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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:

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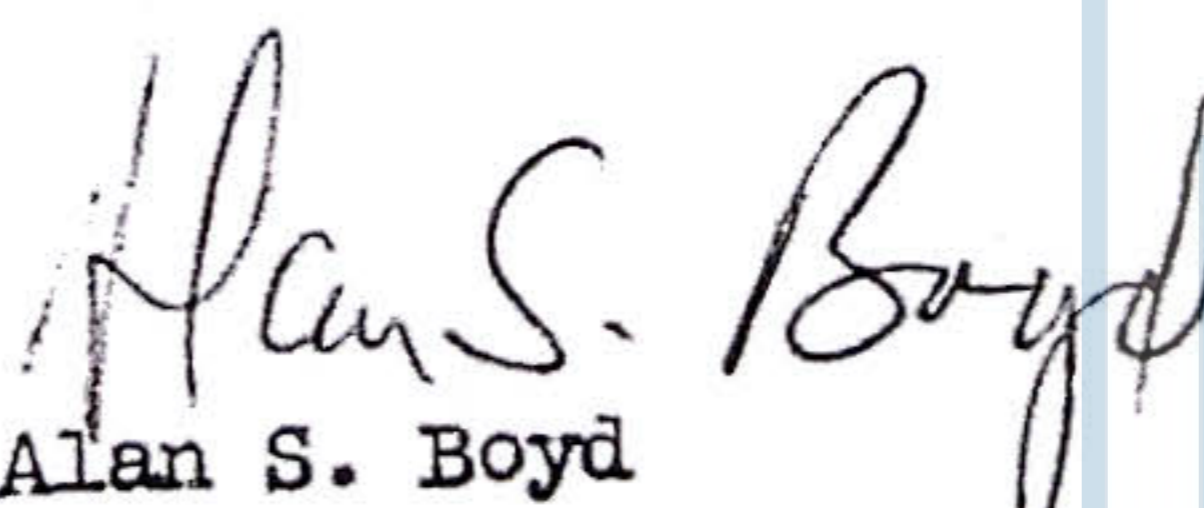
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1. Concentration of transportation agencies and transportation functions other than economic regulation in the Executive Branch in a Department of Transportation.
2. Interim reforms of the Interstate Commerce Commission to include the Presidential 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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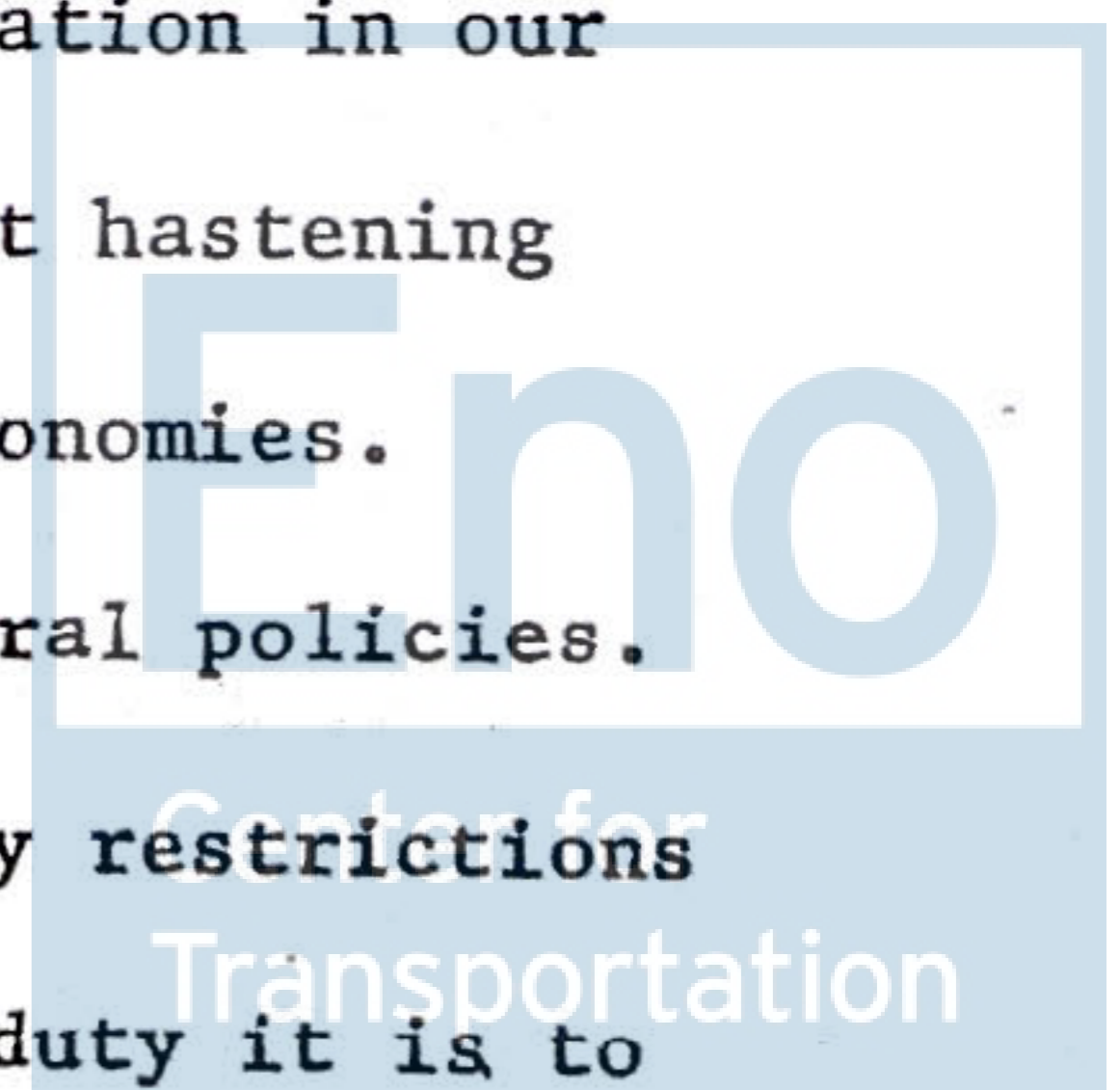
## A DEPARTMENT OF TRANSPORTATION AND RELATED ORGANIZATIONAL ISSUES

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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,



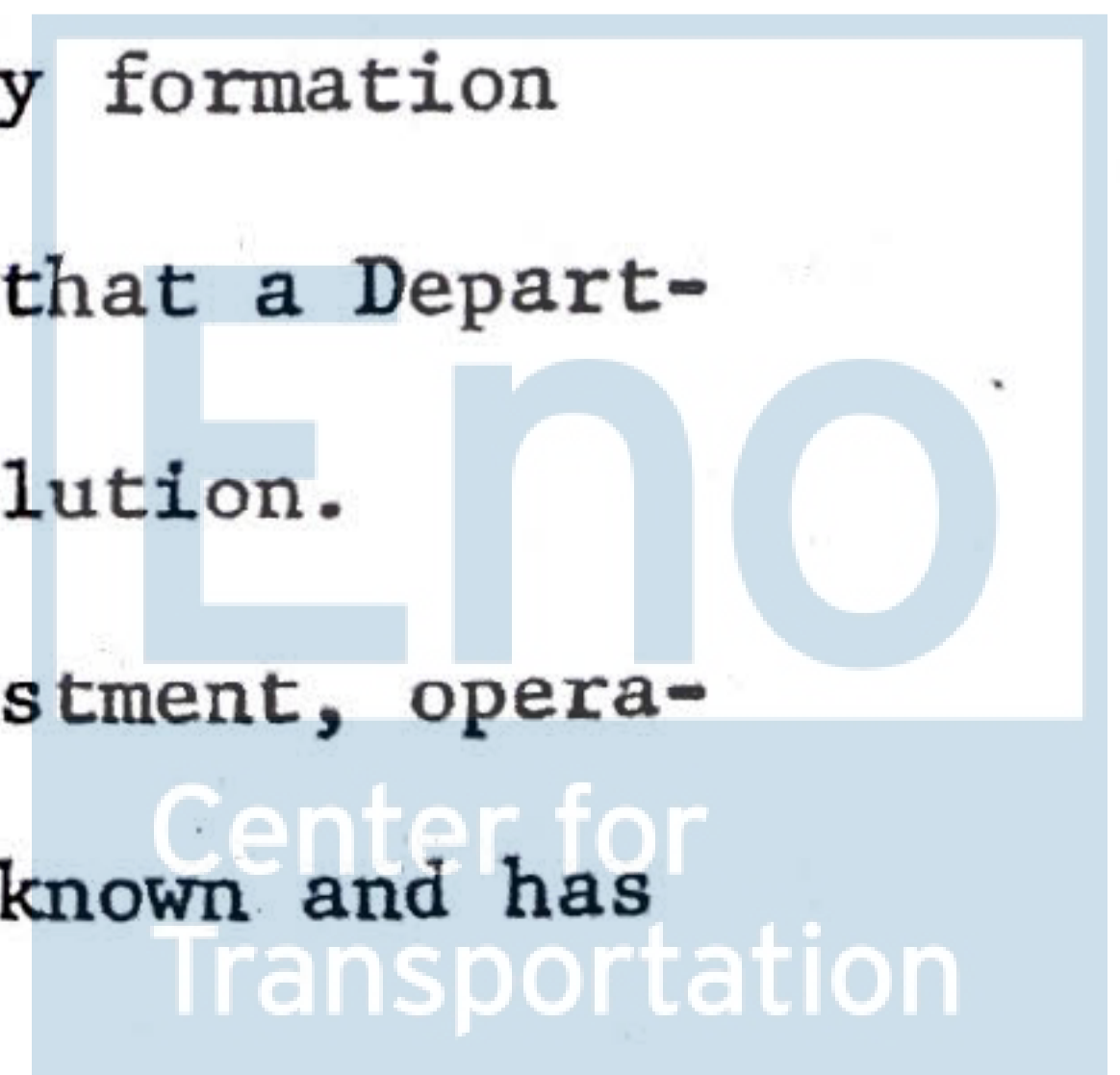
a National Transportation Council should be formed. Such a Council should be chaired by the Department of Commerce with its membership consisting of the heads of principal Federal agencies and departments having transportation responsibilities. This could be accompanied by some limited transfers of functions 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.

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### 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.

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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

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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.

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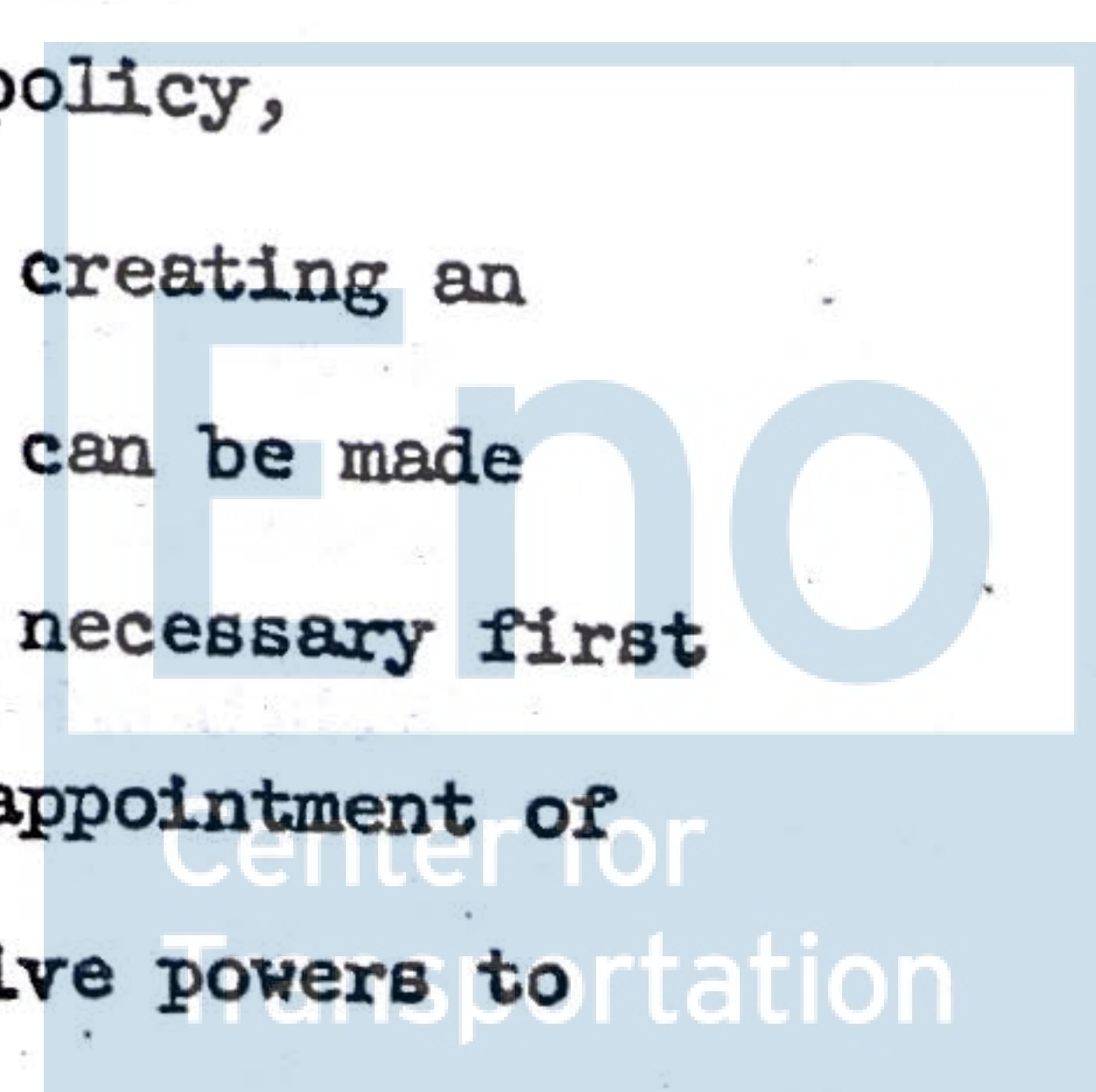
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## REORGANIZATION OF REGULATORY AGENCIES

### 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 in/



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.

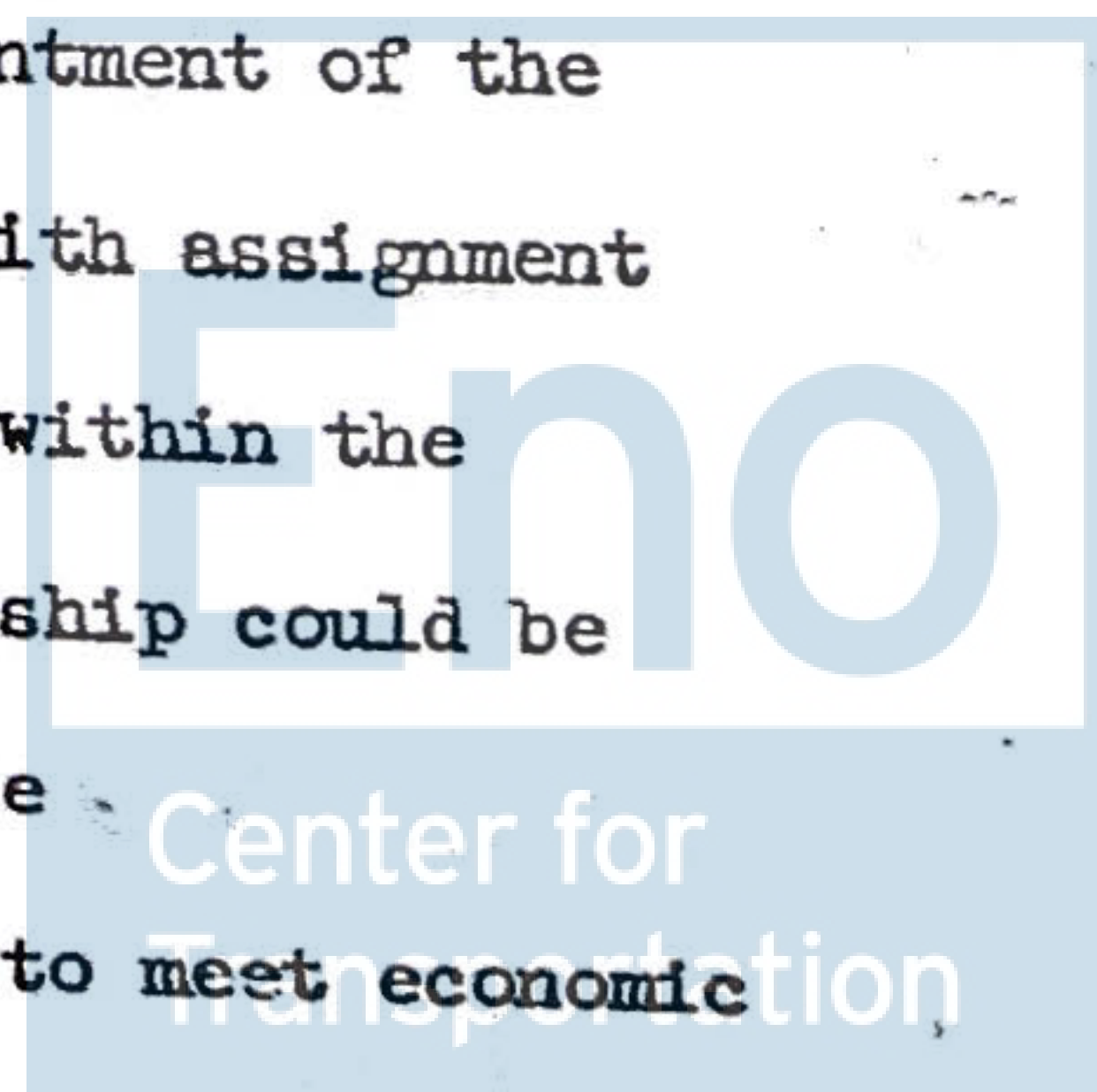
5. Establish by legislation the prima facie showing of performance doctrine as a key procedure in administering the amended regulatory statutes.

#### 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

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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.

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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.

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