

STATEMENT OF  
HONORABLE NEIL GOLDSCHMIDT  
SECRETARY OF TRANSPORTATION  
BEFORE THE  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
UNITED STATES SENATE  
REGARDING  
MOTOR CARRIER REGULATORY REFORM  
FEBRUARY 26, 1980

Mr. Chairman and Members of the Committee:

The President and all of us in the Administration are committed to strong trucking reform legislation, and I am pleased to be here today to outline the Administration's views on the impressive bill which you and Senator Packwood have placed before the Committee. With me today are John Shenefield, the Acting Associate Attorney General, who will also deliver a short statement, and Mark Aron, Deputy General Counsel at DOT.

Trucking reform legislation presents the Congress with a unique opportunity not only to improve our truck transportation system, but to help control inflation, conserve fuel, and reduce red tape in government.

Mr. Chairman, I know that you and the other Members of the Committee share our deep concern that, in these times, we cannot afford to miss any opportunity to reduce inflationary pressures and conserve fuel. Your concern is clearly reflected in the prompt and thorough process which the Committee has undertaken to review all aspects of the trucking industry, including household movers and safety issues. The Committee is also to be particularly commended for having held hearings outside of Washington, to assure the consideration of views from the grass roots.

And you have been extremely considerate in allowing us to participate so fully in this process. This is the seventh time in the last eight months that you have invited Administration witnesses to discuss various aspects of trucking regulation, and we appreciate the Committee's interest in our views.

Mr. Chairman, as a result of this impressive process, you and Senator Packwood have introduced S. 2245, the "Motor Carrier Reform Act of 1980."

Let me say at the outset that we think that the introduction of this legislation is a very, very positive development. S. 2245 is forward-looking public interest legislation. It recognizes the need to inject competition into the trucking industry and the need to end wasteful practices caused by outdated trucking regulation.

This bill also recognizes that reform of the present system is the best way to improve truck service to the small towns of America. While I will touch on the small town service issue later today, I want to especially commend you and Senator Packwood for your painstaking examination of this issue. You not only reviewed all the evidence on this point that was readily available, you asked my staff to conduct additional studies, in small towns all over this country, to learn how we can best meet the needs of small towns in trucking legislation. We thank you for the careful consideration and help you and your staff have given to our work in this area.

All of this is not to say that S. 2245 could not be improved. We feel that consideration should be given to some additional reforms, which would supplement the benefits S. 2245 offers to the public. However, the general approach of S. 2245 is very good and we would be extremely disappointed to see this bill weakened by amendments which are not justified by the facts or responsive to the needs of the times.

Increasing Competition

Mr. Chairman, the Administration believes that more competition in trucking would be a good thing and, in discussing S. 2245, I will focus on the provisions that address most directly the need to reduce regulatory barriers to competition in the trucking industry. Those critical provisions concern proposals to end legalized price-fixing, to remove artificial barriers to entry, to allow truckers to price their services within a zone of reasonableness not subject to ICC review, and to establish a pro-competitive national transportation policy statement to govern future ICC trucking decisions. There can be no doubt that S. 2245 addresses the need for change in all of these areas in a very direct and substantial way, and we commend you and Senator Packwood for recognizing the need for strong action. However, I would like to begin today by reemphasizing the compelling need for reform and the benefits reform will bring to shippers and consumers.

Under the current regulatory system, entry restrictions, operating restrictions, price-fixing, and insufficient ratemaking flexibility have combined to waste fuel and raise truck rates higher than they need be. Those who would retain the 1935 status quo argue that entry is virtually free already and that regulation has actually held rates below the rate of general inflation. While we have provided the Committee with rebuttals to status quo arguments before, I'd like to highlight today our newest evidence on these points.

Mr. Chairman, in a recently completed study which we have provided to the Committee staff, we looked into statistics from recent years that show that the ICC is granting over 95 percent of all entry applications. We found that recent applications and grants represent only requests for, and grants of, additional tiny monopolies. If someone wants authority to carry only empty ginger ale bottles, or oyster shells from Baltimore

to Michigan, and there are no protests from existing carriers, a filing fee and an average seven-months waiting time will probably suffice to get the authority. But we found that if someone dares to seek meaningful business, in terms of broad commodity and geographic authority, he or she is still faced with long, difficult, and expensive proceedings, and limited prospects for success. These recent narrow grants of common carrier authority, many of which authorize service only to or from an individual plant or factory, simply have not resulted in meaningful competition or significantly better service.

Mr. Chairman, this is consistent with the results of earlier studies. These recent entry statistics are deceptive not only because they represent grants only of tiny monopolies, but also because they record as granted those applications which were denied in part, even those denied in large part. Further, as we have described before, an informal process has evolved under which applicants, to avoid long and hard fought proceedings, frequently do not even file for new authority until after having consulted with potential protestants. This process encourages applicants to narrow the scope of their requests and, as a result, applicants often file for substantially less authority than they really want. So, it is clear that substantial entry reform is still needed.

We've also taken a look at the industry's contention that regulation has served to keep rate increases below the rate of inflation. Our preliminary results show that, since 1972, truck rates have gone up at a slightly higher rate than the Consumer Price Index (CPI).

As part of this study we considered the very important question of differences between truckload rates, which are available to big shippers with lots of alternatives, and less-than-truckload rates, which are available to small shippers who generally have few transportation

options. Truckload rates are sometimes referred to as "partially deregulated" because the truckload shipper has many alternatives, including private carriage, to regulated carriers, and is usually able to negotiate rates with the carriers. On the other hand, less-than-truckload shipments are highly regulated.

If the industry argument is correct one would expect to find that rates for the more heavily regulated less-than-truckload sector would be lower, but the opposite is true. We found that truckload rates seem to have increased at an annual rate almost a quarter lower than the CPI, while less-than-truckload rates have apparently increased over half again faster than the CPI. Even when taking into account the different cost components for the two sectors, such as labor, these preliminary results indicate that less-than-truckload rates have risen faster than truckload rates. We believe this is further evidence that antitrust immunity and tough restrictions on entry into the general freight business inflict particular hardships on small shippers and small businesses.

Mr. Chairman, there are other indications that the system is not working as well as the status quo proponents suggest. Dr. Kahn has said that shippers are "voting with their feet" against regulated trucking. We've found new evidence of this phenomenon, and it appears those feet are running, not walking. You have already heard of the tremendous growth of private carriage and that, given the high rates and inadequate service offered by common carriers, shippers continue to choose to carry their own goods, in spite of the higher level of empty backhauls and costs incurred by private carriers under the present regulatory system.

Another aspect of this trend away from common carriage is the growth of shipper associations. As you know, shippers can join together to form non-profit associations, exempt from ICC regulation, for the consolidation of shipments for line-haul transportation by regulated carriers. We have found that the volume carried by such associations has almost quadrupled since 1964. On the other hand, the volume of traffic handled by freight forwarders, the regulated counterparts of these associations, who charge regular less-than-truckload rates, has actually fallen by almost 10 percent in the same period.

There is good reason for shippers to join these associations. We testified earlier that total transportation rates paid by members of shipper associations appear to average 15 percent lower than rates available to individual shippers. This is because the association consolidates the freight of its member shippers and charges truckload rates. A more detailed survey of additional shipper associations indicates a savings range of 11-39 percent, with the biggest savings enjoyed on shipments of the highest-valued commodities.

Turning to the provisions of S. 2245, I know you appreciate that estimates of significant savings to consumers and shippers depend heavily on important reforms in the areas of entry, collective ratemaking, and ratemaking flexibility. As I mentioned, S. 2245 provides for substantial reform in each of these areas.

As to entry, S. 2245 places the burden of proof on opponents of applications, which is an extremely important reform. This placement of the burden on opponents is a way of having the Commission say to opponents of applications that "unless you give us a good reason, we're going to assume its good to allow this new applicant to compete." That is the

way that applications ought to be viewed, and we know that this change, coupled with the imposition of the time limits on Commission entry decisions, is exactly the kind of reform that will give minorities and other small businessmen a fair chance to compete. S. 2245 also provides that the public convenience and necessity test is not to be applied in cases where an applicant seeks to serve areas abandoned by railroads, or to deliver small packages. These reforms will help improve service to small communities. The bill would also make the entry process faster and more equitable by eliminating frivolous protests of new applications.

As to price-fixing, you and Senator Packwood are to be particularly commended for having the courage to face up to the facts that call for reform in this area. While Mr. Shenefield will be addressing this issue in greater depth, I want to make clear that your proposal to end antitrust immunity for single line rates in 1983 is a very positive step. We also fully agree with your proposal to open up rate bureau meetings.

Regarding rate bureaus, let me also mention that S. 2245, like our own proposal, would not abolish rate bureaus. The rate publishing and other information services provided by rate bureaus would continue after enactment of S. 2245, and that is entirely appropriate.

As to pricing flexibility, under S. 2245 trucking firms will be free to price within a zone of plus or minus ten percent, or they may choose to "go with the rate bureau", so long as antitrust immunity continues, if they wish to subject rate changes within the zone to ICC review.

I would also like to make clear that it is very important to supplement these and other specific reforms with a strong, pro-competitive national transportation policy governing trucking decisions. The transportation policy is a factor to be considered in every Commission trucking decision,

particularly those regarding entry, antitrust immunity and restriction removal. We are pleased that S. 2245 includes a pro-competitive policy statement, which will assure that needed reforms are not given restrictive interpretations.

As important as reform is in each of these areas, Mr. Chairman, I do not intend to discuss the importance of individual reforms in detail. Rather, I'd like to emphasize that it is critically important that we closely coordinate the introduction of reforms to end price-fixing, remove unreasonable barriers to entry, and allow ratemaking flexibility. To provide reforms in only one or two of these three areas could be ineffective, or even counterproductive.

For example, ratemaking flexibility without sufficient rate bureau reforms or entry liberalization -- or entry that is slow in coming -- could easily lead to a preponderance of rate increases, not decreases. In such a case existing carriers could take advantage of both their present market power and their new ability to raise rates.

On the other hand, increased entry without sufficient ratemaking flexibility could easily lead not to price competition, but to intense service competition, much as we witnessed among the airlines in the 1960s and early 70s. In this scenario we could certainly expect to see more frequent scheduling of truck movements, which would mean reduced load factors. So, this combination could well give us the worst of both worlds: rates that continue to be higher than they ought to be, and greater fuel waste as load factors fall.

By contrast, S. 2245 generally sets forth a balanced approach, providing for important reforms in each of these interrelated areas. To us, this is the greatest strength of S. 2245, and it is of critical importance to maintain this balance and the level of reform in each of



these areas. As I mentioned earlier, however, we feel that, with modifications, the reforms you have proposed can be made to work together even more effectively to capture the large gains for consumers that we know are there to be had.

For example, prompter and stronger action to end antitrust immunity would further the effectiveness of entry reform. We not only want more carriers to compete in markets, we want price competition between those carriers. In this regard, we feel that consideration should be given to providing for a phase-out of joint line immunity a year or two after single line immunity is ended. It would also be desirable to end immunity for freight forwarders, particularly as they would be given pricing flexibility under the bill. If the proposed reforms of antitrust immunity can be strengthened, consideration should be given to widening the zone of rate freedom over time, as antitrust immunity is removed.

We believe that a slow phase-out of price fixing places too much reliance on the zone of rate freedom to achieve the pricing competition that is needed to help keep rates down for shippers and consumers. We are not confident that a ten percent zone will encourage individual carriers to leave the protective umbrella of the rate bureaus' immunity and prepare individual pricing initiatives. And without a good bit of individual ratemaking, we will not see much price competition. "Business as usual" general rate increase requests will continue as long as there is immunity to do so and they will likely exceed 10 percent. Without antitrust and entry reforms we do not expect to see many rate decreases, either, even though our studies and other studies have indicated that rate reductions of 20 and 30 percent are realistic in some segments of the industry.

So, it is crucial that ratemaking flexibility be combined with the elimination of antitrust immunity. Without an end to price-fixing we might see truckers in many markets using the zone only for upward increases, depriving shippers and consumers of the benefits of competition that that zone intended to provide.

However, in conjunction with more rate bureau reform, it might be reasonable to allow truckers more ratemaking freedom. In a truly competitive environment shippers would be able to find alternatives to truckers who price their services unreasonably high. Further, a wider zone would have the benefit of encouraging imaginative and efficient pricing systems such as peak and off-peak rates, low backhaul rates, and the like. For seasonal or time-sensitive traffic, carriers may have to offer, at short notice, a wider spread of rate options than allowed under S. 2245's zone in order to allocate their trucking capacity efficiently. For example, some truck fleets may be idle during certain times, and it may be worthwhile for a shipper and a carrier to take advantage of the otherwise idle fleet at a rate lower than permissible under the proposed zone.

Mr. Chairman, to summarize this discussion of entry, ratemaking flexibility, and anti-trust immunity, we feel that S. 2245 recognizes the need for substantial reform in each of these critical areas. We do feel that, with modifications, the reforms which you have proposed would offer even greater benefits to consumers and shippers.

Specific Reforms

Let me shift now to a discussion of the need for reform of several particular aspects of the trucking industry. As we have said many times, we have never proposed deregulation of the trucking industry, but a collection of reforms to correct specific deficiencies in the present system. The most important of our specific proposals would remove fuel wasting operating restrictions, broaden the agricultural exemption, and open up opportunities for private and contract carriers.

Operating Restrictions

Mr. Chairman, in the past year I know that you and the other Members of the Committee have heard a great deal about the many irrational operating restrictions governing trucking operations. Truckers are often required to follow out-of-the-way routes or carry an absurdly limited range of commodities. Ending these restrictions will save fuel and greatly improve the efficiency of trucking operations and, in a more competitive environment, these fuel and other savings will be passed on to consumers and shippers.

Let me also mention that the removal of restrictions will do more than reduce operating inefficiencies. The broadening of commodity and backhaul authorities is a form of increased entry and, as such, is also an important part of efforts to make trucking more competitive.

Your proposal to remove restrictions will provide greatly enhanced opportunities for truckers to travel with full trucks and by efficient routes. S. 2245 would immediately terminate any circuitous routing requirements and provide for prompt ICC consideration of applications to remove other restrictions, including backhaul and commodity restrictions. We think the provision could be strengthened by providing for more of the restrictions to be removed automatically.

Mr. Chairman, on behalf of the American people we simply must obtain the largest possible energy savings in this legislation. The Department of Energy has estimated fuel savings of 220-320 million gallons per year from the reforms the Administration proposed. We are certain that the restriction removal provision of S. 2245 also involves very substantial savings, and we strongly urge you to resist any weakening amendments that may be offered to this excellent provision.

#### Agricultural Transportation

It is very important to significantly expand the agricultural exemption. The evidence is clear that the rates for transporting certain agricultural products dropped significantly when transportation of those products was removed from economic regulation. Further, the evidence is equally clear that this sector of the industry operates efficiently, and that every town in America receives regular shipments of fresh produce. We feel strongly that the effectiveness of the agricultural sector, both in terms of costs and efficiency, presents a compelling argument for expansion of the exemption.

Our own legislation, S. 1400, proposed that the transportation of processed food, farm machinery and implements, fertilizer, and other agricultural items be made exempt. S. 2245 moves in the right direction in adding several important commodities to the exempt list, such as bananas, slaughtered but uncooked meat, feed, and seed. However, we believe that further expansion of this exemption is clearly in the public interest.

We are aware that the owner-operator provision of S. 2245 in part addresses the need to expand the agricultural exemption. That provision would lift restrictions for one important group of operators serving the agricultural sector. However, we do not find that provision to be

a wholly satisfactory substitute for our proposal, which would expand opportunities for all carriers involved in agricultural transportation.

We also support an expansion of the authority of agricultural coops to haul non-exempt goods on an exempt basis. S. 2245 provides for a smaller increase in this authority than we recommend and would impose new conditions on those coops which choose to haul non exempt traffic. We urge the Committee to further broaden this provision and allow coops to transport, on an exempt basis, regulated products of non-members totalling as much as fifty percent of the annual tonnage transported by the coop. Further, we feel that present ICC controls on coop transportation of this traffic are adequate and that the additional requirements proposed in S. 2245 are not necessary. Our goal here is to help consumers by making trucking more competitive and efficient. More paperwork is not part of the answer.

#### Private Carriers

As I mentioned earlier, recent years have seen a tremendous shift from regulated to private carriage in order to avoid the high prices charged by the regulated general freight carriers. However, as I also noted, today's private trucker faces significant operating restrictions. Private carriers face empty backhauls more than twice as often as regulated carriers, as the present system has limited their ability to obtain backhaul traffic.

Restrictions on intercorporate hauling are among those which cause empty backhauls for private carriers. S. 2245 does take effective action against the present unreasonable restrictions on intercorporate hauling, and we strongly support this reform.

On the other hand, we continue to believe that the truck transportation system would be made more efficient and competitive by legislation which would codify recent ICC decisions and end any legal question as to whether private carriers may obtain common carrier authority, either for fronthauls or backhauls. Such legislation should also include reform of the securities laws governing truck transportation, such as have been proposed by the Commission and ourselves. We also recommend legislation to expand the right of private carriers to trip lease for regulated carriers.

#### Contract Carriers

S. 2245 includes a number of excellent provisions which will end restrictions on contract carriers. The bill would end limitations on the number of shippers served by contract carriers and allow contract carriers to seek common carrier authority. These provisions will further the efficient and competitive use of trucks. The implementation of these provisions could be made more effective by adding a provision specifying that the burden of proof should rest on opponents of applications for contract carrier authority, a reform which you have so effectively provided as part of the common carrier entry provision.

On the other hand, we recommend deletion of the provision in the bill that would allow interested parties to petition the ICC to revoke a carrier's contract carrier status and convert that carrier's authority to that of a common carrier. This provision could allow the competitors of a contract carrier to undermine that contract carrier's relationship with shippers by unreasonably requiring the contract carrier to litigate to defend his right to offer contract rates to shippers. Further, present law provides the Commission with sufficient authority to maintain the distinction between common and contract carriage.

Service to Small Communities

Mr. Chairman, let me turn now to allegations that common sense reforms of wasteful regulatory practices will somehow adversely affect the ability of shippers and consumers in small towns to obtain the truck service they need.

First, let me repeat what I told this Committee last October: that the state of small community service is a reason for proposing change to the present trucking regulatory system, not a reason for resisting change. In short, we think the small communities issue is our issue, and this is borne out by the facts.

The main facts are these. First, we have found no evidence to support allegations that, under the present system, carriers cross-subsidize service to small towns with so-called "excess" profits from service to larger cities. Further, the carriers have repeatedly told us and this Committee, that there are no excess profits for truckers, so its hard to find the source of any cross subsidy.

Second, Mr. Chairman, we have not proposed any change to the exit provisions of present law. I think this bears repeating because, on this point, the opponents of reform have tried very hard to confuse the issue by arguing against the strawman of deregulation, not against the merits of particular reform proposals. The simple fact is that we never proposed a change in the common carrier obligation, nor have you and Senator Packwood proposed such a change in S. 2245.

Third, and of greatest importance, we have found that under the present system the regulated general freight carriers simply don't deliver a high percentage of the goods shipped to small towns. Other kinds of trucks keep small town America going.

We've found that, out in the field, far away from the ICC's offices here in Washington, the common carrier obligation doesn't prevent a common carrier from ceasing to provide service without notifying the ICC.

And not only did we find that many common carriers weren't providing service, we found that those who were handled only a small part of truck service provided to small towns. These towns receive most of their truck service from private carriers, with significant contributions from small package firms, agricultural exempt carriers, and intrastate carriers.

Mr. Chairman, these were the findings of studies conducted by or for us in many States, including Nevada, Oregon, New Mexico, Kentucky, Washington, Idaho, Montana, and Utah. These were also the findings of a recent study by the California Public Utilities Commission, which looked at interstate and intrastate truck service to small towns in California. These results are consistent with the results of earlier studies, and all of the particular studies I just mentioned have been completed within the last year. They are more up to date than anything else that is available on the subject. And I might add, that in designing our study of small towns in Nevada, Kentucky and New Mexico, we were fortunate to have the assistance of this Committee and its fine staff.

Let me summarize the findings this way. All of us have seen the advertisements picturing a truck passing through a small town. Under the picture is the phrase "the truck stops here". Well, Mr. Chairman, we've found that the truck does stop there, but we found that its not the truck of a regulated interstate general freight carrier. Its usually a private truck, or an exempt truck, or some other kind of truck.



And Mr. Chairman, let's not forget the other side of our position on small town service - that reforms will improve trucking service to shippers located in small towns. Last October, I presented the Committee with a list of eight ways that the Administration's bill would work to improve small town service, including the elimination of route restrictions and eased entry for small package service. We are pleased to note that S. 2245 is responsive to many of these suggestions and we believe that S. 2245 would improve small town service.

#### Other Provisions

In my statement today I have tried to focus on the major issues. However, we have looked at the other provisions of S. 2245 and find several of them to be particularly desirable. For example, we feel that your proposal to exempt truck transportation incidental to air transportation could not possibly be improved. We also share your opposition to the practice of lumping. We do have some suggestions and comments regarding other provisions of the bill and we will be forwarding some additional recommendations to the Committee in the next few days.

#### Summary and Conclusion

In closing, Mr. Chairman, we feel that you and Senator Packwood have introduced a very meritorious bill. It reflects an appreciation of the facts about trucking regulation and provides for reform in almost all of the critical areas of truck transportation. This proposal would remove many of the present restrictions on trucking operations. It would make trucking a much more competitive industry, an industry that would be more responsive to the needs of shippers, consumers, and the general public.

As I have said, we would like to see some modifications to S. 2245. The changes which we have suggested to the antitrust, agricultural

transportation, and private and contract carrier provisions would strengthen the benefits offered by S. 2245.

However, I think it more appropriate to emphasize that the greatest strength of S. 2245 is that it provides a balanced approach to reform in those areas where reform can do the most to make trucking more competitive, particularly the areas of entry, collective ratemaking and ratemaking flexibility. As we explained, failure to provide reform in any one of these three areas would make other reforms far less effective, and could well make them ineffective. On the other hand, legislation which includes strong reforms in all three of these areas will provide the greatest benefits to consumers and shippers.

Finally, Mr. Chairman, in these times, we simply cannot retain regulatory practices that waste fuel and add to consumer costs. Strong trucking legislation will end these wasteful practices and help shippers and consumers all over this country, in towns large and small. I think these are goals that we all want to achieve, and I think the American people would like us to achieve them as soon as possible.

With these important goals in mind, I look forward to working with you and the other Members of the Committee in the coming weeks to assure the passage of strong trucking reform legislation.

This concludes my prepared statement, Mr. Chairman. At this time, with the Committee's permission, Mr. Shenefield will continue the Administration's formal presentation.