

STATEMENT OF
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DEPUTY SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
ON THE SHIPPER UNDERCHARGE ISSUE
JUNE 15, 1993

Introduction

Mr. Chairman and Members of the Subcommittee, I am delighted to be here today. I commend you, Mr. Chairman, for holding these hearings and providing the opportunity for all parties to discuss, once again, the important issue of shipper undercharges.

The Problem is a Serious One

Obviously, you all are already familiar with the issue, so I won't spend time describing the history of how we got to this point. The pressing issue now is that we have a serious problem that must be resolved promptly and equitably. It affects not only big corporations, but also small businesses all across the country. It affects churches and charitable organizations, and even individuals who have received COD shipments.

The shipper undercharge problem places a terrible burden on the economy. It has been with us since the mid-1980's, and it doesn't make any more sense today than it did then. Estimates of the direct cost range as high as \$38 billion in potential claims.

Just as important, the whole problem has imposed severe indirect costs on the economy, diverting attention and resources from the efficient operation of our national transportation system into a nonproductive paperwork exercise.

From the standpoint of fairness, we should not perpetuate a system where two parties have agreed upon a price for service, the bill has been paid, and then a higher amount can be collected years later.

On occasion, the undercharge problem has fostered unethical activities, such as forcing a carrier into bankruptcy when it is "worth more dead than alive." One carrier has even been convicted of tampering with tariffs on file at the ICC in order to extract increased undercharges.

The Administration sympathizes deeply with the problem confronting the employees, pension funds, and other creditors, affected by the bankruptcies in the trucking industry. But I do not believe the current system is righting that wrong or that it will in the future. Legal fees and collection overhead are siphoning off up to 80 percent of the amounts collected, according to some reports. Beyond that, however, it just is not equitable to try to meet the legitimate needs of the drivers and other creditors by passing on the problem to large and small shippers who in good faith negotiated and paid freight rates to the now defunct carriers.

Pending Legislation

I commend Chairman Mineta for his proposal, the "Negotiated Rates Act of 1993," H.R. 2121, which has been cosponsored by Representative Shuster and a number of other Members. I know that Chairman Mineta has worked hard for several years to encourage development of a consensus solution by shippers, carriers, and labor. So far a mutually acceptable compromise has been elusive. However, I want to go on record offering the Department's full

support to all efforts to achieve compromise. For now, however, I believe Chairman Mineta's proposal is a good, comprehensive approach, one which embodies elements of compromise that all parties should be able to work with and which should enable us to put the undercharge problem behind us.

We particularly endorse provisions such as ratification of past coded discounts and the provision of alternative means of resolution of disputes.

As you know, the scope of the undercharge problem has expanded over the past several years. It now threatens customers of contract motor carriers that also possess common carrier operating authority. Many undercharge disputes today allege that invalid contract carriage has occurred and that, consequently, the carrier's higher common carriage rates should apply. H.R. 2121 contains a provision dealing with contract disputes, and it should go a long way toward solving them.

In addition, the issue of range tariffs is not addressed. A range tariff is a tariff that discloses only a range of possible rates, with no specific criteria by which to determine the exact rate for any given shipment. The ICC is attempting to deal with the range tariff problem administratively, but we believe a legislative solution may provide greater certainty and reduce the potential for future litigation. We recommend that the Committee consider treatment of range tariffs similar to that accorded coded discounts. That is, they should be ratified for the past, and standards established for the future.

Over the years, the National Industrial Transportation League, the American Trucking Associations, organized labor, and other interested groups have proposed compromise legislative

solutions to this problem. This year is no exception, with several other potential solutions before us. There are provisions in these other proposed bills which are appropriate for further consideration.

Proper Context for Solving the Undercharge Problem

H.R. 2121 would make a major step towards solving the undercharge problem.

However, we note that some of the solutions embodied in H.R. 2121 are temporary, providing only two years of relief. After two years, if additional carriers go bankrupt, what prevents the problem from recurring? While it can be argued that shippers are on notice and should take steps to protect themselves, that simply isn't practical. Small shippers, or worse yet, recipients of COD shipments, have no practical way of knowing whether they are paying a "filed rate." Therefore, we strongly support the bill's provisions for a report by the ICC on the need to extend the bill's solutions and the Transportation Research Board study, which will look at the benefits of the tariff filing requirement and alternate means of filing tariffs. These will provide the basis for considering the need for permanent changes to the tariff filing system.

Conclusion

We believe it is extremely important that the shipper undercharge problem be resolved, both in the interest of good business practice and of fairness to small and large shippers, the trucking industry, our global competitiveness and our economy as a whole. In addition, we take note of the legitimate concerns of

organized labor and others who have suffered as a result of carrier bankruptcies and recognize their need for compensation. We are hopeful that compromise is possible among shippers, carriers, and labor.

For example, we recognize that there is disagreement over the provision of sec. 2, which effectively prohibits collection of undercharges for transportation provided before September 30, 1990. We think it is important that an expedited approach be enacted to resolve old claims, but the Committee, working with interested parties may wish to consider the fairness of this "statute of limitations" date. The percentages for settlement of claims might also be the subject of additional discussion.

But, with or without complete consensus, there is a critical need to act on this matter now. We support H.R. 2121 as a sound basis for action. We look forward to working with this Committee to fine tune the bill and move it towards prompt enactment. This concludes my prepared statement.

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STATEMENT OF THE HONORABLE MORTIMER L. DOWNEY, DEPUTY
SECRETARY OF TRANSPORTATION, BEFORE THE HOUSE COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON AVIATION,
CONCERNING THE FEDERAL AVIATION ADMINISTRATION'S
OPERATIONS ACCOUNT. JUNE 30, 1993.

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before the
Subcommittee today concerning the budget for FAA's
Operations account. Accompanying me is Joe Del Balzo,
Acting FAA Administrator.

As a backdrop for this discussion it is important to note
that achieving the goal of a hard freeze on discretionary
spending, as set forth in the Congressional Budget
Resolution, requires that both Congress and the
Administration accept the fact that all programs will face
severe budget constraints. Operational programs like
FAA's are of special concern because of their high outlay
rate and the fact that they are driven toward growth by
factors beyond our control. In addition, efforts to
support the President's investment initiatives will
require reductions in the base to make room within the
caps. As a measure of this challenge, the Congressional
Budget Resolution calls for reductions of \$5 billion in
outlays from the President's FY 1994 Budget and \$14
billion in outlays from the Administration's budget plan
for FY 1995.

in the demand for FAA services and FAA's management is working on cost savings to offset most increases.

Components of Budget

Slightly more than three-quarters of the Operations appropriation supports FAA payroll costs, while most of the remainder goes for rent, contracts, communications, and utilities and other operational costs.

This year's Operations request has been carefully constrained. It reflects the Administration's commitment to bringing our Nation's deficit under control. It represents the kinds of tough choices we must make if we are to succeed in that effort. But it also reflects our judgment of the safety and efficiency needs of our air transportation system. We believe that the funding level we have sought will provide us the ability to meet those needs. The safety of our air travelers must be and has been the foremost consideration in our development of this proposal, and the Administration's commitment to aviation safety will not change.

The total staffing for the FAA supported by the President's requested funding level in FY 1994 is 48,922 FTEs. This overall staffing level reflects targeted workforce reductions as part of the President's objective

the safety of our Nation's air passengers will remain our highest priority. In the spirit of "reinventing government" the FAA is aggressively working to find additional ways to achieve productivity and safety improvements at less cost.

For example, closing low activity VFR control towers which do not meet FAA's criteria for continued operation would provide significant savings, as would contracting out operation of those low level towers that do meet operational criteria. FAA currently operates about 400 air traffic control towers, of which about 100 are Level I VFR towers. We also need to look at FAA-provided services, like the Direct User Access Terminal System (DUATS), which can be provided commercially or which we should charge for.

We also must look at operating and staffing costs, including revisiting FAA's staffing standards and permanent change-of-station policies. We need to reexamine FAA's overall pay and benefits policies, like the pay demonstration program, which might have outlived their usefulness or not be cost-effective. And, of course, we need to exercise continued prudence about travel, office equipment and support costs.

That completes my prepared statement. Mr. Del Balzo and I would be pleased to respond to any questions you may have at this time.