Administrative Law News

Published by the Virginia State Bar Section on Administrative Law for Distribution to its Members

VOLUME XII, NO. 1 **FALL, 1995**

TABLE OF CONTENTS

Assessing the Economic Impact of Virginia Regulations

Editor's note: Recently, the General Assembly amended the Administrative Process Act to require agencies proposing new regulations to formally assess their economic impact. Rule making agencies are expected to cooperate with the Department of Planning and Budget in the preparation of formal reports (called Economic Impact Analyses) for publication in the Virginia Register and for scrutiny by the Governor and his Secretaries. DPB was directed to develop methodologies for producing EIAs, and the Joint Legislative Audit Review Commission was directed to evaluate what DPB developed. What follows is the executive summary of JLARC's first report on this government venture, an excellent overview of the process by which the costs and benefits of regulation are discovered, quantified, related, and employed in administrative decision making.

The choice to use the powers of government to regulate behavior is based on the conclusion by policy makers that their constituents are better off with the regulation than without it. Such a decision requires a set of judgments about the impact of the regulation on the behavior of individuals and firms in the economy and about the value that people place on those changes. These policy choices also necessarily involve choices about the acceptability of the distribution of the gains and loses created by the regulation, as well as their magnitude.

The information needed to make informed policy choices can be difficult to obtain and to interpret. There is, then, a strong rationale for developing standard methods for generating the information necessary to assess the economic value of proposed regulations. Once this information is obtained, it must be presented in a way that facilitates, rather than impedes, the making of reasoned choices.

Under the Virginia Administrative Process Act, the Virginia Department of Planning and Budget (DPB) has been charged with the responsibility of assessing the economic impact of new and revised revelations promulgated. In addition, DPB was directed by Chapter 853 of the 1995 Virginia Acts of Assembly, Section 1-79.G to submit its methodology for reviewing regulations to the Joint Legislative Audit and Review Commission. This report on DPB's economic impact analysis methodology fulfills that requirement.

Economic impact analysis (EIA) is a standardized technique for measuring the effects of government actions and for presenting the results of the analysis in a way that can help elected officials make effective policy choices. This report describes in detail the scientific method used by DPB to analyze the economic impact of regulations. It also describes how the data, assumptions, and conclusions are presented to those actually making decisions.

Considering the important alternatives

There are usually many different ways to implement a regulation once the general goal is established by elected representatives. Each regulatory option will imply a different distribution of gains and loses as well as different costs of administration and enforcement. Subject to considerations of fairness, agencies should choose regulations that achieve the required ends at the lowest possible cost and with the least intrusion into the voluntary choices of individuals and firms. This common-sense requirement maximizes the gain from regulatory action and helps maintain the credibility of government in the eyes of those subject to regulation.

Since added flexibility can reduce the costs of compliance, regulations should specify results rather than specific actions. This leaves the challenge of finding the best way to achieve the results to those with the most knowledge about the particular circumstances of each individual or firm. Maximizing flexibility has the added advantage of giving people incentives to innovate. In the long run, the incentive to innovate is probably the most important cost-reducing element of regulatory design.

Theory and long experience strongly indicate that voluntary trading in markets provides the flexibility and the incentive to find innovations that reduce costs. Thus, it is important that agencies consider whether market incentives can be used instead of traditional "command and control" regulations. For example, allowing firms to buy and sell pollution allowances among themselves may provide a greater level of environmental quality than traditional regulations, while at the same time reducing costs.

Identifying the people and resources affected

An economy the size of Virginia's is enormously complicated. Each individual has his or her own goals and preferences. Each firm has its own technology and management. Regulations change individual rights and responsibilities. In this way, regulations change the incentives that people have and, hence, change the way economic resources are allocated throughout the economy.

Measuring the change in economic activity resulting from a regulation, then, must start with an effort to identify the incentives created by the regulation and then predict the actions that will result from that change in incentives. Analyzing individual and firm responses to changes in incentives is the special province of the discipline of microeconomics. Microeconomics treats the economy as an interconnected set of markets. Once the markets and their interactions are specified, we can trace the impact of a regulation through the economy by tracing its effect on supply and demand in various markets.

In tracing these effects, an economic analyst can identify those changes in employment, property values, the distribution of costs and benefits, and other impacts attributable to the regulation. It is also possible to identify the impact of the changes on resources that may be valued but are not necessarily traded in markets. One advantage of this process is that policy makers and the public are made aware of any unintended consequences of the regulation.

The detail with which the economy is modeled depends on the scale of the effects expected from the regulation. Small changes may be analyzed by looking at one, or just a few, markets. Larger changes may require a simplified model of the whole economy.

Measuring the value of the changes

Having identified the people and economic resources that are affected by a regulation, the analyst should make every reasonable effort to determine how these resources are valued by individuals. It is

not enough simply to report the changes in payrolls and other economic activity. These are a measure of the gross impact of a regulation. The gross impact may be quite different from how people value that change. For example, the gain of a job in one industry may be matched by a loss of a job in another. Determining the net value of given changes in economic activity is one of the most important contributions of economic impact analysis to good public decision making.

It is the standard assumption of microeconomics that individual tastes and preferences are the sole source of economic value. This is often referred to as the principle of consumer sovereignty. The standard economic measure of value of a good is the amount of money that would induce a person to voluntarily trade the good. The maximum amount a consumer would pay to receive something is called his *willingness-to-pay* (WTP) for the gain. The minimum amount he would accept to part with something he already has is called his *willingness-to-accept* (WTA) the loss. WTP and WTA are monetary measures of value for economic resources that are consistent with the assumption of consumer sovereignty.

Economic impact analysis uses WTP and WTA to measure the actual values that people place on the changes that a regulation causes in the allocation of economic resources. Most economic valuation techniques work by observing the choices people make and then deriving the monetary value implied by those choices.

The standard case is for a good that is traded in a smoothly operating market. By observing how much of the good a consumer purchases at different prices, we can derive the consumers "demand function" for that good. This mathematical representation of the consumer's choices allows us to estimate the total net value that he or she gets from consuming various amounts of the good.

For goods that are not traded in markets, such as air quality or visits to state parks, we look to consumer choices in related markets for the information needed to estimate a demand relationship. For example, knowing the cost to consumers of getting to and using a park allows us to estimate a demand function for use of the park. This, in turn, provides a way of estimating the total value to consumers of having the park. In this way, economic analysis provides a way of assessing the value of valuable but otherwise unpriced resources.

Accounting for time

Most different regulations have costs and benefits that accrue at different periods of time. However, people generally prefer to have something now rather than later. It follows that regulatory impacts that occur in the future should be given less weight than those that occur immediately.

The process of accounting for this time preference is known as discounting. All future gains and loses attributable to a regulation should be discounted at a rate consistent with the willingness of individuals to trade present consumption against future consumption. The rate at which consumers trade off consumption between periods is called the rate of time preference. It is this rate that should be used for discounting. This rate of time preference is reflected in the inflation adjusted interest rate paid on safe assets traded in private markets. To ensure consistency among choices, all gains and losses from a regulation should be expressed in inflation adjusted terms and discounted at the rate of time preference.

Accounting for risk

Since people place a premium on avoiding risk, a risky stream of benefits or costs flowing from a policy must be adjusted to take account of this risk premium. Measuring the economic value of a policy with a risky outcome involves two distinct steps: 1) a risk assessment that characterizes the probabilities of occurrence of the various outcomes, and 2) a valuation of the risks in terms of individual preferences and costs of avoidance. The appropriate level of risk is a question of policy, not science. The level (and type) of risks should be chosen on the basis of the value that people place on being exposed to those risks.

Risk assessment is the process of listing the possible consequences of an action or event and attaching to each possible outcome a probability that the event will occur. We might be interested, for example, in knowing how a regulation will affect the likelihood that a particular type of building will burn down. A risk assessment would use engineering information to assess all of the ways that the regulation affects the potential for a fire and the resulting probabilities of a fire occurring.

Evaluating the risk associated with some policy action raises a number of difficult scientific issues. In some areas, the scientific uncertainties may be very large. It is crucial that these uncertainties be incorporated into the analysis in a way that allows the valuation of the risks in economic terms. Using the best available scientific information, risk assessments should provide quantitative assessments of the average risk and its spread so that the policy maker can choose the policy that best reflects social preferences for avoiding or accepting risk.

Once the nature and magnitude of the risk have been measured, economic principles can be used to measure the value of that risk. Since risk is something that individuals prefer to avoid, we would expect to observe people who face a risk to spend resources to reduce the risk. These expenditures may take the form of self-protection, mitigation, buying insurance, and buying information. These measures are costly and must be counted as part of the costs of uncertainty. An individual's risk premium is measured after he has adjusted his activities to manage risks. The social costs of risk, then, comprise expenditures on risk management plus any residual risk premium that remains.

Most of the time, allowance for risk should be made by adjusting the monetary values of the uncertain future consumption flow. However, whenever a person faces unfamiliar types of risk, or risks of great magnitude relative to income and wealth, or risks with unusually large or small probabilities, we cannot simply calculate monetary adjustments to the stream outputs. A qualitative balance will be required, taking into account the various dimensions of risk. The analysis should compare the policy choice in question to other choices involving similar types of risk. If an analogous choice can be found, it may help bracket the range of values appropriate for the policy choice under consideration.

Policy choices under uncertainty

It is important to report the results of the economic analysis in a way that avoids giving misleading impressions about the precision of the analysis. Results should always be reported as a range of possible outcomes. The report should include the author's judgment about the most likely outcome, and a measure (possibly quite informal), of the likely dispersion of outcomes around the most likely one. In addition, the analyst should report how costly it would be to reduce the uncertainty of the outcome by buying information or taking mitigating actions. Numerous techniques are available for making judgments about the uncertainties present. Among these are sensitivity analysis, Monte Carlo simulation, and decision analysis. Each of these techniques has strengths and weaknesses, so it is important to select the one most valuable for the given problem.

Any analysis of policy uncertainty should identify the important variables in the analysis. The impact analysis will highlight for the policy maker those variables which can be expected to have a significant impact on the outcome of the policy decision. The analysis should not be so exhaustive that the reporting of the results actually obscures the important uncertainties confronting the policy maker.

Summarizing the results

In summarizing the economic impact of a proposed regulation, a careful balance must be drawn between completeness and usefulness. While all of the components of the assessment should be available for public scrutiny, as a practical matter, decision makers require a more compact statement of results. Unlike the traditional practice in benefit/cost analysis, it is not the function of the impact assessment to provide a single number on which a decision would be based. It is, rather, a presentation of the key

analytical results in a way that makes clear both the best estimate of impact and the range of uncertainty. The policy maker will be able to see not just the final result but the main components that make up the result.

Economic impact assessment uses the tools of microeconomics to help those choosing among different policies make careful, considered decisions. If carefully done, this analysis can help us make better choices by suggesting the most efficient and effective strategies for achieving a given result, and making sure that we are fully informed of the tradeoffs implicit in any policy decision.

The Federal Admin Conference is No More

It is with genuine regret and chagrin that your editor reports the demise of a federal agency well known to many of this newsletter's readers, if not to the public or, for that matter, the bar in general. On October 31, 1995, the Administrative Conference of the United States closed its doors at 2120 L Street in Washington for the last time. Congress had refused ACUS even a modest budget for next year, and so, after twenty seven years of working to make federal agencies smaller, more efficient, and more responsive, ACUS is no more. As the Washington Post recounted in detail on November 7, a coterie of administrative law judges opposed to suggestions produced by an ACUS study for ALJ reform fomented the attack on the think tank, and Senator Richard Shelby of Alabama administered the *coup de gracê* in his appropriations subcommittee. Hope for enlightened bureaucracy and rational agency procedure, federal and state, foreign and domestic, is just a little dimmer with the passing of ACUS.

ALAC COMPLETES ADMIN PROCESS STUDIES

The Administrative Law Advisory Committee, a standing committee of the Virginia Code Commission, has issued two reports which may result in legislative proposals for the 1996 General Assembly. ALAC studied standardizing judicial review of agency regulations and case decisions and regulating ex parte communications in agency proceedings. The committee also studied the publicizing of regulatory proposals, but is not recommending changes in the current process. The committee is scheduled to report its recommendation to the Code Commission in November.

Standardizing Judicial Review

Last fall the Virginia Bar Association proposed standardizing judicial review procedures for state agencies governed by the Administrative Process Act. Currently, the APA merely supplements agencies' basic laws in this as in other areas. If an agency's basic law prescribes a process that differs from the APA, the basic law governs. Some critics have charged that this subordination of the APA to other law results in myriad sets of rules that may confuse the regulated public and confound attorneys representing clients before state agencies. The Bar Association proposal would have amended §9-6.14:3 to state:

> "notwithstanding any other provision of law contained in the basic law of an agency subject to this chapter, the procedures for judicial review of agency regulations or case decisions shall be governed by the provisions of this chapter."

While initially supporting the concept of standardization, ALAC voiced concern that the effects of such a proposal were unpredictable unless the existing differences between agency basic law and the APA were catalogued. A subcommittee chaired by Roger Chaffe of the Attorney General's office then set to work producing just such a catalog, comparing various basic laws pertaining to Virginia's regulatory agencies with the APA to determine those differences with respect to judicial review.

The study found that most of the agencies not exempt from the APA were subject to the Act's judicial review provisions. However, the subcommittee found significant differences among several agencies, particularly in the areas of venue, filing requirements and standards of review. (From the outset, ALAC had declined to consider recommendations regarding "standing to sue" while the issue is the subject of an ongoing law suit filed by the Governor.) The subcommittee found several other differences in isolated situations which are not easily categorized.

The subcommittee's preliminary recommendations are as follows:

1) The Subcommittee recommends that agencies be notified by letter of the judicial review provisions in their basic laws which vary from those of the APA and asked to explain the variations. In the absence of compelling reasons for variations from the APA, the subcommittee recommends that agency basic statutes be amended to conform with the APA.

2) Whether or not an agency's case decision is made under the APA, individuals should be informed of their ability to appeal agency determinations and the means by which such appeals may be made. Rule 2A:2 of the Supreme Court requires that any final agency case decision as described in §9-6.14:14 shall advise the party of the time for filing a notice of appeal. Each agency should be required to include a notice with every case decision that explains the applicable judicial review process. The notice should include a reference to the governing statutes, a brief explanation of steps to be taken, and the deadline for seeking judicial review. This information should be provided regardless of whether the decision is made pursuant to the APA.

3) The Subcommittee found several instances of APA exemptions located only in agency basic statutes, and recommended that these exemptions be listed in the APA as well.

4) While additional research is needed and the issue exceeds the focus of this study, the subcommittee suggests further study of (1) judicial caseloads to consider the possibility of transferring some of all APA appeals to the Court of Appeals; and (2) the possible standardization of the administrative record which is to be subjected to judicial review.

Ex Parte Communications

Ex Parte communication has been defined in an Opinion of the Attorney General (1982-83) as a situation in which "an advocate for but one of two or more parties presents his views upon the controversy to the decision maker." During the 1994 and 1995 Sessions of the General Assembly, legislation was introduced which would prohibit ex parte communication during administrative agency proceedings. The issue of whether ex parte communications should be prohibited also arose during the 1995 Administrative Law Conference sponsored by the Administrative Law Advisory Committee. In order to determine which agencies currently have policies regarding ex parte communications and to determine whether those policies are adequate, another ALAC subcommittee, chaired by Phil Abraham of Hazel & Thomas, undertook a study.

The study found that, of the 52 agencies which issue case decisions, only six have written policies prohibiting ex parte communications. Fifteen agencies have informal policies prohibiting ex parte communications and 19 agencies have no policies on the matter at all. Five agencies freely permit ex parte communications in case decisions.

Generally, agencies are obliged to base their regulations and case decisions upon information in the agency's record. In judicial review of agency case decisions and regulations, the court reviews the agency action to determine whether there is substantial evidence in the agency's records which supports its decision. Ex parte communications present two problems in this context. First, if a single party to a decision process contacts the decision-maker without the knowledge of the other parties, there is a possibility that the decision may be based, in whole or in part, on information that is irrelevant to the case. Second, through ex parte contacts, parties may attempt to present evidence that

is not tested by rebuttal or cross examination. Ex parte communications therefore make possible agency decisions based on information which is both inherently less reliable and later unavailable should the decision be subject to judicial review.

In response to these and other findings, ALAC adopted the following recommendations:

1) All state executive and independent agencies conducting case decisions as defined by the Administrative Process Act (§9-6.14:4) should adopt a policy regarding ex parte communications in adjudicatory settings.

2) Such policies should be adopted as regulations developed in compliance with the Administrative Process Act. Agencies not subject to the rule making provisions of the Administrative Process Act should follow any applicable provisions for adopting regulations, including, but not limited to, the Virginia Register Act.

3) The Virginia Administrative Law Advisory Committee should monitor and evaluate these policies during development. If necessary, the Committee should be prepared to recommend more specific procedures, including prohibition of ex parte communications, particularly in formal adjudicatory proceedings.

To obtain a copy of either study report or to obtain additional information about the work of the Administrative Law Advisory Committee, call Lyn Hammond, Division of Legislative Services at (804) 786-3591.

THE ADMIN CODE IS JUST AROUND THE CORNER

Virginia's Administrative Code is almost ready. Originally scheduled for publication this past summer, the first edition has been delayed by a variety of unanticipated complications, one being its size: it has turned out to be 150% larger than foreseen. In print, the Administrative Code will fill twenty-two volumes, each containing about 1000 pages; all but two of the twenty-four titles are now complete. Delivery by Lawyers Cooperative Publishing is set for no later than January 16, 1996, and Lonnie Griffith, Director of Product Development for the company's Southern Division, hopes to beat that revised deadline. The first edition will include materials through April 15, 1995. A supplement will follow a month later, including all changes through December 1, 1995.

Two hard copy versions of the Code will be offered, a perfectbind set priced at $230, and a loose-leaf set in post binders priced at $335. Two CD-ROM versions will be offered, a DOS-based version and a WINDOWS-based version. Each CD library will be self-contained, including not only a complete Code but also the appropriate version of FOLIO software for search and retrieval. The publisher's proprietary DiscLINC feature will link its CD versions of the Virginia Administrative Code to its other CD-ROM products, including the Code of Federal Regulations, Federal Register, and United States Code Service. Direct inquiries and orders to Lawyers Coop at (800) 762-5272.

The Trucking Industry Regulatory Reform Act of 1994 Understanding the Fine Print

by Mark J. Ayotte, Esq.
(Briggs and Morgan - Minnesota)

Editor's Note: This article is reprinted from World Reports, the journal of Lex Mundi, a worldwide organization of independent law firms which have formed an association for the professional exchange of information. The member law firms of Lex Mundi maintain complete autonomy, exercise their professional services, on an independent basis, and are not affiliated for the joint practice of law. Permission for the article's appearance in our newsletter has been obtained both from Lex Mundi and the author.

The Trucking Industry Regulatory Reform Act of 1994 has accelerated the process of promoting competition among interstate motor carriers and

disassembling the Interstate Commerce Commission. The new law affects interstate motor carrier regulation in three key areas: rates, entry, and exemptions. Most of the Act's provisions have already taken effect. Shippers and carriers alike need to take steps now to bring their operations in line with an industry that will operate in a free market environment.

The purposes of the Act are to enhance competition, safety, and efficiency in the motor carrier industry, and to enhance government efficiency. The legislation is a compromise negotiated in Conference Committee. A House bill eliminated all funding for the ICC, but would have left its regulations intact. The Senate proposed to scale back the ICC's responsibilities and cut its budget by one-third. Against this background, the Act effects a congressional compromise in promoting efficiency within the motor carrier industry and in government.

Rate Regulation

Trucking companies are no longer required to file their individual interstate common carrier tariffs with the ICC. The only exceptions relate to rates pertaining to household goods, or shipments to points within Hawaii, Alaska, or the U.S. territories, which now continue to be filed at the ICC.

The new law makes certain specific changes with respect to tariffs for individually determined rates. An "individually determined rate, classification, rule or practice" is a rate established by a single motor carrier for transportation service over its line; or, a rate, classification, rule, or practice of two or more interline carriers for transportation they provide over their lines.

First, the tariffs are no longer subject to the ICC filing and approval requirements. Carriers are required to maintain their own tariffs, and to provide them to a shipper or potential shipper upon request. The tariff includes a written or electronic copy of the rate, classification, rules, and practices upon which the agreed rate may be based. The ICC will retain jurisdiction over resolving rate disputes. When the applicability or "reasonableness" of a rate is challenged by the person paying the freight charges, the ICC will be authorized to resolve the dispute.

Second, the new law reduces to six months the time a carrier or shipper has to challenge a rate after payment is made. The "agreed to and billed rate" for individual tariffs will be the absolute rate, unless a carrier rebills or a shipper protests the original bill within 180 days. Where a motor common carrier seeks to collect charges in excess of those billed and collected (i.e., undercharge claims), the carrier must issue a bill for charges within 180 days to attempt to collect the charges. The current 36-month statute of limitations under the Negotiated Rates Act of 1993 for collecting overcharges and undercharges still applies if timely notification is made. To effectively meet these timetables, both shippers and carriers alike may need to revamp their internal operations to increase the time freight bill audits are performed.

Third, a carrier cannot collect a rate determined by a referenced tariff (i.e., National Motor Freight Classification or HHG Mileage Guide) unless the carrier is a participant in the tariff. The Act simply codifies a prior Supreme Court ruling that prohibits a carrier from enforcing a tariff rate when the carrier did not sign a power of attorney for participation in the tariff.

Finally, the individual *tariffs presently on file at the ICC have become null and void as of August 26. 1994.*

Motor Carrier Licensing

The ICC's role in issuing permits and certificates to motor carriers will diminish under the Act. Applications for new or expanded motor common or contract carrier operating authority to transport property (other then household goods) will become more streamlined. The application and review process for interstate authority will require three identified showings. First, the applicant must demonstrate an ability to comply with all statutory, regulatory, and ICC imposed safety requirements. Second, the applicant must demonstrate its fitness to comply with safety standards developed by the Department of

Transportation (DOT). Third, the applicant must demonstrate its ability to provide adequate liability insurance. or otherwise meet the self-insurance standards under existing law. Similarly, the Act restricts the grounds under which a person may protest an application made for operating authority to the insurance, minimum financial responsibility, or safety fitness matters.

Most significantly, the Act eliminates the statutory "public convenience and necessity" standard. Under existing law, an applicant is required to show that its proposed service will serve a useful public purpose responsive to a public demand need. The new application process will focus only on the carrier's legal and financial fitness. The changes relating to entry review and entry applications become effective on January 1, 1995.

Exemptions

Two general exemptions are provided for in the Act. First, motor carriers providing household goods transportation services remain suspect to existing law. Second, motor carriers providing transportation in "non-contiguous domestic trade" are not subject to the provisions of the Act. "Non-contiguous domestic trade" means motor-water transportation involving traffic originating in or destined for Alaska, Hawaii, or a territory or possession of the United States. These two areas will continue to be suspect to ICC regulation in a manner consistent with existing law.

The ICC is further given authority to exempt trucking matters from statutory and regulatory requirements. The ICC previously had this authority over railroads to administratively deregulate categories of traffic which it determined to be of limited scope and not subject to competitive abuses. However, the Act prohibits the ICC from exempting carriers from the new tariff rules, collectively made rates, insurance matters, carrier liability on cargo loss and damage, safety fitness, or the uniform bill of lading.

CONGRESSIONAL STUDY OF ICC FUNCTIONS

There will no doubt be a dramatic downsizing of the 107 year old ICC as result of this legislation. Congress directed the ICC and DOT to prepare a comprehensive review of all of the ICC's functions. and a study of possible changes to the status of the ICC. The ICC is directed to prepare and submit its report to the Secretary of Transportation and the Congress within 60 days from enactment. The report should identify and analyze all of the ICC's statutory and regulatory responsibility, and include recommendations as to which responsibilities could be further eliminated or restricted. Similarly, the Secretary of Transportation is directed to study the feasibility and efficiency of retaining the ICC in its present form. This study is to include

- the possibility of merging the ICC into DOT as an independent agency:

- the elimination of the ICC and transfer of its functions to other federal agencies: or,

- any other organizational change that may lead to governmental and transportation efficiencies.

The Secretary is directed to report within four months of the submission date of the ICC report.

The Act's provision voiding existing filed tariffs has prompted the ICC to pack approximately 1,300 boxes of such tariffs for shipment to a government storage facility in Suitland, Maryland. Ironically, the ICC is in the unusual position of being a shipper. It is hoped the ICC will use a duly authorized regulated carrier and will negotiate a reasonable but unfiled rate when moving the freight.

Now What?

In response to the new law, motor carriers and shippers need to be aware of a variety of important business items:

• Carriers should notify shippers that the individual rates and rules governing service will be based on tariffs which carriers will make available to shippers on request.

• Shippers should immediately submit written requests to their carriers for a copy of the individual rates and rules for service.

• Carriers must insure their participation in bureau tariffs, including classifications and mileage guides. Otherwise, carriers may not be able to enforce such tariffs.

• Shippers should request written evidence of carriers' participation in any collectively detemmined bureau tariffs, including classifications and mileage guides. At a minimum, shippers should be provided with a copy of the power of attornev which the carrier provides to the tariff publishing agent

• Carriers will still be required to possess the appropriate motor common or motor contract carrier authority from the ICC. If a carrier is contemplating an application for expanded authority, it may be easier to wait until January 1, 1995.

• Shippers and carriers should both update their respective traffic and accounting functions to insure compliance with the 180 day statute of limitations. Carriers will need to rebill, and shippers will need to protest original bills within 180 days.

• Carriers should engage in a review of their rate and rule tariffs with an eye toward simplification

• Shippers must continue to request both the rules tariffs and rate tariffs to obtain a complete rate picture. Trailer detention charges, inside delivery charges, and other services currently contained in rules tariffs may play a dramatic role in modifying a quoted mileage rate.

• Shippers able to generate a steady volume of traffic should consider negotiating new terms and rates with a selected group of carriers through a competitive bidding process. This may be coupled with a written contract setting forth each parties' rights and obligations, which will further allow quick adjustment or modification of basic rates only by way of a written amendment to the contract.

• Contract carriers are still required under the Negotiated Rates Act of 1993 to keep evidence of the written agreements and rates for at least one year.

Conclusion

Carriers and shippers need to become familiar with the provisions in order to implement appropriate changes within their companies. We can all expect further changes in the nature and extent of interstate regulation as the ICC undertakes a critical self-examination.

MEMBERSHIP APPLICATION

ADMINISTRATIVE LAW SECTION

Please aid your Section in its membership drive by forwarding this application to your colleagues.

I desire membership in the Administrative Law Section of the Virginia State Bar.

(NAME)

(FIRM)

(ADDRESS)

(CITY AND ZIP CODE)

Enclose a check payable to VSB for annual dues in the amount of $15.00. Mail to: Virginia State Bar, Administrative Law Section, Eighth & Main Building, 707 E. Main Street, Suite 1500, Richmond, VA 23219-0500

Virginia State Bar
Eighth & Main Building
707 East Main Street
Richmond, VA 23219-2803

Bulk Rate
U.S. Postage
PAID
Richmond, VA
Permit No. 709