

THE WHITE HOUSE
WASHINGTON

December 11, 1978

MEMORANDUM FOR: THE PRESIDENT
FROM: STU EIZENSTAT *Stu*
SUBJECT: Meeting with Secretary Adams on
Surface Transportation Deregulation

You will be meeting today with Secretary Adams to discuss briefly the status of our planning for next year's legislation to deregulate the trucking and rail industries. Adams will be seeking guidance on the drafting of decision memos on these issues. The memos are due at the White House in mid-December, and will be forwarded to you with staff and agency recommendations shortly after that.

One basic issue is the level of detail and the range of choices you will be asked to review. Because of the complexity of the issues and the importance of the legislation to the Administration, I recommend that you encourage the Secretary to provide you with relatively comprehensive documents on truck and rail issues. We will be defending and lobbying for our package for many months, and it will be useful for Administration officials to be familiar with the whole range of issues involved.

As for the trucking memo, we recommend that you ask Adams to proceed with the current detailed paper that his staff has prepared. In addition, we recommend that he provide you with information about the following:

o Impact of Deregulation on Minority Groups. The ICC's restrictive policy on entry has prevented minority groups from getting into the trucking industry. However, since the ICC has recently established a program to help minority groups receive operating authority, many of them now oppose deregulation -- because it will deprive them of their newly favored status and permit freer entry for everyone. We recommend that you ask for a complete assessment of minorities' views.

o Congressional views. We recommend that the Secretary also include a detailed assessment of the views of key Congressional members. Senator Kennedy strongly supports deregulation, but the views of Senator Cannon, whose committee has jurisdiction, have not been thoroughly

explored. And there may be opposition in the House: Public Works Committee Chairman Bizz Johnson and Subcommittee Chairman Jim Howard have just written to Chairman O'Neal protesting recent ICC reforms, and asking him to stop his new competitive policies until Congress has first determined the industry should be more competitive. We believe that you will need a complete assessment of Congress' views before you make a final decision.

o Safety and other provisions supported by the Teamsters. The Teamsters will strongly oppose deregulation. However, we may be able to defuse their opposition somewhat by including provisions relating to truck safety which the Teamsters have been pushing for (such as revision of regulation relating to work hours, trailer lengths, and owner operators).

Finally, you may also wish to encourage the Secretary to be firm in enforcing his deadlines. If we are to present detailed legislative recommendations to the Congress by February, we will need to hold closely to our decision schedule.

You might also ask Brock to be sure he sits down with Fred Kahn and Charlie Schultze to talk about the relationship between trucking deregulation and the Teamsters negotiations. Charlie asked me today to convene such a meeting, which I am in the process of doing.





THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

DEC 6 1978

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Form of Surface Transportation Deregulation
Options Paper

As you know, the Department of Transportation has taken the lead role in developing an option paper for you and I have promised to give you the results of our thinking on rail and truck deregulation by December 15, 1978. The purpose of this memorandum is four-fold:

- (1) to describe generally the transportation problems,
- (2) to suggest in broad terms alternative possible solutions to these problems,
- (3) to briefly review the likely views of the various affected constituencies, and
- (4) most importantly, to determine the best means of shaping for you our December 15th package.

I have structured this memorandum to first discuss the rail questions separately from the trucking questions and then to discuss the effects of deregulation legislation of each on the other.

RAIL

The Problem

The bottom line is that the rail industry must become much more efficient and productive. The alternatives are no U. S. railroad system or a heavily nationalized rail system. The industry's rate of return on net worth last year was 1.9 percent -- not enough to attract the capital that is necessary to improve a deteriorating plant. There is much excess capacity in the national system and the railroads are required to serve

Center for
Transportation

many markets for little or no profit. Finally, the effect of government economic regulation is such that the ability of the railroads to compete either on a price or service basis with much less regulated transportation modes, i. e., trucks, barges, and pipelines, is drastically limited.

Alternative Solutions

It is clear that some form of economic deregulation of the railroads is necessary. It is not the only problem facing the industry -- there is, for example, the labor productivity issue -- but it is one that the Federal Government can do something about. It is also clear that deregulation is good for the railroads; however, there are substantial concerns on the part of shippers and labor. The alternatives are not whether deregulation is necessary but what form it should take and how fast it should be implemented. The principal issues are rate flexibility, freedom to abandon lines and markets, and mergers and consolidations.

Views of Affected Constituencies

The shippers have three concerns about rate flexibility. First, it is clear to them that, at least until the railroads are able to streamline their network and obtain the capital necessary to run a sound business, rates might rise. Secondly, some shippers are "captive" to the rail lines and thereby suspicious of possible abuses by the railroads of a monopoly situation. Finally, there is the expectation that, given the existence of some captive markets, the railroads might underprice competitive traffic and subsidize it with revenues from captive traffic.

I am at present considering various methods for providing protection against abuse of dominant market power. There are shortcomings in every approach we've considered to date. Either we wind up regulating a much larger portion of the industry than necessary to take care of exceptions or we create tests for market dominance and rate reasonableness that are too complicated for good public administration.

Small shippers are concerned with possible abandonments of unprofitable branch lines and labor is generally against any reduction of the total system. The fundamental public policy questions here are: should the traditional common carriage obligation be maintained and, if so, how should the burden of maintaining this service be borne if it is unprofitable to the railroads at any reasonable rate? Some alternative possibilities for answering the second question are having the Federal Government, or the State government,

pay for some of the costs or giving affected shippers or entrepreneurs who think they can make a small railroad work the chance to do so.

Finally, the rail labor unions are likely to oppose substantive changes in existing procedures for mergers and consolidations. While there is authority that the Secretary of Transportation was given in the 4-R Act to stimulate mergers and consolidations, there must be some method for improving this authority.

TRUCKING

The Problem

The reasons usually given for deregulating the trucking industry are almost exactly opposite. The regulated industry last year had substantial profits in an industry that does not require the large capital investments needed in the rail industry. There are 17,000 carriers protected by government regulation. I know you want this as part of your anti-inflation program. The need for a government bureaucracy to control directly 17,000 regulated carriers and indirectly a total industry of 100,000 carriers is also questionable.

Another potential benefit of deregulation is the lessening of fuel consumption that would result from a reduced number of empty backhauls and elimination of all circuitous routing.

There is a significant social question in addition to the productivity issues mentioned above. The difficulties associated with entry into the regulated trucking industry have kept many potential minority truckers from offering for-hire service.

Alternative Solutions

There are three basic approaches to reform the shortcomings of the regulatory system. The first of these, which Dan O'Neal is already pursuing, is to let the ICC make the necessary changes administratively. While Dan is making great strides in this regard, the arguments for accompanying legislation are the same as they were with Fred Kahn's initiatives at CAB; i. e., to speed up the process and to have Congress decide on the matter prior to the many court challenges that will certainly accompany each major ICC initiative. There is good reason also to believe that the Congress would not be receptive to a unilateral ICC approach.

The second alternative is to approach deregulation first from the standpoint of specialized, truckload-lot (TL) carriers and then later for the general commodity, less-than-truckload-lot (LTL) carriers. The arguments here are that many TL carriers are essentially deregulated already, provide the necessary competition to rail, have the greatest potential for minority entry, and are not heavily unionized. Arguments against are: (1) the principal rate benefits will derive from deregulation of the LTL industry, and (2) labor and other opposition to deregulation will likely oppose either TL or LTL since they would view it as a first step and they also would not like to compete with a deregulated TL industry.

The third alternative, of course, is total industry deregulation, phased over some time period to ascertain a smooth transition.

Views of Affected Constituencies

Two potent political forces, the Teamsters and the American Trucking Associations (ATA) are opposing Dan O'Neal's initiatives at ICC and will oppose any substantive change in the status quo. The ATA, however, is preparing a modest regulatory reform bill because certain segments of that organization support some deregulation.

The Teamsters' opposition is straightforward. They, along with the ATA, make the argument that the amount of freight to be moved is constant, regardless of the rates. Therefore, new entries -- on the part of independent owner-operators -- will only take business away from existing, unionized truckers. They are concerned for the same reasons about increases in productivity that would result from presently exempt carriers reducing their empty backhauls by carrying regulated commodities and thus removing traffic from the existing regulated carriers.

It is also quite clear that the Teamsters perceive a "linkage" between the Administration's preliminary deregulation initiative and the upcoming wage settlement in March. They argue that we cannot expect support for both.

Shippers are very wary of any change in the status quo but there is no issue of equal impact to the "captive shipper" concern with rail deregulation. Arguments that small community service will deteriorate without the common carrier obligation are made.

A Parallel Approach to Rail and Truck Deregulation

For all of the reasons given above, I feel that we should go forward with a parallel approach but, because of the interest on the Hill, the impact on the rail and truck industries and the work already being done by Dan O'Neal, I believe the rail initiative will move first.

With respect to the Congress, Senator Cannon seems prepared to deal with rail legislation immediately after the beginning of the next session. The House Commerce Committee is also geared up but the situation has changed somewhat with the defeat of Fred Rooney. I do not expect substantial change but we will have to see who will be in charge of ICC type legislation. The Senate Commerce Committee also has jurisdiction over trucks but on the House side jurisdiction is with Public Works. We are working closely with all relevant Committees.

Since the TL segment of the trucking industry is essentially deregulated, starting rail deregulation first will provide some competition. Any further deregulation of the trucking industry without the same freedom on the rail side will only put the rail industry in a worse competitive position and, therefore, get unified opposition for the trucking bill from the rail industry. And, while it is true that shippers will fear rail deregulation without sufficient truck deregulation to hold down rates, the fact of pending subsequent truck legislation and the O'Neal initiatives should demonstrate there will be adequate competition.

FORM OF THE DECEMBER 15th OPTIONS PAPERS

The form of these papers essentially will be the same: i. e., a full paper of 50 or so pages designed for staff review preceded by an Executive Summary of perhaps five to fifteen pages. I will cover this combined package with a memorandum discussing the logic of considering truck and rail deregulation in parallel. For a variety of reasons and notwithstanding the fact that the form of the papers is the same, the status both of our thinking on each and the extent to which each paper has been coordinated throughout the government varies.

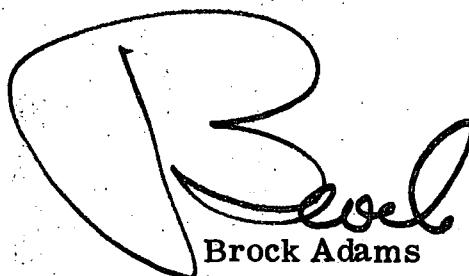
On the rail side, we will definitely recommend sweeping deregulation and will have completed a thorough analysis of specific legislative alternatives regarding such matters as rate flexibility, abandonments and mergers and consolidations. I will not submit recommendations on December 15,

however, because I want to be sure we have heard from all affected constituencies -- our consultative process runs through December 19. In addition, I would like to circulate our options among the relevant government agencies and get the benefits of their thinking.

On the trucking side, we are chairing an interagency task force to develop a Presidential decision paper with various options. The options paper that results from this process will be our best effort at representing the views of the various agencies. In this case, even though our coordination has been more advanced, the level of thinking about specifics is far below what we have in the rail paper. There will be broad options discussed:

- o Administrative reform at ICC,
- o Deregulation legislation phased over industry structure; i. e. , first truckload carriage and then less-than-truckload,
- o Total industry deregulation legislation phased over time.

I have attached the outlines for each paper.



Brock Adams

Attachments

cc: Honorable Stuart E. Eizenstat



RAIL PAPER OUTLINE

1. Reasons for reduced regulation

- o decline of railroads
- o present (Conrail) and anticipated shortfall
- o reality of budget consequences
- o reduced government involvement

2 Options

- o ratemaking - "captive shipper" options
- o discrimination
- o abandonment
- o mergers and consolidations
- o rate bureaus

3 Arguments against deregulation

- o "captive shipper" issue
- o common carrier obligations
- o labor questions



TRUCKING PAPER OUTLINE

1. Why reduced regulation is necessary
 - o anti-inflationary
 - o reduced government involvement
 - o improved fuel usage
 - o increased opportunities for minorities
2. Structure of trucking industry
 - o regulated (TL and LTL)
 - o private
 - o exempt
3. Review of current ICC reforms
4. Options
 - o administrative reform
 - o structural deregulation (TL then LTL)
 - o total deregulation phased over time
5. Arguments against deregulation
 - o industry instability
 - o certificate values
 - o small community service
 - o impact on safety
 - o potential concentration of industry
 - o impacts on labor
 - o need for legislation



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3:00 PM





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT

FROM: W. Bowman Cutter ~~W~~

SUBJECT: Brock Adams Memo Regarding Form of Surface
Transportation Deregulation Options Paper

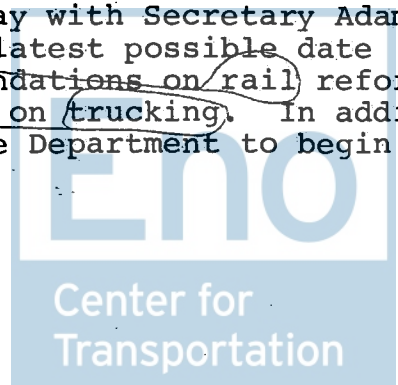
We are pleased to see that the Department of Transportation is making a concerted effort to meet your request for rail and trucking deregulation proposals. The rail and truck proposals should be drafted for simultaneous submission to the Congress very early in the next session. These proposals must be complementary and carefully coordinated.

In the rail area, FY 1980 budget decisions have been predicated on substantial deregulation of the industry. With regard to trucking deregulation, we believe that relatively simple changes on the statute governing trucking should be drafted quickly. Even such easily explainable amendments could move significantly toward deregulation.

We believe that surface transportation deregulation should be a major theme in your State of the Union Message to Congress, including deregulation of intercity bus transportation. The two largest companies, Greyhound and Trailways, support deregulation and consumers could see an immediate benefit through lower fares on certain routes. Such a bill would be a logical extension of airline deregulation and it could help build the momentum for rail and trucking deregulation. Since time is fleeting, DOT should begin to develop the proposal immediately.

We recommend that in your meeting today with Secretary Adams you indicate that December 22 is the latest possible date for the final DOT legislative recommendations on rail reform and December 29 for the options paper on trucking. In addition, we recommend that you direct the Department to begin work on bus deregulation.

~~Attachment~~



12/11/78

TO: RICK & BILL

SUBJECT: Congressional Liaison's Comments on Brock Adams
12/6/78 Memo re Form of Surface Transportation
Deregulation Options Paper

RR deregulation will not pose the lobby effect trucks will. Adams failed to state that the Public Works Subcommittee Chairman Jim Howard is totally committed to truckers and has already begun writing a compromise bill the teamsters and truckers will want. Our bill will face tough sledding.

On RR, Staggers will go with industry and they seem very favorable to our proposals. (JF)

*Received from Lake -
already on Carter's desk*



THE WHITE HOUSE
WASHINGTON

DATE: 06 DEC 78

FOR ACTION: STU EIZENSTAT

FRANK MOORE (LES FRANCIS)

JACK WATSON

ANNE WEXLER

JIM MCINTYRE

INFO ONLY: THE VICE PRESIDENT

JODY POWELL

JERRY RAFSHOON

CHARLIE SCHULTZE

RICHARD PETTIGREW

ALFRED KAHN

SUBJECT: BROCK ADAMS MEMO RE FORM OF SURFACE TRANSPORTATION
DEREGULATION OPTIONS PAPER

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+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +
+ BY: 1200 PM MONDAY 11 DEC 78 +
+++++

ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:



DATE: 06 DEC 78

FOR ACTION: STU EIZENSTAT

FRANK MOORE (LES FRANCIS)

JACK WATSON

ANNE WEXLER

JIM MCINTYRE

INFO ONLY: THE VICE PRESIDENT

JODY POWELL

JERRY RAFSHOON

CHARLIE SCHULTZE

RICHARD PATTIGREW

ALFRED KAHN

SUBJECT: BROCK ADAMS MEMO RE FORM OF SURFACE TRANSPORTATION

DEREGULATION OPTIONS PAPER

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+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +

+ BY: 1200 PM MONDAY 11 DEC 78 +

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ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:



THE WHITE HOUSE

WASHINGTON

To Secretary Brock Adams

I look forward to receiving your proposals for deregulation of the rail and trucking industries. Deregulation of surface transportation will be an important theme in my State of the Union Message to Congress. I will need, therefore, to have your final legislative proposal on rail reform by December 22, 1978 and your options paper on trucking by December 29, 1978 so that both bills can be ready when Congress convenes.

I would also like my reform program to include deregulation of intercity bus transportation as a complement to our rail, truck, and airline initiatives. Time is short but we must be ready to present our proposals when the Congress returns.

The Honorable Brock Adams
Secretary
Department of Transportation
Washington, D. C. 20590

