

or economic to maintain partial operations of the railroads to carry the commodities essential to the national defense and the public health. I do wish that you would indicate to me just what you had in mind in your answer to question 4 when you stated that it appears likely that such partial operation would require legislation by the Congress for implementation.

Is it your thought in this connection that existing authority under the Interstate Commerce Act with the President in times of war or threatened war to establish priorities of movement of traffic is inadequate?

As you know, I just recently have written you in connection with the authorities that you do have or may have as a result of delegation from the President in this area of traffic priorities.

Sincerely yours,

HARLEY O. STAGGERS, *Chairman.*

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., May 26, 1967.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for your letters of May 10 and May 18, 1967, and for the opportunity to provide additional information with respect to the emergency transportation functions now lodged in the Department of Transportation. My testimony was, of course, directed toward those functions which would be relevant in the event of a nationwide railroad work stoppage, and not specifically to those which are designed to meet emergencies of other sorts.

You are entirely correct that the Office of Emergency Transportation (OET) has been transferred to this Department from the Department of Commerce. In the past, its responsibilities under Executive Order 10999 (February 16, 1962) have generally been construed to relate primarily to national defense emergencies arising out of enemy actions against this country proper rather than to emergencies arising out of a major disaster or strike. It should be noted that planning with respect to emergencies of the former sort is not readily applicable to emergencies such as a rail strike, in part because of the greater legal authority which could be made available in the former case, and in part because of the obvious factual differences.

In establishing the Department of Transportation the Congress has charged the Secretary with responsibility "to exercise leadership under the direction of the President in transportation matters, including those affecting the national defense *and those involving national or regional emergencies . . .*" (emphasis added). We have already initiated discussions within the Executive Branch looking toward developing orderly programs to carry out this portion of our responsibility.

In response to your inquiry concerning the Interstate Commerce Act, no specific authority has been transferred to the Secretary of Transportation to act in behalf of the President under Sections 1(15) and 6(8) of that Act to obtain preferences for defense traffic carried by rail. It should be noted, however, that both of these sections of the Act relate only to service by rail and would be effective in the event of a rail shutdown only with respect to whatever rail facilities remained in operation. "Partial" operation of railroads (dependent upon voluntary agreement of the carriers and the unions) to move "essential" goods is not feasible without additional legislation, in my opinion, since there is no authority under such a scheme to require shipment of materials which one or the other of the parties may regard as not essential and hence not within the scope of the agreement. Sections 1(15) and 6(8) of the Interstate Commerce Act do not provide authority to resolve disputes as to the scope of a voluntary agreement, nor to prevent either party from ceasing operations rather than carry materials which it does not regard as covered by the agreement.

I enclose, further to clarify the record, a memorandum (attachment A) from General Counsel on the Executive Branch's existing emergency transportation authorities.

I trust that this is fully responsive to your inquiry but, if I can be of further assistance, please do not hesitate to call on me.

Sincerely,

ALAN S. BOYD,
Secretary.