than \$300,000 for the 12-month period prior to unification. The 1980 Act does not change any of the provisions of the above paragraph. However, it does change the procedural aspects relating to the Interstate Commerce Commission's processing of the applications.

### **REPORTING REQUIREMENTS**

The Interstate Commerce Commission is authorized by the 1935 Act to require annual, periodical, or special reports from motor carriers. The 1980 Act had no effect on this provision. The purpose for motor carrier reporting is undoubtedly to provide the Interstate Commerce Commission with a meaningful data source from which it may base decisions concerning policies and rate-making.

Currently, the report required by the Interstate Commerce Commission consists of financial schedules, operating expense schedules, and operating statistics. The financial schedules are used to compute the carrier's financial condition and the average

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<sup>21</sup>Ibid.

investment in carrier operating property.<sup>22</sup> The operating expense schedule consists of expenses that are very important to determine costs of traffic movements.<sup>23</sup> The last section of the annual report, operating statistics, provides information necessary to distribute expenses to particular services and also to develop unit costs for each service.<sup>24</sup>

### **INSURANCE AND SURETY BOND REQUIREMENTS**

To protect the public from financial irresponsibility of the motor carrier industry, the 1935 Act provided for the Interstate Commerce Commission to establish rules and regulations regarding insurance and surety bonds as a condition for motor carriers to receive operating authority. The insurance and surety bond requirements cover bodily injury or death resulting from the negligent operation, maintenance, or use of motor vehicles as well as for loss and damage to property of others, The 1935 Act also provides for self-insurance by motor carriers subject to the rules and regulations adopted by the Interstate Commerce Commission.

The 1980 Act places the duty to establish regulation to require minimal insurance or surety bond requirements with the Secretary of Transportation. The Secretary of Transportation may reduce these minimum insurance requirements below \$750,000 provided he/she finds that reduction below will not adversely affect public safety and will

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<sup>22</sup>Dr. Edwend J. Marien and Glen L. Fast, "The Nature of Motor Carrier Costs and ICC Highway Form B Costing Methodology" presented at the Motor Carrier Costing and Analysis Seminar at Management Institute, University of Wisconsin-Extension, April 9-10, 1979.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid.

prevent a serious disruption in transportation service. However, in no event may the Secretary reduce the insurance requirements below \$500,000 over the next two-year period. In the case of hazardous materials, the insurance requirements may not be less than \$5 million unless the Secretary of Transportation finds that a reduction will not adversely affect public safety and will prevent a serious disruption in transportation service. In that event the Secretary of Transportation may reduce insurance requirements to not less than \$1 million.

Security issuances of motor carriers are subject to regulations by the Interstate Commerce Commission under the 1935 Act. The purpose is to ensure that the carriers are using the proceeds from such issuances for legitimate purposes.<sup>25</sup> For example, proposed security issuances have been denied because the purpose of such an issuance was to get rid of competitors or to give special salaries or bonuses to employees.<sup>26</sup> An exemption from Interstate Commerce Commission regulation over security issuances exists for smaller concerns where the value of the capital stock and the principal value of other securities along with any proposed issuances do not exceed \$1 million. Also exempt from Interstate Commerce Commission authority are any issuances of notes that are less than \$200,000 and mature within two years. Any other proposed issuances of such notes must have Interstate Commerce Commission approval.

### COMMON VERSUS CONTRACT CARRIER REGULATION

Many of the provisions in the 1935 Act and its various amendments apply to contract carriers as well as to common carriers. Provisions such as those relating to reporting,

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<sup>25</sup>James C. Johnson, *Trucking Mergers* (Lexington, MA: D. C. Heath and Co., 1973), p. 39.

<sup>26</sup>*Ibid.*

mergers, consolidations, and acquisitions for control, and security issuances apply similarly to both common and contract carriers. However, regulation involving entry, rates, and insurance requirements according to the 1935 Act and its amendments, applies differently to these two classes.

Contract carriers had to obtain a permit to operate before commencing operations. To obtain such a permit, a contract carrier had to be fit, willing, and able to perform the service, and the proposed service had to be "consistent with the public interest and the national transportation policy." Under the 1980 Act the Interstate Commerce Commission must appraise the following items when considering a contract motor carriers operating authority application:

- a) the nature of the transportation proposed to be provided;
- b) the effect that granting the permit would have on protesting carriers if such a grant would endanger or impair their operations to an extent contrary to the public interest;
- c) the effect that denying the permit would have on the person applying for the permit, its shippers, or both; and
- d) the changing character of the requirements of those shippers.

In the past, the requirement of contract carriers to show that the proposed service was consistent with the public interest was presumably a less exacting requirement than was the requirement of common carriers "to prove" public convenience and necessity.<sup>27</sup> However, the Motor Carrier Act of 1980 has substantially lessened entry requirements for common carriers while leaving entry requirements for contract carriers "virtually" the

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<sup>27</sup>D. Phillip Locklin, *Economics of Transportation* (Homewood, IL: Richard D. Irwin, Inc., 1972), p.680.

same. Currently, a common carrier must show evidence demonstrating that the proposed service will serve a public purpose responsive to a public demand or need. Contract carriers, on the other hand, must still demonstrate that the proposed service is consistent with the public interest and the national transportation policy.

The second major difference between common and contract carrier regulation is in regards to rates. Under the 1935 Act, contract carriers only had to file their minimum rates. However, in 1957, Congress amended the act to require contract carriers to publish their actual rates and adhere to them.<sup>28</sup> Contract carrier rates are the result of negotiations between the carrier and the shipper. For this reason, the negotiated rate is generally taken except in extreme cases when discriminatory or unreasonable pricing exists in which case the rate may be suspended and investigated. Following investigation, the Interstate Commerce Commission may prescribe the minimum rate, not the actual or maximum rate, relying on competition to provide effective maximum rate control.<sup>29</sup>

The 1980 Act provided for a zone of rate-freedom; however, this provision does not apply to contract carriers.

Insurance requirements are the last major difference between common and contract motor carrier regulation. Contract carriers, unlike common carriers, do not have to carry insurance or surety bond to cover claims on the cargo they haul. Nevertheless, they must carry personal liability and property damage insurance.

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<sup>28</sup>Robert C. Lieb, *Transportation: The Domestic System* (Reston, VA: Reston Publishing Co., Inc., 1978), p. 233.

<sup>29</sup>Ibid.

## EXEMPTIONS TO REGULATION

The Motor Carrier Act of 1935 and its various amendments provide for numerous exemptions which were further expanded by the 1980 Act.

First, exemptions from Interstate Commerce Commission regulation provided for agricultural groups including: motor vehicles owned and operated by a farmer and used in the transportation of his/her agricultural commodities and products thereof as well as the transportation of his/her supplies to the farm; motor vehicles controlled by an agricultural cooperative, including backhaul movements up to 25 percent of the carriers total annual tonnage; and motor vehicles used in carrying ordinary livestock, fish (including shellfish), unmanufactured agricultural commodities; and horticultural products, if such motor vehicles are not used in carrying any other property or passengers for compensation. The 1980 Act expanded these agricultural exemptions to include livestock and poultry feed, and agricultural seeds and plants (those not already exempted) if such products are transported to a site of agricultural production. These products are also exempted if they are transported to a business enterprise engaged in the sale of agricultural inputs to agricultural producers. The rationale for agricultural exemptions is to aid the farmer and/or fisherman/woman to get his or her product to the market. Due to the seasonality and perishability of these products, "a transportation system that can swell up to gigantic portions at harvest time and then slide back to nothing at other times" was needed.<sup>30</sup>

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<sup>30</sup>James C. Johnson, *Trucking Mergers* (Lexington, MA: D. C. Heath and Company, 1973), p. 44.



Other exemptions provided by the 1935 and 1980 Acts include:

- 1) transportation local in nations;
- 2) transportation under the control of the Secretary of the Interior (such as transportation of persons around national parks and monuments);
- 3) private motor carriers;
- 4) transportation incidental to railroads, water carriers, freight forwarders, and air freight;
- 5) transportation solely of newspapers;
- 6) transportation of pallets and empty shipping containers (other than those used in the transportation of motor vehicles or parts of motor carriers);
- 7) transportation of material, crushed, vesicular rock to be used for decorative purposes;
- 8) transportation of wood chips; and
- 9) transportation by motor carriage in lieu of aircraft because of weather conditions.

As can be seen in the list above, the exemptions are quite narrow but cover a broad range of interests. James C. Johnson, of the University of Tulsa, maintains these exemptions exist for any or all of the following reasons: 1) the services involved were not considered to be of national transportation importance; 2) if they were regulated, the administrative burden would be greater than the benefits received; and 3) the exemptions were the result of special interest groups that did not want to be federally regulated.<sup>31</sup>

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<sup>31</sup>Ibid.

Nevertheless, the importance of this sector cannot be understated. It must be remembered that the total number of carriers involved may be as many as 200,000 which is 12½ times greater than the number of Interstate Commerce Commission regulated motor carriers.

## CONCLUSIONS

Unlike the railroad industry, there was no general public outcry for regulation of motor carriers. Rather, regulation of motor carriers was the direct result of lobbyist efforts of special interest groups and of economic conditions of the times. The question of deregulation stems around two considerations—whether or not what economists refer to as economies of scale exist and whether or not the industry needs to be protected from competition between themselves.

During the 1950's it was generally concluded that the trucking industry did not experience economies of scale.<sup>32</sup> In the last several years there had been some evidence to support the conclusion that economies of scale do exist in the industry. If true, regulation would be predicated (a protection of the shipping public as opposed to protection of the industry from ruinous competition.)

There are two major sectors of the trucking industry—the regulated sector and that exempt from regulation. Deregulation of the motor carrier industry can be expected to have substantial effects on each sector as well as on the shipping communities.

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<sup>32</sup>Economies of scale refer to a long-run decreasing coverage cost curve.

An estimated 68 percent of regulated truck traffic in North Dakota originates out-of-state and is therefore, generally, subject to ICC regulated rates.<sup>33</sup> Under provisions of the 1980 Act regulated motor carriers have some degree of rate flexibility. It could be expected that rates applicable to small communities in the state will increase. Regulated trucking firms may find it advantageous to provide service to small communities themselves as opposed to transferring the peddle runs to some smaller carriers. The small trucker will have to adjust to this development by developing their own traffic generating network.

Ease of entry formalizes the ICC policy of the last few years. It could be expected that competition both within the regulated sector and between the regulated and exempt sector would increase. Exempt carriers may seek operating authority to supplant their fronthaul as well as take advantage of a broadened list of agricultural provisions and certain other provisions of the Act such as the owner-operator exemptions.

Service to small communities has long been cited as a drawback to deregulation. In Florida, the impact of deregulation has been smaller firms handling the peddle runs and larger interstate carriers handling traffic on the high density routes. Rates to small communities have increased. The impact then was quite similar to airline deregulation felt nationwide. In North Dakota, there are about 700 exempt carriers hauling to Duluth, Minneapolis, Kansas City, etc. There appears to be a good deal of excess capacity of such truckers on the backhaul whereby the average exempt trucker only has about 30 percent of return movements loaded. It should be noted that "empty backhauls" of these truckers

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<sup>33</sup>The exact distinction between intra versus interstate rates depends upon the "will" of the shipper. If the traffic "originates and comes to rest in North Dakota" then the traffic will be subject to intrastate rates.

stem from two factors—regulation imposed and logistically determined. To what extent the 70 percent available capacity is determined by each of these factors is not known. However, with ease of entry and certain other provisions of the Act it could be expected that a substantial portion of the regulatory imposed excess capacity will diminish. Service to small communities could actually increase due to the fact that most exempt truckers are located in rural North Dakota.

Above were some of the potential implications of deregulation with respect to North Dakota. A note of caution should be made. It has only been one year since the Act was passed. The motor carrier industry was regulated for 45 years. It will take time for the industry to react to reregulation and only speculative statements can be made as to what will or will not happen.