WATER CARRIER BULK COMMODITY EXEMPTION

TO REPEAL INLAND WATERWAYS CORPORATION ACT

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 5595

TO REPEAL SECTION 303(b) OF THE INTERSTATE COMMERCE ACT, AS AMENDED, RELATING TO THE WATER CARRIER BULK COMMODITY EXEMPTION, AND FOR OTHER PURPOSES

H.R. 9046

TO PERMIT THE APPLICATION OF THE BULK COMMODITY EXEMPTION WHEN OTHER COMMODITIES ARE CONCURRENTLY TRANSPORTED IN THE SAME VESSEL

H.R. 10542

TO REPEAL THE INLAND WATERWAYS CORPORATION ACT

MARCH 27, 28, 30; APRIL 10, 11, 1962

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WATER CARRIER BULK COMMODITY EXEMPTION

TO REPEAL INLAND WATERWAYS CORPORATION ACT

TUESDAY, MARCH 27, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 1334, New House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The committee will be in order, please.

Pursuant to notice of March 14, 1962, the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce is meeting this morning to begin hearings on three bills having to do with water carriers.

The first bill, H.R. 5595, was introduced by the chairman of the full committee, Hon. Oren Harris of Arkansas, at the request of the Interstate Commerce Commission, to give effect to the Commission's legislative recommendation No. 7 as set forth in its 74th annual report to the Congress. This bill would repeal section 303(b) of the Interstate Commerce Act relating to the water carrier bulk commodity exemption.

I shall not read the text of this section, but I shall simply insert it at this point in the record.

(The excerpt of sec. 303(b) of the Interstate Commerce Act, referred to above, follows herewith:)

> Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. This subsection shall not apply to transportation subject, at the time this part takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended.

Mr. WILLIAMS. The second bill, H.R. 9046, would amend section 303(b) to permit the application of the bulk commodity exemption when other commodities are transported concurrently in the same vessel.

The third bill, H.R. 10542, would repeal the Inland Waterways Corporation Act. And for the record, I shall insert a copy of the act at this point in connection with my remarks.

(The Inland Waterways Corporation Act of June 3, 1924, as amended, is as follows:)

ACT OF JUNE 3, 1924, AS AMENDED

CHAP. 243.—An Act To create the Inland Waterways Corporation for the purpose of carrying out the mandate and purpose of Congress as expressed in sections 201 and 500 of the Transportation Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of carrying on the operations of the Government-owned inland, canal, and coastwise waterways system to the point where the system can be transferred to private operation to the best advantage of the Government, of carrying out the mandates of Congress prescribed in section 201 of the Transportation Act, 1920, as amended, and of carrying out the policy enunciated by Congress in the first paragraph of section 500 of such Act, there is hereby created a corporation, in the District of Columbia, to be known as the Inland Waterways Corporation (hereinafter referred to as the "corporation"). The Secretary of Commerce shall be deemed to be the incorporator, and the incorporation shall be held effected upon the enactment of this Act. The Secretary of Commerce shall govern and direct the corporation in the exercise of the functions vested in it by this Act.

SEC. 2. The capital stock of the corporation shall be $15,000,000, all of which is hereby subscribed for by the United States. Such subscriptions shall be paid by the Secretray of the Treasury, within the appropriations therefor, upon call from time to time by the Secretary of Commerce. Upon any such payment a receipt therefor shall be issued by the corporation to the United States, and delivered to the Secretary of the Treasury, and shall be evidence of the stock ownership of the United States. There is hereby authorized to be appropriated the sum of $10,000,000, in addition to the $5,000,000 heretofore authorized, for the purpose of paying such subscription.

SEC. 3. (a) Until otherwise directed by Congress, the corporation shall continue the operation of the transportation and terminal facilities now being operated by or under the direction of the Secretary of Commerce under section 201 of the Transportation Act, 1920, as amended, and shall continue to operate the facilities now being operated or that may hereafter be operated by it under the provisions of this Act; and shall, as soon as there is an improved channel sufficient to permit the same, initiate and continue the water carriage heretofore authorized by law upon the Mississippi River above Saint Louis.

(b) When the improvement of any tributary or connecting waterway of the Mississippi River, not including the Ohio River, shall have been completed or advanced to the point where within two years thereafter there will have been substantially completed a sufficient and dependable channel for the safe operation of suitable barges and towboats thereon; and when the Chief of Engineers of the United States Army shall certify that fact to the Secretary of Commerce, the Secretary of Commerce shall thereupon cause a survey of such tributary or connecting waterway to be made for the purpose of ascertaining the amount of traffic, the terminal facilities, and the through routes and joint tariff arrangements with connecting carriers, that are or will, within such years, probably be available on such tributary or connecting waterway. As soon thereafter as such survey shall have been completed and a sufficient and dependable channel for the safe operation of suitable barges and towboats shall have been substantially completed, the Secretary of Commerce may, if he finds from such survey that water transportation can, in the public interest, be successfully operated on such tributary or connecting waterway, extend the service of the Inland Waterways Corporation thereon as soon as the corporation shall have suitable facilities available therefor.

(c) It is hereby declared to be the policy of Congress to continue the transportation services of the corporation until (1) there shall have been completed in the rivers where the corporation operates, navigable channels, as authorized by Congress, adequate for reasonably dependable and regular transportation service thereon; (2) terminal facilities shall have been provided on such rivers reasonably adequate for joint rail and water service; (3) there shall have been published and filed under the provisions of the Interstate Commerce Act, as amended, such joint tariffs with rail carriers as shall make generally available the privileges of joint rail and water transportation upon terms reasonably fair to both rail and water carriers; and (4) private persons, companies, or corpora-

tions engaged, or are ready and willing to engage, in common-carrier service on such rivers.

(d) When the Secretary of Commerce shall find that navigable channels and adequate terminals are substantially available as provided in paragraph (c) of this section, and when the Interstate Commerce Commission shall report to the Secretary of Commerce that joint tariffs with rail carriers have been published and filed as provided in said paragraph, the Secretary of Commerce is hereby authorized to lease for operation under private management, or to sell to private persons, companies, or corporations, the transportation facilities, or any unit thereof, belonging to the corporation: *Provided*, That for the purpose of this paragraph the facilities of the corporation on the Mississippi River and its tributaries shall be considered one unit, and those on the Warrior River and its tributaries as one unit: *Provided further*, That the facilities of the corporation shall not be sold or leased (1) to any carrier by rail or to any person or company directly or indirectly connected with any carrier by rail; or (2) to any person, company, or corporation who shall not give satisfactory assurance and agree, as part of the consideration for such sale or lease, that the facilities so sold or leased will be continued in the common-carrier service in a manner substantially similar to the service rendered by the corporation, together with ample security by bond or otherwise to insure the faithful performance of such agreement; or (3) until the same has been appraised and the fair value thereof ascertained and reported to the President by the Interstate Commerce Commission, and the sale or lease thereof has been approved by the President.

(e) (Repealed by sec. 320(e) of the Act of February 4, 1887, as added by the Act of September 18, 1940 (54 Stat. 950).)

(f) The operation of the transportation and terminal facilities under this Act shall be subject to the provisions of the Interstate Commerce Act, as amended, and to the provisions of the Shipping Act, 1916, as amended, in the same manner and to the same extent as if such facilities were privately owned and operated; and all vessels of the corporation operated and employed solely as merchant vessels shall be subject to all other laws, regulations, and liabilities governing merchant vessels.

SEC. 4. (a) The Secretary of Commerce shall appoint an Advisory Board of six members (hereinafter referred to as the "board") from individuals prominently identified with commercial or business interests in territory adjacent to the operations of the corporation. No member of the board shall be an officer, director, or employee of, or substantially interested in, any railroad corporation. Two of such members shall continue in office for terms of one year, and the remaining four for terms of two, three, four, and five years, respectively, from the date of appointment, the term of each to be designated by the Secretary of Commerce. Each successor shall be appointed by the Secretary of Commerce for a term of five years from the date of the expiration of the term of the member whom he succeeds, except that any successor appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed only for the unexpired term of the member whom he succeeds. A vacancy in the board shall not impair the powers of the remaining members to execute the functions of the board.

(b) The members shall receive no salary for their services on the board but, under regulations and in amounts prescribed by the Secretary of Commerce, may be paid by the corporation a reasonable per diem compensation for attending meetings of the board and for time spent on special service of the corporation, and their traveling expenses to and from such meetings, or when assigned to such special service.

(c) In addition to the six members, the Secretary of Commerce shall appoint an individual from civil life, or (notwithstanding section 1222 of the Revised Statutes[1] or any other provision of law, or any rules or regulations issued thereunder) detail an officer from the Military Establishment of the United States, as chairman of the board. Any officer so detailed shall, during his term of office as chairman, have the rank, pay, and allowances of a major general, United States Army, and shall be exempt from the operation of any provision of law, or any rules or regulations issued thereunder, which limits the length of such detail or compels him to perform duty with troops. Any individual appointed from civil life shall, during his term of office as chairman, receive a

[1] Section 1222 of the Revised Statutes was repealed, and its provisions are now set forth in sections 3544 and 8544 of title 10, United States Code.

salary not to exceed $10,000 a year to be fixed by the Secretary of Commerce.[2] The Secretary of Commerce may delegate to the chairman any of the functions vested in the Secretary by this Act.

(d) The board shall meet for organization purposes when and where called by the Secretary of Commerce, and thereafter at such times and places as the Secretary deems necessary. The board shall consider matters submitted to it by the Secretary of Commerce, and make recommendations thereon, and from time to time advise him and make recommendations, in respect of the management and operation of existing facilities, or the development and operation of new lines.

SEC. 5. The corporation—

(a) Shall have succession in its corporate name during its existence;

(b) May sue and be sued in its corporate name;

(c) May adopt a corporate seal, which shall be judicially noticed, and may alter it at pleasure;

(d) May make contracts;

(e) May acquire, hold, and dispose of property;

(f) May appoint, fix the compensation of, and remove such officers, employees, attorneys, and agents as are necessary for the transaction of the business of the corporation; define their duties, and require bonds of them, and fix the penalties thereof;

(g) May incur obligations, borrow money for temporary purposes, and issue notes or other evidences of inedbtedness therefor, but the aggregate amount of the indebtedness at any time shall not exceed 25 per centum of the value of the assets at such time;

(h) May exercise any of the functions vested in the Secretary of Commerce by sections 201 and 500 of the Transportation Act, 1920, as amended;

(i) May, in the exercise of such functions, conduct the business of a common carrier by water, and maintain, manage, and operate properties held for or used in the service of transportation, or necessary or convenient to such use; and

(j) In addition to the powers specifically granted, shall have such powers as may be necessary or incidental to fulfill the purposes of its creation.

SEC. 6. (a) The Secretary of Commerce shall transfer to the corporation all assets transferred to, or acquired, constructed, or operated by, or under the direction of, the Secretary of Commerce, or which revert to the United States, under section 201 of the Transportation Act, 1920, as amended, or under the joint resolution entitled "Joint resolution to exempt the New York State Barge Canal from the provisions of section 201 of the Transportation Act, 1920, and for other purposes," approved February 27, 1921.

(b) The rights, privileges, and powers, and the duties and liabilities, of the Secretary of Commerce, or the inland and coastwise waterways service, in respect of any contract, loan, lease, account, or other obligation, under section 201 of such Act, or under such joint resolution, shall become the rights, privileges and powers, and the duties and liabilities, respectively, of the corporation.

(c) All money available for expenditure or the making of loans under such joint resolution or section 201 of such Act, and all money repaid in pursuance of loans made under subdivision (c) of section 201 of such Act, shall be available for expenditure or the making of loans by the corporation under this Act.

(d) The enforcible claims of or against the Secretary of Commerce, or the inland and coastwise waterways service, in respect of the operation, construction, or acsquisition of any such transportation facilities, shall become the claims of or against, and may be enforced by or against, the corporation.

(e) The Secretary of Commerce shall adjust and appraise the value, at the time of transfer, of all assets transferred to the corporation under this Act, and such value shall be entered upon the books of the corporation.

(f) In the determination of the running of the statute of limitations or of any prescriptive right, the period of time shall be computed in the same manner as though this Act had not been passed.

SEC. 7. The Secretary of Commerce is authorized to extend the services and operations of the Inland Waterways Corporation to the Savannah River, under the same terms and conditions as are prescribed for the extension of such services and operations to any tributary or connecting waterway of the Mississippi River in section 3(b) of this Act, as amended by section 2 of the Act approved May 29, 1928 (45 Stat. 979).

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[2] Provisions of subsection (c) which limited the salary of the chairman to not more than $10,000 per year to be fixed by the Secretary of Commerce have been superseded.

Mr. WILLIAMS. The text of these bills will also be inserted in the record at this point, together with reports from agencies and executive departments of the Government.

(The bills and reports referred to above follow:)

[H.R. 5595, 87th Cong., 1st sess.]

A BILL To repeal section 303(b) of the Interstate Commerce Act, as amended, relating to the water-carrier bulk commodity exemption, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 303 of the Interstate Commerce Act, as amended (49 U.S.C. 903(b)), which relates to exempt water carrier transportation of bulk commodities, is hereby repealed.

SEC. 2. Subject to section 310 of the Interstate Commerce Act, if any person (or its predecessor in interest) was in bona fide operation on January 1, 1961, over any route or routes or between any ports in transportation in interstate or foreign commerce of property for compensation by water which becomes subject to the provisions of part III of that Act by reason of the repeal of subsection (b) of section 303 of that Act, as provided in section 1 of this Act, and such person has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on January 1, 1961, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which said applicant or its predecessor in interest had no control, the Interstate Commerce Commission shall without further proceedings issue a certificate or permit, as the type of operation many warrant, authorizing such operations as a common or contract carrier by water if application is made to the Commission as provided in part III of the Interstate Commerce Act and within one hundred and twenty days after the date on which this section takes effect. Pending the determination of such application, the continuance of such operation without a certificate or permit shall be lawful. Any carrier which on the date this section takes effect is engaged in an operation of the character specified in the foregoing provisions of this paragraph, but was not engaged in such operation on January 1, 1961, may under such regulations as the Interstate Commerce Commission shall prescribe, if application for a certificate or permit is made to the Commission within one hundred and twenty days after the date on which this section takes effect, continue such operation without a certificate or permit pending the determination of such application in accordance with the provisions of part III of the Interstate Commerce Act.

SEC. 3. Section 418 of the Interstate Commerce Act (49 U.S.C. 1018) is amended to read as follows:

"CARRIERS THE SERVICES OF WHICH FREIGHT FORWARDERS MAY UTILIZE

"SEC. 418. It shall be unlawful, except in the performance within terminal areas of transfer, collection, or delivery services, for freight forwarders to employ or utilize the instrumentalities or services of any carriers other than common carriers by railroad, motor vehicle, or water, subject to this Act; express companies subject to this Act; air carriers subject to the Federal Aviation Act of 1958; common carriers by motor vehicle engaged in transportation exempted under the provisions of section 203(b)(7a) of this Act; common carriers by motor vehicle exempted under the provisions of section 204(a)(4a) of this Act; the Alaska Railroad; common carriers by water operating between Alaskan ports, and between those ports and other ports in the United States; or common carriers by water operating between Hawaiian ports, and between those ports and other ports in the United States."

[H.R. 9046, 87th Cong., 1st sess.]

A BILL To permit the application of the bulk commodity exemption when other commodities are concurrently transported in the same vessel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303(b) of the Interstate Commerce Act (49 U.S.C. 903(b)) is amended by inserting after the second

sentence the following: "The transportation, subject to the provisions of this part, of commodities not in bulk, or commodities in bulk at rates lawfully filed, or both, shall not prevent the application of the provisions of this subsection to the concurrent transportation in the same vessel of commodities in bulk moving under the exemption provided in this subsection."

SEC. 2. The amendment made by this Act shall be effective only during the six months period beginning on the date of enactment of this Act, and only with respect to transportation on the Mississippi River system, and including the Ohio, Tennessee, and Missouri Rivers, Gulf Intracoastal Waterway, and all of their connecting, interconnecting, and tributary inland waterways.

[H.R. 10542, 87th Cong., 2d sess.]

A BILL To repeal the Inland Waterways Corporation Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Inland Waterways Corporation Act (49 U.S.C. 151–157) is hereby repealed.

THE SECRETARY OF COMMERCE,
Washington, D.C., March 27, 1962.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in reply to your request for the views of the Department of Commerce with respect to H.R. 10542, a bill to repeal the Inland Waterways Corporation Act.

The Inland Waterways Corporation, a Federal corporation in the Department of Commerce, pursuant to the statutory language which would be repealed by H.R. 10542, operated until 1953 the Federal Barge Lines, a comprehensive barge common carrier service on the Mississippi and Missouri Rivers, around the gulf, and up the Warrior River in Alabama since this responsibility was assigned to the Secretary of Commerce by Reorganization Plan No. II of 1939. This service, in accordance with the direction of the statute, was developmental in nature, and was inaugurated in an unincorporated form by the Department of War during World War I in an effort to augment other transportation facilities of the Nation in the prosecution of the war.

Sections 151 through 153 of title 49 of the U.S. Code, with their emphasis on common carrier service and the establishment of terminal facilities, make clear the developmental aspects of this operation. Section 153 authorized the Secretary of Commerce, upon the finding that described stages in the development of river transportation were achieved, to dispose of the facilities by lease or sale to private persons. These conditions having been accomplished, the facilities were disposed of in accordance with the statute on the 24th day of July 1953.

Your attention is invited to the provisions of section 153(d) containing the specific requirement that the purchaser of the facilities was to give satisfactory assurance and agree, as part of the consideration for such sale or lease, that the facilities so sold or leased would be continued in the common carrier service in a manner substantially similar to the service rendered by the Corporation, together with ample security by bond or otherwise to insure faithful performance of such an agreement. To carry out this provision, the contract of sale provided standards of performance with onerous penalties in the event of nonperformance. These standards, based on the operations by the Government, included a requirement of a stated number of trips over the various districts served by the Corporation and of continued less-than-bargeload carriage in a specified amount for the benefit of small shippers. There was general agreement that providing a bond as an assurance was not feasible because of the unique and unpredictable nature of the undertaking. The onerous penalties were made a part of the contract of sale to provide assurances of performance. This technique was deemed acceptable in light of the alternative "by bond or otherwise" provided by the statute.

It has been the position of the purchaser in recent years that the required conditions of this contract of sale no longer reflect changed conditions prevalent along the inland waterways served by the corporation. With respect to the two major requirements described above, it is contended that the increased size of tows made possible by the immensely larger propulsion vessels developed by the purchaser makes the trip requirements out of date. With respect to the less-than-bargeload carriage, a service which was costly and not self-supporting, the purchaser undertook immediately to increase this aspect of the business with the hope of bringing up the volume to the point where it would be profitable or at least self-supporting. Solicitors were hired to bring in this business. This operation was not successful, not, we are convinced, because of a lack of effort or expense on the part of the purchaser but rather because the business was simply not there. The less-than-bargeload carriage business has dropped off. The purchaser has, wisely, persuaded most of such shippers who still use the service to increase their use of the lines to the point of shipping in bargeload lots, which is beneficial to the shipper and the carrier.

Concern on the part of the purchaser, based on these alleged changing circumstances and their responsibility to continue services which these changes have outmoded, have caused the purchasers to consider carefully their liabilities under the contract. That contract foresightedly provided that changes in circumstances, on which the required performances set out in the contract are based, will provide an excuse from such performance, but it is perfectly clear that the burden of justifying such nonperformance to the satisfaction of the Secretary of Commerce rests on the purchaser. Because of this burden, the purchaser has asked the Secretary to consider amending the contract to reflect the changed circumstances in the areas served.

In view of the precise direction of the Congress in the statute considered above, the authority to amend the contract in this respect is questionable at best. The purchaser is directed to provide services similar to those provided by Government operation, and the Government operation prior to the sale can be the only basis for such standards of performance.

The contract provides that, if the Congress should through legislation grant relief with respect to the present requirement of law that the purchaser shall continue its common carrier service in a manner substantially similar to the service rendered while under Government ownership, the contract shall be deemed as modified to reflect such change. It is apparently the intention of the purchaser to effect the modification of the contract in this manner.

We concur in the appropriateness of seeking such a determination by the Congress. So long as the view of the Congress is that which is expressed in the present statutes, the requirements of the contract reflecting this view must in our opinion remain unchanged.

If it is the view of Congress that, because of changes in circumstances in the area served since the original enactment in 1924 of the law containing the conditions of required performance, the need for the services as set forth in the statutes no longer prevails, we believe that the Congress should modify the existing law. The extent of the modification might properly depend on the extent of the changed circumstances found by the Congress. In the unlikely event that the purchaser defaults under the present contract of sale, the responsibility remains under existing law for the Secretary of Commerce to step into the breach and continue the service as directed by the Congress. This possibility should also be taken into account by the Congress in its determination of the need for continuation of this service.

We understand that representatives of the purchaser of the Inland Waterways Corp. facilities will be at this hearing. Because of their day-to-day operations and contact with other carriers, we believe that they will be in a much better position than ourselves to advise this committee precisely concerning the changes in circumstances in this industry since the program was originally undertaken in the World War I era and even since 1953, when the facilities were purchased from the Secretary of Commerce.

In the event of enactment of a bill for the purpose of H.R. 10542, the present contract of sale would automatically be modified to a contract of sale without the present requirements of service measured by those provided by the Government prior to the sale. It would then be directed only to security for the payment of the balance of the purchase price, which at present is $5 million remaining from the original sale price of $9 million.

In the event a bill for the purpose of H.R. 10542 is enacted, it appears appropriate that it should include clearly a savings clause provision to assure that the obligation for the payment of the balance of the purchase price entered into with the Secretary of Commerce as governor of the Inland Waterways Corp. continues as an obligation thereafter running to the Secretary of Commerce or his assigns. There also remains an obligation of the corporation arising out of a sinking of a vessel. This item should also be provided for in the savings clause.

Subject, therefore, to our concern with respect to the addition of a savings clause in the event of enactment, the Department of Commerce would, in the event the Congress determines that a change in circumstances has taken place sufficient to warrant a decision that the need for the barge service by the Federal Government no longer exists, interpose no objection to enactment of such a proposal.

The provisions to be repealed by H.R. 10542 would do away with the corporation which would carry out the more general directions of section 141 of title 49 of the United States Code. Consideration should also be given to the continued utility of this latter provision in light of any decision here reached by this committee on the significance of changes in the area served.

Members of our staff are avalable to assist you in drafting a savings clause appropriate to the needs of the occasion in the event the committee decides to report out a bill for the purpose of H.R. 10542.

The Bureau of the Budget advises that there would be no objection to the transmission of this report from the standpoint of the administration's program.

Sincerely yours,

C. D. MARTIN, Jr.,
Acting Secretary of Commerce.

DEPARTMENT OF THE ARMY,
Washington, D.C., March 22, 1962.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense on H.R. 10542, 87th Congress, a bill to repeal the Inland Waterways Corporation Act. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The Inland Waterways Corporation was created by the act of June 3, 1924 (43 Stat. 360; 49 U.S.C. 151–157). This bill would repeal that act.

In 1939, the Inland Waterways Corporation was transferred from the (then) War Department to the Department of Commerce. The Government Corporation was sold to a private corporation in 1953. The Commerce Department presently exercises supervision over the performance by the private purchaser of the facilities in order to assure satisfactory service.

The Department of the Army defers to the Department of Commerce, as the Department having the primary interest in this matter, for an expression of views as to the merits of this proposed legislation.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

W. F. SCHAUB, *Acting Secretary of the Army.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 30, 1962.

HON. OREN HARRIS,
Chairman, Comittee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on H.R. 10542, a bill to repeal the Inland Waterways Corporation Act.

H.R. 10542 would totally repeal sections 151 to 157 of title 49 of the United States Code, while making no provision for orderly execution of the residual functions under the contract of sale to the Federal Barge Lines, Inc. Therefore, the Bureau of the Budget would oppose enactment of the bill in its present form.

The original contract of sale was signed in 1953. It is, therefore, reasonable to assume that material changes may have taken place in the operating procedures of the purchaser. The Bureau of the Budget is not opposed to the intent of the legislation to remove the requirements of the 1953 contract for specific numbers of trips to particular ports if it can be demonstrated that new operating procedures render these provisions unnecessary. It is understood that Federal Barge Lines Corp. will have the opportunity to present to the committee its position regarding the future status of its operation. With this testimony, the committee should be able to judge the best means for granting the highest degree of operating freedom to the purchaser, while still providing adequate safeguards for the public interest.

If a repeal of the corporation's basic authority is determined to be the best course of action, the Department of Commerce has suggested a number of provisions that should be placed in the bill to provide an orderly means for disposal of the remaining functions of the Inland Waterways Corporation. Such provisions would transfer to the Secretary of Commerce such of the authorities now vested by law in the Inland Waterways Corporation as are considered necessary for the effective execution of the terms of the contract and the protection of the Government's interests, such as: the right to sue and be sued, a provision to place the purchaser under the Interstate Commerce Act, and certain items which will allow orderly completion of certain administration functions. Upon the inclusion in the bill of provisions for protection of the Government's interest, the Bureau of the Budget would interpose no further objection to enactment of this legislation.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 28, 1961.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: Yesterday I received your letter dated March 20, 1961, enclosing copies of a bill, H.R. 5595, introduced by you to repeal section 303(b) of the Interstate Commerce Act as amended relating to the water-carrier bulk commodity exemption and for other purposes, and requesting a report and comments thereon.

This proposed measure would give effect to Legislative Recommendation No. 7 in the Commission's 74th annual report. Copies of the draft bill, together with a statement of justification therefor, were transmitted to you with my letter of February 24, 1961, requesting introduction. Additional copies of that transmittal are enclosed for convenience of reference.

Your assistance in introducing this proposed measure is very much appreciated.

Sincerely,

EVERETT HUTCHINSON,
Chairman.

RECOMMENDATION NO. 7

This proposed bill would give effect to Legislative Recommendation No. 7 of the Interstate Commerce Commission as set forth on page 187 of its 74th annual report to Congress as follows:

"We recommend that section 303(b) relating to the water-carrier bulk commodity exemption be repealed, but with provisions preserving the rights of those carriers presently engaged in such operations under the exemption."

JUSTIFICATION

The attached draft bill would enable the Interstate Commerce Commission to regulate domestic water transportation more effectively in the public interest by repealing the so-called bulk commodity exemption in section 303(b) of the Inter-

state Commerce Act. It would also provide "grandfather" rights for those carriers presently engaged in operations under the exemption.

Improved navigation facilities on the Nation's rivers have made them important water highways for low cost transportation of goods in commerce when speed in transit is not a controlling factor. New and improved methods of providing services are being introduced continuously, with a growing trend toward the utilization of vessels having higher cargo capacities and greater power. The size of barge-tows on inland waterways has also increased steadily. For example, on the Columbia River, where tows formerly consisted of 1 or 2 barges, tows comprised of 6 to 12 barges are not now uncommon. Barges are not only being built larger, but are also being designed and constructed to accommodate commodities requiring specialized handling, such as those requiring unusually high or low temperatures or specially lined tanks.

It is probably not generally realized, but, despite the substantial operations involved, domestic water transportation is for the most part exempt from economic regulation by the Interstate Commerce Commission. It has been estimated that only about 10 percent of the tonnage shipped by water in the domestic trade is subject to regulation. Private carriers are not subject to regulation by the Commission and should not become so unless shippers are to be deprived of the opportunity to transport for themselves. However, the many exemptions in the act leave the greater part of all domestic water transportation free from regulation. The most important of these is the bulk commodity exemption in section 303(b), under which the transportation of commodities in bulk by water carriers is exempt when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This exemption does not apply when nonexempt commodities are transported in the same vessel or tow as bulk commodities.

Bulk commodities transported in the domestic trade under this exemption consist mainly of grain and grain products, coal and coke, ore, sand, gravel, and stone, phosphate rock, salt, and sulfur. Such traffic also comprises a substantial portion of the tonnage handled by the regulated barge carriers. However, because these carriers seldom find it economically feasible to segregate tows, bulk and nonbulk commodities are moved together. Consequently, the bulk-exemption is not applicable and the regulated carrier must, among other things, adhere to its published tariff rates.

The unregulated carriers need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order to obtain the traffic. The regulated carriers, on the other hand, have no ready means of ascertaining the rates charged by the exempt carriers, since those carriers need not publish their rates. This, of course, places the regulated carriers at a distinct competitive disadvantage. A natural result of these conditions is instability of rates.

Further, it should be pointed out that rail and water rates, particularly in the case of inland waterways, are not separate but are intermingled in very complex, competitive relationships. This means that shippers and carriers lack a firm basis for resolving the differences which develop among them when one group of carriers is able to change its rates at will and vary them from shipper to shipper.

The public interest in stable, reasonable, and properly related rates cannot find expression in the complete absence of control of a large part of the bulk-carrying trade. Enactment of the proposed legislation would provide a means of correcting these undesirable conditions, and would also constitute an important step toward achieving broad equality of treatment of carriers of the various modes.

The proposed amendment to section 418 of the act would merely make that section conform to the other parts of the act by removing therefrom the reference to common carriers by water engaged in transportation exempted under section 303(b) of the act.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 20, 1962.

Hon. OREN HARRIS
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: Your letter of September 15, 1961, addressed to the Chairman of the Commission and requesting comments on a bill, H.R. 9046, introduced by you, to permit the application of the bulk commodity exemption

when other commodities are concurrently transported in the same vessel, has been referred to our committee on legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

Under the provisions of section 303(b) of the Interstate Commerce Act the transportation of commodities in bulk on domestic waterways is exempt from regulation when not more than three such commodities are being carried in the same vessel or tow. When more than three are carried, the exemption is lost completely and tariff rates have to be applied. Moreover, the Commission has held that the exemption is lost when nonbulk commodities are transported in the same vessel or tow with bulk commodities.

H.R. 9046 would, in general, amend section 303(b) so as to allow certain water carriers, for a period of 6 months following the date of its enactment, to combine nonexempt commodities with exempt bulk commodities without the latter losing their exempt status. The application of the proposed amendment would be confined to transportation performed on the Mississippi River system, including the Ohio, Tennessee, and Missouri Rivers, the Gulf Intracoastal Waterway and their connecting, interconnecting, and tributary inland waterways.

The amendments proposed in H.R. 9046 have probably arisen as a result of the Commission's decision in docket No. WC–5, *Mississippi Valley Barge Co. Exemption, Section 303(b)*, 311 I.C.C. 103 (decided Aug. 25, 1960), in which it was held, as previously noted, that exempt commodities could not be mixed with nonexempt commodities and still retain their exempt status. This decision, which is now before the courts on appeal, dealt with practices engaged in by less than 10 out of some 50 regulated carriers operating within the area covered by the bill.

The proposed measure would appear, however, to go beyond the practices dealt with in docket No. WC–5. The bill provides, among other things, that the transportation of "* * * commodities in bulk at rates lawfully filed * * * shall not prevent the application of the provisions of this subsection [303(b)] to the concurrent transportation in the same vessel of commodities in bulk moving under the exemption provided in this section." Apparently, this language would allow more than three bulk commodities to be transported in the same vessel without the complete loss of the exemption, that is, three bulk commodities would be exempt no matter how many were being carried at the same time.

It has been estimated that only about 10 percent of the tonnage shipped by water in the domestic trade is subject to regulation. Private carriers are not subject to regulation by the Commission and should not become so unless they are to be deprived of the opportunity to transport for themselves. However, the many exemptions in part III of the act, particularly section 303(b), leave the greater part of all domestic water transportation free from regulation.

Bulk commodities transported in the domestic trade under this exemption consist mainly of grain and grain products, coal and coke, ore, sand, gravel and stone, phosphate rock, salt, and sulphur. Such traffic also comprises a substantial portion of the tonnage handled by the regulated barge carriers. However, because these carriers seldom find it economically feasible to segregate tows, bulk and nonbulk commodities are moved together. Consequently, the bulk-exemption is not applicable and the regulated carrier must, among other things, adhere to its published tariff rates.

The unregulated carriers need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order to obtain the traffic. The regulated carriers, on the other hand, have no ready means of ascertaining the rates charged by the exempt carriers, since those carriers need not publish their rates. Thus, not only are the regulated carriers placed at a distinct competitive disadvantage, but, more importantly, these conditions give rise to instability of rates. The public interest in stable, reasonable, and properly regulated rates cannot find expression in the complete absence of control of a large part of the bulk carrying trade.

While we are aware of the concern that has been expressed by that segment of the transportation industry affected by the Commission's decision in docket No. WC–5, we feel that to amend section 303(b) as proposed in H.R. 9046, even for a period of 6 months (which, of course, could be extended by subsequent amendments), represents an expansion of the bulk commodity exemption and, thus, would be inconsistent with the Commission's views, as expressed in its annual reports to the Congress since 1958, that the exemption should be repealed in its entirety. Outright repeal would not only be tantamount to the relief sought, but it would also place the regulated carriers in a much stronger com-

petitive position. In addition, it should be pointed out that the problem of regulated carriers competing with unregulated carriers of bulk commodities is not limited to operations on the waterways covered by the bill. Regulated water carriers in other areas also compete with exempt bulk haulers on unequal terms.

It is our further view that if legislation of the nature proposed in H.R. 9046 is enacted, it might establish an undesirable precedent under which other groups would request similar legislation whenever the Commission issues a decision which they may consider to be adverse to their particular interests.

For the foregoing reasons we recommend against the enactment of H.R. 9046. Not only does it not get to the nub of the problem, but it would only serve to aggravate an already bad situation. We recommend, instead, that favorable consideration be given to the enactment of H.R. 5595, which provides for the outright repeal of section 303(b).

Respectfully submitted.

RUPERT L. MURPHY,
Chairman, Committee on Legislation.
HOWARD G. FREAS.
EVERETT HUTCHINSON.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 23, 1962.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN HARRIS: Your letter of March 7, 1962, addressed to the Chairman of the Commission and requesting comments on a bill, H.R. 10542, introduced by you, to repeal the Inland Waterways Corporation Act, has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

H.R. 10542 would repeal the act of June 3, 1924 (49 U.S.C. 151–157), under which the Inland Waterways Corporation was created to foster the development and use of domestic waterways through Government operation of transportation facilities thereon. In that act, the Congress provided, among other things, for the continued functioning of the Corporation until specified facilities and services were completed and made available to the public, and private persons engaged, or were ready and willing to engage, in common carrier service in the areas which it served. In addition, the Congress laid down certain conditions respecting the eventual sale of the Corporation's facilities, one of which required the vendee to agree to provide "common-carrier service in a manner substantially similar to the service rendered by the Corporation * * *."

Accordingly, when the Government withdrew from the barge business in 1953, the contract of sale required the purchaser, Federal Barge Lines, Inc., to continue to provide certain services. Included among these were the transportation of a specified minimum quantity of less-than-bargeload and less-than-carload shipments per year and the making, annually, of a specified minimum number of trips between certain named points. The contract provided that the purchaser could modify these requirements after June 1, 1973, with the consent of the Secretary of Commerce who, under the statute, was authorized to govern and direct the corporation in the exercise of its functions. Finally, it was further provided in the contract that: "Should Congress through legislation grant relief with respect to the present requirement of said law that the purchaser continue its common carrier service in a manner substantially similar to the service rendered by the corporation, the contract shall be deemed as modified to reflect such change." The terms and conditions of the contract were approved by the Commission, as required by section 5(2) of the Interstate Commerce Act, in *Federal Barge Lines, Inc., Purchase, Etc.*, 285 I.C.C. 439 (Dec. 3, 1953).

It is our understanding that the purpose of the proposed repeal is to relieve the Federal Barge Lines from the service requirements of the contract of sale, which are considered by that carrier to be obsolete and burdensome and which action, it believes, will place it in the same position as to service requirements as other competing barge lines.

In our opinion the repeal of the Inland Waterways Corporation Act would be in the public interest. At present, the Commission has no authority to permit the Federal Barge Lines to make any changes in its services which would be

contrary to the requirements of that act even though such changes may be desirable and otherwise lawful under the applicable provisions of part III of the Interstate Commerce Act. It should be pointed out in this connection, however, that since repeal of the Waterways Corporation Act would not change any of the statutes administered by this Commission, it is our view that the Federal Barge Lines would still have to make appropriate change in its published tariffs before it could discontinue any of the services now required by statute and the contract of sale and as reflected in the tariffs. Such changes would of course, be subject to protest, suspension, and investigation. Nevertheless, in order to avoid any uncertainty as to the intended effect of the bill, if enacted, it is our further view that it be made clear in the committee's report that such enactment is not intended to affect the authority of this Commission to require Federal Barge Lines to comply with the tariff filing provisions of part III in effectuating changes in service.

We also wish to point out that nearly $5 million remains to be paid under the 1953 contract of sale on or before June 30, 1964. A question arises as to who would be authorized to receive such unpaid balance on behalf of the Government if the Inland Waterways Corporation Act is repealed. The contract of sale states in article XXI that the word "Corporation" shall mean the Inland Waterways Corporation, the Department of Commerce, the United States of America, or such other governmental agency or officer having the "right to make this sale and to carry out the contract." Unless provision has already been made for the collection of the unpaid balance and for the enforcement of any surviving terms of the contract, we suggest that the bill be amended to provide the Secretary of Commerce with such authority.

Subject to the foregoing suggested changes, we favor the enactment of H.R. 10542.

Respectfully submitted.

RUPERT L. MURPHY,
Chairman, Committee on Legislation.
HOWARD G. FREAS.
EVERETT HUTCHINSON.

Mr. WILLIAMS. I might say that we have had so many requests for persons who desire to appear here in regard to this legislation that it has been necessary for us to break these hearings into two sections. We will hold one series of hearings this week, and then we will resume the hearings on April 10 and 11 in order to permit all of the interested parties to present their testimony.

Our first witness this morning is the Honorable Rupert Murphy, the Chairman of the Interstate Commerce Commission.

Mr. Murphy, we are delighted to have you back before the committee.

STATEMENT OF HON. RUPERT L. MURPHY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY ABE McGREGOR GOFF, COMMISSIONER; DIRECTOR VERNON BAKER, BUREAU OF FINANCE; DIRECTOR EDWARD MARGOLIN, BUREAU OF TRANSPORT ECONOMICS AND STATISTICS; DIRECTOR LFE R. NOWELL, BUREAU OF WATER CARRIERS AND FREIGHT FORWARDERS; ROBERT NEWEL, ASSISTANT DIRECTOR, BUREAU OF TRAFFIC; HIRAM H. SPICER, LEGISLATIVE COUNSEL; AND DALE W. HARDIN, CONGRESSIONAL LIAISON OFFICER

Mr. MURPHY. Thank you, Mr. Chairman, I am delighted to be back.

Before I read my statement, would it be in order if I gave you the names of those who are with me today?

Mr. WILLIAMS. Surely, we would like to have that.

Mr. MURPHY. I have Commissioner Goff, and Director Baker of the Bureau of Finance; Director Margolin, of the Bureau of Transport Economics and Statistics; Mr. Nowell, Director of the Bureau of Water Carriers; and Assistant Director Newel, of the Bureau of Traffic; and, of course, Mr. Spicer, legislative counsel, and Mr. Hardin, our liaison officer.

Mr. WILLIAMS. Thank you, sir.

Mr. MURPHY. Mr. Chairman, and members of the subcommittee, my name is Rupert L. Murphy. I am the present Chairman of the Interstate Commerce Commission and have served in that capacity since January 1 of this year. I am appearing today to present the Commission's views on H.R. 9046, H.R. 5595, and H.R. 10542. I will discuss these bills in that order.

H.R. 9046 would permit the application of the bulk commodity exemption when other commodities are concurrently transported in the same vessel. Under the present provision of section 303(b) of the Interstate Commerce Act, the transportation of commodities in bulk on domestic waterways is exempt from regulation when not more than three such commodities are being carried in the same vessel or tow. If more than three such commodities are carried, however, the exemption is lost completely and tariff rates must be applied. Also, the Commission has held the exemption to be lost if nonbulk commodities are transported in the same vessel or tow with bulk commodities.

Generally speaking, H.R. 9046 would amend section 303(b) so as to allow, for a period of 6 months after its enactment, certain water carriers to combine nonexempt commodities with exempt bulk commodities without the exempt bulk commodities losing their exempt status. The proposed amendment would be applicable only to transportation performed on the Mississippi River system, including the Ohio, Tennessee, and Missouri Rivers, the Gulf Intracoastal Waterway, and their connecting, interconnecting, and tributary inland waterways.

H.R. 9046 has no doubt arisen as a result of the Commission's decision in docket No. WC–5, *Mississippi Valley Barge Co. Exemption*, section 303(b), 311 I.C.C. 103, decided August 25, 1960. It was held in that case that exempt commodities could not be mixed with nonexempt commodities and still retain their exempt status. This decision, which is now before the courts on appeal, dealt with practices engaged in by what is probably a limited number of regulated carriers operating within the area covered by the bill.

This measure, however, appears to go beyond the practices dealt with in docket No. WC–5. The bill provides, among other things, that the transportation of—

> * * * commodities in bulk at rates lawfully filed * * * shall not prevent the application of the provisions of this subsection (303(b)) to the concurrent transportation in the same vessel of commodities in bulk moving under the exemption provided in this section.

This language would evidently allow more than three bulk commodities to be transported in the same vessel without the complete loss of the exemption. That is, three bulk commodities would be exempt no matter how many were being carried at the same time.

It has been estimated that only about 10 percent of the tonnage shipped by water in the domestic trade is subject to regulation. Private carriers are not subject to regulation by the Commission and should not become so unless they are to be deprived of the opportunity to transport for themselves. However, the many exemptions in part III of the act, particularly section 303(b), leave the greater part of all domestic water transportation free from regulation.

Bulk commodities transported in the domestic trade under this exemption consist mainly of grain and grain products, coal and coke, ore, sand, gravel and stone, phosphate rock, salt, and sulfur. This traffic also comprises a substantial portion of the tonnage handled by the regulated barge carriers. However, because these carriers seldom find it economically feasible to segregate tows, bulk and nonbulk commodities are moved together. Consequently, the bulk exemption is not applicable and the regulated carrier must, among other things, adhere to its published tariff rates.

The unregulated carriers need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order to obtain the traffic. The regulated carriers, on the other hand, have no ready means of ascertaining the rates charged by the exempt carriers, since those carriers are not required to publish their rates. Thus, not only are the regulated carriers placed at a distinct competitive disadvantage, but, more importantly, these conditions give rise to instability of rates. The public interest in stable, reasonable, and properly regulated rates cannot find expression in the complete absence of control of such a large part of the bulk carrying trade.

We are aware of the concern that has been expressed by the segment of the transportation industry affected by the Commission's decision in docket No. WC–5. Nevertheless, we feel that to amend section 303(b) as proposed in H.R. 9046, even for a period of 6 months, which, of course, could be extended by subsequent amendments, represents an expansion of the bulk commodity exemption, and, thus, would be inconsistent with the Commission's views, as expressed in its annual reports to the Congress since 1958, that the exemption should be repealed in its entirety. Outright repeal would not only be tantamount to the relief sought, but it would also place the regulated carriers in a much stronger competitive position. In addition, it should be pointed out that the problem of regulated carriers competing with unregulated carriers of bulk commodities is not limited to operations on the waterways covered by the bill. Regulated water carriers in other areas also compete with exempt bulk haulers on unequal terms.

It is our further view that, if legislation of the nature proposed in H.R. 9046 is enacted, it might establish an undesirable precedent under which other groups would request similar legislation whenever the Commission issues a decision which they may consider to be adverse to their particular interests.

For these reasons, we recommend against the enactment of H.R. 9046. Not only does it not get to the nub of the problem, but it would only serve to aggravate an already bad situation. We recommend, instead, that favorable consideration be given to the enactment of H.R. 5595, which provides for the outright repeal of section 303(b).

H.R. 5595 would also provide "grandfather" rights for those carriers presently engaged in operations under the exemption.

Improved navigation facilities on the Nation's rivers have made them important water highways for low-cost transportation of goods in commerce when speed in transit is not a controlling factor. New and improved methods of providing services are being introduced continuously, with a growing trend toward the utilization of vessels having higher cargo capacities and greater power. The size of barge tows on inland waterways has also increased steadily. For example, on the Columbia River, where tows formerly consisted of 1 or 2 barges, tows comprised of 6 to 12 barges are not now uncommon. Barges are not only being built larger, but are also being designed and constructed to accommodate commodities requiring specialized handling. I have in mind commodities such as those requiring unusually high or low temperatures, or those which require specially lined tanks.

It is probably not generally realized that, despite the substantial operations involved, domestic water transportation is, for the most part, exempt from economic regulation by the Interstate Commerce Commission.

Further, it should be pointed out that rail and water rates, particularly in the case of inland waterways, are not separate but are intermingled in very complex, competitive relationships. This means that shippers and carriers lack a firm basis for resolving the differences which develop among them when one group of carriers is able to change its rates at will and vary them from shipper to shipper.

Enactment of H.R. 5595 would provide a means of correcting these undesirable conditions, and would also constitute an important step toward achieving broad equality of treatment of carriers of various modes.

The proposed amendment to section 418 of the act would merely make that section conform to the other parts of the act by removing therefrom the reference to common carriers by water engaged in transportation exempted under section 303(b) of the act.

We urge the enactment of H.R. 5595.

H.R. 10542 would repeal the act of June 3, 1924, 49 U.S.C. 151–157, under which the Inland Waterways Corporation was created to foster the development and use of domestic waterways through Government operation of transportation facilities thereon. In that act, the Congress provided, among other things, for the continued functioning of the Corporation until specified facilities and services were completed and made available to the public, and private persons engaged, or were ready and willing to engage, in common-carrier service in the areas which it served. In addition, the Congress laid down certain conditions respecting the eventual sale of the Corporation's facilities, one of which required the vendee to agree to provide "common-carrier service in a manner substantially similar to the service rendered by the Corporation * * *."

Accordingly, when the Government withdrew from the barge business in 1953, the contract of sale required the purchaser, Federal Barge Lines, Inc., to continue to provide certain services. Included among these services were the transportation of a specified minimum quantity of less-than-bargeload and less-than-carload shipments per year and the making, annually, of a specified minimum number of trips be-

tween certain named points. The contract provided that the purchaser could modify these requirements after June 1, 1973, with the consent of the Secretary of Commerce who, under the statute, was authorized to govern and direct the Corporation in the exercise of its functions. Finally, the contract provided:

> Should Congress through legislation grant relief with respect to the present requirement of said law that the purchaser continue its common carrier service in a manner substantially similar to the service rendered by the Corporation, the contract shall be deemed as modified to reflect such change.

The terms and conditions of the contract were approved by the Commission, as required by section 5(2) of the Interstate Commerce Act, in Federal Barge Lines, Inc., Purchase, Etc., 285 I.C.C. 439, December 3, 1953.

It is our understanding that the purpose of the proposed repeal is to relieve the Federal Barge Lines from the service requirements of the contract of sale, which are considered by that carrier to be obsolete and burdensome and which action, it believes, will place it in the same position as to service requirements as other competing bargelines.

In our opinion, the repeal of the Inland Waterways Corporation Act would be in the public interest. At present, the Commission has no authority to permit the Federal Barge Lines to make any changes in its services which would be contrary to the requirements of that act. This is true even though such changes may be desirable and otherwise lawful under the applicable provisions of part III of the Interstate Commerce Act.

We wish to point out in this connection, however, that since repeal of the Waterways Corporation Act would not change any of the statutes administered by us, it is our view that the Federal Barge Lines would still have to make appropriate changes in its published tariffs before it could discontinue any of the services now required by both the statute and the contract of sale, as well as any such services that might be reflected in the tariffs. Such changes would, of course, be subject to protest, suspension, and investigation. Nevertheless, in order to avoid any uncertainty as to the intended effect of the bill, if enacted, it is our further view that it should be made clear in the committee's report that such enactment is not intended to affect the authority of the Commission to require Federal Barge Lines to comply with the tariff filing provisions of part III in effectuating changes in service.

We also wish to point out that nearly $5 million remains to be paid under the 1953 contract of sale on or before June 30, 1969. A question arises as to who would be authorized to receive such unpaid balance on behalf of the Government if the Inland Waterways Corporation Act is repealed. The contract of sale states in article XXI that the word "Corporation" shall mean the Inland Waterways Corporation, the Department of Commerce, the United States of America, or such other governmental agency or officer having the "right to make this sale and to carry out the contract." Unless provision has already been made for the collection of the unpaid balance and for the enforcement of any surviving terms of the contract, we suggest that the bill be amended to provide the Secretary of Commerce with such authority.

Subject to the changes I have suggested, the Commission favors the enactment of H.R. 10542.

Mr. Chairman, we appreciate this opportunity to appear and express our views on these bills. If there are any questions, I will do my best to answer them.

Mr. WILLIAMS. Thank you very much, Mr. Chairman. You have given us an excellent statement of the Commission's position with regard to these several bills.

There may be some questions.

Mr. Friedel?

Mr. FRIEDEL. No questions.

Mr. WILLIAMS. Mr. Devine?

Mr. DEVINE. I have no questions.

Mr. WILLIAMS. Mr. Chairman, as I understand it, section 303(b) is the so-called dry bulk commodities exemption section.

Mr. MURPHY. That is correct.

Mr. WILLIAMS. It exempts from regulation those shipments which contain dry bulk commodities unwrapped and unpackaged, and so forth, provided there are not more than three of these commodities being carried in a single tow or is it in a single barge?

Mr. MURPHY. It can be in a single vessel, or in a tow, Mr. Chairman.

Mr. WILLIAMS. In other words, if I am a barge operator and I am towing 20 barges, barge 1 contains sand, barge 2 contains gravel, and barge 3 contains coal, and the rest of the barges contain automobiles, then under that circumstance the coal, gravel, and sand would be subject to regulation, is that correct?

Mr. MURPHY. Yes, sir, it would be subject to regulation.

Mr. WILLIAMS. Now, as I understand it, H.R. 5595 would repeal the exemption and require that everything that they carry be regulated?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Whether it be dry bulk commodities or otherwise?

Mr. MURPHY. That is correct.

Mr. WILLIAMS. Does not section 303(d) provide for an exemption for carrying liquid bulk commodities?

Mr. MURPHY. This is directed primarily strictly at the dry bulk.

Mr. WILLIAMS. I understand it. But you made no recommendation on the carrying of liquid bulk commodities. Is there any reason for making the distinction between dry and liquid commodities in bulk?

Mr. MURPHY. I don't recall any, Mr. Chairman.

Mr. WILLIAMS. I say, you didn't make a recommendation on liquid commodities in bulk. I am not certain whether you did or not, you may have made a recommendation.

Mr. MURPHY. I don't believe we have. I don't recall any.

Mr. WILLIAMS. As far as the principle of the matter is concerned, it would be exactly the same, would it not, with respect to liquid and dry commodities in bulk.

Mr. MURPHY. There would possibly be some difference in it, Mr. Chairman, but I don't believe I could discuss that at any length right at this time without checking into it.

Mr. WILLIAMS. Now, on page 6 where you deal with H.R. 5595 we find this language in support of removing the exemption:

Barges are not only being built larger, but are also being designed and constructed to accommodate commodities requiring specialized handling.

By way of explanation you say this:

I have in mind commodities such as those requiring unusually high or low temperatures or those which require specially lined tanks.

Now, isn't that statement applicable solely and exclusively to liquid bulk commodities rather than dry bulk commodities?

Mr. MURPHY. It could apply to both, but I had in mind acids that could be in bulk.

Mr. WILLIAMS. Acids are liquid, are they not? Or do we have dry acids that require refrigeration or special handling?

Mr. MURPHY. I think you would have some that would require the lined barges.

Mr. WILLIAMS. You make reference to those barges dealing with commodities which require special handling as well as specially lined tanks. What commodities did you have in mind in that statement?

Mr. MURPHY. While I don't recall many such commodities, the reference there is principally to liquid commodities requiring temperature control, of which sulfur would be one.

Mr. WILLIAMS. Sulfur requires special handling?

Mr. MURPHY. Yes.

Mr. WILLIAMS. What type of handling does it require?

Mr. MURPHY. Heating, or temperature control.

Mr. WILLIAMS. Dry sulfur?

Mr. MURPHY. Mr. Nowell here will answer that.

Mr. NOWELL. That is a rather new technique in handling sulfur. It used to be that it was taken out of the mine and placed into lakes to dry until all the heat was gone. That would take several months before it could be scooped up and handled dry.

But in recent years they have developed a technique where they use heat or steam in the mining process and it is taken and loaded in that manner in a liquid form and transported up the river.

Mr. WILLIAMS. Well, that type of special handling is not caused or brought about by the necessity of handling it that way, but rather as a convenient means of shipping it.

Mr. NOWELL. Yes, sir. Because I think before it is used in papermills they have to heat it and liquefy it, anyway. So it is mined in that state and it is transported in that state, and it is used in that state.

Mr. WILLIAMS. I was in Port Sulphur, La., last fall where there is a tremendous sulfur mining operation, and I saw piles of sulfur, I suppose, 20 or 30 feet high which were awaiting shipment on barges.

Now, that was a dry sulfur. Is that the type of special handling that you refer to?

Mr. NOWELL. Not for heating, no; that is just dry, and it is handled like grain or something like that. And I believe it is handled in open barges.

But I would like to point out the difference between section 303(b) and 303(d).

Mr. WILLIAMS. I would like for somebody to clarify it.

Mr. NOWELL. Well, the great difference there is that section 303(d) dealing with liquid cargoes is unconditional, and it is exempt regardless of who handles it and what tow mixture it may be included in.

Mr. WILLIAMS. In other words, you could have 3 oil barges and 30 automobile barges, and the oil would still be exempt?

Mr. NOWELL. That is correct. So the regulated carriers can hold their own there, they are at no disadvantage, I don't believe.

Mr. WILLIAMS. With respect to this legislation, Mr. Chairman, the Commission is suggesting a different approach for dry bulk commodities than it does for liquid bulk commodities, in that it wants to regulate the dry bulk commodities as well as the other commodities carried by the tows.

Now, what is the difference in carrying 3 barges of oil and 10 barges of automobiles, on the one hand, and, on the other hand, carrying 3 barges of gravel and 10 barges of automobiles? Why couldn't the exemption apply to the gravel, as it apparently does from your explanation in the case of liquid bulk commodities? Why the distinction, in other words?

Mr. MURPHY. Well, Mr. Chairman, in answering that I would have to give my personal views as to the difficulty that the industry itself is running into; that is, the barge people are trying to compete with the dry bulk freight, which is predominantly the largest volume of traffic that they have available to move. I should point out, however, that section 303(b) is not limited to dry bulk commodities. It also applies to liquid commodities in bulk which do not come within the section 303(d) exemption.

I know of no complaints that we have had, either from the industry or the operators, respecting any difficulties encountered under the liquid bulk exemption in section 303(d).

It has been directed primarily at the dry bulk. And that comes not only from the regulated barge operators themselves but also from the railroads; that is, from other modes of transportation.

As I stated, I know of no serious complaint that we have had with respect to the liquid bulk exemption under paragraph (d) of section 303.

Mr. WILLIAMS. Let us take the case of salt, for instance. Under the suggested change in the law requested by the Commission—I don't know whether this would be economically feasible or not, but on the presumption that it would be economically feasible—let us take the case of salt, for instance. A shipper, under the Commission's proposal, who shipped dry bulk salt would have that shipment regulated, is that correct?

Mr. MURPHY. That is correct.

Mr. WILLIAMS. If that salt was processed into brine simply by mixing water with it, and if that were economically feasible, there would be a means of getting around the regulation, would it not, through the shipment of brine rather than salt?

Mr. MURPHY. Mr. Nowell will answer that.

Mr. NOWELL. I can't say for sure, because section 303(d) has a proviso in there that to be entitled to an exemption it must move in barges certified by the Secretary of Commerce under section 4417a of the Revised Statutes. And the certification usually runs to safety angles, explosives, and things like that.

Mr. WILLIAMS. We have not had much difficulty in getting a certification for a bargeful of brine.

Mr. NOWELL. That is not explosive. I wouldn't know whether the Coast Guard or the Secretary of Commerce would certify a barge under that provision for the movement of brine.

But that would have to be decided later, because with the 303(b) being so all-inclusive, we haven't had to do much interpreting on that particular point in 303(d).

Mr. WILLIAMS. I am having some difficulty in understanding why the Commission should consider the principle of the shipment of dry bulk commodities as being any different from the shipment of liquid bulk commodities.

Mr. MURPHY. Mr. Chairman, maybe I can clarify that somewhat. Section 303(b), which we recommend for repeal, is not confined to dry bulk commodities. It applies also to liquid bulk commodities which are not covered by section 303(d). I am afraid that some confusion has arisen on this point. In the specialized handling of bulk commodities under section 303(b), whether liquid or dry, the type of equipment that is used is of a more specialized type than you find in the ordinary tanker type of operation for the ordinary movement of liquid or the regular type of barge used in the ordinary movement of dry bulk commodities.

Mr. WILLIAMS. Isn't that the argument that you are using on page 6 of your statement to support your recommendation that exemptions be removed; namely, that certain dry bulk commodities require special handling and special types of equipment, and so forth? You use that argument.

Mr. MURPHY. Yes, I am speaking there of——

Mr. WILLIAMS. If I understand it correctly, you are using that very argument in support of maintaining an exemption for liquid commodities, and at the same time you are using it as an argument for removing the exemption for dry bulk commodities.

Mr. MURPHY. That is the way it sounds when you read it. And, of course, I have more in mind than just that when I speak of their being built larger to accommodate more cargo. There are other types of specialized handling that go in connection with the loading and unloading and storage problems with which you are confronted. I believe that we must keep in mind that section 303(b) applies to both dry bulk and liquid bulk commodities not falling within the section 303(d) exemption.

But, to me, I do see a difference in the two types of cargo for which the carriers are trying to compete. And I say again, we have had no real complaint or showing that the liquid commodity exemption in section 303(d) has given the regulated carries as difficult a problem on meeting competition as the dry bulk and liquid bulk commodity exemption in section 303(b).

Mr. WILLIAMS. Would the enactment of this bill, H.R. 5595, affect the movement of bulk commodities on the Great Lakes?

Mr. MURPHY. Yes; sir, except for contract carriers which, I think, come under paragraph (c).

Mr. WILLIAMS. I am not familiar with paragraph (c). What does that paragraph provide in general?

Mr. MURPHY. I think that refers to contract carriers that are operating in waters—pass through or operate in waters that are made international waters by treaty or other agreements.

Mr. WILLIAMS. Are they made international waters from shore to shore, or is there a line running down the middle of the lake that divides them?

Mr. MURPHY. I am not familiar with the treaties or agreements, Mr. Chairman. I just wouldn't be in a position to answer.

Mr. WILLIAMS. Let's take the example of a shipment from Cleveland to Erie, Pa.

Mr. MURPHY. I think perhaps, Mr. Chairman, I will have to say this, that I cannot express any views for the Commission, because we haven't interpreted—I don't recall any interpretation of this particular part of section 303—paragraph (c). I might read it into the record if you have no objection. It is short.

Mr. WILLIAMS. Let us read that into the record now. It simply says:

> Nothing in this part shall apply to transportation by a contract carrier by water of commodities in bulk in a nonoceangoing vessel on a normal voyage during which (1) the cargo space of such vessel is used for the carrying of not more than three such commodities, and (2) such vessel passes within or through waters which are made international for navigation purposes by any treaty to which the United States is a party.

The question, of course, arises as to whether these waters have been made international for navigation purposes, does it not?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Would that not be the controlling issue?

Mr. MURPHY. That would be it, as I read it, the determining factor.

Mr. WILLIAMS. But you are not prepared to answer the question as to whether it is or not?

Mr. MURPHY. No, we have not studied the question.

Mr. WILLIAMS. Now, as to H.R. 9046, let me ask this question: First, if I understand it correctly, H.R. 9046 makes the exemption apply to the commodity itself instead of to the tow or to the vessel, is that right?

Mr. MURPHY. If I understand your question, Mr. Chairman, the H.R. 9046 would exempt three commodities, bulk commodities, yes, sir, regardless of whether you had six commodities in the tow or you had other nonbulk commodities. There would be at least three that would be exempt.

Mr. WILLIAMS. Let us take the two examples I mentioned a few minutes ago. We had one barge of coal and one barge of sand and another barge of gravel, and then five barges of automobiles. Would the sand, gravel and coal under H.R. 9046 be exempted and the automobiles be regulated?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. The only difference in principle between the Commission's bill and H.R. 9046 is that the Commission's bill would provide that all of these commodities be regulated?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Since, then, the exemption which would be applied under H.R. 9046 would be directed to the bulk commodity itself rather than to the nature and character of the balance of the tow or the balance of the vessel?

Mr. MURPHY. That is correct.

Mr. WILLIAMS. And, of course, with the three commodity limitation.

Mr. Friedel has pointed out that on page 2 of your statement you say:

> The proposed amendment would be applicable only to transportation performed on the Mississippi River system, including the Ohio, Tennessee, and Missouri Rivers, the Gulf Intracoastal Waterway, and their connecting, interconnecting, and tributary inland waterways.

Let us take a shipment on the Warrior River in Alabama, which I understand runs into the Tombigbee somewhere down the line, and the Tombigbee, in turn, goes down to Mobile Bay. Would carriage on the Warrior River be affected by this bill?

Mr. MURPHY. No, I don't understand that it would.

Mr. WILLIAMS. Do you understand the purpose of limiting this bill to the transportation provided in those specific waterways? I understand this is not the Commission's bill, but I am asking for information.

Mr. MURPHY. In response to your previous question, Mr. Nowell advises that a movement on the Warrior and Tombigbee Rivers would be covered by the bill.

Mr. WILLIAMS. Shipments over what rivers would not be covered by this, for instance?

Mr. NOWELL. Well, the Hudson River or the Columbia River or Puget Sound, San Francisco Bay.

Mr. WILLIAMS. Do you know why that should be treated any differently? I understand the Commission is not suggesting this bill, but do you know the reason behind that, treating the Mississippi River system differently?

Mr. MURPHY. This is just my offhand opinion as to why the bill is restricted as it is. I think it is because of the Commission's decision in the WC–5 proceeding, which was a Mississippi Valley Barge Co. exemption proceeding. And I think that is the reason why the bill is restricted to the waterways system described therein. But that is an assumption on my part.

Mr. WILLIAMS. This is mentioned specifically in the bill itself.

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Perhaps that will be explained later.

Mr. MURPHY. That is described in section II of the bill. Perhaps some of the carrier witnesses can answer it.

Mr. WILLIAMS. Now, with respect to the third bill, H.R. 10542, that bill would simply repeal the Inland Waterways Corporation Act.

You have suggested certain amendments to require that the Federal Barge Lines continue such operations as they are now required to carry on. After the dissolution of the corporation, would this company have to have approval by the Commission before it can discontinue any of its operations, is that correct?

Mr. MURPHY. I would state it is a little different, Mr. Chairman.

What we are asking here is to make it specific, that if the Inland Waterways Corporation is dissolved, which would relieve Federal Barge Lines of the present provisions of the contract to provide certain types of less carload service, that it be clearly understood that in eliminating the type of services and tariff provisions that would be affected

by it that they would have to follow the provisions of the statute in making those changes. And I think you can see why that would be desirable, because the public should be given an opportunity to know what changes and services they are going to modify and eliminate as a result of it, so you can be sure they do not go beyond the relief that they are granted by such legislative action.

Mr. WILLIAMS. Mr. Friedel, do you have any questions?

Mr. FRIEDEL. As I understand it, you are in favor of 10542, if provisions are made for the payment of the $5 million in the terms of the contract?

Mr. MURPHY. That is one of the two suggestions we made, yes. We think there should be some provision made, if it hasn't already been done, to designate some Government agency to receive the money, and we suggest that it be the Department of Commerce.

Mr. FRIEDEL. Actually one provision is for the unpaid balance, setting up the Government agency to receive it is the purpose, is that correct?

Mr. MURPHY. What we had in mind there was designating someone who would have the responsibility of collecting and receiving the money.

Now, as to any change as to when it is due and payable, we didn't get into that feature of it.

Mr. FRIEDEL. In reference to H.R. 9046, the second paragraph, that the bulk amendment be applicable only to "transportation on the Mississippi River system, and including the Ohio, Tennessee, and Missouri rivers, Gulf Intracoastal Waterways, and all of their connecting, interconnecting and tributary inland waterways," my question is this: What effect would that have on the Chesapeake Bay?

Mr. Murphy. That would have none on the Chesapeake Bay.

Mr. FRIEDEL. They would not be exempt?

Mr. MURPHY. As I read the bill, they would not be relieved of the exempt bulk commodities ruling in WC–5 because they do not come within the described territory to be affected by the proposed legislation.

Mr. WILLIAMS. Mr. Chairman, as I understand it, the railroads do not have a dry bulk exemption, do they?

Mr. MURPHY. No, sir.

Mr. WILLIAMS. Everything that is carried by the railroads is subject to regulation, is that right?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. What about trucklines?

Mr. MURPHY. You would have some agricultural commodities that would be exempt.

Mr. WILLIAMS. Is there a dry bulk commodity exemption?

Mr. MURPHY. No, not as such.

Mr. WILLIAMS. Why is the distinction made between rail transportation and barge transportation with respect to dry bulk commodities?

Mr. MURPHY. Well, this dry bulk commodities as far as regulation by the Commission was put in part III of the act, I am not in a position——

Mr. WILLIAMS. You did not review the legislative history behind that?

Mr. MURPHY. No, I didn't review that sufficiently to discuss why that was put in.

Mr. WILLIAMS. I don't believe I have any more questions.

Any further questions?

(No response.)

Mr. WILLIAMS. Permit me to express the appreciation of the committee for your appearance here today.

As I stated at the outset, you have given us a very good picture of the Commission's position with regard to these several bills. Thank you very much.

Mr. MURPHY. Thank you. I may say that I feel a little embarrassed over not answering some of your questions, and on this section 303(c), may I assume that if you do wish the Commission to express any views on that that you will notify us?

Mr. WILLIAMS. I would appreciate it if you would submit a statement, perhaps, in writing, with respect to whether or not the Commission believes that the bill which they sponsored, H.R. 5595, would affect the transportation of dry bulk commodities on the Great Lakes.

Mr. MURPHY. Very well, sir.

(The statement submitted by Mr. Murphy follows:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., May 9, 1962.

Hon. JOHN BELL WILLIAMS,
Chairman, Transportation and Aeronautics Subcommittee, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR CHAIRMAN WILLIAMS: During the course of my testimony before your subcommittee on March 27 on H.R. 5595, H.R. 9046, and H.R. 10542, you requested that we "submit a statement * * * in writing * * * with respect to whether or not the Commission believes that the bill which they sponsored, H.R. 5595, would affect the transportation of dry bulk commodities on the Great Lakes."

H.R. 5595, which would repeal the bulk commodities exemption afforded by section 303(b) of the Interstate Commerce Act, was introduced at our request. Legislative recommendations to repeal section 303(b) were contained in our 74th and 75th annual reports to Congress. The direct answer to your question is that if H.R. 5595 is enacted, bulk commodities now being carried by water comomn carriers on the Great Lakes under the section 303(b) exemption would become subject to economic regulation under the provisions of the Interstate Commerce Act.

The exemption provided in section 303(c), to which you referred during the course of the hearing, applies only to contract carriers by water transporting commodities in bulk in non-ocean-going vessels on normal voyages during which the cargo space of such vessel is used to carry not more than three such commodities and the vessel passes within or through waters made international for navigation purposes by any treaty to which the United States is a party. In other words, the repeal of section 303(b) would bring common carriers by water of commodities in bulk operating on the Great Lakes under economic regulation, but would not bring those contract carriers by water described in section 303(c) under regulation.

When section 303 was being considered by the Congress in 1939, the Commission, at that time, was of the view that section 303(c) was unnecessary, and that section 303(b) was broad enough to include the exemption now contained in section 303(c). It appears that subsection (c) was dropped from the proposed bill at one point, but was again offered as an amendment during the debate on the floor of the Senate in 1939. The amendment was adopted despite Senator Wheeler's assurance that it was not necessary.

The legislative history of section 303(c) indicates the congressional intention that the exemption should be applicable to the Great Lakes. In House Report No. 1217, which relates to the measure that ultimately became the Transporta-

tion Act of 1940 and which was added as part III to the Interstate Commerce Act, it is stated, at page 21 thereof, as follows:

"Subsection (c) exempts transportation by a contract carrier by water of commodities in bulk in a non-ocean-going vessel on a normal voyage during which the cargo space of the vessel is used for carrying not more than three such commodities, and during which the vessel passes within or through waters which are made international for navigation purposes by any treaty to which the United States is a party. This will apply on the Great Lakes. If the contract carriers in question were regulated it would place them at an unfair advantage in their competition with unregulated Canadian vessels."

This background makes it clear that the congressional intent was to preserve the means by which domestic contract carriers were able to compete with unregulated Canadian vessels on the Great Lakes. That is, if the transportation of bulk commodities by domestic water contract carriers operating on the Great Lakes were subjected to regulation, such carriers would then be required to publish their rates. This would enable Canadian carriers to shave their rates to a point slightly below the rates of domestic contract carriers and thus place the Canadian carriers in a distinctly advantageous competitive position at the expense of the domestic contract carriers.

It appears, therefore, that the principle which the Congress, in its wisdom, recognized in the passage of the Transportation Act of 1940, has now become of considerable importance again. In other words, if section 303(b) is repealed with a result that exempt bulk commodities transported by water common carriers operating on the Great Lakes are brought under economic regulation, and bulk commodities transported by water contract carriers operating under the exemption in section 303(c) are not, water carriers transporting bulk commodities on the Great Lakes may, under the provisions of the act, perform service as both a regulated common carrier by water and an exempt contract carrier by water whichever is most advantageous to them under the circumstances. A water common carrier, operating solely in that capacity, would thus be at a distinct competitive disadvantage since he must publish his rates and thus enable water contract carriers to offer rates on the same traffic which can be changed at will.

The best solution, therefore, seems to be to repeal the bulk commodity exemption in section 303(b) but to except from economic regulation those water common carriers operating on the Great Lakes, and to retain the present exemption extended to water contract carriers as provided in section 303(c). This could be accomplished by repealing section 303(b) and by inserting into section 303(c) after the words "Nothing in this part shall apply to transportation by a" the following: "common or."

Sincerely,

RUPERT L. MURPHY, *Chairman.*

Mr. WILLIAMS. Thank you very much.

The next witness is Mr. Frank L. Barton, Deputy Under Secretary of Commerce for Transportation.

STATEMENT OF HON. FRANK L. BARTON, DEPUTY UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION

Mr. BARTON. We have a statement in the form of a letter, but with your permission I will summarize that statement. I believe I can do it in less time than if I read it in full.

(The letter referred to is the report of the Department of Commerce and appears on p. 6.)

Mr. BARTON. My name is Frank L. Barton. I am Deputy Under Secretary of Commerce for Transportation.

I appear here for the Department of Commerce with respect to H.R. 10542, which would repeal the Inland Waterways Corporation Act.

As you know, Mr. Chairman, the service rendered by the Federal bargelines of the Inland Waterways Corporation was originally started by the Secretary of War during World War I in an effort

to get material to the seacoast in order that it might be taken to Europe to aid the war effort. This was to avoid the railroad congestion that existed at that time.

In 1924 the Inland Waterways Corporation Act was passed that gave the responsibility for operating this service to the Secretary of War. The Inland Waterways Corporation was made a responsibility of the Secretary of Commerce by Reorganization Plan No. 2 of 1939. Under this law the Federal bargelines was operated as a common carrier barge service of a developmental nature on the Mississippi and Missouri Rivers, through the gulf, and up the Warrior River, until 1953. At that time, it was sold to the present owners in accordance with the act which provides that the facilities could be sold or leased to private interests upon the finding by the Secretary of Commerce that prescribed stages in the development of river transportation were achieved.

The contract of sale for the property in accordance with the law contained a requirement that the purchaser would continue to render service substantially similar to that rendered by the Corporation when under the supervision of the Secretary of Commerce.

Accordingly, the standards of performance contained in the contract provided for, (1) a stated number of trips over the various districts served by the Corporation; (2) continued less-than-bargeload service in a specified amount for the benefit of small shippers.

Onerous penalties in the form of liquidated damages as provided in the statute were made a part of the contract of the sale to assure performance. We find that the purchaser now takes the position that these required conditions do not fit circumstances now existing, specifically that larger towboats allowing larger tows make the number of trips required obsolete.

Further, the purchaser maintains that less-than-bargeload traffic has not developed, although the purchaser hired solicitors in an honest effort to obtain such traffic. Despite these efforts, less-than-bargeload traffic has decreased and has remained unprofitable.

The burden imposed by these conditions has caused the purchaser to consider his liabilities under the contract. However, because of the precise directions contained in the statute, the authority to amend the contract with respect to the service to be maintained is questionable at best.

The contract provides that if legislative relief is granted from the requirements, that the purchaser shall continue service substantially similar to that rendered under Government ownership, the contract shall be deemed as modified to reflect such change.

This bill proposes such a change.

The Department of Commerce concurs in the appropriateness of seeking such a determination by the Congress. If a change in circumstances is found to exist by the Congress upon the consideration of a showing made by the purchaser's representatives and the bill becomes law, the contract of sale would automatically be modified to a contract without the present service requirements, but would be directed only to security for payment of the $5 million remaining to be paid of the $9 million original sale price.

Because of their knowledge of day-to-day operations, we believe that the purchaser's representatives are well qualified to advise your committee with respect to the change of circumstance in the industry

either since 1924 when the act was originally passed, or in 1953, when the sale was consummated.

I should point out that in the unlikely event that the purchaser defaults under the present contract of sale, the responsibilities remain on the Secretary of Commerce to continue the barge service as directed by Congress.

In considering changed conditions since 1924, this possibility, in our opinion, should be taken into account by the Congress in its determination of the need for a continuation of this service.

In other words, do you want the Federal Government to stay in the barge business?

If a bill containing the purpose provided in H.R. 10542 is enacted, these suggestions are offered:

First, the bill should clearly include a savings clause to assure that the obligation for the payment of the balance of the purchase price continues as an obligation thereafter running to the Secretary of Commerce or his assigns.

Second, there remains an obligation of the Corporation arising out of the sinking of the towboat *Natchez*. This item should also be provided for in the savings clause.

Mr. WILLIAMS. What was that last one now?

Mr. BARTON. The towboat *Natchez* sank, and one of the widows brought suit. She wouldn't accept the compensation allowed but brought suit for additional liability. The case has been in the courts since that time. As I understand that it will probably be settled. That is an obligation of the purchaser, and we would like it to remain so.

Mr. WILLIAMS. I see.

Mr. BARTON. My third suggestion is with respect to the general directions of section 141 of title 49 of the United States Code, to maintained in section 141 would in the opinion of the Department of Comat repealing the specific directions contained in sections 151 to 157, inclusive, for establishing Inland Waterways Corporation, but the bill does not touch section 141. The repeal of the general direction contained in section 141 would in the opinion of the Department of Commerce be consistent with the purpose of H.R. 10542. In other words, the present bill takes out the requirement of specific action to establish the Inland Waterways Corporation but section 141 contains a general direction to go in this kind of business which the bill leaves untouched. We think they should be treated together.

To summarize, Mr. Chairman, subject to the suggestions offered with respect to the savings clause and possible repeal of section 141, the Department of Commerce offers no objection to the enactment of H.R. 10542 in the event Congress determines that a change in circumstances has occurred sufficient to warrant a decision that the need for barge service by the Federal Government no longer exists.

Mr. WILLIAMS. Would you care to comment on the suggestion of the Interstate Commerce Commission made by Mr. Murphy that the bill be amended so as to give the Commission control over the activities which were required under the contract before these activities could be discontinued or changed?

Mr. BARTON. In other words, they would remain subject to regulation under the Interstate Commerce Act.

Mr. WILLIAMS. The same requirements would continue to apply until a change will have been authorized by the Interstate Commerce Commission, as I understand the testimony.

Is that correct?

Mr. MURPHY. Our suggestion was that it be made not an amendment, Mr. Chairman, but it be made clear in the committee's report that if you do repeal the act, that it be made clear that they are to bring about such changes in the present tariff provisions and regulations that in so doing they comply with the present statutes of publication.

Mr. WILLIAMS. I see. Thank you.

Mr. BARTON. We would agree to that.

Mr. WILLIAMS. I do not believe I have any further questions.

I do not believe you are here to testify on the other two bills, are you, Mr. Barton?

Mr. BARTON. No, sir.

Mr. WILLIAMS. Thank you very much, Mr. Barton.

I believe that is all the witnesses that we have scheduled for this morning.

The committee will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 11:15 a.m., the committee recessed, to reconvene at 10 a.m., Wednesday, March 28, 1962.)

83168—62——3

WATER CARRIER BULK COMMODITY EXEMPTION

TO REPEAL INLAND WATERWAYS CORPORATION ACT

WEDNESDAY, MARCH 28, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 1334, New House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The committee will be in order, please.

This morning the Subcommitee on Transportation and Aeronautics will continue its hearings on three bills, affecting inland water transportation. Our first witness this morning is Capt. A. C. Ingersoll, president of the Federal Barge Lines.

I should like to state that Representative Hale Boggs has told me that he intended to be present at these hearings but was unavoidably detained. He endorses the statement of Captain Ingersoll.

You may proced, Captain.

STATEMENT OF A. C. INGERSOLL, JR., PRESIDENT, FEDERAL BARGE LINES, INC.

Mr. INGERSOLL. I am A. C. Ingersoll, Jr., president of the Federal Barge Lines, Inc., of St. Louis, Mo., a privately owned corporation operating transportation facilities purchased from the Inland Waterways Corporation in 1953.

I am appearing today in support of H.R. 10542, a bill to repeal the Inland Waterways Corporation Act (sec. 151–157, title 49, U.S.C.). It has been my pleasure to appear before this committee before, 12 or 14 years ago, in my then capacity as president of the Inland Waterways Corporation, urging that the money-losing Corporation be rehabilitated so that it could be put on a paying basis and made salable as a "going concern." That purpose has been accomplished; the Government's baregline has been sold as a "going concern"; it is a successful private enterprise, and now I am asking that the 1924 enabling act that set up the Inland Waterways Corporation be repealed so that the enterprise may continue to serve the public, pay its debts to the Government, and grow and prosper.

In my testimony I shall describe the purposes of the Inland Waterways Corporation Act, how those purposes have been accomplished, and why the act should be repealed.

As to the purpose of the Inland Waterways Corporation Act, at the time of World War I there was no water transport of any consequence on the inland rivers of the United States. With minor exceptions the great rivers of the Midwest were in their natural state; channels were shallow and undependable. The once-flourishing packet boat industry was dead; barge transporattion was just beginning to be developed in a primitive way on a small scale here and there around the Mississippi Valley.

The Congress had authorized a beginning of improvement of the navigation channels on the rivers, but private capital was slow to engage in barge transportation on the waters where the growth of railroad transportation had completely eliminated the packet boats.

Then the sudden surge of activity in World War I resulted in serious traffic congestion around the ports. As a measure to help alleviate this congestion the Railroad Administration, the Government agency then operating the Nation's railroads, acquired boats and barges wherever they could be found and instituted a water transportation service on the Mississippi and elsewhere.

This operation was so welcomed by the public in the Mississippi Valley that in the Transportation Act of 1920, which returned the railroads to private operation, provision was made, in section 201 (now sec. 141, title 49, U.S.C.) to continue the water line under the War Department.

In the 1920 act also in section 500 (now sec. 142, title 49, U.S.C.), it was—

> declared to be the policy of Congress to promote, encourage, and develop water transportation, service and facilities in connection with the commerce of the United States and to foster and preserve in full vigor both rail and water transportation.

The Government's barge operation, known officially as the Inland and Coastwise Waterways Service, but colloquially as the Federal Barge Line, continued as an arm of the War Department until 1924. During these years two things appeared: There was a growing public demand for barge service, but the inadequacy of channels and terminals put severe limitations on the operation. Also, as the barge operation grew in scope and complexity, the awkwardness of trying to conduct a business operation within the framework of a Government department became increasingly apparent.

So, in 1924, H.R. 8209 was introduced, to set up a Government corporation to carry on the barge operation. The committee report (No. 375 dated March 6, 1924) in recommending the bill, said:

> The Secretary of War, under a mandate of Congress, is now conducting the experiment, trying to demonstrate that when the channel of our rivers are made navigable, water transportation can be made profitable to private capital and beneficial to the people through the cheapened cost of transportation.

The report went on to say that the purpose of the bill was:

1. To carry on the mandate of Congress in section 500 of the Transportation Act of 1920.
2. To reorganize the enterprise on a practical business basis.
3. To continue the operation until it could be transferred to private ownership to the best advantage of the government.

The committee report also said:

If this bill becomes a law, the Government can and will within the next 5 years demonstrate not only the practicability of water transportation, but the great advantage and economy to shippers, and the profitable results that will reward private capital invested in transportation facilities on our rivers. And when that time comes, it is the judgment of the committee that the Government can dispose of its properties to private capital to an advantage, and withdraw entirely from such activities.

H.R. 8209, the Inland Waterways Corporation Act, was passed on June 3, 1924. It is now in sections 151–157, title 49, United States Code. In section 153(c) it was declared to be the policy of Congress to continue the operation until four objectives had been accomplished:

1. Adequate channels completed.
2. Adequate terminals provided.
3. Joint rail-water rates filed.
4. Private parties engaged in common carrier service on the rivers.

I would like to turn to accomplishment of the objectives of the corporation.

In 1924 the channels on the Mississippi and its tributaries were extremely undependable. A report to the chief executive of the enterprise in September 1923 describes the situation that prevailed on the Mississippi:

MEMPHIS, TENN., *September 23, 1923.*

Colonel ASHBURN,
Chief Inland and Coastwise Waterways Service,
Washington, D.C.:

We are in very great difficulty owing to channel. Our month's results are already blasted and we cannot escape showing a loss, as the present prospects are that we will not get any more tows into New Orleans before the end of the month, and we have only succeeded in getting through 18 barges thus far. *Iowa*, *Illinois*, and *Nokomis* have been struggling to get freight through from St. Louis to Cairo since the 18th and not a single barge has yet reached Cairo at this hour.

It is a constant succession of double tripping and pulling stranded barges off bars. *Baton Rouge* northbound passed *Helena* the night of the 19th. Grounded three of her barges at Shoofly, 60 miles below Memphis and after working 48 hours, was unable to either release them or find sufficient water to get them through. She finally worked three barges over and came through with these three as far as Finley Bar, 27 miles below Memphis, and grounded all three of these barges and she has not succeeded in getting them over at noon today.

No barge in any of the southbound tows draws over 6 feet 9 inches, and the channels in numerous places are impassable for tows of more than two barges: and at Shoofly barges drawing 6 feet had to be taken through singly. Our towboats drawing 8 feet have been repeatedly aground, but succeeded in dredging their way through. The river between St. Louis and Cairo and between Memphis and Helena represents the reaches giving us the most trouble. All difficulties have been reported to the engineers by wireless or telephone and advice of channel conditions also reported to the engineers by wireless or telephone and advice of channel conditions also reported to them as our masters found them. Engineers seem to be doing all their equipment is capable of, but our earnings are going to pieces nevertheless.

The Mississippi above Cairo was only seasonably navigable. The Illinois was only navigable for shallow draft vessels as far as LaSalle, Ill.; there was no water connection to Lake Michigan. On the upper Mississippi there was a channel only at intermittent time of high water. Shoal water was the prevailing condition on the Missouri, and commerical navigation there was impossible.

Since 1924 the lower Mississippi has been improved all the way from St. Louis to the Gulf of Mexico by channel regulation and bank stabilization so that more than a 9-foot channel is available most of the time.

Only for short periods of low water each year do a few shoal spots occur which require channel maintenance by dredging. A 9-foot channel is available the year round.

By a system of full-size locks and dams the Illinois waterway has been canalized to a 9-foot draft all the way from its confluence with the Mississippi up to the headwaters and across the height of land to Lake Michigan at Chicago.

Twenty-seven locks and dams have been built on the upper Mississippi providing a dependable 9-foot channel all the way to Minneapolis. On the Missouri River, the most undependable stream of all, by channel regulation and bank stabilization, and by regulation of the discharge of the river through a system of storage dams in the Dakotas and Montana, a dependable 6- to 7-foot channel is available to Kansas City and Omaha.

The Ohio River has been canalized with modern locks and dams to Pittsburgh; the Tennessee, Kanawha, and Monongahela for their entire lengths. A coastal canal has been put through from Northern Florida skirting the Gulf of Mexico all the way around through New Orleans and Galveston to Houston and the Mexican border.

In all, there are 6,000 miles of dependable connected 9-foot channels on the main waterways of the Mississippi River system.

As to development of terminals, in 1923 the Government bargeline handled traffic at only five ports on the Mississippi River: St. Louis, Cairo, Caruthersville, Memphis, and New Orleans; there was no service north of St. Louis. In 1960 Federal Barge Line handled freight to or from 88 ports on the Mississippi, Illinois, and Missouri Rivers. In 1941 a War Department survey listed 303 terminals where barges could be loaded or unloaded on the Mississippi, Illinois, and Missouri Rivers. By 1960 this number had increased to 593.

Publication of joint rail-barge rates was accomplished. By the early 1930's Federal Barge Line had in effect a system of joint rail-barge rates on most commodities reaching as far east as New York State and as far west as Colorado whereby shipments could be made partly by rail and partly by water where a reasonable length of water haul could be included in the route without undue circuity.

In 1924 Federal Barge Line was the only common carrier on the Mississippi River system; there are now 18. In 1953, according to the Army Engineers equipment register, 169 different companies on the Mississippi River system and Gulf Intracoastal Waterway operated 474 towboats of 500 horsepower or over. By 1961, 329 companies operated 801 towboats over 500 horsepower on these waters.

The mission of the Inland Waterways Corporation is completed. The task the Government undertook, to foster the development of water transportation by engaging in a pioneer operation, had been accomplished. Therefore, in accordance with section 153(d) (49 U.S.C.), the Secretary of Commerce found "navigable channels and terminals substantially available," and the ICC reported to the Secretary of Commerce "that joint tariffs with rail carriers [had] been published and filed."

Accordingly the Secretary of Commerce was authorized by section 153(d) to sell or lease the facilities of the Corporation, provided:

(1) It must not be sold to anyone directly or indirectly connected with a railroad;

(2) It must be continued "in common carrier service in a manner substantially similar to the service rendered by the Corporation"; and

(3) The facilities were appraised by the ICC and the "fair value" reported to the President.

Specifications were prepared and the public was asked to bid. The facilities were sold in July 1953 to the highest bidder, St. Louis Shipbuilding & Steel Co., for $9 million. (ICC, after appraisal, reported that the waterline operations had no commercial value, that the 18-mile rail line the Corporation owned in Alabama had a "fair value" of $2,900,000.)

Incidentally, I have here a copy of the contract of sale which I offer to the committee either for inclusion in the record, if you like, or just for reference of the committee staff.

Mr. WILLIAMS. We will accept it for our files, if that is satisfactory.

Mr. INGERSOLL. The $9 million purchase price was payable in 10 annual installments of around $400,000 each, plus interest at 3¾ percent on the unpaid balance, plus a final payment of $5 million due at the end of the 11th year.

The financing of new construction through commercial channels quickly developed that the $5 million final payment in a lump sum in the 11th year was a hindrance to commercial financing. Accordingly, after 5 years of payments had been made on the purchase price according to the above schedule (totaling $2 million) the payment schedule due of $7 million was renegotiated in October 1958 to provide for annual payments of about $625,000 per year for the following 11 years. The interest rate was increased to 4 percent for the first 6 years, and to 5 percent for the last 5 years of the new purchase contract.

Incidentally, that renegotiation only changed the terms of the payment of the money; that is, the amounts to be paid on the principal each year and the interest on the unpaid balance. No other changes were made in the terms of the contract at that time.

Payments have been made currently when due, including $2,284,140 of accrued interest to date. The balance due is now $5 million to be paid off by June 30, 1969.

Here I would like to call attention to the fact that Chairman Murphy's testimony yesterday said "1964," which was the date in the original contract. The Commission was apparently unaware of the renegotiation of the financial payout.

In addition to the ordinary provisions common to business contracts between the Government and private citizens, provisions were included in the sale contract to implement the requirement in the 1924 act that the purchaser agree to continue the facilities in common carrier service "in a manner substantially similar to the service rendered by the Corporation." These provisions consisted of stipulations as to the minimum number of trips that the operator was required to make over different sections of the river and the minimum amount of "less than bargeload" traffic handled.

At the same time, recognizing that "service" in the transportation industry is an ever-changing concept, reflecting changing patterns of competition and shipper practices and the effects of continuing technological progress, recognition was given in the contract that for these or other specified reasons the purchaser might in good faith be unable to fulfill these requirements.

This contract of sale has been in effect for nearly 9 years. Each year an annual report is submitted to the Secretary of Commerce reviewing the performance of the Federal Barge Line and relating such performance, where appropriate, to the service requirements in the contract of sale. These annual reports have been regularly accepted by the Secretary of Commerce.

Here, Mr. Chairman, I would like to offer to the committee a copy of our last annual report for the year 1960, again for such use as it might serve in your consideration of this bill.

The CHAIRMAN. That will be accepted for the file.

Mr. INGERSOLL. To the best of our knowledge and belief there has been not a single shipper complaint against the service rendered by the Federal Barge Line.

We understand there was a former investigation of the purchase and subsequent operation of the bargeline by the House Committee on Government Organizations; we understand that in the absence of any cause for complaint no report was made as a result of this investigation. In addition, the performance under the contract has been reviewed from time to time by the General Accounting Office.

Since the 1953 purchase of the facilities the new owner has invested up to the end of 1961 $14,645,000 in new equipment and reconstruction of old equipment. This money has all come from retained earnings and institutional financing secured by preferred ship mortgages on the new equipment. At the end of 1960 the depreciated book value of the equipment acquired from the Government was $5,515,294; the depreciated book value of new construction since the purchase from the Government was $7,854,451.

Less-than-bargeload quantities of freight handled by the Federal Barge Line reached a peak of 1,500,000 tons in 1938, when such tonnage constituted 54 percent of the traffic consist of the bargeline. The amount of less-than-bargeload traffic declined steadily thereafter during the remaining years of Government operation of the line to the level of 279,000 tons in 1953, when such traffic constituted 10 percent of the total. Since the sale of the bargeline the amount of traffic moving in separate less-than-bargeload consignments continued to decline year by year in spite of vigorous efforts to encourage the movement of such traffic by barge. In 1960 only 5,500 tons moved, but in 1961 the figure was down to 1,326 tons.

One of the principal reasons for the disappearance of less-than-bargeload freight from barge transportation has been the dramatic change in the cost per man-hour of direct stevedore labor. In 1932 longshoremen earning 30 cents an hour would handle 2½ tons of sugar per man-hour, or 12 cents direct labor per ton. In 1962 longshoremen earning $2.22 per hour handled 1¾ tons of sugar or about $1.27 direct labor per ton. This tenfold increase in the cost of stevedoring during a time when revenue remained constant rendered uneconomic the movement of small quantities of nonbulk freight requiring "touch" labor to load and unload the barge.

The rate schedules offering less-than-bargeload service to the shipping public are contained in 45 separate tariffs published by the Federal Barge Lines (not counting tariffs published by connecting rail carriers to which Federal Barge Lines is a party). These tariffs, which only moved 1,326 tons of freight last year, weighed 95 pounds

yesterday. The Commission has been lenient in not requiring us to update them as frequently as is the customary rule; conservatively estimated, it would cost $60,000 to update these tariffs today.

The common carriers on the rivers have been building bigger boats. Federal has built and operates the two most powerful towboats in the world, the *United States* and the *America*. With big boats handling big tows the frequency of trips would be drastically reduced except that the carriers have learned to offset this tendency toward an impairment of service by towing for each other. In these circumstances the trip requirements become meaningless. At the same time the purpose of trip requirements, to assure service to the public, has been made obsolete by greatly increased traffic density generally. For example, on the Missouri River between Kansas City and the mouth there were in 1953, 42 trips of commercial towboats; in 9 years this traffic density has increased sixfold to 254 trips in 1961, of which only a small fraction were performed by the Federal Barge Lines.

Competition has been steadily increasing in the transportation industry generally, both between railroads and the bargelines and within the bargeline industry. The most strenuous efforts on the part of all forms of transportation to reduce costs and increase efficiency have been necessary to maintain profitable operations.

Increasingly since 1953 there have been evidences in the public speeches of responsible Government officials, in the reports of various special study groups in the administration and the Congress, and particularly since the Transportation Act of 1958, of a changing emphasis in public policy on transportation, an increasing attention to cost as a criterion in determining inherent advantage, and in determining which mode of transportation in a rate controversy should be given preference.

Federal Barge Lines, looking back over the long years of its operation as a governmental and then as a private enterprise, can take pride in the spectacular coincidence that in 1923 its average ton-mile revenue was 3.31 mills per net ton-mile; in 1961, 38 years later it was still the same, having been as high at 3.82 in 1958 and as low as 3.26 in 1955.

Now I should like to turn to why the Inland Waterways Act should be repealed. The conditions in the contract of sale required by the provisions in the act make commercial financing difficult. These conditions constitute an uncertain burden as to the future requirement to perform unprofitable service. There is a question as to whether the Government's right to reenter the business in the event of default in the service requirements might not supersede the rights of a commercial lender in new equipment. There is uncertainty as to the preeminence of a preferred ship mortgage as security in this situation. The Government's lien on property acquired after the purchase of the bargeline impairs the purchaser's equity and makes further equity financing more difficult.

During the past 9 years the bargeline has progressed in its construction program on retained earnings. It is a closely held corporation. For the future there will be a need to spread the ownership and attract more equity capital. The special burdens borne by the Federal Barge Lines as compared to other common carrier bargelines impede equity financing as well as equipment financing.

The Inland Waterways Corporation Act is not needed any more. The public interest was protected by the Inland Waterways Corporation Act in 1924 in the narrow situation of the Federal Barge Lines. It is now protected as to all water carriers by the Interstate Commerce Commission, which was vested by the Transportation Act of 1940 with the authority and responsibility to regulate common carrier service by barge.

To protect the Government's equity, the Federal Barge Lines in today's highly competitive transportation industry needs equal access to the money market for replacement and growth without any extra burden of regulation.

The Inland Waterways Corporation Act was passed to help promote the revival of inland waterways transportation, particularly in the Mississippi Valley.

Due in no small measure to the pioneering work of the Inland Waterways Corporation, barge transportation has "come back to life" in the Mississippi Valley. Ton-miles of barge transportation on the Mississippi River system in 1923 were estimated by the Army Engineers at 3,710 million of which Federal handled 16.1 percent. By 1953, 30 years later, ton-miles had increased tenfold to 38,290 million, of which Federal handled 7.3 percent. In the next 7 years, to 1960, ton-miles increased another 60 percent to 62,367 million, of which Federal handled 4.2 percent.

The corporation's work is done. Its facilities have been sold and are being operated in common carrier service as a successful private enterprise.

The public interest is amply protected by the Interstate Commerce Act.

The provisions of the 1924 act are obsolete; they no longer serve a useful purpose, but instead act as a burden, impairing the ability of the Federal Barge Lines to meet its obligations to the Government, to provide common carrier service, and to grow with the needs of the country.

It should be repealed to enable the Secretary of Commerce to renegotiate the contract of sale on terms that will protect the interest of the Government, but will permit the purchaser to be competitive as a common carrier.

We so pray.

Thank you.

Mr. WILLIAMS. Captain Ingersoll, we compliment you on a very excellent statement, and particularly on going into detail and giving us the history of this whole proposition. Insofar as you know, is there any shipper opposition to this legislation?

Mr. INGERSOLL. No, sir, I have taken the trouble to bring this question before the interested shipper groups. It is my belief that this committee will receive formal communications from these shipper groups, but I think it would be appropriate to describe here the status of these discussions now.

The matter was put before the board of directors of the New Orleans Traffic and Transportation Bureau yesterday. That bureau wired to its congressional delegation urging support of this measure. It is my understanding that there will be a communication to this committee on the subject.

This matter was also brought to the attention of the Inland Waterways Committee of the National Industrial Traffic League. This committee, after considering the matter, recommended to the league that the National Industrial Traffic League support this bill. Whether the National Industrial Traffic League will be able to act on that committee recommendation in time to get in this record is not yet determined.

Mr. WILLIAMS. Do you know of any opposition to this within the industry itself?

Mr. INGERSOLL. I have never heard any opposition to this from any source. I have checked with all of our principal competitors. They all are agreeable.

Mr. WILLIAMS. One other question, Captain. Would you comment on the statement made yesterday by Chairman Murphy of the ICC when he said, "It is our view that the Federal Barge Lines would still have to make appropriate changes in its published tariffs before it could discontinue any of the services now required by statute and the contract of sale, as well as any such services that might be reflected in the tariffs"?

Mr. INGERSOLL. This is understood.

Mr. WILLIAMS. In other words, you don't take exception to that?

Mr. INGERSOLL. There is no problem there whatever. We publish tariffs and amend tariffs and cancel tariffs subject to the same rules as all other regulated carriers. We would continue to do so. This proposed change in the law would not have the least effect on the way the Interstate Commerce Act would control our operations.

Mr. WILLIAMS. Thank you, sir.

Mr. Friedel?

Mr. FRIEDEL. I have no questions. I want to compliment you on a very fine statement.

Mr. WILLIAMS. Thank you very much, sir.

Mr. INGERSOLL. Thank you, sir.

Mr. WILLIAMS. Mr. Myles Robinson, director of transportation and economics of the National Coal Association.

First let me ask Captain Ingersoll one further question.

Captain, I notice you restricted your testimony to this one bill.

Mr. INGERSOLL. Yes, sir.

Mr. WILLIAMS. Do you plan to present testimony either by yourself or some other representative of the Federal Barge Lines on the other two bills at a later date?

Mr. INGERSOLL. It is my understanding that representatives of the Common Carrier Conference of Domestic Water Carriers and the Inland Waterway Common Carrier Association will testify on the other two bills.

Mr. WILLIAMS. Thank you, sir.

STATEMENT OF MYLES E. ROBINSON, DIRECTOR, TRANSPORTATION AND ECONOMICS, NATIONAL COAL ASSOCIATION

Mr. ROBINSON. Thank you, Mr. Chairman.

My name is Myles E. Robinson. I am director, economics and transportation of the National Coal Association, with offices in the Coal Building, Washington, D.C. The National Coal Association is

a trade organization, whose owner, operator, and sales members account for two-thirds of the production of commercially mined and marketed bituminous coal in the United States.

Before speaking on the merits of H.R. 5595 and its relationship to the economic health and well-being of the economy in general and the bituminous coal industry in particular, I should point out that our association, by official action of its board of directors, has long been on record in opposition to the repeal of section 303(b) of the Interstate Commerce Act. The main reason for this opposition is the deep concern of our industry with any action, either governmental or private, which would cause further erosion in coal's markets, which have already borne the impact of changing consumer demands and increasing competition from other fuels, particularly from natural gas and imported residual oil. The industry, largely through mechanization of the mines, has actually succeeded in decreasing the cost of coal at the mine mouth in the postwar years. We feel that the repeal of section 303(b) would jeopardize both the industry's competitive position in the fuel market and the ability to maintain the cost-realization relationships necessary to keep the industry a viable and going concern.

Suppose we first examine the proposed repeal of the bulk commodity exemption for waterway operators in the light of its effect upon shippers generally. For both shippers and the general public, repeal of section 303(b) would destroy or lessen materially the value of favorable geographic location of industrial plants. Using the waterway network provided by the Ohio and Mississippi Rivers as an illustration, over the past two decades electric utilities, aluminum plants, steel mills, and a variety of industrial concerns have invested billions of dollars in plants and facilities along or near these waterways to take advantage of low-cost transportation. Price patterns have been set for goods and services, workers and whole communities have established their roots, and the entire regional economy has benefited. To repeal the bulk commodity exemption which has largely been responsible for this growth pattern would be to disrupt producer-distributor-consumer relationships and raise prices all along the line.

Transportation cost is a dominant factor in competitive pricing. Only through the advantages of low-cost transportation have many industries been able to maintain a small margin between total costs and revenues. In other words, repeal of section 303(b) could hardly fail to force some water carriers as well as the industries which they serve either out of business entirely or into other areas which are less price competitive. Many communities in Illinois, Indiana, Ohio, West Virginia, Kentucky, and elsewhere, place heavy dependence upon low-cost water transport.

Certain other results could be expected to flow from repeal of the exemption. First would be the increase in private transportation to escape regulation. The net effect of this, particularly coupled with higher transport costs, would be to diminish capacity available to the shipping public. Whether or not the remaining barge capacity would be adequate to handle bulk commodity needs in for-hire transportation would be doubtful.

Little has been said about the regulatory problems which would face the Commission with repeal. At present there is no machinery for such regulation. After repeal, regulatory machinery would be

cumbersome with long delays for rate approvals and adjustments. Meanwhile, water carriers which are not now under regulation would have lost their pricing flexibility.

Finally, the shippers are not requesting the change; nor are the major shipper organizations calling for repeal. In fact, the National Industrial Traffic League is opposing repeal and other transportation organizations within the past few years have taken the same position. The general public also is not claiming that repeal is a requisite for a sound transportation system.

While the bituminous coal industry has interests which are generally the same as those applicable to the shipper and the public, there are many sound reasons why the coal industry itself is deeply concerned with the possibilities flowing out of repeal of the exemption. Most important is the matter of preserving present coal markets from erosion and expanding these wherever possible. At the close of World War II, the railway market for fuel and the domestic market together consumed 39 percent of total U.S. bituminous coal production. With the railroads dieselized and with the domestic market losing heavily to natural gas and heating oil, the coal industry had to develop new markets or face a severe shrinkage in overall consumption.

To take the place of the lost and diminished markets referred to above, the industry looks hopefully to the market potential of the electric utilities. In 1946, of total U.S. consumption of bituminous coal, electric utilities accounted for slightly less than 13 percent, but today this is running around 45 percent. Authorities see the utility market for bituminous coal as an increasingly dominant market in the years ahead. With constant pressure from consumers, regulatory bodies, and others to keep costs as low as is consistent with good service, the electric utilities are experimenting with mine-mouth generation and with waterborne coal and even coal transported by pipeline in the form of slurry, a mixture of coal and water.

The facts are, however, that "dump" natural gas and foreign residual oil are strong and sometimes unfair competitors for the utility fuel market. That this market is still heavily serviced with coal is due, in large part, to the availability of low-cost transportation. For example, in the central industrial Midwest, coal thus far dominates the utility fuel market. With the constant competitive pressures from existing natural gas distributors and the early availability of Canadian natural gas in this area, the bituminous coal industry, now furnishing more than 95 percent of fuel needs for the utility industry, will be confronted by increasing competition. The maintenance of the transportation cost line at or near its present level is imperative, if the coal industry is to maintain its ability to meet its share of the Nation's growing fuel needs.

The problem of maintaining a healthy coal industry by meeting competition for markets for other fuels is, of course, not confined to any one geographical section. Residual oil competition in the Middle Atlantic area, where imported supply has been undercutting coal prices with little regard to cost, is representative of the competitive pressures which the coal industry must face. In the New York Harbor area, the railroads and coal operators have cooperated to maintain delivered price to utility consumers at a point competitive with other fuels. Other instances exist where railroad cooperation has been very helpful in

maintaining coal markets and making it possible for consumers to benefit from this efficient and economical fuel.

I might point out as an illustration of some of the problems we meet: A short time ago in the harbor of Rio de Janeiro, a Russian tanker of heavy oil appeared and sold its oil at 25 cents a barrel less than Venezuelan oil from nearby. The Russians were asked how much lower they would go. The answer was, "As low as necessary to get the business."

To maintain an efficient, modern transportation network, the United States must have a strong inland water carrier system capable of flexibility in ratemaking. To sharply curtail this flexibility by repealing section 303(b) would be to seriously weaken the ability of this segment of the industry to meet the distribution needs of the Nation. According to statistics prepared by the Army Corps of Engineers, barge traffic of nonmetallic minerals on the internal waterway system in 1958 was 193.4 million tons, or 81.4 percent of total traffic. For the same period, 48.8 percent of total rail tonnage handled was products of mines.

Coal, trafficwise, is vitally important to barge operations. In 1960, for example, regulated water carriers on the Mississippi River system moved 25.2 million tons of coal. Total bulk shipments were 33 million tons for the same period. In other words, 76.4 percent of the total bulk commodity shipments of the regulated water carriers was represented by coal.

The point being made is that bulk shipments are vital to barge operators and their main source of income. Both because of the fairly low profit margins of the shipments they handle and the low value of these items generally, bargelines do not have the same opportunity to base charges on what the traffic will bear as their competitors.

Bulk commodity exemption, as provided in the Interstate Commerce Act, was not entered into hastily. The House report (No. 1217, dated July 18, 1939) pointed out that:

> Very painstaking consideration was given to the working out of these exemptions. Every effort was made to avoid imposing unnecessary regulation upon carriers of this type which have never before been regulated, and at the same time to insure that the exemptions would not result in regulated carriers being subjected to unfair competitive disadvantages.

Finally, we are well aware of the claim that common carriers by water are losing out to nonregulated carriers. Back in 1955 when this subject was first in issue, the Army Corps of Engineers' own statistics showed that some 8 percent of the total domestic water traffic moved by waterway common carriers. In 1960, according to the ICC, some 10 percent moved in this category. Even allowing for a difference in the way the figures are calculated, it is difficult to accept the contention that the waterway common carrier is at a competitive disadvantage.

In summary, the National Coal Association wishes to be on record with the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce as being strongly opposed to the enactment of H.R. 5595 or similar legislation. We respectfully request that this statement be made a part of the record of the hearings before this subcommittee with respect to H.R. 5595.

We appreciate the opportunity to appear before this subcommittee.

Mr. WILLIAMS. Thank you, Mr. Robinson.

I notice that you made no mention of another bill that is before this committee which deals with this same subject.

Mr. ROBINSON. Yes. We have no position on that at all.

Mr. WILLIAMS. That broadens the exemption.

Mr. ROBINSON. That is right.

Mr. WILLIAMS. You have no position on that?

Mr. ROBINSON. We have no position on that at all. We have not even taken it up.

Mr. WILLIAMS. Thank you very much, Mr. Robinson.

Mr. ROBINSON. Thank you, sir.

Mr. WILLIAMS. Mr. Matt Triggs, representing the American Farm Bureau Federation.

STATEMENT OF MATT TRIGGS, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. Thank you, Mr. Chairman. We have a brief statement which has been distributed to you. I think the best way for me to proceed would be to read it.

The opportunity of presenting the views of the American Farm Bureau Federation with respect to H.R. 5595 is sincerely appreciated.

Farm Bureau is an organization of 1,600,000 farm families, voluntary members of 2,674 county farm bureaus in 49 States and Puerto Rico.

The interest of farmers in this issue is based on the volume of grain, fertilizer, and other bulk commodities shipped by inland water carriers. In many cases these products are handled and shipped by farmer cooperatives. But farmers have essentially the same interest in shipments by other commercial concerns.

For a number of years the American Farm Bureau Federation has supported the basis principle that regulation of transportation should be limited to those instances in which regulation is clearly in the public interest. There are, of course, varying views as to what the public interest may be. It is our view that the exemption of inland waterway transportation from economic regulation now provided in section 303(b) of the Interstate Commerce Act is in the public interest for the reasons set forth below.

1. Regulated rates are likely to be higher than unregulated rates. There is at least a tendency for industry rate bureaus and regulatory authorities to fix rates at levels designed to protect the less efficient and thus to deny the public the advantages of free and open competition. We are not arguing for substandard water rates. But we do assert that the manner in which regulated rates are established, and the restrictions imposed by economic regulation involve costs and inefficiencies, which operate to increase regulated rates.

2. The enactment of H.R. 5595 would substantially reduce the shipper's freedom to choose among carriers. At the present time shippers may call upon any of the many carriers operating on a river system for transportation service. The competition among such carriers for business gives assurance they will seek to provide the best, fastest, and most economic service the circumstance will permit. The

elimination of the exemption would limit the number of potential carriers competing for any particular traffic movement. Shippers would be limited to the particular carrier or carriers with an operating right to transport a particular commodity from one specified point to another, even though such carriers may be or may become inefficient or lack interest in providing that particular service.

3. Classification of carriers creates inefficiencies. The bill would require each "for hire" operator to become either a contract or a common carrier, whether by its own option or by Commission action. At the present time the operation of many carriers may involve a combination of these two types of service. Private carriers too may provide for-hire service to other shippers that may be similar to that provided by contract or common carriers. To provide that all carriers shall now be classified into one of three groups, each with a specified limited authority, constitutes a regulatory restriction of efficiency of operations with respect to which little public purpose is served.

4. The proposed limitation on operating rights involves inefficiencies. We are not certain we understand the kind of operating rights that present unregulated carriers would be granted under the bill. However, it appears that operating rights would be limited to specific point to point service comparable to that actually provided by the carrier on January 1, 1961, and thereafter. A carrier would apparently be prohibited from providing other point to point service even though it's ready, willing, and able to provide such service and even if it would enhance the efficiency and economy of its operation to do so. Apparently the limitation on operating rights would run to commodities as well, providing a further restriction on freedom of operations. We see no public purpose to be served by so limiting the flexibility of operations of presently exempt carriers. In fact, the inefficiencies incident to such limitation on service would be reflected in necessarily higher rates.

5. The elimination of the exemption would discriminate against small shippers. If the exemption were eliminated, the largest shippers now engaged in private carriage would continue to do so. Perhaps other large shippers would enter into private carriage if they decided this was in their interest. This protection is not in most cases economically feasible for small shippers. The interest of small shippers would therefore be adversely affected by the enactment of H.R. 5595.

6. The reasons the exemption was originally provided are still applicable. A review of the legislative history of section 303(b) evidences the careful and extended consideration given to this issue at the time part III of the act was approved in 1940, and on various occasions since then. The exemption was not happenchance but was adopted for carefully considered reasons.

It was based on the principle that competition in transportation on waterways was to be free and remain free except to the extent that the public interest necessitated legislation. The exemption has been carefully considered by House and Senate Commerce Committees on various occasions since 1940. We believe that the original reasons the exemption was adopted and maintained are still applicable.

7. Experience with the exemption has been satisfactory. Experience with the exemption since the enactment of the Transportation Act of 1940 indicates it has worked out satisfactorily. It is favored by most inland waterway carriers and by virtually all shippers. We see no adequate justification for disturbing a situation which has worked out so satisfactorily.

8. The elimination of the exemption would not benefit the railroads. It appears that at least some of the interest in reconsideration of this issue stems from concern with respect to the critical economic status of the country's railroads. We share that concern. We believe that action is needed to improve the economic position of railroads and will support a variety of measures having this purpose. But we do not believe the elimination of the bulk exemption for water carriage is a desirable means of helping with the railroads' problem nor that such elimination would in fact have any discernible effect on the earnings of railroads.

If H.R. 5595 were enacted, all of the present inland waterway carriers would continue to operate either as private carriers or as contract carriers or as common carriers. While some inefficiencies and additional costs would be involved in this changeover, it does not seem likely that the extent and scope of water carrier competition would be a whole lot different than it is now. It does not seem likely that any significant portion of the traffic now handled by barges would be diverted to railroads as a result of the elimination of the exemption.

9. The argument for equality of regulation is not valid in this situation. The conditions and circumstances under which transportation is performed by different modes of transportation are such that identical regulation is not necessary or desirable to accomplish equity between modes. Another equally important principle must be considered, that regulation should be extended only where clearly necessary in the public interest. We believe the railroads have a legitimate complaint in this area, but the answer to their complaint is not the elimination of the waterways exemption, but rather a greater flexibility in rail ratemaking.

10. The argument that the regulated water common carriers suffer from the unfair competition of unregulated carriers is without merit. The regulated carriers who engage in hauling bulk commodities are exempt from regulation while so engaged in exactly the same manner as non-common carriers. They enjoy the same exemption under the same circumstances. There is nothing unfair or discriminatory about this situation. However, we do not object to broadening the exemption so that it is applicable to bulk commodities under all circumstances, i.e., irrespective of other cargo in the tow or barge.

It seems to us that the basic issue can be briefly stated thus: If regulation is to be extended to any transportation segment, the burden of proof that such regulation is needed in the public interest is on those who propose to extend regulation. We do not see that any substantial case has been made by those who propose to extend economic regulations to all inland waterway carriage.

Mr. WILLIAMS. Thank you, Mr. Triggs.

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Are there any questions? If not, Mr. Triggs, I would like to ask one or two questions. In paragraph 9 where you discuss the question of equality of regulation, you state:

> We believe the railroads have a legitimate complaint in this area, but the answer to their complaint is not the elimination of waterways exemption but rather a greater flexibility in rail ratemaking.

Would you advocate also the provision by statute of a dry bulk commodity exemption for railroad carriers?

Mr. TRIGGS. Comparable to what the water common carriers have?

Mr. WILLIAMS. In other words, would you advocate for them exactly what the water carriers have in this regard?

Mr. TRIGGS. We do favor a more flexible rate policy for railroads. We have not specifically recommended exact complete identical exemption from rate regulation of agricultural bulk products handled by rail, partially because we don't understand what this would mean in practice, and railroads have not made any effort to explain it.

We would like to have some answers to these kinds of questions. If we got answers, we might be in full support of this proposal. Does the proposal mean that the railroad rate bureaus would fix rates without being subject to ICC suspension, or does it mean that each originating railroad would determine rates which it would change as it chose, or does it mean that the railroads would bargain with each shipper with respect to each such shipment, or what does it mean in practice? What does discrimination mean if such a proposal were enacted? Would discriminatory rates continue to be unlawful and how do you determine what is discriminatory in a ratemaking pattern such as this? What is the significance of the Reed-Bulwinkle Act if rate regulation is to be eliminated? What does this proposal mean with respect to such things as demurrage and division of rates, and all the other things that are involved in railroad transportation? What protection would be provided shippers in those remaining traffic situations where the railroads still have a quasi-monopoly position? There are not many, but there are some very important ones. These are some of the questions that we would very much like to understand the answers to.

Mr. WILLIAMS. Might not those very same questions be directed toward barge line operations?

Mr. TRIGGS. Yes. I think those very same questions could well be asked in connection with the barge exemption. But I think there are some conditions of transportation that make them far less important and significant, and let me give one example to illustrate this.

Discrimination is comparatively meaningless when applied to exempt truck operations or exempt barge operations, because every truck on the highways and every water carrier on the river is in competition for a particular movement. However, in the case of the railroads, when a particular shipper wishing to move a cargo from point A to point B may in fact be able to look to only one or to two railroads to provide him that service. Therefore discrimination here is vitally significant to the shipper, whereas discrimination in the case of truck shipments and water transportation is unimportant, is insignificant. This is a factor that makes some difference in the scope of the regulatory program.

Mr. WILLIAMS. Then I take it that the Farm Bureau is in support of the regulation of dry bulk commodity shipments on railroads and the continued exemption for water transport. I am trying to find out what the position of the Farm Bureau is. It is either for it or against it.

Mr. TRIGGS. As of now we are not prepared to say that complete exemption should be extended to railroads comparable to that provided trucks or comparable to that provided for water transportation. I think there are a lot of questions that we as shippers and the Congress are going to have to insist that the railroads supply answers to before we can intelligently judge whether this is a sound proposition or not.

Mr. WILLIAMS. You don't take a position on that?

Mr. TRIGGS. That is right.

Mr. WILLIAMS. In your next paragraph you say that you would not object to broadening the exemption. A broadening of the exemption is provided in H.R. 9046, which is under consideration by this subcommittee. Do you advocate a broadening of the exemption? You say you have no objection. But do you advocate it?

Mr. TRIGGS. I worded this very carefully.

Mr. WILLIAMS. I noticed that and that is why I ask the question.

Mr. TRIGGS. I just don't have any authority on behalf of the American Farm Bureau to say that we recommend such action. We don't have any board policy or any convention policy to direct us on this point.

On the other hand, we don't have any board policy or convention action to tell us to object to this proposal and it has been around for some time. However, speaking personally, I feel confident that this would be the general character of our recommendation if one were developed. We would not feel that the bill under consideration goes anywhere near far enough. It is a 6-month exemption. It is only an exemption if there are other nonbulk commodities in the same tow. It is not a complete exemption for these and other reasons. If you are going to have an exemption we think it ought to be comparable to the liquid bulk exemption.

Mr. WILLIAMS. Mr. Collier.

Mr. COLLIER. Going back to point 8 that you make. In the heading it states "the elimination of the exemption would not benefit the railroads." Then in the following paragraph you say nothing to substantiate this conclusion. Instead it says, "We don't believe the elimination of the bulk exemption for water carriage is a desirable means of helping the railroads' problem."

Which is it? Do you honestly feel that this would not benefit the railroads, or do you say that this is not the desirable means?

Mr. TRIGGS. Both, Congressman. We don't feel it is a desirable means because we believe this exemption is in the public interest. We also question whether the elimination of the exemption would significantly help the financial and earnings position of the railroad, because you don't eliminate any water carriers by this operation. They are all still in business.

Mr. COLLIER. But you provide a means, do you not, of permitting the railroads to compete for business which presently it is practically impossible for them to get?

Mr. TRIGGS. I think the most important thing that the railroads need to compete for business is a more flexible rate policy. We did testify in the ICC hearing on the application of the Southern Railroad for a 70-percent reduction in rates on shipping grain from river crossings into the Southeastern quarter of the United States. We think this is a desirable thing. We are appalled at the idea that it takes about 12 months from the time a new tariff is filed before it can be put into effect. This is not what we would consider to be sufficient flexibility. We would favor some means to expedite this whole procedure.

Mr. COLLIER. I agree with you there, but this is just one of many problems; is it not?

Mr. TRIGGS. Yes. Of course, in the original legislation the exemption was provided, among other reasons, because it was said that the barge rates were so far below rail rates that they were not in competition, anyway. This is still largely true. There are exceptions to this. The Southern Railroad's program will put them in competition in significant areas of bulk commodity shipments.

Mr. COLLIER. Thank you very much, sir.

Mr. WILLIAMS. Are there any further questions? If not, thank you very much, Mr. Triggs.

Mr. TRIGGS. Thank you, Mr. Chairman and members of the committee.

Mr. WILLIAMS. The next witness, and the last witness listed for this morning, is Mr. Robert Peabody, chairman of the Traffic Committee of the National Plant Food Institute, and general traffic manager of the Smith-Douglass Co., Inc.

Mr. Peabody, you may proceed.

STATEMENT OF ROBERT V. PEABODY, CHAIRMAN, TRAFFIC COMMITTEE, NATIONAL PLANT FOOD INSTITUTE; GENERAL TRAFFIC MANAGER, SMITH-DOUGLASS CO., INC.

Mr. PEABODY. Mr. Chairman, and members of the committee, my name is Robert V. Peabody. I am chairman of the Traffic Committee of the National Plant Food Institute. Through the unanimous action of our board of directors, I have been authorized to make this statement in opposition to H.R. 5595, which would repeal the water carrier bulk commodity exemption as found in section 303(b) of the Interstate Commerce Act.

The National Plant Food Institute is a voluntary, nonprofit membership corporation, whose members produce and market over 75 percent of the fertilizer used on American farms. The fertilizer industry is the largest of the industries in the United States producing heavy chemicals, and as such is vitally interested in the transportation by water carriers of its raw materials and finished products. This industry is peculiarly sensitive to transportation costs as many of its raw materials are low-grade commodities moving in heavy volume, the value of which is even less than the cost of low-cost water transportation. Any increase in costs would ultimately have to be borne by American agriculture.

Appended to my statement is an exhibit entitled "Summary of Survey of Water Transportation of Fertilizer and Fertilizer Materials for Year 1960." This survey was prepared in order to demonstrate

the extensive use of domestic water transportation by the fertilizer industry. The figures contained therein were compiled from a questionnaire submitted to American manufacturers of fertilizer and fertilizer materials using domestic water transportation. It was not restricted to members of the National Plant Food Institute. The survey represents approximately 90 percent of the tonnage of fertilizer and fertilizer materials moving in domestic water commerce. The exhibit reveals that this industry moved the astounding total of 13,875,938 net tons, and 4,565,064,627 net ton-miles. These figures are also subdivided in the exhibit by commodity categories and in nine different geographical areas.

Mr. Chairman, just looking at that exhibit for a minute, you will note that it is shown by commodity and total net tons as I have just mentioned, and total net ton-miles, and then by nine different geographical areas, such as the gulf coast area, Atlantic coast area, west coast area, and so forth.

For instance, take sulfur that might originate at Galveston, Tex. The tonnage under tons would show in the gulf coast area, and then it was going, say, to Chicago, Ill. It would show also in the lower Mississippi River area, No. 8, and also in the Illinois water area No. 4. Practically 100 percent of this traffic moved by water carriers operating under paragraphs (b), (c), or (d) of section 303; and most of it was under section 303(b), the present bulk exemption.

It is readily apparent, therefore, why we are appearing before you to express our opposition with regard to H.R. 5595.

Historically the geographical location of the fertilizer industry has been dictated by the availability of economic water transportation. For instance, Norfolk, Va., has been developed as the largest center for fertilizer manufacture in the United States due to the availability of water transportation and the location of this port to the consumer market. Likewise, other extremely important fertilizer manufacturing areas on the Atlantic and gulf coasts, such as Carteret, N.J.; Baltimore, Md.; Wilmington, N.C.; Charleston, S.C.; Savannah, Ga.; Jacksonville, Fla.; Tampa, Fla.; Mobile, Ala.; New Orleans, La. and Houston, Tex., have been developed because of the availability of water transportation.

Likewise, as the demand for fertilizer in the midwestern part of the United States has grown, fertilizer and fertilizer material plants have been established at numerous points along the inland waterways, such as Memphis, Tenn.; St. Louis, Mo.; Dubuque, Iowa; Chicago, Ill.; Cincinnati, Ohio; Louisvile, Ky.; Sheffield, Ala.; Jeffersonville, Ind.; Prairie du Chien, Wis. and Winona and St. Paul, Minn. In addition, a number of smaller plants which have been located in the interior and off navigable waterways receive basic raw materials such as superphosphate from larger plants located on the water.

Typical movements of basic fertilizer materials by water are phosphate rock and superphosphate from Tampa, Fla., and sulfur from the Texas and Louisiana gulf coast. These materials, as may be seen on the aforementioned exhibit, move to all nine areas in our survey.

We have shown the importance and volume of bulk water transportation to the fertilizer industry; now we wish to explain why economic regulation of such transportation would be impractical. It should first be mentioned that regulation would destroy the necessary

flexibility that is enjoyed at present and substitute therefor an unworkable rigidity. For example:

1. The cost of such bulk transportation is affected by a multitude of variable factors that can and do change from shipment to shipment of the same commodity between any two points.

2. These commodities can and do move in bargeloads ranging from 1,000 to 10,000 tons.

3. Similarly, in self-propelled ocean vessels, cargoes range from small parcel lots to full cargoes in excess of 10,000 long tons; yet if the small parcel lot is moving in conjunction with a cargo of a different commodity, it could very well enjoy the same advantage of a large volume cargo.

4. Annual volume of tonnage as well as seasonal variations in tonnage have distinct effects upon water rates because the total utilization of the barge must be taken into consideration.

5. In arriving at rates charged by water carriers consideration must be given among other things to the type of berth available for loading and discharging, and the efficiency of the terminal facilities provided for loading and discharging; these factors are important for all forms of domestic water transportation, but absolutely vital in the case of deep sea barges and self-propelled vessels, which have highly expensive standby costs.

6. Today there is a trend to the development and use of highly specialized barges and vessels, whose peculiar economic conditions and advantages cannot be expressed in a tariff.

7. All of the coastwise movement of bulk materials carried in vessels are governed by charter parties and many of them are chartered on a spot basis. The rates contained in such charter parties are based upon factors that exist at a particular moment in the charter market. Supply and demand governs the rates that exist at a particular time and often worldwide conditions govern the availability of American-flag vessels.

8. Varying conditions also dictate the lay time that can be allowed at different times.

9. On the inland waterways some barges must move in small tows because of the expeditious service required, or to obtain full utilization of special-type barge equipment, while others can be moved in very large tows at, of course, a slower transit time.

All of these varying and specialized factors are not suceptible of expression in the rigid rates, rules and regulations of a tariff filed with the Interstate Commerce Commission, which necessarily must be designed to cover average situations. In the circumstances of these tremendous tonnages, usually moving in heavy cargoes, a few cents a ton is a significant factor. We cannot rely on averages, as cost is too important; and if we did rely on averages, it would mean the penalizing of an efficient operation at the expense of an inefficient one. In other words, we cannot emphasize too strongly that we need flexibility because of the variety of conditions present.

Referring again to our survey of water transportation of fertilizer and fertilizer materials, some of these commodities are capable of being transported by water in either dry or liquid form. I might add at that point that you could use sulfur as a good example. Sulfur can be moved in dry form or in liquid form.

H.R. 5595 would repeal the exemption on these commodities moving in dry form: but those moving in liquid form would continue to en-

joy the exemption provided in section 303(d) of the Interstate Commerce Act. This would be a gross discrimination against the shippers and receivers of the dry commodities as opposed to those shipping and receiving the same or competitive commodities in liquid form. You are undoubtedly familiar with the plight of domestic coastwise and intercoastal water carriers of regulated commodities. As you undoubtedly know, in the 86th Congress the Merchant Marine and Fisheries Subcommittee of the Committee on Interstate and Foreign Commerce of the U.S. Senate conducted hearings on the decline of the coastwise and intercoastal shipping. Today, coastal steamship service has practically disappeared and there are only two major regulated coastwise water carriers offering regular service. The only water carriers operating profitably in intercoastal and coastwise service are those operating as bulk carriers and exempt from economic regulation. We ask that you do not adopt legislation that would destroy this last segment of our domestic merchant marine. It is not only needed for our domestic commerce but also for national defense.

As the Interstate Commerce Commission has reported, approximately 90 percent of our inland waterways tonnage is being moved by carriers exempt from regulation. We submit that this is the case because the basic economic reasons shown in this statement require that these materials move by carriers free from regulation. Historically, rate regulation has been instituted by the State or Federal Government as a substitute for competition in order to protect shippers from discriminatory or extortionate rates. The fertilizer industry, which is one of the most competitive industries in the United States, is not complaining about either discriminatory or extortionate rates charged by water carriers hauling under the bulk exemption; and we have not heard of any other industry making such a complaint. Furthermore, there is no need for economic regulation of the present exempt barge operators as competition among them is pervasive.

Moreover, there is nothing to stop the regulated barge carriers from operating under the bulk exemption providing they do not carry more than three bulk commodities nor mix the bulk commodities with regulated commodities. We are apprehensive that their purpose in supporting the repeal of section 303(b) is to destroy some, if not all, of the smaller water carriers which are providing an economical and indispensable service to our country.

Already there are many private barge operators of dry bulk commodities, particularly in the grain, coal, and chemical industries. At the present time shippers utilizing contract barge operators are not adversely affected by such private operators because they are able to obtain economical transportation service from the contract carriers operating under the bulk exemption. In the event of the repeal of the bulk exemption, the larger companies will be encouraged to provide their own private barge service; the small shippers, having insufficient tonnage to own barges would be put to a competitive disadvantage, thus making the big, bigger, and the small, smaller.

The fertilizer industry depends upon the transportation services that can only be provided by water carriers who are exempt from economic regulation. To eliminate this type of service would disrupt the entire present economic structure of the fertilizer industry, thus reducing its efficiency, raising its costs, and increasing inflationary pressures.

(The tables referred to follow:)

Summary of survey of water transportation of fertilizer and fertilizer materials for year 1960

Commodity	Total net tons for 9 areas		Gulf coast area [1]	
	Net tons moved	Net ton-miles moved	Net tons moved	Net ton-miles moved
Sulfur [2]	5,749,227	2,181,523,683	2,128,015	548,260,441
Sulfuric acid [3]	1,108,323	81,006,670	725,231	34,357,687
Potash fertilizer materials	337,560	11,471,970	39,858	3,484,200
Phosphate rock	4,223,096	1,117,855,298	2,501,642	280,123,770
Ammonium sulfate (fertilizer material)	424,693	197,269,303	57,948	13,448,974
Nitrogenous fertilizer and fertilizer materials [4]	285,608	87,002,512	110,399	28,205,226
Phosphate fertilizer materials	57,920	40,452,680	32,920	14,552,680
Superphosphate	964,610	491,139,413	335,877	79,491,244
Fertilizer and fertilizer materials, not elsewhere classified [4]	724,901	357,343,090	218,547	92,542,982
Total	13,875,938	4,565,064,627	6,150,437	1,094,467,204

Commodity	Atlantic coast area [5]		West coast area [6]	
	Net tons moved	Net ton-miles moved	Net tons moved	Net ton-miles moved
Sulfur [2]	240,994	23,678,050	45,870	4,809,130
Sulfuric acid [3]	248,204	21,798,058		
Potash fertilizer materials	242,932	7,349,498	51,570	206,280
Phosphate rock	467,138	39,085,982		
Ammonium sulfate (fertilizer material)	59	1,979		
Nitrogenous fertilizer and fertilizer materials [4]	6,864	459,603	82,754	15,240,868
Phosphate fertilizer materials				
Superphosphate	48,116	4,300,012		
Fertilizer and fertilizer materials not elsewhere classified [4]	79,646	15,184,379		
Total	1,333,953	111,857,561	180,194	20,256,278

Commodity	Illinois waterways area [7]		Ohio River area [8]	
	Net tons moved	Net ton-miles moved	Net tons moved	Net ton-miles moved
Sulfur [2]	514,003	169,971,406	310,944	195,483,599
Sulfuric acid [3]	14,500	5,170,000	6,305	4,590,000
Potash fertilizer materials				
Phosphate rock	389,272	148,263,165		
Ammonium Sulfate (fertilizer material)	14,007	24,526,187	105,755	33,189,647
Nitrogenous fertilizer and fertilizer materials [4]	14,509	2,292,422	7,826	1,183,236
Phosphate fertilizer materials				
Superphosphate	45,959	10,327,849	24,236	9,199,540
Fertilizer and fertilizer materials, not elsewhere classified [4]	100,679	31,580,168	2,344	883,688
Total	1,092,929	392,131,197	457,410	244,529,710

Summary of survey of water transportation of fertilizer and fertilizer materials for year 1960—Continued

Commodity	Missouri River area [9]		Upper Mississippi River area [10]	
	Net tons moved	Net ton-miles moved	Net tons moved	Net ton-miles moved
Sulfur [2]			213,132	30,625,966
Sulfuric acid [3]				
Potash fertilizer materials				
Phosphate rock			401,272	39,859,077
Ammonium sulfate (fertilizer material)			22,630	36,249,630
Nitrogenous fertilizer and fertilizer materials [4]			16,009	431,357
Phosphate fertilizer materials				
Superphosphate	10,822	6,599,504	205,173	108,837,294
Fertilizer and fertilizer materials, not elsewhere classified [4]	12,675	8,010,600	121,687	31,331,290
Total	23,497	14,610,104	979,911	247,334,614

Commodity	Lower Mississippi River area [11]		Great Lakes St. Lawrence Waterway, New York State Barge Canal area [12]	
	Net tons moved	Net ton-miles moved	Net tons moved	Net ton-miles moved
Sulfur [2]	2,178,329	1,137,816,003	117,940	70,879,088
Sulfuric acid [3]	114,083	15,090,925		
Potash fertilizer material			3,200	432,000
Phosphate rock	424,272	605,190,804	39,500	5,332,500
Ammonium sulfate (fertilizer material)	154,109	87,649,360	70,177	2,203,526
Nitrogenous fertilizer and fertilizer materials [4]	47,247	39,189,800		
Phosphate fertilizer materials	25,000	25,900,000		
Superphosphate	250,311	265,951,491	44,116	6,432,479
Fertilizer and fertilizer materials not elsewhere classified [4]	180,768	175,582,483	8,555	2,227,500
Total	3,374,119	2,352,370,866	283,488	87,507,093

[1] Gulf coast area—This area includes the gulf intracoastal waterways, rivers, harbors, and channels in confluence therewith (except the Mississippi River), also harbors on the Gulf of Mexico, not in confluence with the Intracoastal Waterway. Also included are Black Warrior, Warrior, and Tombigbee River system, Houston Ship Channel, Trinity River, etc.

[2] Approximately 25 percent of sulfur moved in liquid form.

[3] All of the sulfuric acid moved in liquid form.

[4] Small proportion moved in liquid form.

[5] Atlantic coast area—This area includes the intracoastal waterways on the Atlantic seaboard and other canals, rivers, and bays in confluence therewith, such as Chesapeake Bay, Delaware River, C. & D. Canal, Potomac River, etc., except the Hudson River and New York Harbor are excluded from this area.

[6] West coast area—This area includes all canals, rivers, and harbors on the Pacific coast of the United States.

[7] Illinois waterways area—This area includes the waterways in the State of Illinois, exclusive of the Great Lakes, and would include Illinois River, Des Plains River, Cal-Sag Canal, Chicago Canal, etc.

[8] Ohio River area—This area includes the Ohio River and all of its tributaries, such as Allegheny, Barren, Green, Kanawha, Kentucky, Monongahela, and Tennessee Rivers.

[9] Missouri River area—This area includes the Missouri River and all of its tributaries.

[10] Upper Mississippi River area—This area includes the Mississippi River north of the mouth of the Missouri River, and all tributaries except the Illinois waterways shown in footnote 7, and the Missouri River area shown in footnote 9.

[11] Lower Mississippi River area—This area includes the Mississippi River south of the mouth of the Missouri River, including all tributaries, except the Ohio River and tributaries.

[12] Great Lakes, St. Lawrence, New York State Barge Canal area—This area includes all of the Great Lakes, the St. Lawrence Seaway, New York State barge canals, Lake Champlain, Hudson River, and New York Harbor. In part exempt under section 303(c).

Mr. PEABODY. That is the end of my statement, and I thank you very much for allowing me to appear.

Mr. WILLIAMS. Mr. Peabody, you did not discuss the provisions of H.R. 9046, which would broaden these exemptions. Are you in a position to comment on that matter?

Mr. PEABODY. Mr. Williams, we have not taken a position on that, but I might say that is of such a temporary short-term nature that we have not been to interested in that. In listening to some of the discussions on that, we have felt that the purpose of that is to broaden that exemption for a short term and then cancel out the entire bulk exemption later on as the ultimate aim. As I have just testified, we are against that.

Mr. WILLIAMS. I have one other question. With respect to the statistical data that you have given us in the exhibits to your testimony, are these shipments to which you refer confined to section 303(b) commodities or shipments?

Mr. PEABODY. Yes; that is right, except as indicated in the exhibit.

Mr. WILLIAMS. In other words, this would not include any fertilizer that had been sacked?

Mr. PEABODY. No, sir.

Mr. WILLIAMS. It is all dry bulk.

Mr. PEABODY. This is all dry bulk shipments. Actually, the fertilizer that would be sacked that is shipped water transportation is very small, if any.

Mr. COLLIER. Mr. Peabody, you make a very significant point on page 5 of your statement with regard to the discrimination that would exist between the shipping or movement of dry commodities in your industry and those that were shipped in liquid form. Can you think of any other industries wherein this discrimination would be created in the same manner if this legislation were enacted?

Mr. PEABODY. Mr. Collier, I imagine it would include many chemicals, because today there is a tendency, for the convenience of industry, to make certain shipments in liquid. It would amount to the same exact product in bulk. I could give other illustrations which are somewhat related to the chemical industry as well as the fertilizer industry, such as ammonium nitrate, which is a dry commodity, but some people in the industry like it in solution. Urea is another one. You can ship urea in dry form or you can ship urea solutions. There are a few examples.

Mr. WILLIAMS. I think you indicated that sulfur comes out of the ground in liquid form and in the past has been exclusively dried and shipped in that form. Now there is a very strong tendency to also ship sulfur in liquid form as it comes out of the ground.

Mr. COLLIER. Then if this legislation were enacted, in order to eliminate this discrimination, we would probably be faced with amending section 303(d) of the Interstate Commerce Act.

Mr. PEABODY. Definitely so, in my opinion. The liquid exemption is needed just as much as the dry bulk exemption for almost the same reasons I pointed out in my testimony on the dry bulk.

Mr. COLLIER. Would there be any way of saying whether the profit factors on the fertilizers that were manufactured from the dry commodities substantially are the same as those in liquid form?

Mr. PEABODY. I think it is just about the same.

Mr. COLLIER. It would be about the same.

Mr. PEABODY. For instance, the price of liquid sulfur and dry sulfur is just about the same.

Mr. COLLIER. That would hold fairly true in other commodities?

Mr. PEABODY. Yes; in our industry it would.

Mr. COLLIER. Thank you very much, sir.

Mr. WILLIAMS. Thank you, Mr. Peabody.

Mr. PEABODY. Thank you, sir.

Mr. WILLIAMS. I believe that concludes our list of witnesses for today. The committee will not be able to meet tomorrow because of a meeting of the parent committee, and therefore we will adjourn until Friday morning at 10 o'clock.

(At 11:45 a.m., a recess was taken until 10 a.m., Friday, March 30, 1962.)

WATER CARRIER BULK COMMODITY EXEMPTION

TO REPEAL INLAND WATERWAYS CORPORATION ACT

FRIDAY, MARCH 30, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m. in room 1334, New House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The committee will be in order, please.

At this point I would like to insert for inclusion in the record a copy of the letter from Mr. Harold Hammond, representing the Transportation Association of America.

(The letter referred to follows:)

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., March 27, 1962.

HON. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the board of directors of the Transportation Association of America, I should like to express the support of TAA of H.R. 10542, one of the bills currently being considered by your subcommittee.

This bill would remove what we believe to be the obsolete and burdensome service requirements that apply to the present sales contract between the Federal Barge Lines, Inc., and the Federal Government, as required under provisions of the enabling act of 1924.

Prior to the sale of the formerly Government owned and operated Federal Barge Lines to the present privately owned and operated barge line of the same name, all eight permanent advisory panels to the TAA board—representing users, investors, and air, freight forwarder, highway pipeline, railroad, and water carriers—approved the following statement of policy, which was officially adopted by the board:

The Inland Waterways Corporation should be dissolved and the properties and routes of its operating unit, the Federal Barge Lines, should be sold or otherwise disposed of within 2 years of the enactment of legislation embodying this proposal, such sale or other disposition to be conducted without regard to the restrictions and conditions placed on such sale or other disposition by the Denison Act (sec. 153 of title 49, United States Code).

We believe that the sale of this Government transportation facility has proved to be beneficial to all parties concerned, including the seller, the purchaser, and the users of the barge services offered. Passage of H.R. 10542 should help strengthen the present Federal Barge Lines, which has become an integral part of the Nation's vital privately owned and operated common carrier system.

We request that this letter be made a part of the official record of the hearings on this bill.

Sincerely,

HAROLD F. HAMMOND.

Mr. WILLIAMS. The first witness this morning is Mr. Harry Breithaupt, Jr., representing the Association of American Railroads.

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D.C.

Mr. BREITHAUPT. Good morning, Mr. Chairman.

Shall I proceed, sir?

Mr. WILLIAMS. You may proceed.

Mr. BREITHAUPT. For the record, my name is Harry J. Breithaupt, and I am general attorney, Association of American Railroads, Washington, D.C. I appear before you today, by authority and by direction of the board of directors of that association, to state the association's position and that of its members as to the three measures that have been designated as the subject of these subcommittee hearings.

I should like to address myself first to H.R. 5595, the bill introduced on March 14, 1961, by the chairman of your parent committee "to repeal section 303(b) of the Interstate Commerce Act, as amended, relating to the water-carrier bulk commodity exemption, and for other purposes."

Mr. Chairman, it is a widely known fact, almost universally accepted in this country, that the common carriers of the Nation, especially the railroads, are encountering serious difficulties today. There are numerous reasons for that, and it would hardly be appropriate for me to enumerate them or elaborate upon them on the occasion of this particular hearing; but prominent among them is the accelerated and alarming erosion of the common carriers' traffic and revenues at the hands of unregulated carriers. It is common knowledge, and surely needs no documentation in this forum, that there has been and continues to be a steady decline in the relative position of the railroads and other parts of the common carrier industry vis-avis unregulated carriage.

The erosion of traffic and revenues from the regulated common carriers to unregulated carriers must be attributed in large degree to the unequal and unfair competitive conditions prevailing under our anomalous scheme of regulation that permits a large part of the country's transportation to be performed free of economic control, yet demands and expects the balance to be performed under strict and rigid economic control.

It is generally estimated that two-thirds of the total intercity highway to ton-miles and 90 percent of all inland waterway tonnage are free of economic regulation. Moreover, projected trends indicate that the unregulated proportion will, unless arrested, increase until—even throwing the totally regulated railroads into the picture—unregulated carriage will in a few years amount to 50 percent of all intercity traffic. This phenomenal growth of unregulated carriage, with the concomitant relative decline of the common carriers, clearly poses one of the gravest threats to the welfare of the railroads and to that of other segments of the regulated transportation industry.

Mr. Chairman, railroads are severely handicapped in their competition with exempt for-hire carriers. The Interstate Commerce Act contains a number of "escape" provisions but there are two, in particular, that are sources of very deep concern to the railroads. They are the

so-called agricultural commodities exemption for motor carriers and the bulk commodity exemptions for water carriers. It is with the latter that we are today dealing.

Under section 303 of the Interstate Commerce Act railroads are greatly prejudiced in competing with water carriers for the movement of vast tonnages of coal, iron ore, grain, petroleum, and other commodities that move in bulk free of regulation when waterborne, but subject to full regulation on the rails.

The exemptions from regulation that apply when the traffic described is transported by water, but do not apply when such traffic is moved by railroad, create the grossest kind of discrimination against the railroads and pose the gravest kind of competitive difficulties for them.

Specifically, this disparity of treatment means that in competing with domestic water carriers, where the traffic comes or is brought within the exemptions, the railroads are in a position where their rates must be published, strictly adhered to, without change except on 30 days' notice to the public (unless there are unusual circumstances in the light of which the regulating authority may authorize publication of a change with less than that period of notice), and meet various standards of reasonableness and nondiscrimination; whereas their competitors by waterway operate under no such requirements and are privileged to make whatever rates they choose at any time, without any notice to anyone, on whatever basis is necessary to get the business. For railroads to meet all of the regulatory requirements to which they are subject and at the same time meet competition that is free of such requirements places them in an almost impossible, and altogether unfair, competitive position.

As Chairman Murphy of the Interstate Commerce Commission said in testimony before this subcommittee on the first day of these hearings:

> The unregulated carriers need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order to obtain the traffic. The regulated carriers, on the other hand, have no ready means of ascertaining the rates charged by the exempt carriers, since those carriers are not required to publish their rates. Thus, not only are the regulated carriers placed at a distinct competitive disadvantage, but, more importantly, these conditions give rise to the instability of rates. The public interest in stable, reasonable, and properly regulated rates cannot find expression in the complete absence of control of such a large part of the bulk carrying trade.

Please understand that when we speak of waterborne traffic that is exempt from regulation under the bulk commodity exemptions, we are not speaking of small tonnages. We are speaking of an immense volume of freight. To quote once more from the testimony of the Interstate Commerce Commission presented to you just 3 days ago:

> It has been estimated that only about 10 percent of the tonnage shipped by water in the domestic trade is subject to regulation. Private carriers are not subject to regulation by the Commission and should not become so unless they are to be deprived of the opportunity to transport for themselves. However, the many exemptions in part III of the act, particularly section 303(b), leave the greater part of all domestic water transportation free from regulation.

And please understand Mr. Chairman, too, that when we speak of bulk commodities, we are not speaking of a type of traffic that is unimportant, or relatively unimportant, to the railroads. We are speak-

ing of a class of traffic that is very important to the railroads. Because of the diversion to motor carriers of a large part of the merchandise traffic once carried by rail, the railroads have been relegated in a large way to carriers of bulk traffic. In the handling of this traffic there is keen competition between the water carriers and the railroads.

I had at first thought that I would endeavor to buttress my own testimony by setting out for you at some length the numerous statements that the Interstate Commerce Commission has made from time to time over the years in support of its long-standing recommendation for repeal of the so-called dry bulk exemption. It now seems to me, however, wholly unnecessary to burden the record in that fashion, for—as I have already indicated—the Chairman of the Commission has just appeared before you and expressed the current and up-to-date views of the Commission. To quote, or cite, past expressions of that body would be merely repetitious.

I would point out, nevertheless, that as long ago as 1954, in its 68th Annual Report to the Congress, page 20, the ICC was already saying:

> * * * the exemption adversely affects the public interest in stable, reasonable, and properly related rates and makes effective regulation of water transportation impossible * * *.

And during the intervening years this and similar statements have periodically—and with a considerable measure of regularity—been repeated by the Commission. The Commission's statement to you at the opening of these hearings was substantially a reflection, or restatement, of the succinct explanation it had given in justification of the legislative recommendation out of which grew the introduction of this bill, H.R. 5595. In this 75th Annual Report to the Congress in 1960, the ICC said in support of the legislative recommendation now embodied in H.R. 5595:

> As a result of the various exemptions in part III of the act, particularly the so-called dry bulk commodity exemption, only about 10 percent, tonnagewise, of domestic water transportation is subject to economic regulation by the Commission. The complete absence of regulation of such a large segment of the domestic water carrier industry is incompatible with the public interest in reasonable and stable regulated rates. In addition, the regulated carriers are placed at a distinct competitive disadvantage and shippers and localities are subject to discriminatory practices.
>
> Repeal of the dry bulk commodity exemption would constitute an important step toward correcting this situation and would contribute substantially to achieving greater equality of treatment of carriers of the various modes (p. 187).

Nor is the voice of the Interstate Commerce Commission the only public or governmental voice that has been raised in protest against the situation created by the bulk commodity exemptions. As far back, if you please, as October 15, 1946, in a letter to the Interstate Commerce Commission, the Director, Office of Defense Transportation, wrote:

> It occurs to me that if Congress ever hopes to fulfill the national transportation policy in "developing, coordinating, and preserving a national transportation system by water, * * * and rail * * * adequate to meet the needs of the commerce of the United States * * * and * * * the national defense," it will be necessary for the Commission to have jurisdiction over the transportation of commodities in bulk, particularly that performed by the lake carriers.
>
> As Director of the Office of Defense Transportation, I urge that the Commission, in its annual report to Congress, recommend that Congress amend the

Interstate Commerce Act to bring under regulation the transportation of commodities in bulk (60th Annual Report of Interstate Commerce Commission, 1946, p. 36).

Then in 1951, in a progress report of the Senate Committee on Interstate and Foreign Commerce by its Domestic Land and Water Transportation Subcommittee, pursuant to Senate Resolution 50, 81st Congress, it was said:

The familiar pattern of competion between regulated and unregulated carriers has commenced to become increasingly wider. The published rates of the common carriers by rail or water are an easy mark for the unregulated water carriers, and more and more dry bulk traffic is moving by unregulated barges (S. Rept. No. 1039, 82d Cong., p. 16).

And that same report went on to say:

* * * The competition of the unregulated water carrier of bulk commodities, exempted by section 303(b) of the act, has resulted in lower rates for a few of the large shippers on the inland waterways. Also, it has resulted in increased rates to shippers on the waterways, who, because of size or type of shipment must rely on the regulated common carrier by water. It has resulted in increased rates to shippers across the Nation who cannot take advantage of these lower rates due to location. It has resulted in financial disadvantage to competing common carriers by rail and water, with a consequent weakening of the national transportation system. Finally, as will be shown later, it has achieved its lower rate advantages at least partially through the expenditure by the Federal Government of revenues raised from ordinary taxpayers, competing shippers, and competing carriers themselves. The only justification for the situation is the aim of strengthening the national transportation system. When the net effect of this exemption tends, as has been shown, to weaken the system as a whole, disrupting the economic flow of traffic, then corrective measures are indicated (p. 17).

Others have spoken in similar vein, but I think that I have supplied enough authoritative references to illustrate my point—that corrective measures are indeed indicated.

One such corrective measure is before you for consideration today in the form of H.R. 5595. That bill would repeal the so-called dry bulk commodity exemption, section 303(b) of the Interstate Commerce Act, and thus tend to make for greater equality of competitive opportunity between railroads and water carriers as to the transportation of bulk commodities. The railroads endorse H.R. 5595 and urge that it be favorably reported. We believe, however, that the bill ought to be amended so as to provide for the repeal of the so-called liquid bulk exemption as well. In our view there is as little justification for one bulk commodity exemption as there is for another. Why should there be any difference between the regulation of liquid bulk cargo and dry bulk cargo? There is very keen intermode competition for both.

Mr. Chairman, the railroads go a step further. The railroads believe that if the bulk commodity exemptions for water carriers are not to be repealed, then exemption should be extended to the transportation of bulk commodities by rail.

The answer to the question of whether or not to regulate the transportation of bulk commodities depends entirely upon the public need for such regulation. If the public interest is best served by imposing regulation, then it goes without saying that regulation should be imposed. On the other hand, if the public interest does not require the imposition of regulation, then of course, it should not be imposed. It is extremely difficult to believe that the public interest is well served

by exempting bulk commodities from regulation when transported by water, but not exempting them when transported by rail. If the public interest justifies exemption from regulation for the transportation of bulk commodities to or from a plant by water, what is there from the standpoint of the public interest that requires regulation when the movement takes place by rail?

We believe that the time is at hand, if not indeed long past, when the Congress should find that the public interest either does require or does not require regulation of the transportation of bulk commodities in this country. If the broad public interest requires such regulation then the existing exemptions should be repealed, not only in the broad public interest but so as to remove the discrimination against the railroads existing under present circumstances and under present law. On the other hand, if the Congress should determine that the public interest does not require regulation of the transportation of bulk commodities, then such exemptions should be extended to the railroads.

The railroads' position with respect to the bulk commodity exemptions, then, is clear and simple and, we believe, just: either repeal the exemptions or extend them to the railroads.

The railroad industry seeks no preferential treatment. It seeks no "fair advantage." It seeks equality only. All we ask the Congress to do in this instance, as in all other instances, is to prescribe a Federal policy with respect to transportation that will afford a measure of equality of opportunity to all modes of transportation and the common carriers by each mode of transportation to compete for the transportation business of this country. The bulk commodity exemptions provide for you a good starting point.

There is a bill pending in the Senate, S. 2078, 87th Congress, that would exempt from regulation the transportation of bulk commodities by rail. I have attached a copy of S. 2078 to my prepared statement. H.R. 5595, which you are now considering, if amended in such a way as to provide appropriately for the repeal of subsections (c) and (d) as well as subsection (b) of section 303, would serve as a suitable vehicle for repeal of the present exemptions.

(The bill, S. 2078, follows:)

[S. 2078, 87th Cong., 1st sess.]

A BILL To amend the Interstate Commerce Act, as amended, so as to provide that the transportation of bulk commodities by railroad shall be exempt from regulation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act, as amended, is amended by inserting after section 25 thereof a new section 25a as follows:

"SEC. 25a. Nothing in this part shall apply to the transportation of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk in tank cars."

SEC. 2. Section 418 of the Interstate Commerce Act, as amended, is amended by striking out all that follows the final semicolon therein and inserting in lieu thereof "or common carriers engaged in transportation exempted under the provisions of section 25a or section 303(b) of this Act."

Mr. BREITHAUPT. The railroads look with favor upon, and would eagerly embrace, either approach. We urge your subcommittee to adopt one or the other.

Let me now address myself to H.R. 9046, a bill designed "to permit the application of the bulk commodity exemption when other commodities are concurrently transported in the same vessel".

This bill would have the effect, of course, of broadening and making even more liberal the terms and scope of the present water carrier exemptions, and thus aggravate what is already for the railroads an intolerable competitive situation in the transportation of bulk commodities. It would worsen that which is already bad.

For reasons implicit in my earlier discussion of the exemptions as they now stand, then, the railroads must urge you to look with disfavor upon this effort to loosen and expand the water carrier exemptions to even wider dimensions.

As the subcommittee knows from the testimony of previous witnesses and from its own examination of the statute, the exemption from regulation afforded by section 303(b) of the Interstate Commerce Act comes into play only when the vessel or tow in which the bulk commodities are transported is being used to carry not more than three such commodities. The exemption is lost as to the entire lading if more than three bulk commodities are carried in the same vessel or tow, and it is similarly lost as to the entire lading if any nonbulk commodity is carried in the same vessel or tow with what would otherwise be exempt bulk commodities.

But by the terms of H.R. 9046, albeit for a period of only 6 months, these conditions or restrictions would be lifted or suspended for a very large and important part of the inland waterway system. Water carriers operating on the specified waterways would be permitted to mingle bulk with nonbulk commodities in a single vessel or tow without loss of the exempt status of the bulk commodities. In addition, they would be allowed to transport more than three bulk commodities in one vessel or tow without sacrificing the exempt status of three such commodities.

This, as I have said, would broaden and expand the scope of the bulk commodity exemptions and thus heighten and intensify the competitive handicap to which railroads are already subject in their competition with the water carriers. The railroads unalterably oppose H.R. 9046.

Mr. Chairman, at this point I find myself in an awkward, and what is for a lawyer an unhappy, position. I must endeavor to anticipate what the proponents of this bill will argue when they appear before you. The proponents of the measure have not yet been heard, so I must surmise what they will say when they are heard. I venture to do this only because I followed closely the course of the hearings on this same proposal on the Senate side last year, and I assume that what was said there in justification of the proposal will in due course be repeated here.

As the Interstate Commerce Commission pointed out in its testimony before this subcommittee, H.R. 9046 has no doubt arisen as a result of the Commission's decision in Docket No. WC–5, *Mississippi Valley Barge Co. Exemption*, section 303(b), 311 ICC 103 (decided August 25, 1960). Speaking in broad generalities, that case (which I understand is now before the courts for review) was the latest of a series of cases holding that exempt commodities could not be mixed with nonexempt commodities and still retain their exempt status.

On the Senate side it was argued by the proponents of legislation of this character that certain water carriers had not expected the Commission to decide as it did in Docket No. WC–5; that the decision took them by surprise; that the effect of the decision would be to deprive them of a method of operation in which they had been engaging over the years; and that as a result they are threatened with disruption of their services.

If my understanding of the matter is correct, however, the decision of the Commission should not have been unexpected and should not have come as a surprise, since it followed in principle earlier decisions of the Commission and of the courts to the same general effect. Further, if my understanding is correct, the effect of the decision in Docket No. WC–5 would not be to disrupt a method of operation in which the water carriers involved had for many years prior to the decision been engaged.

On the contrary, again if my understanding is correct, the particular operations found in Docket No. WC–5 to violate the conditions of the exemption represent just one more in a series of efforts to circumvent, by one device or another, the limitations imposed upon the applicability of the section 303(b) exemption.

The details of these operations have been, and are, intricate; and I would prefer, frankly, that they be explained to the subcommittee by those spokesmen for the water carriers intimately familiar with them. I expect that such explanation will be forthcoming. It does appear to be a fact that ever since about 1955 certain water carriers have been mixing bulk and nonbulk commodities on the rivers in ways, first one and then another, hopefully conceived as expedients to avoid loss of the exempt status of the bulk cargoes.

But also ever since 1955 and earlier, the Interstate Commerce Commission and the courts have declared the mixing of nonbulk commodities with bulk commodities in the same tow to result in loss of the exemption given by section 303(b) to the transportation of the bulk traffic, and various contrivances to avoid this result have one by one been disapproved. See *American Barge Line Company, Petition for Declaratory Order*, 294 ICC 796 (1955); *Commercial Transport Corporation—Exemption*, 300 ICC 66 (1957); *Commercial Barge Lines, Inc., et al* v. *United States*, 166 F. Supp. 867 (1958), affirmed 359 U.S. 342 (1959).

Indeed as long ago as March 20, 1941, just 6 months after part III of the Interstate Commerce Act (including the section 303(b) exemption) became law, the Bureau of Water Carriers of the Interstate Commerce Commission issued the following interpretative ruling:

RULING NO. 6—SECTION 303(b)

MARCH 20, 1941.

INTERSTATE COMMERCE COMMISSION

BUREAU OF WATER CARRIERS

The following is an administrative ruling of the Bureau of Water Carriers, made in response to questions propounded by the public, indicating what is deemed by the Bureau to be the correct application and interpretation of the act. Rulings of this kind are tentative and provisional and are made in the absence of authoritative decisions upon the subject by the Commission.

Question. Is the transportation of three or less commodities in bulk exempted by section 303(b) when there is being transported in the vessel (or tow) any commodity not in bulk?

Answer. No. The transportation of commodities in bulk is not exempt from regulation under part III when more than three bulk commodities are transported in the vessel (or tow), or when there is being transported in the vessel (or tow) a commodity not in bulk.

GEORGE E. TALMAGE, JR., *Director.*

Be all of that as it may, it does not appear that the particular operations vitiated by the Commission's declaratory order in docket No. WC–5 had been conducted very long before their lawfulness was brought into question. In the ICC proceeding it was alleged that the operations there considered would be conducted pursuant to a tariff filed on June 12, 1959, to become effective July 16, 1959; and two petitions, one supporting and one attacking the legality of the proposed operations, were filed on August 28, 1959, and August 31, 1959, or less than 2 months after the effective date of the tariff covering the contemplated operations.

How, then, can it be said that the effect of the Commission's decision of August 25, 1960, would be to disrupt a method of operation of long standing and use

Even beyond all of the foregoing considerations, it seems apparent that the language of H.R. 9046 goes far beyond what would be required to overcome the effect of the 1960 decision of the Commission in docket No. WC–5 as to the limited situation there involved, and would result in reversal of all of the decisions I have cited, going back to 1955 and earlier. What possible justification is there for this, as a matter of temporary 6-month relief, assuming there were justification for such relief in the first place?

I repeat, without laboring the matter further, that the railroads vigorously oppose H.R. 9046 and urge that it not be favorably reported.

This brings me finally to H.R. 10542, the bill to repeal the Inland Waterways Corporation Act. It seems to us that we should support this bill, having due regard, of course, for appropriately safeguarding the public's interests in light of the considerations earlier mentioned by the witnesses for the Interstate Commerce Commission and the Department of Commerce; and we do so.

Mr. WILLIAMS. Mr. Breithaupt, if I understand your testimony correctly, in essence you are asking for what you would deem equal treatment, is that correct?

Mr. BREITHAUPT. That is correct, Mr. Chairman.

Mr. WILLIAMS. In other words, if the exemptions are not extended to rail transportation, then they should be taken away from water transportation, is that correct?

Mr. BREITHAUPT. As a matter of simple equity and equality of competitive opportunity, yes, sir.

Mr. WILLIAMS. All right, sir. Have you studied the legislative history of section 303(b)?

Mr. BREITHAUPT. I have, yes, sir.

Mr. WILLIAMS. Can you inform the committee as to the reasons why a three-commodity limitation was imposed with respect to these exemptions?

Mr. BREITHAUPT. The legislative history makes it quite clear as to why the exemptions themselves were granted but is somewhat fuzzy as to why there is a limitation as to the number of bulk commodities that may be carried in the same vessel or tow.

Mr. WILLIAMS. You say that you are asking for equal treatment. Would the railroads be satisfied if they were granted this exemption on the same basis as water transportation has it on a three-commodity limitation?

Mr. BREITHAUPT. We have examined this question pretty thoroughly, Mr. Chairman, and as a practical matter we don't think it is entirely feasible or would be entirely feasible to impose the three-commodity limitation.

On the other hand, if it were deemed desirable to do so as a matter of equality and if the section 303(b) exemption were not to be changed so as to eliminate the three bulk commodity limitation there imposed, we would be willing to accept it, yes, sir.

Mr. WILLIAMS. I notice that you did not have that in the bill that you referred to, a copy of which is attached to your statement.

Mr. BREITHAUPT. That is the bill introduced by Senator Magnuson in the Senate by request and it is true that the bill does not include limitations of the character contained in section 303(b).

Mr. WILLIAMS. Would the railroads have any objection if the dry bulk commodity exemption were extended to the railroads, and the three-commodity limitation removed both for railroads and for water carriers?

Mr. BREITHAUPT. No objection.

Mr. WILLIAMS. The same is true with respect to liquid bulk commodities or liquid shipments?

Mr. BREITHAUPT. Yes, sir.

Mr. WILLIAMS. Thank you very much.

Our next witness is Mr. G. C. Taylor, president of the Mississippi Valley Barge Line Co. of St. Louis, Mo., and here representing the Common Carrier Conference of Domestic Water Carriers. He is accompanied by Captain Ingersoll, chairman of the executive committee of the Common Carrier Conference of Domestic Water Carriers, and president of the Federal Barge Line, Inc., also of St. Louis. I believe Captain Ingersoll testified here a day or so ago, representing Federal Barge Lines.

Mr. Taylor is also accompanied by Mr. J. W. Hershey, a member of the conference's executive committee, representing the gulf coast region, of the Common Carrier Conference of Domestic Water Carriers. Mr. Hershey is also board chairman of the American Commercial Barge Line at Houston, Tex.

Mr. TAYLOR. Also here with us today are the general counsel of the Great Lakes Ship Owners Association, John H. Eisenhart, for the members of the conference operating on the lakes; and Mr. John Weller, president of Seatrain Lines, Inc., of Edgewater, N.J., on behalf of the coastwise and intercoastal domestic water carrier members of the common carrier conference, in support of the statement I shall present.

STATEMENT OF G. C. TAYLOR, PRESIDENT OF THE MISSISSIPPI VALLEY BARGE LINE CO. OF ST. LOUIS, REPRESENTING THE COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS; ACCOMPANIED BY CAPTAIN INGERSOLL, CHAIRMAN OF THE EXECUTIVE COMMITTEE OF COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS; AND J. W. HERSHEY, EXECUTIVE COMMITTEE MEMBER, GULF COAST REGION, COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS, AND BOARD CHAIRMAN OF THE AMERICAN COMMERCIAL BARGE LINES, HOUSTON

Mr. TAYLOR. Mr. Chairman, my name is G. C. Taylor, and I am president of the Mississippi Valley Barge Line Co. of St. Louis. I am here as a representative of the Common Carrier Conference of Domestic Water Carriers, representing common carriers operating on the Great Lakes, in the coastwise service, on the Columbia River and the Atlantic Intercoastal Waterway, as well as on the Mississippi system and the gulf canal.

I would like to introduce a list of the complete membership of the conference. I won't take the time of the committee to read it.

Mr. WILLIAMS. That will be accepted for the record.

(The document referred to follows:)

ROSTER OF MEMBERS, COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS

American Commercial Barge Line Co., Houston, Tex.
Arrow Transportation Co., Sheffield, Ala.
Bison Steamship Corp., Buffalo, N.Y.
Columbia Transportation Division, Oglebay Norton Co., Cleveland, Ohio.
Coyle Lines, Inc., New Orleans, La.
Federal Barge Lines, Inc., St. Louis, Mo.
Foss Launch & Tug Co., Seattle, Wash.
Gartland Steamship Co., Chicago, Ill.
John I. Hay Co., Chicago, Ill.
James Hughes, Inc., New York, N.Y.
Igert, Inc., Paducah, Ky.
S. C. Loveland Co., Inc., Philadelphia, Pa.
McAllister Lighterage Line, Inc., New York, N.Y.
Mississippi Valley Barge Line Co., St. Louis, Mo.
Norfolk, Baltimore & Carolina Line, Norfolk, Va.
Ohio River Co., Cincinnati, Ohio.
Pacific Inland Navigation Co., Inc., Vancouver, Wash.
Pacific Western Lines, Portland, Oreg.
Puget Sound-Alaska Van Lines, Seattle, Wash.
The River Lines, Inc., San Francisco, Calif.
Roen Steamship Co., Sturgeon Bay, Wis.
Sea-Land Service, Inc., Newark, N.J.
Seatrain Lines, Inc., Edgewater, N.J.
Shaver Transportation Co., Portland, Oreg.
Sioux City & New Orleans Barge Line, Inc., Houston, Tex.
Tidewater Barge Line, Portland, Oreg.
Union Barge Corp., Pittsburgh, Pa.
C. G. Willis, Inc., Paulsboro, N.J.

Mr. TAYLOR. My presentation is planned to be a consolidation of the point of view of the common carriers by water who serve the domestic commerce of the United States. We have three main characteristics in which we are alike. First, our companies depend on transportation alone for their livelihoods. Second, we hold certificates of public convenience and necessity requiring us to prvide regular, dependable service at nondiscriminatory and reasonable rates to the general public. Third, we are subject to economic regulation by the Congress through the Interstate Commerce Act.

I plan to cover the broad issue of the survival of the common carrier by water. Addressing myself to the support of H.R. 5595, I will discuss the exemptions and the destructive activities resulting from the use of exemptions by private industry. Our complaint here is that this competition is unfair because it is competition at uneconomic rates.

Our group also favors the passage of H.R. 9046 and H.R. 10542.

Evidence has been piling up for years that the regulated common carrier is in serious trouble. I will not recite here the broad general agreement on the facts. Suffice it to say that the Congress has, for some time, been concerned that the economic regulations it developed in the public interest are insufficient to fulfill the obligations set forth in the national transportation policy of the Transportation Act of 1940—particularly that section of the policy which promises to "foster sound economic conditions in transportation and among the several carriers."

The Secretary of Commerce, the Honorable Luther H. Hodges, in his annual report to the Congress on February 6, 1962, said:

> The Department is convinced that the keystone of transport progress is a strong common carrier industry, although it is concerned with the welfare of all types of carriage. Only the common carrier has a mandatory responsibility for providing adequate, regular service to meet public demand for passenger and freight service.
>
> If all or even most of our vital freight services were dominated by private and contract carriers equality of economic opportunity would end for many U.S. small businessmen. If common carriers are driven out of business (and present trends, if continued, portend this by 1975), only the big producers and shippers would be able to serve a national market. Competition would suffer and the economic vitality of our free enterprise system would be seriously impaired.

The complaint of the domestic water carrier is a relatively simple one. Our role in the economy is to provide the lowest cost service available to industry on commodities adapted to water transportation. Our average revenues for example are 4 mills per ton-mile compared to 14 mills for the railroads. The inherent advantage of our low cost of operation should provide us with ample protection. However, we are continually faced with competition of higher cost means of transportation who undercut our rates by uneconomic pricing. Railroads have seriously damaged us, and, we believe, themselves, by out-of-pocket cost pricing. A rate reduction is made below the cost of performing the service by railroad and down to the level of our costs.

Thus, on the one side of us towers the giant $9 billion railroad industry playing, as Supreme Court Justices have recently noted, "hanky panky" with its overhead and fixed charges in order to undercut our services. On the other side of us are some of the Nation's largest corporations operating private equipment, when not needed in proprietary service, in the exempt "for hire" trades at uneconomic

rates. Crushed as we are between two such forces, there is little prospect of arresting the trend toward liquidation unless a sounder rationale of regulation is formulated and put into practice.

The issue before the Congress is this: What sort of protection can be given to the low cost operator, the small efficient, independent water transportation company who is faced with uneconomic, cutthroat competition on the part of very large companies. If the problem of uneconomic pricing of transportation can be solved, water common carriers can survive. If it cannot be solved, they cannot survive. It is as simple as that. Our question to you is blunt: Is common carrier service by water important enough to the country for the Congress to attempt to remedy the unfair competitive burdens now threatening its survival?

The Congress set out to regulate the water transport industry in 1940, but it did not regulate all of it. How did it distinguish between traffice to be regulated and traffic that would not be? The congressional intent was clearly stated many times. Here for example is the definition of Senator Burton K. Wheeler as given in the Congressional Record for May 22, 1939.

> * * * all we say is, "if you are competing with a common carrier which is regulated, you must be regulated. If you are not competing, you are in the clear and you are exempt." It seems to me that is all there is to it.

In our view, this is still all there is to it. Certainly this comment brings into sharp focus the principal change that has taken place in the water carrier industry since 1940. When the act was passed, all the inland bargelines were given grandfather certificates and all commodities, except petroleum and sand and gravel and some local movements of coal, traveled at published rates. Hence, river competition for railroads was effectively regulated. In recent years, scores of new bargeline companies have gone into business under the exemptions providing intense competition to both the regulated water carriers and the railroads. Whereas in 1940, what exempt traffic there was did not compete with regulated traffic; today there is most vigorous competition between regulated and unregulated carriers.

There is general agreement also on this fact: The unregulated carrier has one principal advantage. He can quote a rate in secret, shaving the published rate just enough to get the business. As quickly as we can publish a lower rate to meet the exempt competition, the exempt carrier can shave it again. There is no economic advantage here; you might call the process simply a license to chisel.

The other significant change is in the number of competitors. In 1940 the Congress awarded certificates of public convenience and necessity to the rather limited number of carriers available. Today there are hundreds of companies, large and small, operating all over the river systems. No one claims there isn't enough capacity. H.R. 5595 would protect the interests of all those new operators by providing grandfather certificates, in the manner of the act of 1940, which would reflect the service they have performed in a reasonably representative past period.

Exempt carriers will testify against this, just as most of the presently regulated carriers did in 1940. A reading of the debates preceding the passage of the Transportation Act of 1940 is most instructive. All the arguments that are being used today against the extension of regu-

lation, were arguments used at that time. We sympathize with the fears the exempt carriers will express because they were those of most of the presently regulated carriers only 20 years ago. But our experience has shown that regulation has been constructive and beneficial and I am sure their experience of regulation will be, too, if H.R. 5595 passes.

The fact of the matter is that today a basic inequity exists between the exempt carriers on the one hand and the regulated water, truck, and railroad companies on the other hand. It is an inequity for which a solution must be found if common carriers are to survive.

Perhaps the most significant development so far in these hearings has been the absence of testimony by the Department of Commerce. The traditional position of the Department has been that the Congress should plug the present loopholes which prevent regulation, in the words of the act, from being "fair and impartial" to all modes. No comment of any kind was made either in opposition to or in support of H.R. 5595. What does this portend?

In the debates over a new program to cure the inequities which clearly have developed from the exemptions, the suggestion has sometimes been made that Congress deregulate bulk traffic on the railroads. There has lately been much talk of this possibility and it may, indeed, be recommended in the near future. No one so far has listed for consideration some of the new problems this would create in the transportation industry. The extension of bulk exemptions to the railroads is hardly the course the railroad industry would choose for itself. Indeed, the Association of American Railroads has testified specifically in recent hearings in favor of the repeal of section 303(b). They have also said, of course—and we believe this is very much a second choice—that if equality of regulation cannot be achieved, then the bulk exemptions should be extended to the railroads.

As I shall attempt briefly to show, deregulation of the railroads would produce chaotic conditions in the railroad industry itself. Not in 75 years have railroads competed with each other on a price basis. We have maintained for years that the greatest weakness of the railroad industry is the blood they let out of their own veins through uneconomic pricing of their competition with water carriers. But imagine for a moment two great railroads reducing their rates to out-of-pocket cost levels in an effort to wrest bulk exempt traffic from one another. Such titanic struggles would quickly swamp the small water carriers, but inevitably, as they did before the passage of the Interstate Commerce Act of 1887, they would ruin the railroad industry. We sometimes forget that this act was passed as much to protect the railroads from each other as for any other reason.

The key point was made by ICC Commissioner Howard Freas in testimony on the occasion of the passage of the Transportation Act of 1958:

> I believe that if transportation history teaches any one thing, it is that while competitive forces generally are effective in reducing prices and improving standards of service, these very same competitive forces in the transportation field, if unchecked, will result in eliminating competition and in disrupting reasonable and fair rate relations as between competing shippers, geographical areas and territories.

That is the clear lesson of history.

But, if serious consideration is given to the question of deregulating the railroads, these issues must be considered:

1. Seventy percent of railroad traffic would be exempt: How much of railroad traffic would be exempt? Reliable estimates are that 70 percent of existing traffic of the railroads would be deregulated. The Congress would have to determine the facts. If this much of the Nation's traffic were to be deregulated overnight, any effective regulation of the rest would become academic. Extending the bulk exemption to the railroads would, therefore, become tantamount to repealing the Interstate Commerce Act.

2. Eliminate price-fixing rate bureaus: Railroads now meet regularly in rate bureaus to fix prices, a practice that, in industry generally, has been successfully attacked under the antitrust laws in recent years. The saving grace of the rate bureau has been the fact that the Interstate Commerce Commission provides economic regulation of the resulting rates in the public interest. Without the ICC, such rate bureaus would be an invitation to reestablishment of monopoly.

3. Relative size problem: The disparity in size between the regulated water carrier industry and the railroad industry is approximately 1 to 90. The $9 billion railroad industry could easily overwhelm the less than $100 million common carrier barge industry, if it came to a real test of the unrestricted operation of the "law of the jungle." Central to the protection of the small, efficient operator from the inevitable predatory operations of the large railroad has been the instantaneous relief available under the suspension provision of the Interstate Commerce Act. Wipe this out and water carriers would be out of business within weeks or months.

4. Increasing the power of large shippers: The tendency of large corporations to use their economic power to obtain uneconomic rates is largely responsible for the crippling of the common carrier transportation industry. The only defense against forced uneconomic pricing is the Interstate Commerce Act. No more powerful stimulus to the development of monopoly in industry could be conceived than the removal of adequate public control of transportation rates. Preference and prejudice in freight rates, rebates to large shippers, would, once again, become the rule and the Nation's small shippers would suffer.

5. Effect on the farmers: Farm organizations generally oppose the extension of the agricultural exemptions to the railroads. In hearings on the decline of regulated carriage in 1961, the American Farm Bureau Federation stated as follows:

> The Association of American Railroads has proposed that the hauling of farm products by rail should be exempt from ICC rate regulation in the same manner as the hauling of farm products by truck, and that the hauling of bulk commodities by rail should be exempt from ICC rate regulations in the same manner as the hauling of bulk commodities by inland water carriers. This is asserted to be necessary to provide equality of regulation among the various modes.
>
> It is our view that the difference between the modes of transportation are so substantial that the argument for identical regulations has little merit. We do, however, believe that a substantial equality of regulation can be provided by a flexible rate policy as summarized in section 2 of this statement, and that in the interest of all concerned, including the railroads, this is a more desirable approach to the problem.

Their recommendation of a more cost related rate policy is one that is generally endorsed by the water common carriers. It was stated by the American Farm Bureau Federation as follows:

> Much of the rate structure of regulated carriers is still based on value of service and related concepts with only secondary consideration to costs and competitive factors. This is an open invitation to nonregulated carriers to "cream" the high-rated traffic.
>
> This is of vital importance to the maintenance of a common carrier system. While the traffic which has been lost by decades of noneconomic pricing cannot be regained quickly, expeditious action to adjust rates on the basis of cost and competitive conditions is needed.

6. Below-cost pricing by railroads: According to ICC records, two-thirds of rail freight is carried at less than full cost and one-fifth at less than direct or out-of-pocket cost. The only protection the lower cost water carrier has today against cutthroat competition by the higher cost railroads is the Interstate Commerce Act. Remove this protection and the lower cost water carrier would find his rates undercut in a concerted campaign to eliminate competition. Even with the Interstate Commerce Act, cutthroat competition has very nearly eliminated the once-flourishing coastwise and intercoastal steamship service. Without the ICC, the small water carrier industry would disappear in a very short time.

Extending the bulk exemptions to the railroads would in effect, mean elimination of public control of minimum rates. Commissioner Joseph Eastman expressed the social justification of the minimum rate power in these terms in a precedent-setting ICC decision:

> There are, I believe, sound grounds for holding that we were given the minimum rate power for the purpose of promoting within reason the use, to the extent that our jurisdiction permits, of the different modes of transportation in the services to which they are economically best fitted and discouraging their use in adverse conditions * * *.

Let me return now to the specific issues of the exemptions as they relate to water carriers.

The question was asked on Tuesday as to what effect the passage of H.R. 5595 would have on bulk transportation on the Great Lakes. The answer is a complicated one: unless 303(c) is also repealed, the repeal of 303(b) would be a disaster to the regulated carriers on the Great Lakes.

Section 303(c) is the section which gives the bulk exemption to contract carriers operating in international waters—the Great Lakes contract carriers. The passage of H.R. 5595 would deprive the common carriers of the ability to meet unregulated competition "in kind," but would leave the contract carrier still in a position to handle bulk traffic at secret rates. Since Congress would not deliberately handicap the common carriers, it follows that the repeal of section 303(b) as proposed in H.R. 5595 ought to be accompanied by the repeal of section 303(c) as well. This would subject bulk transportation "for hire" on the Great Lakes to appropriate regulation either as common carriage or contract carriage, as is now the case with nonbulk traffic.

But even this would not quite produce an equitable system of regulation. When water transportation of bulk cargoes is brought under regulation, the definition of contract carriage should be narrowed to cover only traffic which, by its inherent nature or special requirement

of equipment, is not substantially competitive with common carriage. This clearly was the congressional intent in 1940.

Would the passage of H.R. 5595 be the solution to our troubles? The answer is that it would be only half a solution. A serious threat to the survival of common carriers would still remain. Serious as the problem of unfair exempt competition is—of operating in a field where in effect there are two sets of rules—the problem of competing with proprietary carriers of the Nation's largest corporations makes brothers out of all independent water carriers.

With the exempt carriers, we are at least in the same ball park. But when multibillion-dollar corporations throw their excess capacity on the market at uneconomic rates, then, indeed, we have a situation in which we fear for our lives.

The most famous and best documented case of uneconomic competition from a proprietary carrier is on the Great Lakes. One of the Nation's largest corporations maintains a ship which has become widely known as a "fighting ship", a ship designed to be a "yardstick" of costs for the independent carriers. But a yardstick assumes an agreed fair measure. Analyzed in a recent brief by the Great Lakes Ship Owners Association in a proceeding before the ICC (Docket Nos. 33366, 33444 and 33636), the proprietary carrier costs were shown to be understated by at least 50 percent. Common carrier costs were shown to be the same or lower than the true costs of the proprietary carrier, a contention reinforced by the fast that when the company had products to ship, it first sought to do so by the common carrier.

The more usual practice of the proprietary carrier is not quite so blatant. If the ore trade, for instance, from the Mesabi range at the head of the Great Lakes becomes dull, the proprietary carriers will simply avail themselves of the bulk exception and drop down into the grain trade. Since rates are based on the assumption that the ships should simply be kept busy regardless of the profit return, the impact on the independent common carriers can readily be imagined.

On the rivers, the problem varies. Most damaging is the proprietary carrier with a haul of his own material one way who throws his capacity on the market at uneconomic rates to provide himself with what the regulated truckers call "gas money" for the return trip. But for the bulk exemption this would not be possible.

Needless to say, we have no quarrel with genuine private carriage. The right of a private industry to haul its own goods should certainly be preserved and we would not want to see that right impaired in any way. Our problem is with the intermingling of private and "for hire" operations which are made possible by the bulk exemptions.

There is one easy way to cover the problem. Section 310 is a qualified ban on the intermingling of common and contract carriage. The carrier has to make up his mind whether he wants to be a common or a contract carrier; he cannot be both at the same time. The commingling of private and "for hire" transportation could be similarly prevented. You would need, obviously, to cover all the loopholes such as the practice of chartering barges and towboats back and forth either to carriers that are independent in name only or to bona fide independents.

Indeed, it is doubtful whether private industry would oppose such a proposal with much vigor. The plain fact is that the corporations having private fleets are among the largest in the Nation. The economic leverage they exert against the relatively small barge industry is virtually irresistible. No responsible corporation interested in the preservation of the common carrier can defend situations where cutthroat uneconomic rates are used to damage the common carrier.

I would like now, briefly to suggest to you the other side of some of the prophecies of doom you have heard from those who are against repeal of the exemptions.

First, I would like to try once again before this committee to take away the club with which the common carriers are so often beaten. This club, we sometimes think, prevents serious consideration of many of our proposals. It was used by Robert Peabody on Wednesday and by ICC Chairman Murphy on Tuesday, and by Mr. Breithaupt, who preceded me. It is simply this:

Mr. Peabody said:

> 90 percent of our inland waterway tonnage is being moved by carriers exempt from regulation.

Mr. Murphy said:

> It has been estimated that only 10 percent of the tonnage shipped by water in the domestic trade is subject to regulation.

The impression conveyed by these two statements is that the regulated carriers handle so small a part of the business that whether they survive or not is of little consequence. The main show is in another tent. Those who know the river business know differently and I believe you will agree with me very quickly that an injustice has been done.

Tons of transportation performed are not a proper measure of the extent of the service. The ton-mile is the test used for railroads and trucks and the same yardstick should be applied to us. When you limit your measurement to tons alone, then you overemphasize the myriad operations which are more mining than transportation. I have in mind sand and gravel taken from the river bed and transported perhaps only to the river bank or a few miles upstream to be used in local building operations. Oyster shells are another example of "mining" rather than transportation. This is not transportation that needs regulation by any stretch of the imagination. And yet, of course, on the rivers, there is a lot of it and it distorts the whole tonnage picture.

The common carriers' own estimates, previously introduced as evidence before this committee, show that ICC-regulated bargelines actually handle about 40 percent of the ton-miles on the Mississippi River and the Gulf Intracoastal Canal.

It may surprise you to hear that the regulated truckers haul less than 40 percent of the total truck commerce of the Nation.

This misunderstanding of the difference between tons and ton-miles as a measure of transportation service is highly damaging to the common carrier and in turn to the public interest.

From this misunderstanding stems another just as great. Commodities which qualify under the bulk exemptions are not necessarily handled on that basis. Grain, for example, is eligible for the bulk

exemption, but most of it on the rivers travels at tariffs published by the common carriers. Coal can be bulk exempt but common carriers publish coal rates, and handle coal on them.

The charge is often heard that regulated rates mean higher rates. How often this was said in the hearings on the 1940 act. The record speaks for itself. Captain Ingersoll testified on Wednesday to the spectacular fact that his ton-mile revenues were the same today as in 1923; his figure of 3.31 mills per ton-mile is not far from an industry average of about 3.6 mills. What other mode of transportation can make such a claim?

But, say the exempt carriers, look at the rates on steel which are regulated and compare them with the rates on grain which are subject to exempt competition. Indeed there is a difference. But, as you would expect from such a pat example, there is a good answer. It is simply this: The revenue per barge-mile of a barge laden with 1,300 tons of grain at the lower rate per ton is about the same as the revenue per barge-mile of a barge laden with 600 tons of steel. Our unit of production is the barge; our charge is related to the cost of handling the barge.

Another illusion of opponents of this bill is that the exempt carriers are doing all the work of transporting the commodities that are subject to the exemptions. This is just not the case. Common carriers, harassed as they are by chiseling competition, even so, derive most of their revenues from commodities that can move on an exempt basis whether or not they are so hauled. It is the common carrier lines which provide essential services to power companies and steel companies. They are the companies which have given the coal industry such a boost in the market in the past few years.

In addition, the common carrier bargelines provide at least half of the service in carrying grain for the farmers and millers.

In sober truth, the Congress has to decide whether common carrier service is important to the country or not. Surely the relatively small shipper could face no more destructive handicap than the absence of common carrier transportation. Can any force be conceived more likely to promote monopoly than to deprive the average shipper of regular, dependable common carrier service at nondiscriminatory rates? The experience of Congress speaks for itself. There is no substitute for the common carrier.

Mr. WILLIAMS. That concludes your statement, Mr. Taylor; is that correct?

Mr. TAYLOR. Yes; it does, Mr. Chairman.

Mr. WILLIAMS. You made a very excellent statement, in my opinion, of the position of your group that you represent on this legislation.

As a matter of fact, you have raised some points which have not occurred to me in the consideration of this legislation and some points which I think certainly should be given consideration by this committee. However, for the sake of clarification I would point to the contentions on page 4 of your statement relating to the competition of regulated carriers with unregulated carriers. You say in your last sentence of the first paragraph:

> Today there is most vigorous competition between regulated and unregulated carriers.

Are you referring to regulated and unregulated water carriers?

Mr. TAYLOR. Yes.

Mr. WILLIAMS. Let me ask you this: Are you referring to the carriers of exempt dry bulk commodities?

Mr. TAYLOR. Yes, sir.

Mr. WILLIAMS. Is not the exemption equally applicable to all carriers?

Mr. TAYLOR. That is correct.

Mr. WILLIAMS. Then how can there be discrimination as between one carrier and another in this respect?

Mr. TAYLOR. The point I am making here is that at the time the 1940 act was passed the exemption actually meant very little because it was not used to any great extent. Most of the traffic was handled by the regulated carriers at published rates even though it was susceptible to the exemption. That was their normal way of doing business. The use of the exemption grew very rapidly beginning, I think, in the late 1940's and has generated a large number of strictly exempt competitors.

Mr. WILLIAMS. Do you mean competitors who carry nothing but exempt commodities?

Mr. TAYLOR. That is correct, and it makes it very difficult for the common carrier to conduct two separate operations.

Mr. WILLIAMS. I can understand your argument in that respect, but is that necessarily discriminatory? He is not necessarily an unregulated carrier. He is an unregulated carrier to the extent that he is carrying exempt commodities, isn't he?

Mr. TAYLOR. Yes.

Mr. WILLIAMS. Very frankly, I fail to understand the implied argument of unfair competition among the water carriers in that respect because of the fact that the exemption is extended across the the board to all of the carriers and is available to your carriers as well as it is to, we might say, the smaller or the other independent carriers.

Mr. TAYLOR. The maintenance of the exemption makes it difficult to conduct a common carrier operation economically.

Mr. WILLIAMS. In other words, it is necessary for the carriers that you represent to mix their shipments in order to make a profit?

Mr. TAYLOR. Pardon me.

Mr. WILLIAMS. It is necessary for the carriers that you represent to mix their shipments in order to make it profitable?

Mr. TAYLOR. Yes, that is correct, in order to conduct the most economically possible operation. We did this in the forties because the use of the exemption was extremely limited and the great bulk of the tonnage of the commodities susceptible to the exemption were handled under regulation and were therefore mixed by the regulated carriers. When the use of the exemption started and grew then it became necessary in some instances for the common carriers to use the exemptions to remain competitive for the reasons that I have stated here about the inability to file rate changes rapidly enough to keep up with the day-to-day quotation situation.

Mr. WILLIAMS. Going back to page 2 now, you say:

> No more powerful stimulus to the development of monopoly in industry could be conceived than the removal of adequate public control of transportation rates.

Are you saying there that these exemptions created tendencies toward monopoly?

Mr. TAYLOR. I am talking here about the possibility of the extension of the exemption to the railroads.

Mr. WILLIAMS. That is what I thought, but I wanted to make that clear. You are referring to competition between modes and not competition between individual carriers in the same mode?

Mr. TAYLOR. I am talking about the tendency toward industrial monopoly that would result by reason of the elimination of the exemption on the rails and the leverage that the larger corporations would be able to exert on the rates charged for their exempt traffic by rail.

Mr. WILLIAMS. Your reference is to competition between modes of transportation in this instance, is it?

Mr. TAYLOR. No, I think my reference is to the tendency toward industrial monopoly by reason of the ability of the larger units to use their leverage for discriminatory rates because of their business volume, which under the proposal for the extension of the exemption to the railroads would become possible by rail.

Mr. WILLIAMS. I just wanted to clarify that, Mr. Taylor.

Mr. Springer, did you have any questions?

Mr. SPRINGER. Yes, one or two. In general in the last 5 years what has been the economic situation in the industry?

Mr. TAYLOR. In the last 5 years the return on investment of the common carrier river group—I am not familiar with the figures for the lakes or coastwise carriers—has been more than cut in half and it has become a very serious question as to whether any expansion of operation is desirable. Speaking for our own company, we are not yet——

Mr. SPRINGER. I am asking you about the industry broadly, not your company.

Mr. TAYLOR. All right. For the Mississippi River and tributary waterways, class A and B carriers, the return on net property in 1956 was 11.5 percent and in 1960 was 5.6 percent.

Mr. SPRINGER. 5.6 percent when?

Mr. TAYLOR. 1960. That is the last year for which figures are available.

Mr. SPRINGER. What is your average for the 5-year period?

Mr. TAYLOR. I don't have those figures. It has been a constant decline, however.

Mr. SPRINGER. Your average has been between 5 and 9 percent, though, has it not?

Mr. TAYLOR. Yes, it would have to fall in there, but I don't know what the exact figure is.

Mr. SPRINGER. That is all I have.

Mr. TAYLOR. Thank you, sir.

Mr. WILLIAMS. The next witness is Vice Adm. James A. Hirshfield, vice president of the Lake Carriers' Association.

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STATEMENT OF VICE ADM. JAMES A. HIRSHFIELD, U.S. COAST GUARD, RETIRED, VICE PRESIDENT, LAKE CARRIERS' ASSOCIATION; ACCOMPANIED BY SCOTT H. ELDER, COUNSEL FOR THE ASSOCIATION

Admiral HIRSHFIELD. Mr. Chairman, I have with me Mr. Scott H. Elder, who is counsel for the association.

Mr. WILLIAMS. You may proceed.

Admiral HIRSHFIELD. Mr. Chairman, I am Vice Adm. James A. Hirshfield, U.S. Coast Guard, retired, vice president of the Lake Carriers' Association.

We have submitted a rather lengthy statement, Mr. Chairman, which goes into history and background, and I have with me, to read, a summary of this statement in order to save the committee's time, if I may, sir.

Mr. WILLIAMS. All right, sir, and if there is no objection the entire statement will be included in the record.

(The statement referred to follows:)

STATEMENT OF VICE ADM. JAMES A. HIRSHFIELD, U.S. COAST GUARD, RETIRED, VICE PRESIDENT, LAKE CARRIERS' ASSOCIATION, CLEVELAND, OHIO

INTRODUCTION

Lake Carriers' Association, hereinafter referred to as "association," is an organization consisting of 28 vessel companies owning and operating in the aggregate 264 cargo vessels of U.S. flag engaged primarily in the transportation in bulk of iron ore, coal, limestone, grain, and petroleum products between ports on the Great Lakes. In all the vessels of association members transport about 95 percent of the total commerce of the Great Lakes which moves by American-flag vessels. At times this commerce has totaled as much as 175 million tons in a single 8-month navigation season.

As has been noted so often by the Congress, the commerce on the Great Lakes is predominantly the transportation in bulk of such raw materials as iron ore, limestone, coal, and grain. The transportation of these bulk commodities constitutes about 95 percent of the total Great Lakes commerce. That transportation is a homogeneous operation. Bulk and nonbulk commodities are rarely, if ever, commingled in the same vessel for purposes of transportation. Indeed the two types of commodities are rarely transported by the same vessel owner. Those vessel owners who engage in bulk transportation are exclusively in that trade. Transportation of commodities in bulk on the Great Lakes is not competitive with common carriers either by land or by water. On the other hand, such transportation is competitive with foreign water carriers.

In dealing with the transportation of commodities in bulk on the Great Lakes, it has been the traditional policy of the Congress to exempt such transportation from economic regulation. That is a sound policy redounding to the public interest and should be continued. For this reason the association strongly opposes enactment of H.R. 5595.

GEOGRAPHICAL POSITION OF THE GREAT LAKES

Composed of Lakes Superior, Michigan, Huron, Erie, and Ontario, the Great Lakes provide the largest inland waterway in the world. They are composed of 95,000 square miles of navigable waters, with a shoreline, nearly equally divided between the United States and Canada, of 8,300 miles. From Ogdensburg, N.Y., at the head of the St. Lawrence Seaway, to Duluth, Minn., the sailing distance is 1,225 miles, or alternatively to Chicago, 1,130 miles. Of this route, only Lake Michigan lies entirely within the United States, the remaining lakes and connecting rivers being international boundary waters between the two countries.

A series of waterway improvements have removed many of the natural re-

strictions to unimpeded navigation between the lakes and to tidewater. Specifically, the St. Lawrence Seaway, completed in 1959, makes possible the movement of deep draft vessels between the Great Lakes and the lower St. Lawrence River. The Welland Ship Canal, wholly in Canada, circumvents Niagara Falls through a series of eight locks, and permits vessel transits between Lakes Ontario and Erie. The connecting channels project, now in the final stages of development, has made available deeper channels in the Detroit and St. Clair Rivers, connecting Lakes Erie and Huron. Another phase of the same program will afford more favorable navigational conditions for ships trading between Lakes Huron and Superior. Similarly, a new deep draft lock is in the initial stages of construction at Sault Ste. Marie, Mich., where a series of four existing locks on the United States side and one lock on the Canadian side of St. Marys River have permitted uninterrupted navigation since 1855, when the first lock of commercial size was completed by the State of Michigan.

NAVIGATION RIGHTS ON THE GREAT LAKES

While the Great Lakes are territorial waters of the United States and Canada on their respective sides of the international boundary, all of the Great Lakes, even including Lake Michigan, which lies wholly within the United States, are free and open for purposes of navigation to the vessels and citizens of both countries. This right of free navigation has its origin in the Jay Treaty of 1794 between the United States and Great Britain and was asserted and reasserted in subsequent treaties until made perpetual by the Boundary Waters Treaty of 1909. The language in the last treaty, patterned after earlier treaties, is that the Great Lakes "shall forever remain free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries, equally, * * *."

This right of free navigation, however, extends to more than the vessels of the United States and Canada. No domestic law of the United States or Canada nor any international law or agreement prohibits vessels of any flag from trading within the Great Lakes between the ports of the United States and Canada or from trading between Great Lakes ports and ports of other countries. For all practical purposes, therefore, the right of navigation is free and open to vessels of all countries.

For many foreign nations, construction of the St. Lawrence Seaway has made the right of free navigation of the Great Lakes a valuable privilege. Ocean vessels comparable in size to the largest Great Lakes vessels now trade between ports within the Great Lakes and between such ports and ports on the lower St. Lawrence River and overseas.

GREAT LAKES BULK COMMODITY MOVEMENTS

Waterborne commerce on the Great Lakes is singularly distinguished for the magnitude of bulk commodities transported and the development of ships especially designed and constructed for the handling of those products. Vessel construction on the Great Lakes has made great strides during the current century, although the basic design has remained substantially unchanged, thus attesting to the practicality and flexibility of the original basic characteristics which have endured through succeeding decades. With close correlation between ships and dockloading and unloading machinery, supplemented by an unequaled development of self-unloading devices for bulk cargo, the lake fleet has been able to meet all demands for commodity movements in two World Wars and in eras of industrial expansion and prosperity.

The harmony between vessels and dock facilities does not alone account for the efficiency of the Great Lakes fleet. Land carriers neither own any interest in nor have any arrangement with Great Lakes vessels transporting bulk commodities. Great Lakes vessels transporting bulk commodities have no fixed ports of call and no regular routes. Shippers assemble their cargoes and vessels transport the cargoes between ports according to the direction of those who own the commodities. This system of transportation is as pliant as the needs of the owners of the commodities.

Indicative of the resilience and flexibility of the lake fleet are the accompanying statistics indicating the maximum year's shipments in each period, together with the 1932 minimum. In addition, a subsidiary tabulation reflects the aggregate bulk commodity volume during selected 5-year periods.

Year	Iron ore	Coal	Grain	Limestone	Total
	Gross tons	*Net tons*	*Net tons*	*Net tons*	*Net tons*
1916	64, 734, 198	28, 440, 483	10, 555, 975	5, 553, 927	117, 052, 686
1929	65, 204, 600	39, 254, 578	10, 021, 099	16, 269, 612	138, 574, 441
1932	3, 567, 985	24, 857, 369	8, 890, 409	3, 928, 840	41, 672, 761
1944	81, 170, 538	60, 163, 330	16, 228, 880	16, 856, 279	184, 159, 492
1953	95, 844, 449	51, 034, 713	14, 317, 229	26, 999, 207	199, 696, 932
1957	87, 278, 815	56, 779, 772	11, 234, 810	30, 439, 375	196, 206, 230
1960	73, 073, 053	46, 701, 235	14, 134, 959	27, 179, 458	169, 857, 471

5-year period:	*Total net tons*	5-year period—Continued	*Total net tons*
1916–20	545, 046, 872	1941–45	889, 912, 876
1925–29	621, 245, 372	1951–55	903, 180, 732
1931–35	345, 821, 695	1956–60	844, 387, 308

Declining commodity movements during the 5-year interval 1956–60 reflect not only recessionary influences occurring in both the United States and Canada during 1958 and 1960, but in addition the amounting competitive disadvantages under which U.S. vessels labored as a result of opening of the St. Lawrence Seaway and the influx of low-cost foreign ships with their lower construction and operating costs.

WATER CARRIERS ENGAGED IN GREAT LAKES TRANSPORTATION

Generally speaking, there are two types of carriers which engage in the transportation of commodities in bulk on the Great Lakes. First and more numerous are the carriers which transport cargo for others in full ship loads. The remainder are those who use their own vessels to transport their own commodities.

The Federal courts have consistently held that water carriers, such as those engaged in the transportation for others of commodities in bulk on the Great Lakes, who carry only under special arrangement for specific cargoes and on any given occasion make the capacity of a vessel available only to one person or to one set of persons, are regarded by the general maritime law as contract (private) carriers. Two Great Lakes cases hold to that effect. *The Pawnee* ((E.D. Mich.) 205 F. 333). The *Pawnee* was under charter to a Tonawanda firm for the transportation of lumber and coal covering her downbound and a portion of her upbound trips. On some of the upbound trips she carried coal for other parties, arranged by special contract. Libelant shipped as a seaman at Detroit and was injured while the vessel was in Collingwood, Ontario, as a result of a fall into the cargo hold. He claimed that his cause of action was enforceable under the Employers Liability Act, June 11, 1906, for the reason that the *Pawnee* was a common carrier. Holding that the *Pawnee* was a contract (private) carrier and not a common carrier, the court said, pages 334–335:

"But the *Pawnee* was not a part of a railroad or railroad system, nor a common carrier. She was not engaged in the carrying trade for the general public nor held out to carry the goods of all persons indifferently who might apply. She carried only under special arrangements, for specific cargoes, with such parties as agreements might be made. She made no profession to carry for all, and was under no obligation to take whatever goods might be tendered. She ran on no particular schedule of time, nor between any particular places or termini. She selected such cargoes as she saw fit to carry and at such prices as might be agreed upon. She had the right to refuse any freight which she wished to reject.

"A ship in the business in which the *Pawnee* was engaged is not a common carrier in the legal sense of the term, but in fact and in law a private carrier only."

The *H. A. Rock* ((W.D. N.Y.) 23 F. 2d 198). The *H. A. Rock* loaded a cargo of grain at south Chicago for transportation to Buffalo. The entire cargo was shipped by one shipper. During the voyage the cargo was damaged. Action was brought by the cargo owner to recover the loss and the basis of the cargo owner's claim was that the vessel owner was a common carrier. The court rejected this theory and held that inasmuch as the full reach of the vessel was given to one shipper, the vessel owner was a contract carrier and the defense of the bill of lading barring claim for loss occasioned by faults or errors in the navigation of the vessel was available.

The distinction which the maritime law makes between contract carriers and common carriers is shown by an early Great Lakes case decided by the Supreme Court of the United States, namely *Propeller Niagara* v. *Cordes* (21 How. (U.S. 7)). On the last trip of the season of 1854 the *Niagara* stranded in the north end of Lake Huron on a voyage from Buffalo to Chicago. Cargo was damaged and libel to recover damages was brought. The bill of lading excepted the dangers of navigation and other perils of the sea. There was no statutory limitation of liability and the question was whether the vessel was a common carrier liable as an insurer, act of God or public enemies excepted, or was a contract carrier which could by contract limit liability. The evidence showed that the *Niagara* was a general ship transporting the goods of all who desired her services. It was held that the *Niagara* was a common carrier which the Supreme Court defined, page 22, as "one who undertakes for hire to transport the goods for those who may choose to emply him from place to place."

These Great Lakes cases are wholly in accord with the decisions of the admiralty courts construing and applying the maritime law in the case of ocean vessels. See *Liverpool S.S. Co.* v. *Phoenix Insurance Company*, 129 U.S. 397; *The Wildenfels* (2 CA) 161 F. 864; *The Fri* (2 CA) 154 F. 333; *The C. R. Sheffer* (2 CA) 249 F. 600; *The G. R. Crowe* (2 CA) 294 F. 506; *Commercial Molasses Corp.* v. *New York Tank Barge Corp.*, 314 U.S. 104.

REASON FOR ABSENCE OF COMMON CARRIERS IN GREAT LAKES BULK TRANSPORTATION

The movement of bulk commodities on the Great Lakes does not lend itself to a common carrier type of operation. Of the carriers for hire, only the contract carrier can make the most efficient use of the lake-type bulk vessel which is, after all, a special purpose vessel designed to meet the particplar requirements of loading and unloading facilities for the handling of bulk commodities. If the requirements of the trade are to be served, such vessels must be free to select full cargoes without regard to routes or ports. They must carry the commodities where needed, when needed. This is the type of service that can be provided only by the contract carrier. It is the type of service shippers of bulk goods demand and explains with finality why there are no common carriers by water engaged in the transportation of bulk commodities on the Great Lakes.

ECONOMIES OF GREAT LAKES TRANSPORTATION

The free play of natural economic forces and the absence of statutory regulation in the transportation of bulk commodities on the Great Lakes has resulted in public benefits unmatched by any other of the Nation's modes of transportation. As of 1960 the average per-ton-mile rate of Great Lakes contract carriers for these bulk commodities was 1.9 mills compared with 11.5 mills for rail carriers transporting the same commodities from mines and quarries to the loading ports and from the unloading ports to the consuming areas. If any explanation were needed for the complete absence of competition between Great Lakes carriers and land carriers (railroads and motor carriers), the comparative rates shown herein would be sufficient.

Of the competitive forces, three are prominent and self-evident. First, there is competition between the contract carriers in U.S. domestic trade. Second, several shippers of these bulk commodities have their own vessels for the transportation of their own goods. Third, in the international trade the contract carriers must meet the lower operating costs of Canadian and other foreign-flag vessels, none of which are regulated.

HISTORY OF EXEMPTION FROM STATUTORY ECONOMIC REGULATION OF GREAT LAKES BULK TRANSPORTATION

Three acts of Congress have dealt in some form with economic regulation of water carriers. They are the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and the Transportation Act, 1940. In each of those acts the Congress excluded from the regulatory provisions the transportation of commodities in bulk on the Great Lakes. Such exclusion by the Congress in each case was based on the finding that there were unusual and extraordinary circumstances which distinguished the transportation of commodities in bulk on the Great Lakes from all other modes of transportation. Generally speaking, the findings of the Congress bear out the three distinguishing facts heretofore mentioned, namely (1) that the transportation of commodities in bulk on the Great Lakes is con-

ducted by contract and private carriers not common carriers; (2) that it is not competitive with common carriers either by land or water; and (3) that it is competitive with foreign carriers.

1. Shipping Act, 1916

The regulatory provisions of the Shipping Act, 1916, as originally enacted, applied, among others, to "a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port" (46 U.S.C.A. ch. 801). As the bill which was ultimately approved was originally introduced in the House, it was so broadly drawn as to apply to any common carrier in interstate commerce. Members of the Senate from Great Lakes States were apprehensive that the definition was so broad that it would be construed to apply to vessels engaged in the transportation of bulk commodities. Objection to the bill was stated by Senator Nelson of Minnesota as follows:

"We have on the Great Lakes two or three kinds of vessels"—then he referred to passenger vessels and package freighters—"* * * but the bulk of the tonnage on the Great Lakes is practically carried, not by such route ships but by independent concerns, a species of tramps. They have, for instance, vessels built on the Great Lakes made expressly for the purpose of carrying iron ore from the head of the lakes down to Chicago and ports on the Great Lakes and then carrying coal and other bulk products back again to the lakes. There are several kinds of vessels made for that traffic. To put those vessels under the strict regulation of this bill would be unfair and unjust" (53 Congressional Record, p. 12,799).

To meet the objections of Members of the Senate from the Great Lakes States, the bill was amended by insertion of the condition "on regular routes from port to port."

When the bill was returned to the House for consideration of the Senate amendment, Congressman Alexander, chairman of the Committee on Merchant Marine and Fisheries, explained that the Senate amendment was designed to exclude the bulk carrier on the Great Lakes as well as the tramp ocean carrier, both of whom he placed in the same class. Questioned by Congressman Stafford as to whether or not the bill so amended would apply to a vessel transporting coal, for example, between ports on the Great Lakes, Congressman Alexander answered: "No; it would be a bailee for hire." Later Congressman Alexander made a statement for the benefit of the House that the Senate amendment in reality was not necessary for the reason that the bill as originally introduced was intended to apply only to "common carriers by water" and had no application to "bailees for hire" (53 Congressional Record, pp. 13365, 13366, and 13426).

2. Intercoastal Shipping Act, 1933

As originally enacted, the Intercoastal Shipping Act, 1933, applied to "every common and contract carrier by water engaged in the transportation for hire of passengers or property between one State of the United States and any other State of the United States by way of the Panama Canal." In 1938 the act was amended to extend to all common carriers by water as defined in the Shipping Act, 1916. Again, there was concern about the application of the act so amended to Great Lakes vessels. One of the Senators from Minnesota proposed an amendment to provide that the minimum rate provision would not apply to common carriers on the Great Lakes. The late Senator Copeland of New York, chairman of the then Senate Committee on Commerce, who was in charge of the bill, spoke in favor of the amendment as follows:

"Mr. COPELAND. Mr. President, there is justification for this proposal because 95 percent of the ships on the Great Lakes are contract carriers, and they are not affected in any way. Only 5 percent of the ships are common carriers, and those ships are in competition with Canadian ships. It is an entirely different matter than that of seeking to deal with our own shipping and to keep it on the same plane of parity. Therefore, so far as I am concerned, I have no objection to taking the amendment of the Senator from Minnesota to conference."

The amendment was agreed to (83 (pt. 6) Congressional Record, p. 6622).

The Shipping Board and the Maritime Commission, which administered the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, construed both acts as being applicable to Great Lakes carriers engaged in the transportation of commodities in bulk. They never asserted jurisdiction over those carriers or undertook to exercise any control over them. *Columbia Transportation Company, Contract Carrier Application* (260 I.C.C. 135, 139–140).

3. Transportation Act, 1940

(a) *Reports of the Federal Coordinator of Transportation, 1934–35.*—The Transportation Act, 1940, followed extensive studies made for and by the Congress. Part of the study was made by the late Joseph B. Eastman, then a member of the Interstate Commerce Commission, in the capacity of Federal Coordinator of Transportation. Mr. Eastman examined closely the character of Great Lakes commerce and the status of the carriers engaging in that commerce. In the report of Mr. Eastman's studies, transmitted to the Congress on March 10, 1934, the then Chairman of the Interstate Commerce Commission made these observations concerning Great Lakes commerce:

"On the Great Lakes about 95 percent of the traffic is bulk cargo carried by the private and contract carriers" (73d Cong., 2d sess., S. Doc. 152, p. 7).

The same report contained a full discussion of the Great Lakes contract and private carrier groups. With respect to the contract carrier group the report stated:

"The carriers in this group operate under individual contracts and are engaged almost exclusively in the transportation of bulk commodities, usually in full cargoes, such as ore, coal, grain, pig iron, sand, and stone. They have no regular routes or scheduled sailings but operate between any of the Great Lakes ports at which traffic may be obtained. Contracts for the entire season are sought but many are entered into for a shorter period and for single voyages. Some have close working arrangements with large industries that frequently employ them rather than operate their own ships.

* * * * * * *

"The carriers in this group handle no less-than-carload traffic or passengers and have no interchange traffic with rail or water carriers under joint rates. * * *

"All rates or charges are on a port-to-port basis. The freighting of cargoes is covered by a charter made between the shipper and the owner of the vessel, which usually specifies, among other things, the time when cargo and steamer are to be ready, the port of loading and discharge, the freight rate agreed upon, and a given time for loading and/or discharging, so that if time in excess of that allowed in the charter is consumed, the vessel may collect demurrage for loss of time.

"The rates which these carriers may obtain are strongly affected by competition among themselves, and with Canadian steamers. The latter competition is particularly severe in respect of grain and is also forceful so far as concerns stone, ore, and cement. The Canadian ships have lower operating costs, owing to smaller crews, lower wages, and fewer restrictions. Their endeavor to secure grain tonnage from Lake Superior ports is aided by the Canadian railroads, which maintain low rates via Montreal. Lower rates via Montreal on other commodities also attract to Canadian shipping a large volume of American export and import traffic" (Ibid. 133, 134, 135).

Further discussion of carriers on the Great Lakes engaged in the transportation of commodities in bulk was contained in the report of Mr. Eastman transmitted to the Congress on January 23, 1935, and dealing, in part, with the inroads which certain private and contract carriers were generally making upon common carriers. It is significant that Mr. Eastman drew a sharp distinction between Great Lakes carriers and private and contract carriers elsewhere. Said Mr. Eastman:

"There are, however, private and contract operations which are not open to these objections. An outstanding example is the operation of the cargo boats on the Great Lakes which carry, chiefly, iron ore, coal, and grain. So long as they confine themselves to such forms of traffic, they apparently are, as a practical matter, not competitive either with railroads or with common carrier steamship lines * * *" (74th Cong., 1st sess., H. Doc. 89, p. 17).

(*b*) *S. 2009 76th Congress, which became the Transportation Act, 1940.*—As the bill was reported to the Senate, it applied to all common and contract carriers by water engaged, among other things, in the transportation of goods in interstate commerce. There was no express exclusion of transportation of commodities in bulk or for that matter the transportation of any goods transported for hire by a water carrier. The bill, however, contained the declaration of policy found in section 303(e) of the Interstate Commerce Act, as amended, under the provisions of which the Commission was authorized on an individual basis to exclude "* * * transportation by contract carriers by water which, by reason of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk, is not actually and substantially

competitive with transportation by any common carrier subject to this part or part I or part II."

The Senate was well aware, however, of the exclusion of Great Lakes bulk transportation from the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. The Senate had the benefit of the reports of Mr. Eastman. These reports were fully considered by the Congress in the deliberation of S. 2009. Indeed, they lead directly to the exclusion of the transportation of bulk commodities on the Great Lakes. (84 (pt. 6) Congressional Record, p. 5962.) The Senate, too, was aware of the legal status of vessel owners engaging in that transportation, the lack of competition between them and other modes of transportation and the existence of competition between U.S. Great Lakes vessels and Canadian vessels. To make certain that those carriers were not brought under the regulatory provisions of the bill, Senator Brown of Michigan offered, and the Senate approved, the following amendment: "*Provided, however*, That nothing in this Act shall apply to contract carriers by water in the transportation of commodities in bulk on the Great Lakes whose vessels during the normal course of voyage pass within the international waters between the United States and Canada, and whose vessels compete in respect to the transportation of any such commodities in bulk with water carriers of a foreign country." (84 (pt. 6) Congressional Record, p. 6066.)

As S. 2009 passed the Senate and was introduced in the House, it contained no other exemption for water transportation than that applicable to contract carriers on the Great Lakes. In the House, however, S. 2009 was further amended to broaden the Great Lakes exemption and to provide:

"(c) Nothing in this part shall apply to transportation by a contract carrier by water of commodities in bulk in a non-ocean-going vessel on a normal voyage during which (1) the cargo space of such vessel is used for the carrying of not more than three such commodities, and (2) such vessel passes within or through waters which are made international for navigation purposes by any treaty to which the United States is a party."

In reporting S. 2009 for the Committee on Interstate and Foreign Commerce to the House, the chairman, Congressman Lee, observed, in effect, that the Senate proviso, as amended by the House committee, applied to "non-ocean-going vessels transporting, as contract carriers, not more than three commodities in bulk on the Great Lakes; * * *." (H. Rept. No. 1217, 76th Cong., 1st sess.) The House, therefore, merely restated the Senate proviso and, when the Congress approved the House exemption for the Great Lakes, the Congress adopted the Senate finding that Great Lakes carriers of bulk commodities are contract carriers and are subject to competition with foreign carriers. Obviously, the Congress believed that the Great Lakes merited special consideration inasmuch as the Great Lakes exemption was left in the bill notwithstanding the adoption of the general exemption applicable to all water carriers engaged in bulk transportation.

COMPETITION BETWEEN U.S. GREAT LAKES SHIPS AND THOSE OF CANADA AND OTHER MARITIME NATIONS

For the Great Lakes operator, foreign-flag competition is an even greater problem today than when the Transportation Act of 1940 was adopted. At one time American-flag Great Lakes vessels carried more than 85 percent of all the iron ore consumed in the United States, plus tremendous quantities of grain, coal, limestone, and petroleum. Now the picture has drastically changed. In 1959 the U.S. steel industry consumed only 59.8 million gross tons of Lake Superior iron ore, while imports of foreign ores reached a record of 35,645,649 gross tons. For bulk freight vessels the international trade between the United States and Canada includes all of the major commodities—iron ore, coal, grain and limestone. With the opening of major iron ore deposits in eastern Canada, an additional competitive factor has arisen; namely, the competition between Lake Superior and Labrador iron ore for ascendancy in the U.S. market. Since opening of the St. Lawrence Seaway, Labrador ore has moved to Midwest docks in consuming areas in cargoes equaling or exceeding the largest individual shipments via the Great Lakes from Mesabi and other Lake Superior ranges.

Substantially all of the Labrador product has been transported in Canadian or other foreign-registry vessels, due to their cost advantages. In 1959 such shipments aggregated 4,271,243 gross tons in 297 cargoes, and 1960 shipments, despite the recession, were 3,129,412 gross tons in 217 cargoes. Thus with more

than 500 cargoes having been moved in this 2-year period, and predominantly consigned to U.S. destinations, only 38 were in U.S. vessels.

The continuing success of Canadian vessels in capturing an increasing proportion of the international Great Lakes bulk trade is reflected by the fact that the proportion rose from 22 percent in 1930 to 85 percent in 1959. Complementing statistics indicate that in 1930 Canadian vessels transported 8.5 percent and U.S. vessels 91.5 percent of total lake bulk freight commerce, whereas in 1959 the division had narrowed to 17.1 percent for Canadian ships and 82.9 percent for U.S. vessels. During this period, the Canadian fleet had expanded its actual volume by 131.3 percent as compared with only 17.6 percent for the U.S. fleet.

With iron ore normally representing approximately 48 percent of Great Lakes commerce, coal 29 percent, limestone 16 percent, and grain 7 percent, it is clearly apparent that a major change in the source of iron ore is attended by disproportionate repercussions in the Great Lakes bulk cargo trade. Additionally, the availability of a direct water export route from Great Lakes ports to European consuming areas has drastically decreased the availability of grain as east bound cargo for Great Lakes ships. During 1960, Great Lakes vessels of U.S. registry transported only 17 percent of the grain so loaded, compared with 26 percent for foreign ships, and 56 percent for Canadian vessels. In preseaway years, the division was normally about 30 percent United States and 70 percent Canadian, with volume being substantially comparable.

To add to the competitive plight of American-flag Great Lakes operators, the Canadian Government announced in 1961 a new assistance program designed to augment the Canadian lake fleet. In essence this program provides a subsidy of 40 percent of approved construction costs during the period ending March 31, 1963, and 35 percent thereafter. These rates of capital subsidy will apply toward the construction of vessels in Canada for Canadian registry, other than fishing vessels, for use either in domestic commerce or in deep sea operations.

Heretofore major Federal legislation aimed at preserving U.S. shipping has been concentrated upon the ocean fleet and even then upon liner service on certain essential trade routes. Lately, however, many are coming to realize that it is not only the direct foreign-flag competition which is so devastating to our merchant marine but also the indirect competition among commodities which must necessarily be shipped by water. It is this latter type of competition which is rapidly strangling our American-flag Great Lakes fleet. To repeal the bulk commodity exemption and place American-flag Great Lakes bulk carriers under regulation would but further jeopardize their ability to compete with foreign-flag vessels without benefiting any other segment of our domestic transportation system.

THE EFFECT OF H.R. 5595

H.R. 5595 would repeal pragraph (b) of section 303 of the Interstate Commerce Act, as amended (49 U.S.C.A. sec. 903(b)), the general bulk commodity exemption, but would leave in effect paragraph (c) the Great Lakes exemption. Thus, the bill recognizes, as did the Congress in enacting the Shipping Act of 1916, the Intercoastal Shipping Act of 1933, and the Transportation Act of 1940, that the competitive forces affecting Great Lakes bulk commodity transportation do not call for an adjustment through the extension of regulatory programs and policies to such transportation.

Indeed, it appears to be the primary purpose of this bill to equalize the opportunity for regulated land and water carriers through the equality of regulation among competitors. Whatever may be the merits of such a proposal, the fact remains that, inasmuch as the carriage of bulk commodities on the Great Lakes is not competitive with common carriers either by land or by water, there is no need for bringing Great Lakes bulk transportation under statutory economic regulation.

However, because the present exemption pertaining to the transportation of commodities in bulk on the Great Lakes is limited to "contract carriers," this exemption might be of little effect and purpose should the general commodity exemption be repealed. As indicated previously, the Congress, in earlier enactments, always regarded the Great Lakes vessel operator as a contract carrier in terms of the general maritime law.

The Interstate Commerce Commission, however, does not seem disposed to follow the maritime law in construing the statutory term "contract carrier by water." Thus, in *Columbia Transportation Company, Contract Carrier Application*, 260 I.C.C. 135, the Commission, in determining whether Columbia was a common or contract carrier, refused to follow the maritime law. In that case

the Commission, in effect, totaled the shippers whom Columbia served and the commodities which Columbia transported and held, on the basis of its overall operations and irrespective of the special arrangements for each cargo, that, while Columbia might not be a common carrier under the maritime law, it was a common carrier and not a contract carrier for purposes of regulation under part III. The Commission further held, however, that Columbia in the transportation of bulk commodities was exempt from regulation by virtue of section 303(b).

It is apparent from the *Columbia* case that the Commission is not disposed to follow the maritime law in construing the statutory term "contract carrier by water." The indication is that the latter term would be construed more narrowly than the maritime law and more narrowly than the Congress intended.

Due consideration has been given the decision of the Commission in *American Range Lines, Inc., Contract Carrier Application*, 260 I.C.C. 262, decided several months subsequent to the *Columbia* case. American Range Lines involved the application of a so-called tramp ocean operator for continuation of rights as a contract carrier under applicable provisions of part III. Its transportation consisted of the movement of full vessel cargoes either under period contracts or under voyage contracts. In that respect the facts of American Range Lines operations were substantially similar to those of Columbia. Holding that American Range Lines was a contract carrier, the Commission observed that:

"The carrier which engages in the specialized business of transporting full cargoes or large quantities of a single commodity so that the shipper has the use of the full reach of the vessel does not serve the general public. Under the common law it is well settled by Federal court decisions that vessel operators engaged in the transportation of full cargo loads for one shipper were not common carriers."

Nevertheless, the Commission, particularly in motor carrier cases, has consistently sought to graft upon the common law concept of contract carrier the further requirement of specialization. See *Pregler, Extension of Operations*, 23 M.C.C. 691; *Craig, Contract Carrier Application*, 31 M.C.C. 705; and *Transportation Activities of Midwest Transfer Company*, 49 M.C.C. 383. The effect of the "specialization test," thus conceived, has led the Commission to conclude that, where a carrier serves a number of shippers, specialization is necessarily absent and the absence of specialization constitutes a "holding out" of service to the general public.

MODIFICATION OF GREAT LAKES BULK EXEMPTION NECESSARY WITH REPEAL OF GENERAL BULK EXEMPTION

By abandoning the general maritime law in favor of a much more restricted relationship, the Commission, should H.R. 5595 become law, would quickly take the Great Lakes vessel operator out of his natural role as a contract carrier and classify him as a "common carrier," subject to regulation. Consequently if the general bulk commodity exemption is repealed, the present Great Lakes exemption would be an exemption in name only. Many Great Lakes vessel operators, whom Congress heretofore has always regarded as contract carriers, would probably be held to be common carriers and thus subject to regulation.

Such a result would not be in the best interests of the Nation and would contravene the express intent of Congress. Thus, if the general bulk commodity exemption contained in paragraph (b) of section 303 is repealed, the Great Lakes bulk exemption contained in pargaraph (c) should be modified so as to make it clear that the exemption is to apply to all water carriers engaged in the transportation of commodities in bulk on the Great Lakes. This could be accomplished by deleting the word "contract" so that the exemption would apply to all Great Lakes carriers by water engaged in the transportation of commodities in bulk.

CONCLUSION

Clearly it is in the public interest to continue the exemption for transportation on the Great Lakes of commodities in bulk provided by section 303(b), part III of the Interstate Commerce Act, as amended. Should that section be repealed, however, section 303(c) should be amended to apply to all water carriers on the Great Lakes.

MARCH 21, 1962.

Admiral HIRSHFIELD. Mr. Chairman, the Lake Carriers' Association would like to express their appreciation for being allowed to appear in this hearing. Ours is an association which is an organization of

vessel companies engaged primarily in the transportation of bulk commodities between ports of the Great Lakes. In all, the vessels of association members transport about 95 percent of the total commerce of the Great Lakes which moves by American-flag vessels.

As has been noted so often by the Congress, the commerce of the Great Lakes is predominantly the transportation in bulk of such raw materials as iron ore, limestone, coal, and grain. The transportation of these bulk commodities constitutes about 95 percent of the total Great Lakes commerce. That transportation is a homogeneous operation. Bulk and nonbulk commodities are rarely, if ever, commingled in the same vessel for purposes of transportation. Indeed, the two types of commodities are rarely transported by the same vessel owner. Those vessel owners who engage in bulk transportation are exclusively in that trade.

In dealing with the transportation of commodities on the Great Lakes in bulk, it has been the traditional policy of the Congress to exempt such transportation from economic regulation. That is a sound policy, redounding to the public interest and should be continued. For this reason the association strongly opposes enactment of H.R. 5595.

While the Great Lakes are territorial waters of the United States and Canada on their respective sides of the international boundary, all of the Great Lakes, even including Lake Michigan, which lies wholly within the United States, are free and open for purposes of navigation to the vessels and citizens of both countries. This right of free navigation is preserved by the Boundary Waters Treaty of 1909. The language of the treaty, patterned after earlier treaties, is that the boundary waters—

> shall forever remain free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries, equally, * * *.

Boundary waters are defined in the treaty as—

> the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof.

The right of free navigation, however, extends to more than the vessels of the United States and Canada. No domestic law of the United States or Canada nor any international law or agreement prohibits vessels of any flag from trading within the Great Lakes between the ports of the United States and Canada or from trading between Great Lakes ports and ports of other countries. For all practical purposes, therefore, the right of navigation is free and open to vessels of all countries. Further, Canada has made no attempt to regulate her own domestic commerce on the Great Lakes other than to require that it be carried in "British Commonwealth ships," and all such ships are free of economic regulation.

Generally speaking, as respects our own vessels, there are two types of carriers which engage in the transportation of commodities in bulk on the Great Lakes. First are the carriers which transport cargo for others in full shiploads. The remainder are those who use their own vessels to transport their own commodities.

The Federal courts have consistently held that water carriers such as those engaged in the transportation for others of commodities in bulk on the Great Lakes, who carry only under special arrangement for specific cargoes and on any given occasion make the capacity of the vessel available only to one person or to one set of persons, are by the general maritime law contract carriers. Two Great Lakes cases hold to that effect, the *Pawnee* (Ed. Mich.) 205 F. 333, and the *H. A. Rock* (W.D. N.Y.) 23 F. 2d 198.

The movement of bulk commodities on the Great Lakes does not lend itself to a common carrier type of operation. Of the carriers for hire, only the contract carrier can make the most efficient use of the lake-type bulk vessel which is, after all, a special purpose vessel designed to meet the particular requirements of loading and unloading facilities for the handling of bulk commodities. If the requirements of the trade are to be served, such vessels must be free to select full cargoes without regard to routes or ports. They must carry the commodities where needed and when needed. This is the type of service that can be provided only by the contract carrier.

Three acts of Congress have dealt in some form with economic regulation of water carriers. They are, the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and the Transportation Act, 1940. In each of those acts, the Congress excluded from the regulatory provisions the transportation of commodities in bulk on the Great Lakes. In making such exclusions the Congress, in effect, based its action on findings as follows:

(1) That the transportation of commodities in bulk on the Great Lakes is conducted by contract and private carriers, not common carriers;

(2) That such transportation is not competitive with common carriers either by land or water; and

(3) That such transportation is competitive with foreign carriers.

For discussion of the Shipping Act, 1916, see 53 Congressional Record, page 12,799, and with respect to the Intersoastal Shipping Act, 84 (pt. 6) Congressional Record, page 6,622.

Preliminary to enactment of the Transportation Act, 1940, the late Joseph B. Eastman, then a member of the Interstate Commerce Commission, acting in capacity of Federal Coordinator of Transportation, drew a sharp distinction between Great Lakes carriers and private and contract carriers elsewhere. Said he:

> There are, however, private and contract operations which are not open to these objections. An outstanding example is the operation of the cargo boats on the Great Lakes which carry, chiefly, iron ore, coal, and grain. So long as they confine themselves to such forms of traffic, they apparently are, as a practical matter, not competitive either with railroads, or with common carrier steamship lines. * * * (74th Cong., 1st sess., H. Doc. No. 89, p. 17).

Earlier, Mr. Eastman has observed:

> The rates which these carriers may obtain are strongly affected by competition among themselves, and with Canadian steamers. The latter competition is particularly severe in respect of grain and is also forceful so far as concerns stone, ore, and cement. The Canadian ships have lower operating costs, owing to smaller crews, lower wages, and fewer restrictions. Their endeavor to secure grain tonnage from Lake Superior ports is aided by the Canadian railroads, which maintain low rates via Montreal. Lower rates via Montreal on other commodities also attract to Canadian shipping a large volume of American export and import traffic (73d Cong., 2d sess., S. Doc. No. 152, pp. 134, 135).

That statement was made in 1934. Today foreign flags competition is an ever greater problem for the Great Lakes operator than when the Transportation Act of 1940 was adopted.

At one time American-flag Great Lakes vessels carried more than 85 percent of all the iron ore consumed in the United States, plus tremendous quantities of grain, coal, limestone, and petroleum. Now the picture has drastically changed. In 1959 the U.S. steel industry consumed only 59.8 million gross tons of Lake Superior iron ore, while imports of foreign ores reached a record of 35,645,649 gross tons. For bulk freight vessels the international trade between the United States and Canada includes all of the major commodities—iron ore, coal, grain, and limestone.

With the opening of major iron ore deposits in eastern Canada, an additional competitive factor has arisen; namely, the competition between Lake Superior and Laborador iron ore for ascendancy in the U.S. market. Since opening of the St. Lawrence Seaway, Laborador ore has moved to Midwest docks in consuming areas in cargoes equaling or exceeding the largest individual shipments via the Great Lakes from Mesabi and other Lake Superior ranges. Substantially all of the Labrador product has been transported in Canadian or other foreign registry vessels, due to their cost advantages. Thus with more than 500 such cargoes having been moved in the last 2 years and predominantly consigned to U.S. destinations, only 38 were in U.S. vessels.

The continuing success of Canadian vessels in capturing an increasing proportion of the international Great Lakes bulk trade is reflected by the fact that the proportion rose from 22 percent in 1930 to 85 percent in 1959. During this period, the Canadian fleet has expanded its actual volume by 131.3 percent as compared with only 17.6 percent for the U.S. fleet.

With iron ore normally representing approximately 48 percent of Great Lakes commerce, coal 29 percent, limestone 16 percent and grain 7 percent, it is clearly apparent that a major change in the source of iron ore is attended by disproportionate repercussions in the Great Lakes bulk cargo trade. Additionaly, the availability of a direct water export route from Great Lakes ports to European consuming areas has drastically decreased the availability of grain as eastbound cargo for Great Lakes ships.

Thus, it is not only the direct foreign-flag competition which is so devastating to our merchant marine but also the indirect competition among commodities which must necessarily be shipped by water. It is the latter type of competition which is rapidly strangling our American-flag Great Lakes fleet. To repeal the bulk commodity exemption and place American-flag Great Lakes bulk carriers under regulation would but further jeopardize their ability to compete with foreign-flag vessels without benefiting any other segment of our domestic transportation system.

The provisions of part III of the Interstate Commerce Act, as amended, exempting the transportation of commodities in bulk, are contained in paragraphs (b) and (c) of section 303. Paragraph (c) applies to the transportation by a contract carrier by water of such commodities in a nonoceangoing vessel on a normal voyage during which the cargo space of the vessel is used for the carrying of not more than three such commodities and the vessel passes within or

through waters which are made international for navigation purposes by any treaty to which the United States is a party.

Of the exemptions, paragraph (c) was first adopted when the Senate was considering the bill ultimately leading to enactment of the Transportation Act of 1940. (See discussion of and amendment to bill, 84 (pt. 6) Congressional Record, p. 6,066). The Senate amendment was further amplified when the bill was considered in the House and, notwithstanding the general language of paragraph (b) of section 303, paragraph (c) was retained. (See H. Rept. 1217, 76th Cong., 1st sess.)

There are provisions in part III of the Interstate Commerce Act which indicate a congressional intent that part III should be construed consistently with the maritime law. See section 320(d). Such intent, however, has not been universally expressed in the rulings and adjudications of the Interstate Commerce Commission. See *Columbia Transportation Company, Contract Carrier Application*, 260 ICC 135, where the Commission, in effect, totaled the number of shippers and the number of commodities transported by a carrier and held, on the basis of its overall operations and irrespective of the special arrangements for each cargo, that such carrier, although not a common carrier under the maritime law, was a common carrier and not a contract carrier for purposes of regulation under part III.

In view of such ruling of the Commission, the Great Lakes exemption relating to contract carriers and contained in paragraph (c) of section 303 might be of little effect and purpose should the general exemption contained in paragraph (b) of section 303 be repealed. Under such a repeal, many Great Lakes vessel operators whom Congress has always heretofore regarded as contract carriers would probably be held to be common carriers and thus subject to regulation.

We believe such a result would not be in the best interests of the Nation and would contravene the historic policy of the Congress. Thus it would seem that if the general bulk commodity exemption contained in paragraph (b) of section 303 were to be repealed, the Great Lakes bulk exemption contained in paragraph (c) should be modified so as to make it clear that the exempt status of bulk transportation on the Great Lakes is not to be disturbed. This could be accomplished by deleting the word "contract" so that the exemption would apply to all Great Lakes carriers by water engaged in the transportation of commodities in bulk.

Mr. WILLIAMS. Thank you very much, Admiral.

Mr. Springer, do you have any questions?

Mr. SPRINGER. Admiral, turning to page 4 of your summary statement, you say:

> In making such exclusion, the Congress, in effect, based its action on findings as follows:
>
> * * * * * * *
>
> (2) That such transportation is not competitive with common carriers either by land or water; * * *.

Are you contending that carriage in bulk on the Great Lakes is not in competition with land carriage?

Admiral HIRSHFIELD. Yes, sir.

Mr. SPRINGER. That it is not?

Admiral HIRSHFIELD. That is correct; yes, sir.

Mr. SPRINGER. Do you carry from Buffalo to Detroit?

Admiral HIRSHFIELD. There is not very much of that.

Mr. SPRINGER. If you carried 10 shiploads a year from Buffalo to Detroit, would you say you are competing with land carriage?

Admiral HIRSHFIELD. Well, sir, I doubt that we would be competing with them.

Mr. SPRINGER. That is the problem that has arisen, is it not?

Admiral HIRSHFIELD. It would depend on the commodity, sir.

Mr. ELDER. Mr. Springer, if you are concerned with regulated commodities, it is possible there is one movement between Buffalo and Detroit and vice versa, but so far as the movement of bulk commodities is concerned, I doubt that there would be any movement in that particular area.

Mr. SPRINGER. You mean that there would be no movement in bulk in that area?

Mr. ELDER. That is correct, if we are considering the basic bulk commodities—iron ore, limestone, and grain.

Mr. SPRINGER. Of course if we just limit it to those three. Don't you carry other things in bulk, though?

Mr. ELDER. Oh, there are some other commodities that move in bulk, but those are the major components. Petroleum we move and cement unsacked.

Mr. SPRINGER. Are not those in competition with land carriage?

Mr. ELDER. In a purely economic sense I don't think you could say they were in competition. I think the natural efficiencies of water transportation in bulk, considering the situations of the vessel and the capacity, on a purely economic basis proves that the vessel is much more efficient.

Mr. SPRINGER. You are putting it on purely economic basis?

Mr. ELDER. If you put it on an actual cost basis—I don't want to go into a lot of questions of how you determine cost and so forth, but if we had a pure hypothetical situation.

Mr. SPRINGER. Let's just take cement. If you carry cement from Buffalo to Detroit, are you not in competition for cement with every railroad carrying from Buffalo to Detroit?

Mr. ELDER. I suppose if the railroads were also seeking to carry it, but I don't know of any cement that is moved from Buffalo to Detroit. The cement would move from up around Alpina, and so forth, down the lake and I doubt that the railroads would try to haul it.

Mr. SPRINGER. Are you hauling automobiles in bulk?

Mr. ELDER. No; automobiles are regulated.

Mr. SPRINGER. Let me ask you this: Suppose that you are carrying coal, as an example. Do you carry coal?

Admiral HIRSCHFIELD. Yes, sir.

Mr. SPRINGER. Is that in bulk?

Admiral HIRSCHFIELD Yes, sir.

Mr. SPRINGER. Are you not in competition with every railroad hauling bituminous coal out of the Pennsylvania region?

Admiral HIRSCHFIELD. Mr. Springer, I think that could be answered almost the same way that Mr. Elder answered it and, without going into the figures, economically the railroads would have a hard time competing with it from pure cost because the ships carry so much.

Mr. SPRINGER. But isn't this one of the fields in which you have said here that such transportation is not competitive with common carriage on land?

Admiral HIRSCHFIELD. That is true, I did make that statement.

Mr. SPRINGER. This is a question that has been raised in my mind: You say you are not competitive.

Mr. ELDER. I think one significant factor, particularly in the coal movement, is the fact that on the lakes most of the loading and unloading facilities for coal are owned and controlled by railroads. They are working together in that instance. Practically all of your coal loading facilities on the lakes are owned and controlled by the railroads. I doubt that they could haul the coal if they had to.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. WILLIAMS. Thank you very much, gentlemen.

Admiral HIRSCHFIELD. Thank you.

Mr. WILLIAMS. Our next witness is Mr. Roy Hendrickson, representing the National Federation of Grain Cooperatives.

I believe you are Mr. Hendrickson.

STATEMENT OF ROY F. HENDRICKSON, EXECUTIVE SECRETARY, PRESENTED BY BRUCE J. HENDRICKSON, LEGISLATIVE RESEARCH ASSISTANT, NATIONAL FEDERATION OF GRAIN COOPERATIVES, WASHINGTON, D.C.

Mr. WILLIAMS. What is your name?

Mr. HENDRICKSON. My name is Bruce J. Hendrickson, and I am legislative research assistant on the staff here in Washington.

Mr. Chairman, we have a brief statement here, and with your permission I would like to quickly read it for the record.

Mr. WILLIAMS. Yes, sir.

Mr. HENDRICKSON. My name is Roy F. Hendrickson. I am executive secretary of the National Federation of Grain Cooperatives, with offices located at 711 14th Street, NW., Washington, D.C.

This federation consists of 26 regional grain marketing cooperatives located in all of the principal terminal and subterminal grain markets of this Nation, including Chicago, Minneapolis, St. Louis, Kansas City, and Omaha. These member marketing associations, in turn, are owned by over 2,700 local cooperatives owned and controlled by approximately 1.5 million farmers.

At both the local and regional levels, the primary function of these farmer-owned grain marketing institutions is to market at the lowest possible costs to their member-patrons the growing volumes of wheat, corn, barley, grain sorghums, oats, soybeans, flaxseed, rice, dry beans, and dry peas moving off farms into marketing channels.

In the conduct of their expanding grain merchandising programs on behalf of their farmer-owners, members of this federation have invested many tens of millions of dollars of their farmer-members' money in modern, up-to-date grain storage and handling facilities. Altogether, these storage and handling facilities represent about one-third of the Nation's commercial grain warehousing capacity. These investments by farmers have included substantial outlays for facilities and equipment, including grain-carrying barges used for the movement of dry bulk grain and oilseeds on navigable river systems.

Specifically, members of this federation who state that they would be adversely affected by the enactment of H.R. 5595, a proposal to repeal the water carrier dry bulk commodity exemption, include:

1. The Indiana Farm Bureau Cooperative Association, Inc., of Indianapolis, Ind. Its grain division operates, among others, elevators at Indianapolis, Louisville (Ky.), and Decatur (Ala.). Its marketings include substantial quantities of grains and oilseeds by water via the Ohio, Illinois, Mississippi, and Tennessee River systems.

2. The Illinois Grain Corp., 141 West Jackson Boulevard, Chicago, Ill. This cooperative marketing association has water-connected elevators at Chicago, Havana, and other points on the Illinois River, as well as at Tampa, Fla. Similarly, it is engaged in seeking expansion of grain and oilseed markets on behalf of its farmer-members through the use of water transportation.

3. The Farmers Union Grain Terminal Association of St. Paul, Minn. This cooperative organization, serving farmers in the Central Northwest States, is likewise engaged in enlarging its outlets for surplus grains and oilseeds produced by farmers, through the use of water transportation connecting with its 5 million bushel elevator at St. Paul, Minn.

4. The Farmers Union Cooperative Marketing Association of Kansas City, Mo., which owns water-connected facilities, employs water transportation for the purpose of seeking to enlarge markets for its farmer-members for grains and oilseeds.

5. The Cotton Producers Association of Atlanta, Ga., which has substantial facilities for receiving grain and oilseeds and manufacturing same, on the Tennessee River system, to assist in obtaining grains and other feed ingredients for the use of its farmer-members in Georgia, Alabama, and adjacent areas. Many of these farmers are in a difficult transition from cotton to livestock production, a shiftover undertaken in good faith, which requires grain from distant points to augment local supplies.

6. The Westcentral Cooperative Grain Co. of Omaha, Nebr., which originates a substantial quantity of grains and oilseeds on the Missouri River at Omaha, ships via water to customers in the lower river areas.

7. The North Pacific Grain Growers, Inc., of Portland, Oreg., engages in water transportation on the Columbia River as it seeks to expand the markets for grain of its producer-members. It operates major water-connected elevators at Kennewick, Wash., and Portland, Oreg.

8. The Missouri Farmers Association, Inc., a cooperative serving primarily farmers of Missouri, owns water-connected facilities at Louisiana, Mo., on the Mississippi River.

9. The United Grain Co. of Champaign, Ill., has a water-connected facility at Creve-Coeur, in the Peoria-Pekin area on the Illinois River, as it seeks to expand further its sales of corn, soybeans, and other farm commodities by water transportation in bulk, to meet the requirements of downriver customers.

10. The Equity Union Grain Co. of Lincoln, Nebr. This regional owns water-located facilities at Rock Bluffs, Nebr., on the Missouri River and seeks to expand its sales of wheat and corn to downriver customers.

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11. The Farmers Grain Dealers Association of Iowa at Des Moines barges grains and oilseeds to its customers from recently acquired facilities at Meeker's Landing.

In addition to the above member associations of this federation, other members are engaged in marketing programs which involve truck-river barge and rail-river barge connections to market grain and oilseeds so as to meet the requirements of customers for these commodities produced on farms in the territory served. While less significant than the interest of those listed above, they have expressed concern over the possible repeal of section 303(b) of the Interstate Commerce Act.

All of these member associations, which I have briefly described above, are in unanimous agreement that serious harm and injury would be dealt farmers if this exemption, in the law since 1940, was repealed.

These are the principal movements:

1. Movement of grains (oats, barley, corn) originating in Indiana, Illinois, Minnesota, South Dakota, Nebraska, Iowa, Kansas, Missouri, and Kentucky, which find outlets in markets on the Tennessee River system and on the lower Mississippi-Missouri system, including markets in Missouri, Tennessee, Louisiana, and Florida.

2. Outlets for soybeans, which include feed and processing plants at markets on the Tennessee River system and elsewhere in Missouri, Tennessee, Louisiana, Florida, and important export outlets at New Orleans and Baton Rouge, La.

3. Wheat markets involving spring wheat from the Central Northwest Soft Red wheat (largely from east of the Mississippi River), and Hard Red Winter wheat (largely from west of the Mississippi River), all of which have developed domestic mill use outlets in the markets named, as well as export outlets at New Orleans and Baton Rouge.

4. The development of corn markets utilizing river transportation has been substantial over many years past and includes the same markets listed under 1, 2, and 3 above, with origins both on the upper Mississippi and Missouri Rivers, as well as in Kentucky, Indiana, Illinois, Iowa, South Dakota, Nebraska, Kansas, and Missouri.

The above listing is intended to provide a simple panoramic picture of a development which is of substantial economic concern to farmers in the areas named. This is partly because it is a truism in the pricing of grains and oilseeds that the effective sale of even small, additional quantities above the ordinary volume of sales has an effect seemingly out of proportion in times of surplus production, which is characteristic of the current period in farm production of grains and oilseeds.

Thus, while the outlets represented by water transportation are small relative to the total market disposition of grains and oilseeds transported via rail and truck, these additional sales contribute to the enhancement of market value to a degree which could result in a substantial deterioration in the price structure should these expanding water outlets be curtailed or restricted from developing their full potential in the years to come.

The members of this federation agree that the services being performed by today's bulk water carriers in transporting grains to distant markets are satisfactory. The services currently rendered bene-

fit not only those farmers whose grain is being marketed by the cooperative, but also benefit those farmers in the deficit areas receiving grain via water. Farmers are the largest single users of the grains and oilseeds entering the marketing stream both before and after processing.

At present, the farmer's share of the consumer's food dollar continues to shrink. Last year it declined by another cent, to 38 cents, to tie the lowest point ever reached in this index since it came into being many years ago.

The consuming groups of farmers benefit from being able to share in the lower transportation costs capitalized into the grains and oilseeds moving into those regions served by our river systems. Livestock and poultry producers in these areas are also afforded a reasonable degree of protection against unrealistically high feed grain prices to the extent that barged grain may be available to a marketing area similarly served by competing modes of transportation.

As to the questions of adequacy of service, of convenience, and of necessity, so far as farmers and their cooperatives are concerned, the "proof of the pudding is in the eating."

Last year, members of this federation barging grains and oilseeds directed approximately 80 percent of their waterborne tonnages to the "for hire" and contract carriers because of their favorable rates and services vis-a-vis common carrier barge operators' rates and services.

To summarize: Farmers and their grain marketing associations would not like to see their efforts to expand markets for the growing volumes of grains and oilseeds moving off farms slowed up or handicapped in any way. These grains are in acute surplus. Market outlets are badly needed for the foreseeable future.

Thank you for giving me this opportunity to state the views of our member associations.

Mr. WILLIAMS. Thank you, Mr. Hendrickson.

Mr. Springer, do you have any questions?

Mr. SPRINGER. Yes, I do.

Mr. Hendrickson, is it your thought that if bulk sales were regulated the cost to the farmer would go up?

Mr. HENDRICKSON. In general, that is our feeling.

Mr. SPRINGER. Do you have any proof of that?

Mr. HENDRICKSON. I personally couldn't furnish this proof, but I would be happy if some of our members that would be most adversely affected by this could share their comments with you on this.

Mr. SPRINGER. What makes you think it would go up?

Mr. HENDRICKSON. I can't lay my finger on any certain incident. I don't mean to be evasive on this thing. I would rather at your convenience have several of our members from these areas discuss this with you.

Mr. SPRINGER. Would you write me a letter and tell me on what theory you figure rates would rise?

Mr. HENDRICKSON. I would be very happy to.

Mr. SPRINGER. It has never been our experience where you have gone from nonregulation to regulation that rates went up. Generally rates have gone down. In fact, I can't think of a single instance in my experience on this committee of some 12 years where rates rose as a result of regulation.

Mr. HENDRICKSON. I can tell you this: Our members that do barge grain find that the so-called unregulated carriers—actually they are to some extent the ones holding these certificates to be able to contract, those plus the for-hire carriers—that there is a yardstick function that they perform adequately vis-a-vis the common carrier in the movement of these grains and oil seeds.

Mr. SPRINGER. Let me take just the Illinois Grain Corp. It has a water-connected elevator at Havana. Who is that owned by?

Mr. HENDRICKSON. The Illinois Grain Corp.

Mr. SPRINGER. That is not the sign that is on the building.

Mr. HENDRICKSON. At Havana?

Mr. SPRINGER. Yes. I was there last week. I didn't see any building with that on it. I was at the elevator and watched them load.

Mr. HENDRICKSON. I would have to check that.

Mr. SPRINGER. It may be on there, but there was only one that I could find, and I visited all of them.

Mr. HENDRICKSON. I know in Chicago the Illinois Grain Corp. leases from the Chicago Port Authority in the magnitude of 50 percent of the capacity. I would have to check that.

Mr. SPRINGER. You must have better information than I do, or you wouldn't make this statement.

Mr. HENDRICKSON. It could be that that is also under a long-term leasing arrangement, which is common practice.

Mr. SPRINGER. Are you talking about leasing from some other corporation?

Mr. HENDRICKSON. Leasing a certain capacity of the facility, handling equipment, and so forth.

Mr. SPRINGER. Would you also put that in your letter to me?

Mr. HENDRICKSON. I would be very happy to.

Mr. SPRINGER. As to who does own that and what the leasing arrangement is, if there is such a leasing arrangement, and I assume there must be something.

Mr. HENDRICKSON. Yes; and you were just there last week?

Mr. SPRINGER. Yes, sir.

Mr. HENDRICKSON. Yes, sir. I would be happy to.

Mr. WILLIAMS. Mr. Springer, would you yield at this point?

May I request that this letter be directed to Mr. Springer and perhaps a copy directed to the committee for inclusion in the record. We would like to have that for the record.

Mr. SPRINGER. It would probably be better to come to the committee for inclusion in the record.

Mr. WILLIAMS. All right. Send it to the committee for the record.

(The letter submitted by Mr. Hendrickson follows:)

NATIONAL FEDERATION OF GRAIN COOPERATIVES,
Washington, D.C., April 3, 1962.

Representative JOHN BELL WILLIAMS,
Chairman, Transportation and Aeronautics Subcommittee, Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR CHAIRMAN WILLIAMS: In response to Congressman Springer's request for answers to two questions raised in the course of my appearance before your subcommittee on March 30, the following letter is submitted for the record.

Mr. Springer first asked this question: "Mr. Hendrickson, is it your thought that if bulk sales were regulated the cost to the farmer would go up?"

My response is as follows: Direct proof, of course, to answer this academic question is not available since we do not have any valid analogies of "before" and "after" imposition of economic regulation cases to point to.

Therefore, the basis upon which our concern is based, rests rather, on the long-standing principle of "inherently lower costs." A principle recognized by the Congress when it exempted dry bulk commodities, including grains and oilseeds, from economic regulation by water carriers in 1940.

We, moreover, feel this principle is still just as valid today as it was when enacted into law, notwithstanding the technological progress made in the years since then by all modes of transportation, including water carriers.

In connection with Congressman Springer's request for clarification respecting the Havana, Ill., facility owned by the Illinois Grain Corp., Chicago, Ill., the following information is submitted:

Illinois Grain Corp. owns and operates the river elevator at Havana, Ill. It has a capacity of approximately 200,000 bushels, and is located immediately adjacent to the east end of the Illinois River bridge. The company name is lettered on the "headhouse" and is easily visible for some distance.

The facility has a long cooperative history having begun as a community cooperative, the Havana Co-op Grain Co., about 1920. Havana River Grain Co. acquired it in 1946 and expanded it into a river loading elevator.

Illinois Grain acquired the facility by purchase in 1954 and operates it as a part of its facility system which includes 6 other subterminals as well as the 6,500,000-bushel gateway elevator in Chicago.

Sincerely,

BRUCE J. HENDRICKSON.

Mr. SPRINGER. That is a very excellent statement of your position.

Mr. HENDRICKSON. Thank you.

Mr. WILLIAMS. That is the last witness that we have on our list for today.

The committee will stand adjourned on these hearings until April 10, at which time we will resume hearings on these bills.

(Whereupon, at 12 noon the committee was recessed, to be reconvened at 10 a.m., Tuesday, April 10, 1962.)

WATER CARRIER BULK COMMODITY EXEMPTION

TO REPEAL INLAND WATERWAYS CORPORATION ACT

TUESDAY, APRIL 10, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m. in room 1334, New House Office Building, Hon. Samuel N. Friedel presiding.

Mr. FRIEDEL. The meeting will now come to order.

The purpose of this meeting is to continue the hearings on H.R. 5595 to repeal section 303(b) of the Interstate Commerce Act, as amended, relating to the water carrier bulk commodity exemption, and H.R. 10542, to repeal the Inland Waterways Corporation Act.

Our first witness will be Mr. William J. Reinka, Jr., assistant general traffic manager of the Wyandotte Chemicals Corp.

Mr. Reinka, before you speak, I would like to have part of the President's message read into the record in reference to equal competitive opportunity under diminished regulation.

Bulk commodities: At present, the transportation of bulk commodities by water carriers is exempt from all rate regulation under the Interstate Commerce Act, including the approval of minimum rates; but this exemption is denied to all other modes of transportation. This is clearly inequitable both to the latter and to shippers—and it is an inequity which should be removed. Extending to all other carriers the exemption from the approval or prescription of minimum rates would permit the forces of competition an equal opportunity to replace cumbersome regulation for those commodities, while protecting the public interest by leaving intact the ICC's control over maximum railroad rates and other safeguards (such as the prohibition against discrimination, and requirements on car service and common car carrier responsibility). While this would be the preferable way to eliminate the existing inequality, Congress could elect to place all carriers on an equal footing by repealing the existing exemption, although this would result in more, instead of less, regulation and very likely in higher though more stable rates. Whichever alternative is adopted, these commodities are too important a part of carrier traffic to continue to be governed so unequally by Federal rate regulation.

If anybody wants to comment on the President's message, I would appreciate it.

You may proceed.

STATEMENT OF WILLIAM J. REINKA, JR., ASSISTANT GENERAL TRAFFIC MANAGER, WYANDOTTE CHEMICALS CORP.

Mr. REINKA. Mr. Chairman, my name is William J. Reinka, Jr., and I am assistant general traffic manager of Wyandotte Chemicals Corp., 1609 Biddle Avenue, Wyandotte, Mich., and wish to submit this statement with respect to H.R. 5595, which proposes to repeal section 303(b) of the Interstate Commerce Act relating to the waterway carrier bulk commodity exemption.

Wyandotte Chemical Corp. has facilities at Wyandotte, Mich., on the Detroit River and at Geismar, La., on the Mississippi River, for the assembly of raw materials to be used in the manufacturing of basic chemicals to be distributed in interstate and foreign commerce via all modes of transportation.

Bulk shipments of limestone and coal via water carriers are received at our plants in Wyandotte where outbound bulk shipments of dry soda ash, liquid caustic soda, ethylene glycol, and diethylene glycol originate for destinations within the New York Harbor, Chicago, and Duluth areas. Bulk shipments of liquid caustic soda, liquid chlorine, ethylene glycol, and diethylene glycol in our barges are shipped from Geismar to various points on the inland waterways.

Wyandotte Chemicals Corp. is opposed to H.R. 5595 which would repeal section 303(b) of the Interstate Commerce Act. Substantial investment in plant and barge facilities as well as in bulk terminals at destinations have been made in reliance that bulk water transportation would be exempt from regulation and would remain a low-cost mode of transportation. Our manufacturing and marketing efforts are geared to and wholly depend upon this important phase of our operations.

Similar legislation had been introduced in Congress in the past and failed of adoption. We do not believe that there have been any subsequent changes among the various modes of transportation, the shipping public, and the ultimate consumers of the end products sufficient to warrant any amendment to existing legislation.

Wyandotte Chemicals Corp. is a member of the Manufacturing Chemists' Association, Inc., and, in the interest of time, adopts as part of its position the views pronounced in the statement of C. H. Vescelius, chairman of the Committee on Waterways Bulk Exemption of the Manufacturing Chemists' Association, Inc., to be presented to this subcommittee on April 11.

Thank you for the opportunity, Mr. Chairman, to present this statement.

Mr. FRIEDEL. We want to thank you for your very short, precise statement.

Mr. REINKA. Thank you.

Mr. FRIEDEL. Mr. Gale Chapman, vice president of the Upper Mississippi Towing Corp.

STATEMENT OF GALE H. CHAPMAN, VICE PRESIDENT, UPPER MISSISSIPPI TOWING CORP.

Mr. CHAPMAN. Mr. Chairman, my name is Gale Chapman. I am vice president of Upper Mississippi Towing Corp., of Minneapolis, Minn. I am appearing today, however, on behalf of Waterways Bulk

Transportation Council, Inc., to present the substantive position of the council opposing any suspension of the "mixing rule" in section 303(b) of the Interstate Commerce Act, as proposed in H.R. 9046.

Mr. David A, Wright, the chairman of the council, will give the organization's position on H.R. 5595, the bill to repeal section 303(b).

1. H.R. 9046 is a proposal to suspend the "mixing rule" for a period of 6 months. When this bill was introduced last year, the stated purpose of its proponents was to provide emergency temporary relief for a period of 6 months until Congress could consider the whole subject of possible repeal of section 303(b). But the 6 months have now passed. Congress has had the opportunity then contemplated. If the legislation to suspend the mixing rule had been adopted at the time its proponents put it forward, it would now have expired. Presumably the supposed emergency is now over.

The whole idea that there is an emergency is misleading, however. Even at the time the corresponding bill was introduced in the Senate, there was no emergency. The stated occasion for this bill was a decision of the Interstate Commerce Commission in a proceeding designated as WC–5.

This decision was rendered in August 1960. But a petition for reconsideration by the Commission was almost immediately filed and the enforcement of the order was accordingly delayed pending consideration of the petition. The petition itself was denied on April 25, 1961. Almost immediately thereafter, on May 18, 1961, several of the large regulated carriers filed a complaint in the district court in Texas for an injunction against the enforcement of the Commission's order.

The proceeding commenced in the district court has not even come to hearing.

As a result, the decision and order of the Commission have never been enforced, and, in view of the distinct probability that the losers in the district court will appeal to the Supreme Court, they are unlikely to be enforced for a long time to come.

In the meantime, the Congress will have adequate opportunity to consider once more the problem of possible repeal of section 303(b).

The decision of the Commission in WC–5, therefore, is no basis for an appeal to the Congress for temporary relief.

Moreover, it has been clear for years that the practices, which the decision in WC–5 explicitly condemned, are illegal. If any carrier has been engaging in such practices it has done so at its own risk, knowing that any time it was caught, it would be held to be operating illegally. The decision in WC–5 could not have been a surprise to the carriers involved. A brief review of the rulings of the Interstate Commerce Commission will indicate just how unlikely a contrary decision of the Commission would have been.

Very shortly after the effective date of the Transportation Act of 1940, the Commission was presented with the general question whether bulk commodities included in the same tow with nonbulk commodities thereby lost their exemption under section 303(b).

In *Mulqueen Contract Carrier Application*, 25 ICC 436, decided in 1942, the Commission disposed of this question tersely and finally as follows:

> **The transportation of bulk commodities is not exempt when such commodities are handled in the same unit with nonbulk commodities (p. 439).**

The Commission made the same ruling in the next year in *Jacob Rice & Sons* contract carrier application, 250 ICC 727, at 729. It was reiterated in 1948 in *Portland Tug & Barge Co. Extension*, 265 ICC 325 to 335. This ruling stands today.

In the meantime, it is true, an attorney had secured from the Bureau of Water Carriers an informal letter ruling which seemed to provide a method of circumventing the clear interpretation of the statute which the Commission had adopted. In essence this letter, dated March 27, 1944, said that a carrier, towing a solid tow of bulk commodities, who contracted to act as an incidental tower of a barge of package freight for a regulated carrier, under conditions which would make the tower exempt as to the package freight under section 303(f)(2) if handled separately, would not lose the exemption under section 303(b) for the bulk freight.

It seems to be the position of proponents of H.R. 9046 that, relying on this informal, lower level ruling, the common carriers invested millions of dollars in large towboats which can now be efficiently utilized only if the carriers are allowed to make up tows containing both regulated and exempt commodities.

In the first place, however, the dry bulk exemption was of no importance to the common carriers before 1955. It was at about this time that the common carriers began to order larger and larger towboats. But in that very year a formal decision by the Interstate Commerce Commission should have warned common carriers that if they were relying on the highly technical, informal ruling of 1944, they were risking serious trouble.

Federal Barge Lines, Inc., one of the common carriers, had secured by letter dated April 15, 1954, another ruling from the Bureau of Water Carriers on a question which can be stated as follows:

If carrier A issues a bill of lading to a shipper covering transportation of a bulk commodity, performs part of the transportation itself in a tow containing not more than three bulk commodities, but then transfers the barge to Federal Barge Lines, employing the latter as an incidental tower for the remainder of the transportation, and Federal puts the barge into a tow of its own containing nonbulk commodities, is the dry bulk exemption lost?

The Bureau held that it was not, referring to the ruling of 1944. However, the 1954 ruling did not pass without objection. Indeed, petitions for a declaratory order asking that the Bureau be reversed were promptly filed by two common carriers, American Barge Line Co. and Mississippi Valley Barge Line Co. Union Barge Line Co. and Gulf Canal Lines, Inc., also opposed the Bureau's ruling. Obviously none of these four common carriers was then relying on the incidental towage technique and the theory expressed by the Bureau to circumvent the Commission's clear interpretation of the mixing rule.

The petition was successful, and on May 26, 1955, in *American Barge Line Company and Mississippi Valley Barge Line Company Petitions for Declaratory Orders*, 294 I.C.C. 796, the Commission reversed the Bureau's ruling of April 15, 1954, and held, in effect, that the exemption was lost for the bulk commodities when included in the same tow with nonbulk commodities.

After this decision, it seems to us that any continued reliance upon the earlier Bureau ruling of 1944 as a basis for investing in expensive equipment would have been a display of an extraordinary lack of busi-

ness judgment, of which we cannot believe the very able managements of the common carriers would have been guilty. On the other hand, if they did thereafter invest in reliance on the 1944 ruling, their rashness would not seem to warrant a legislative rescue effort at the expense of their competitors.

Two years later the Commission formally indicated that it considered the 1955 decision as having done away with the 1944 Bureau ruling. In *Commercial Transport Corporation Exemption*, 300 I.C.C. 66 (decided on March 3, 1957), the Commission said that the 1944 ruling "was, in fact, reversed by the decision of the Commission * * * in *American Barge Line Company* * * *."

This particular case arose on a petition filed in 1956 by the company which later became American Barge Lines Co., to seek, in effect, formal confirmation of the ruling of the Bureau of Water Carriers of 1944. At least American Barge Line Co. seems to have been sufficiently doubtful about the continued validity of that ruling after the 1955 decision to file such a petition in 1956.

It is interesting to note that here again there was opposition from other regulated common carriers to the attempt to secure such confirmation. Union Barge Line, John I. Hay Co., Mississippi Valley Barge Line Co., Coyle Lines, Inc., and Dixie Carriers, Inc., opposed the petition.

Relying on its previous decision in the *American Barge Line Company* case, the Commission held that the dry bulk exemption was lost under the circumstances under which the Bureau had in 1944 held that it survived. The opposition of the five common carriers to the petition would again clearly indicate that they, at least, were not relying on the 1944 ruling in their operations. The decision of the Commission was sustained by the U.S. District Court in *Commercial Barge lines, Inc.* v. *United States*, 166 F. Supp. 867, 1958, and the District Court's decision was affirmed in 1959 by the Supreme Court, 359 U.S. 342.

Again, in the light of the failure of the second attempt to establish a loophole in the mixing rule, it is hard to believe that intelligent businessmen would risk investment in equipment which they could legally use only if such a loophole existed.

One further attempt was made, however, when, in the summer of 1959, Mississippi Valley Barge Line Co., Federal Barge Lines, Inc., and American Commercial Barge Line Co. filed a petition seeking elaboration of the Commission's interpretation of section 303(b).

The hypothetical statement of facts included in the petition was substantially the same as that considered by the Commission in the *American Barge Line* case and the effort of the petitioners was really to reargue the *American Barge Line* case with certain minor refinements. It could really have been no great surprise to the petitioners that on August 25, 1960, their effort to reverse *American Barge Line Company* ended in a clear and resounding rejection by the Commission in the proceeding designated as WC–5.

This little history should establish that there is no sudden and surprising change of interpretation of the law by the Commission involved here; there is only the steady refusal of the Commission, at least since 1955, to condone evasions of the mixing rule.

It is obvious that the investment of the common carriers in larger equipment was with full knowledge that the Commission did not condone evasion of the mixing rule and was predicated primarily to compete with the increased horsepower which the private, unregulated contract carriers had demonstrated to be not only feasible, but more economical.

If the proponents claim that they only want to preserve the status quo, I would point out that there is no substantial evidence that any carriers have actually been engaged to any important extent in mixing their tows.

No records or statistics have been submitted on the length of time this alleged mixing practice has been going on, the extent to which tows have been mixed, the commodities and carriers involved, or the alleged savings produced.

In other words, the subcommittee has no basis for determining whether the alleged practice in the past has been of real importance.

In any case, we have gathered certain figures which reflect the results of recent operations by several of the common carriers, John I. Hay Co., American Commercial Barge Line Co., Union Barge Line Co., Federal Barge Lines, and Mississippi Valley Barge Lines.

These show, first, that the common carrier which, by reputation, has confined itself almost entirely to the carriage of commodities under regulation, John I. Hay Co. has prospered throughout the last 6 years. In 1955, the figure for its return on investment was 23 percent. In 1959, it was 27.5 percent and in 1960 it was 22.8 percent. In the intervening period, it was never less than 24.8 percent.

American Commercial Barge Line has had a remarkable increase in the return on its investment in the last 6 years. In 1955 its return was 16.3 percent, and in 1959 and 1960, it was 16.8 percent and 23.3 percent respectively.

These figures do not bear out any contention that such regulated bargelines are suffering from the competition of unregulated bargelines. Nor, in view of the record of John I. Hay Co., can it be said that the prosperity of regulated bargelines is dependent upon their ability to carry bulk commodities in mixed tows.

On the other hand, if this group has been combining exempt and regulated commodities to an important extent since 1955, this practice does not seem to have been of any particular benefit to the other three carriers. Their figures show a very considerable drop in return on investment between 1955 and 1959, with the beginning of a pickup in 1960.

The results for these five carriers thus show a wide variety of experience. In view of this variety, it seems reasonable to deduce that many factors other than the ability to combine exempt and regulated commodities in single tows have had much greater importance in affecting the results. Such factors would include expertness of management, the burdens of large irreducible overhead expenses, the temporary loss of traffic due to the steel strike, the current low level of steel production, and the general decline in transportation during recent recessions.

It is submitted, therefore, that the emergency alleged to have resulted from the Commission's decision in WC–5 is purely imaginary, and that it should not be allowed to stampede the subcommittee into ill-advised action.

2. The small group of common carriers supporting the bill is asking, not for equality of competitive conditions with the unregulated carriers, but for a tremendous competitive advantage.

No unregulated for-hire carrier, of course, can carry nonbulk commodities under any conditions, whether in the same tow with exempt bulk commodities or otherwise. To carry bulk commodities free of regulation, it must conform with the requirements of the law. If the regulated carriers want to carry bulk commodities free of regulation, they only have to do what the unregulated carriers have to do—namely, confine their tows to not more than three such bulk commodities.

Suspension of the mixing rule for the regulated carriers would, on the other hand, enable them to subsidize the exempt movement of bulk commodities out of the revenues received from the high-rated, regulated, nonbulk commodities carried in the same tows. They would enjoy this opportunity for subsidization while maintaining the frequency of operation made possible by the mixing of all classes of freight.

Against the tremendous advantage of the ability to subsidize cut rates for bulk commodities which the proposed legislation would give to the regulated carriers, their unregulated competitors would be largely defenseless.

The common carrier group might reply to this point that some of them have been mixing regulated and exempt commodities in their tows for a long time, and that the unregulated carriers have survived the competition.

It may be that this has been, for a few, a longstanding practice, although we are not convinced of this fact. However, even if it may have been the practice of some, it certainly does not appear to have been that of many in view of the positions taken by several of them in defense of the mixing rule in the proceedings that I have mentioned.

Furthermore, any adverse effect on unregulated competitors of the mixing of cargoes by regulated carriers could have begun to be felt only with the inauguration of the much larger towboats and tows by a few of the common carriers in recent years.

The stimulus which the proposed amendment would give to a larger number of common carriers to mix cargoes in bigger tows and the opportunity it would give them to subsidize the carriage of bulk commodities out of the revenues from nonbulk commodities in the same tows would, we submit, unfairly upset present competitive relationships and result in the probable destruction of many presently useful for-hire bargelines.

3. The shipper and the public would shortly be injured by the destruction of competition which would follow the proposed amendment.

Temporarily, shippers and the general public might enjoy the results of a bitter rate war in the carriage of bulk commodities between the common carriers and unregulated carriers. In a short time, however, it can be anticipated that the common carriers would have destroyed many of their competitors through the great competitive advantage they would have.

As their competitors disappeared, they would be in an increasingly better position to reverse the rate trend and charge higher rates. With their ability to subsidize exempt bulk traffic out of high-rated regu-

lated traffic, they would be enabled to knock off potential competitors from time to time, and make and keep waterways transportation a tight little cartel.

This certainly was not the intended result for which the American people have spent billions of dollars for waterways improvements. Nor was it the purpose of Congress in enacting the carefully thought out provisions of part III of the act. Such monopolization of water carriage and the resulting high transport costs will hardly benefit the farmers who ship their grain by barge, the miners whose products are shipped by water, the chemical and other industries now dependent on water transportation, and the final consumer who must pay such costs in the end.

4. Under section 2 of the bill, the mixing rule is preserved for all of the inland waterways except the Mississippi.

This special treatment of one river system is indefensible. If the mixing rule ought not to be suspended on the Columbia, the Delaware, the Hudson, or the Erie Canal, it ought not to be suspended on the Mississippi. The parochial favoritism for certain carriers in one section of the country reflected by this bill is unworthy of a national legislature.

5. As I have indicated, enactment of this legislation is completely unnecessary to accomplish the purposes for which it is proposed, namely the "preservation of the status quo" while Congress considers the possible repeal of section 303(b). On the other hand, enactment by the Congress or even recommendation by this subcommittee would have a serious adverse effect on the unregulated carriers. It is apparently because the Senate Committee reported the corresponding bill in the last session that the Interstate Commerce Commission has failed to press for a hearing in and disposition of the case now pending in the District Court in Texas and has thus allowed its obviously correct order to be nullified for over 10 months. We hope that this subcommittee and the full committee will vigorously assert their opposition to this unnecessary, discriminatory legislative proposal and thus perhaps restore to the Commission some incentive and courage to try to enforce its interpretation of the act.

6. To summarize, we are strongly opposed to the bill because—

(*a*) The decision in WC–5 has not given rise to any emergency.

(*b*) Suspension of the mixing rule would give an unfair competitive advantage to one class of carriers, the regulated carriers, over another, the unregulated carriers.

(*c*) Shippers and the public would be injured by the destruction of competition following the proposed amendment.

(*d*) The bill's special treatment of the Mississippi system is discriminatory.

(*e*) Even the recommendation of the legislation by this subcommittee would injure the interests of the unregulated carriers by encouraging further delay in the enforcement of the Commission's decision in WC–5.

Accordingly, we urge that H.R. 9046 be voted down by the subcommittee and full committee.

I thank you. Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Chapman, for a very fine statement.

Our next witness will be Mr. David A. Wright, chairman of Waterways Bulk Transportation Council, Inc.

STATEMENT OF DAVID A. WRIGHT, CHAIRMAN, WATERWAYS BULK TRANSPORTATION COUNCIL, INC., AND PRESIDENT OF NATIONAL MARINE SERVICE, INC.

Mr. WRIGHT. My name is David A. Wright. I am president of National Marine Service, Inc., of 21 West Street, New York City, a contract water carrier engaged in the transportation of petroleum products, chemicals, and dry cargo.

I appear today, however, as chairman of Waterways Bulk Transportation Council, Inc.

The Council is a nonprofit organization established originally in 1954 to oppose proposals for the repeal of the exemption from regulation contained in section 303 of the Interstate Commerce Act, and particularly the so-called "dry bulk exemption" contained in section 303(b). The Council is composed of about 130 members, including regulated common carriers by water, exempt water carriers, shippers, public bodies and a few individuals.

I should like to file, as an exhibit to my statement, a list of our members arranged by geographical areas.

Mr. FRIEDEL. That may be inserted in the record.

(The list of members referred to follows:)

WATERWAYS BULK TRANSPORTATION COUNCIL, INC., MEMBERSHIP

EAST COAST REGION

Bouchard Transportation Co., Inc.
Chemical Barge Lines, Inc.
Cleary Brothers, Inc.
Cornell Steamboat Co.
Cornell Transportation Co. Agents Inc.
Dalzell Towing Co., Inc.
A. W. Frey
Frontier Oil Refining Co.
Graham Transportation Co.
Gulf Atlantic Towing Corp.
Horan Transportation Corp.
International Salt Co., Inc.
Interstate Oil Transport Co.
Lewis Transportation Corp.
National Distillers and Chemical Corp.
National Marine Service
National Molasses Co.
New York Trap Rock Corp.
Olin Mathieson Chemical Corp.
Pennsalt Chemicals Corp.
Pittston Marine Corp.
Poling Transportation Corp.
Preferred Oil Co., Inc.
Reinauer Transportation Co., Inc.
Seaboard Shipping Corp.
Shell Oil Co.
Sheridan Transportation Co.
Socony Mobil Oil Co., Inc.
Stauffer Chemical Co.

EAST COAST REGION—continued

Sun Oil Co.
Texaco, Inc.
M. & J. Tracey, Inc.
Turecamo Coastal & Harbor Towing Corp.
John A. Wells, Inc.
H. Newton Whittelsey, Inc.

GREAT LAKES REGION

Acme Petroleum Co.
Cleveland Tankers, Inc.
Erie Navigation Co.
C. H. Hepperla.
Illinois Grain Corp.
The Jupiter Steamship Co. and Subsidiaries.
Lake Michigan Corp.
Lake-River Terminals, Inc.
Marine Inspection Engineers.
Marquette Cement Manufacturing Co.
Martin Oil Service, Inc.
Material Service Division of General Dynamics Corp.
A. L. Mechling Barge Lines, Inc.
The Pittsburg and Midway Coal Co.
Rose Barge Line.
Seneca Oil & Transport Co.
The United Electric Coal Cos.

WATERWAYS BULK TRANSPORTATION COUNCIL, INC., MEMBERSHIP—Continued

GULF COAST REGION

Anderson Petroleum Transportation Co.
Avondale Shipyards, Inc.
B & M Towing Co.
J. W. Banta Towing Co.
J. W. Banta Towing, Inc.
Baton Rouge Coal & Towing Co.
Brent Towing Co., Inc.
Canal Barge Co., Inc.
Elmer D. Conner.
J. S. Gissel & Co.
Greenville Towing Co., Inc.
Gulf States Marine Corp.
Houston Barge Line, Inc.
Industrial Molasses Corp.
Ingram Barge Co.
J. & S. Inc.
Koch-Ellis Marine Contractors, Inc.
L. M. McLeod.
Oil Transport Co., Inc.
Olympic Towing Corp.
Ormet Corp.
Ouachita River Valley Association.
Plaquemine Towing Corp.
Port Arthur Towing Co., Inc.
Red River Barge Line.
Tex-Mex Towing Co., Inc.
Vicksburg Towing Co., Inc.
A. P. Ward & Son, Inc.
G. B. Zigler Co.

MISSISSIPPI RIVER REGION

Aiple Towing Co.
Alter Co.
Archer-Daniels-Midland Co.
Walter Caldwell, Inc.
Cargo Carriers, Inc.
Cities Service Petroleum Co.
A. V. Gardner
G. W. Gladders Towing Co., Inc.
Huffman Towing Co.
Hutchinson Barge Line, Inc.
Industrial Marine Service, Inc.

MISSISSIPPI RIVER REGION—continued

Inland Molasses Co.
Joy Feed Mill
Mid-America Transportation Co.
Midwest Towing Co., Inc.
Missouri Barge Line Co.
Northwest Cooperative Mills, Inc.
Phillips Petroleum Co.
Quincy Soybean Products Co.
Richards Oil Co.
St. Louis-East Side Traffic Conference
Simpson Oil Co., Inc.
Simpson Towing Co.
Smith Oil and Refining Co.
Southern States Towing Division of Triangle Refineries, Inc.
J. D. Streett & Co., Inc.
Upper Mississippi Towing Corp.
Vollmar Bros. Construction Co.
Waxler Towing Co., Inc.
Wayne Bros.
Western Illinois Grain Co.

OHIO RIVER REGION

Amherst Industries, Inc.
Ashland Oil & Refining Co.
Atlas Towing Co.
Central Soya Co., Inc.
Hillman Transportation Co.
Hougland, Inc.
Island Creek Fuel & Transportation Co.
Nashville Bridge Co.
Portsmouth Docking Co.
O. F. Shearer & Sons
Thomas Petroleum Transit, Inc.
West Kentucky Coal Co.

WEST COAST REGION

Inland Empire Waterways Association
Lewiston Grain Growers, Inc.
Pendleton Grain Growers, Inc.
Port of Walla Walla

Mr. WRIGHT. We appreciate very much this opportunity to present to the subcommittee our views on the proposals in H.R. 5595 and 9046 to repeal section 303(b) and to suspend the so-called mixing rule contained in section 303(b). We strongly urge the retention of the exemption provided by section 303(b), and we strongly oppose its alteration along the lines of the proposed mixing rule suspension.

I will speak to the proposal to repeal the exemption. Mr. Gale Chapman has presented our organization's comments on the proposal to suspend the mixing rule. Other witnesses will speak for us with reference to the general problem of extension of regulation, the complexities of compliance, and the effect of the extension of regulation on small- and medium-size carriers now operating under the exemption.

Mr. Jesse Brent, who was to have been a witness for us as representative of the small carrier is unfortunately unable to be present since he has a conflicting hearing on a local problem in Greenville, Miss., today.

1. Description of the inland water transportation industry:

The inland water transportation industry consists of about 1,600 companies operating barges, scows, self-propelled cargo vessels, towboats, and tugs, over routes totaling approximately 15,000 miles in length. This conservative figure for route mileage excludes some 10,000 miles of usable navigation channels of less than 9-foot depth and excludes also the extensive Great Lakes system on which most of the cargo is carried by deep draft vessels including many operating under foreign flags.

This system of waterways links together substantially all of our major cities, and navigation on these channels provides for agriculture, industry, and the public a highly efficient means of transportation for those low-cost bulk commodities which are the basic materials of manufacturing, animal food, plant food, highway and building construction, as well as fuels for the motorist, public utilities.

The list of the commodities carried includes also heavy tonnages which move to the seacoast for export. Generally speaking, over 90 percent of the traffic on inland waters consists of bulk materials including dry bulk and liquids.

Since World War II the application of modern technology to established techniques of operation has resulted in extensive improvements in efficiency, operation, and cost of production. Through the war came a vigorous competition among the operators in the field, and accordingly, the benefits of these improvements have been passed on to the shipping and consuming public.

The result has been a substantial growth both in tonnage and in ton-mileage of inland water traffic. In terms of net tonnage, the growth has been from roughly 260 million tons in 1947, to an estimated 396 million tons in 1961. This tonnage has been moved over progressively longer distances in the course of the period. Consequently, the ton-mileage figure has grown in higher proportion from about 35 billion ton-miles in 1947, to about 121 billion ton-miles in 1960.

The inland water carriers in 1959 employed the following equipment in their service: 4,139 towboats and tugs, 472 self-propelled liquid carriers and 16,289 barges of all kinds.

Of the 1,600 companies operating these vessels, about 1,300 are for-hire carriers, including 130 which are operating under certificates or permits from the Interstate Commerce Commission.

The unregulated water carriers are essentially small business enterprises. As of December 31, 1959, on the Mississippi system, there were 807 of them in existence and they owned on the average, 2 towboats and 6 barges. By contrast, the 46 regulated water carriers on the Mississippi owned an average of 5.4 towboats and 74.4 barges each. On the other waterways, exclusive of the Great Lakes, the 691 unregulated carriers owned an average of 2.5 towboats and 6 barges, while the corresponding figures for the 84 regulated carriers are 5.9 towboats and 12 barges.

2. The proposal to repeal section 303(b) was rejected by this same committee in 1956:

Turning to H.R. 5595, now, I am sure that the chairman will recall that the identical proposal to repeal section 303(b) was before this subcommittee in 1956. The same arguments were made in its support then as are made now.

At that time only the Department of Commerce, the Interstate Commerce Commission and the railroads appeared before this subcommittee in favor of the bill. On the other hand, a large number of organizations, water carriers and shippers, appeared or filed statements in opposition. The committee apparently found no merit in the proposal then, since it was never reported to the House. The matter is no different now.

In view of the President's recent message on transportation, however, it is particularly important that the record of this hearing be as complete as possible.

I will, therefore, review the basic reasons why our organization believes that it would be against the public interest to repeal the presently existing exemption from regulation now provided by section 303(b).

3. The general considerations for and against regulation of transportation:

It is generally agreed that regulation should not be imposed for its own sake and that the burden of establishing the need or desirability of regulation is upon the proponents of regulation. It is also generally agreed that there are only two valid reasons for establishing regulation of transportation:

(*a*) Protection of the shipping public; or

(*b*) Protection of regulated carriers against unfair competition by unregulated carriers.

Let us see how these two grounds apply to the possible extension of regulation to unregulated water carriage of dry bulk commodities:

(*a*) Regulation of water transportation of bulk commodities is not needed to protect the public, in view of the freedom of competition.

So far as the interest of the shipping public is concerned, there is one very significant point to be noticed by this subcommittee. Not a single shipper advocates extension of regulation. This may seem remarkable in the light of the various arguments that have been put forth by the proponents of the legislation to the effect that lack of regulation means favoritism to large shippers and discrimination against those who supposedly cannot bargain effectively with the unregulated carriers.

The explanation, however, is extremely simple. Since relatively little capital is needed, it is, on balance, easy for a small businessman to become an unregulated bulk water carrier. A shipper using water transportation is not necessarily dependent on any single water carrier and no water carrier can in any sense of the word be considered irreplaceable. In the absence of the hampering and limiting effects of regulation, the water carriers of bulk commodities have grown in such numbers that competition is keen and shippers enjoy extremely efficient service at low cost rates and apparently without any unfair discrimination. Competition can be relied on to protect the shipping public.

(*b*) Regulation of rail transportation of bulk commodities has been felt to be needed in the interest of shippers because of the monopoly in rail services based on privately owned roadbeds.

The railroads are in a different situation from the water carriers. They operate over privately owned roadbeds, not open to competitors. Most shippers are served by only one railroad. Each railroad, therefore, to greater or lesser degree, enjoys a natural monoply and is irreplaceable for the particular type of service which it renders.

Enjoying this monopoly and being irreplaceable for its type of service, it is naturally the type of enterprise which has been considered appropriate for regulation to protect the shipping public, as in the case of any other public utility. There is no inconsistency, therefore, from the point of view of protection of the shipping public, in leaving the water carriers of bulk commodities free from regulation, while continuing the regulation of rail carriers.

Let us consider, therefore, the other possible basis for advocating extension of regulation—to protect regulated carriers against the unfair competition of unregulated carriers. Although there is a tendency on the part of the proponents to lump together all "common carriers" it is clear that the positions of the railroads and the regulated water carriers are actually very different. Let us take the interest of the railroads first.

(*c*) Regulation of water transportation of bulk commodities is not justified in the interest of protecting the railroads since, on a cost basis, the railroads cannot compete with water transportation.

Although the railroads complain about the unregulated water carriers and their ability to quote so-called secret rates it is not such lack of regulation which is the reason for the inability of the railroads to compete effectively with the water carriers for bulk commodity traffic.

The reason is the inherent cost advantage of water carriage of bulk commodities over costs of rail transportation. The cost differential is so great that there can be no rate competition between the two modes, except when the railroads are permitted to quote rates which fail to return their costs or the water carriers are somehow to be forced to raise their rates to an artificial level in order to destoy the special inherent advantage of their mode.

This is what is meant when it is said that there can be no competition between water carriers and railroads so far as buk commodities are concerned.

In his testimony for the Common Carrier Conference, Mr. G. C. Taylor pointed to the disparity between the average revenues of common carriers by water and the average revenues of the railroads. On a ton-mile basis the figures are roughly 4 mills and 14 mills, respectively.

Because of competition, one can expect that these revenues are closely related to costs and that they reflect, therefore, the vast difference in the cost of the two types of transportation. It seems to us that, unless the public interest in the maintenance of the inherent low-cost advantage of water transportation is to be sacrificed, extension of regulation to the unregulated water carriers is clearly not justified in the interest of protecting the railroads.

(*d*) Regulation is not justified in the interest of protecting the regulated water carriers since they are free to compete on an equal basis with unregulated carriers.

Here, no doubt, there is competition between the two classes of water carriers—that is, those possessing certificates or permits from the Commission—which I shall call certified carriers, and those who do not.

The certificated carriers attempt to draw a picture of discrimination and inequality as between themselves and the uncertificated carriers. They assert that they must publish their rates and that thereupon the uncertificated carriers only have to quote a rate slightly lower in order to take the business away from them.

This picture, though spectacular, is completely misleading. The certificated carriers can operate on the basis of unpublished rates just as easily as can the uncertificated carriers. All they have to do is to comply with the conditions laid down in section 303(b) for the exemption. They must confine a tow for which they seek an exemption to not more than three bulk commodities.

This is, of course, what the uncertificated carriers have to do. It is impossible for us to understand how any claim of inequality can be honestly made by the certificated carriers.

Mr. Taylor generally painted a picture of the harassed common carrier being driven out of business by unregulated water carriers operating under secret rates. Yet at the same time he testified that many exempt commodities, notably grain and coal, actually were carried by common carriers under their published tariffs—not under exempt and therefore so-called secret rates—and further testified that on a ton-mile basis common carriers enjoyed 40 percent of the Mississippi River and gulf intracoastal traffic.

Certainly the factual information submitted by Mr. Taylor would not permit me to conclude that regulation of bulk water carriers is necessary to protect the regulated water carriers.

With this background, let me turn now to more specific considerations.

4. The bulk commodity exemption in section 303(b) has served the public well.

As I have shown, bulk commodity transportation by water has grown spectacularly in the past 21 years since the Transportation Act of 1940 became effective. This tremendous growth indicates that the present system has served the shipping public in an entirely satisfactory fashion. It has done so from the point of view of both service and rates. New techniques in transportation have been evolved which have increased the capability and efficiency of water carriage and lowered its cost. Special equipment has been developed for handling particular types of commodities.

The result has been the growth in the traffic referred to and the location of many large and important industrial plants on the inland waterways to take advantage of the service provided by bulk commodity carriers.

These highly desirable results have been produced by the keen competition which has evolved under the freedom from regulation provided by section 303(b).

5. The original reasons for the inclusion of the dry bulk commodity exemption in the Transportation Act of 1940 are as relevant as ever.

This exemption was included in the act on the reasoning that there could be no substantial competition between the railroads and water carriers in the transportation of bulk commodities.

I have previously referred to the disparity in costs of the two modes of transportation. Even in 1940, the carriage of bulk commodities by water was clearly so much less costly than the carriage of such commodities by railroad that there was no justification for attempting to protect the railroads by imposing regulation on carriers of such commodities by water.

When the bill which became the Transportation Act was up for debate in the House of Representatives in 1939, Congressman Halleck explained the dry bulk exemption as follows:

> Why were bulk carriers by water exempted? They were exempted because everyone recognizes that their carriage is so cheap that they are not in substantial competition with any carrier (Congressional Record, July 22, 1939, p. 9709).

In discussing the exemptions now contained in section 303 (b), (c), and (e) in a form which differed only slightly from the present one, the report of the House committee said:

> The substitute bill gives the unqualified exemption, above referred to, on the theory that the water carriers, given this privilege, can carry such cargo at such low cost that the transportation is not substantially competitive with common carriers by water or with land transportation * * *.
>
> Subsections (b), (c), and (e) (of sec. 303) relate to exemptions in the case of contract carriers. Very painstaking consideration was given to the working out of these exemptions. Every effort was made to avoid imposing unnecessary regulation on carriers of this type which have never before been regulated, and at the same time to insure that the exemptions did not result in regulated carriers being subjected to unfair competitive disadvantages (H. Rept. No. 1217, 76th Cong., 1st sess., July 18, 1939, pp. 4, 8, 20).

We have made an analysis of the legislative history of section 303(b), which indicates the reasoning behind the exemption and the thorough and careful consideration which was given to the adoption of the exemption at the time of the enactment of part III of the Interstate Commerce Act.

I should like to submit a copy of this analysis for the records of this hearing.

Mr. FRIEDEL. That may be included in the record.

Mr. WRIGHT. Thank you, Mr. Chairman.

(The analysis of legislative history of the Transportation Act of 1940 follows:)

ANALYSIS OF LEGISLATIVE HISTORY OF SECTION 303(b) OF THE TRANSPORTATION ACT OF 1940

Attached as an appendix is a chronological account of the more important steps in the development of the bulk exemption in the Transportation Act. From this account certain relevant points stand out:

1. The exemption of the transportation of bulk commodities by water from the general scheme of regulation was a thoroughly and carefully considered step.
2. The exemption was based on the principle that enterprise and competition in transportation on the waterways were to remain free except to the extent that the public interest required regulation.
3. The exemption was accordingly based upon the determination that there was no substantial competition between bulk transportation on the waterways or any transportation by rail, and that, therefore, the exemption did not place the regulated carriers under unfair competitive disadvantage.
4. The reasons for the bulk exemption extend as much to the inland waterways as to the Great Lakes and coastwise traffic.

1. The exemption of the transportation of bulk commodities by water from the general scheme of regulation was a thoroughly and carefully considered step.

(*a*) The 1934 and 1935 reports of the Federal Coordinator of Transportation, Commissioner Joseph B. Eastman, recognized the difference between bulk transportation by contract carrier and ordinary common carriage by water, although the bills proposed by the Federal Coordinator did not specifically reflect this distinction (report of Federal Coordinator of Transportation, "Regulation of Transportation Agencies," Mar. 10, 1934, S. Doc. 152, 73d Cong., 2d sess., pp. 5, 10, 12 and app. F; report of Federal coordinator of Transportation, "Transportation Legislation," Jan. 30, 1935, H. Doc. 79, 74th Cong., 1st sess., p. 17 and app. VI).

(*b*) When, however, the Coordinator's proposed legislation was introduced in the Senate as S. 1632, 74th Congress, it met criticism from this point of view, to the extent that the Senate committee, upon reporting it to the Senate, recommended an administrative exemption based, among other things, upon shipment in bulk (hearings before the Committee on Interstate Commerce of the U.S. Senate on S. 1632, 74th Cong., 1st sess., to amend the Interstate Commerce Act, pt. II, pp. 609–1344; S. Rept. 925, 74th Cong., 1st sess., June 21, 1935, p. 2; Congressional Record, July 3, 1935, pp. 10692–10693).

(*c*) The exemption recommended by the Senate Committee as an amendment to S. 1632, 74th Congress, was included in the bill introduced by Senator Wheeler of the Senate Committee in the following Congress as S. 1400, 75th Congress. The same bill was introduced in the House by Congressman Ramspeck as H.R. 5719, 75th Congress.

(*d*) The Federal Coordinator of Transportation approved the amendments made by the Senate Committee to S. 1632, including the bulk exemption, in the report of the Coordinator in January 1936. (Report of Federal Coordinator of Transportation, January 21, 1936, H. Doc. No. 394, 74th Cong., quoted in hearings before the Committee on Merchant Marine and Fisheries of the House of Representatives, 75th Cong., 1st sess., on H.R. 3615 "Regulation of Water Carriers," Mar. 15 and 16, 1937, p. 18.)

(*e*) The Interstate Commerce Commission approved S. 1632 as thus amended and the subsequent bills (S. 1400 and H.R. 5719, 75th Cong.) reflecting the amendments to S. 1632. (Ibid.)

(*f*) The bill sometimes called the "Railroad bill" as reflecting the proposals of the "Committee of Six" (H.R. 4862, 76th Cong.) contained a slightly revised provision for the same type of exemption. (Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives on H.R. 3521 and H.R. 4862, 76th Cong., 1st sess., pt. IV.)

(*g*) This type of exemption, still an administrative exemption, was considered at length by witnesses appearing in the course of the hearings of the House Committee on H.R. 4862. (Ibid.)

(*h*) The exemption in the revised form in which it had appeared in H.R. 4862 was included in the bill introduced by Senator Wheeler as S. 2009 of the 76th Congress.

(*i*) The House Committee made the bulk exemption into a legislative exemption and included it in approximately its present form in the bill which it recommended as a substitute for S. 2009 on July 18, 1939. (H. Rept. No. 1217, 76th Cong., 1st sess., July 18, 1939.)

(*j*) As thus formulated by the House Committee, the bulk exemption was referred to specifically in the House Committee report on S. 2009, where it was discussed at considerable length, (H. Rept. No. 1217, 76th Cong., 1st sess., July 18, 1939, pp. 4, 7, 8, 20, 21.)

(*k*) A debate on the House substitute bill followed, which lasted for 5 days (July 21, 22, 24, 25 and 26, 1939). In the course of this debate the bulk exemption was referred to at least twice. (Congressional Record, July 22, 1939, pp. 9709 and 9750.)

(*l*) A slight change was made in the bulk exemption by the Conference Committee and, as a result, the bulk exemption was again discussed in the first conference report. (H. Rept. No. 2016, 76th Cong., 3d sess., pp. 77, 78.)

(*m*) Since the House rejected the first conference report, the bill went back again to conference, and the comments on the bulk exemption which appeared in the first conference report were repeated in the second conference report. (H. Rept. No. 2837, 76th Cong., 3d sess., August 7, 1940, pp. 83–84.)

(*n*) In the debate on the conference report which followed in the Senate the bulk exemption was specifically referred to. Finally, after the conference report was accepted by the Senate, Senator Wheeler inserted in the Congressional Record a statement in explanation of the bill which included comments

on the bulk exemption. (Congressional Record, September 6, 1940, p. 11615, September 9, 1940, p. 11768.)

From this account, it appears that the bulk exemption was considered over the course of many years by committees and Members of Congress. Although the exemption originally was proposed as a matter to be handled by administrative action of the Interstate Commerce Commission, and was changed to a legislative exemption only in 1939, the subject of the exemption was obviously considered of great importance by the committees and interested Congressmen and the adoption of section 303(b) in its present form was made after full consideration and clear understanding of the purpose of and reason for the provision.

2. The exemption was based on the principle that enterprise and competition in transportation on the waterways were to remain free except to the extent that the public interest required regulation.

This position was recognized as early as 1934, when the Federal Coordinator of Transportation stated:

"It is clear that no regulation or restrictions should be imposed upon any form of transportation merely for the purpose of benefiting some other form of transportation. The test must be the public interest." (Report of the Federal Coordinator of Transportation, "Regulation of Transportation Agencies," S. Doc. No. 152, 73d Cong., 2d sess., p. 5.)

The public interest referred to is the maintenance of a nondiscriminatory transportation service. Such purpose justifies regulation of carriers in two ways:

(1) To require that shippers be afforded nondiscriminatory transportation service;

(2) To protect regulated carriers against unfair unregulated competition.

In the case of contract carriers on inland waterways, there was no demand from shippers for protection against discrimination. Thus the position of the members of the Transportation Conference of 1933–35 was stated as follows in the Senate Committee hearings on S. 1632, 74th Congress, 1st session, at p. 1330:

"The general purpose of the conference discussion was to the effect that there appears to exist no necessity for the regulation of the rates or quantity of service offered by the contract carriers of full cargoes of bulk commodities on the Great Lakes, and that further investigation might possibly show a similar situation as regards such contract carriers on the coastal waterways and inland rivers."

The participants at this Transportation Conference included the following, some of whom obviously represented shippers', as distinguished from carriers', interests:

National Association of Manufacturers
Canal Carriers Association, Inc.
American Transit Association
National Highway Freight Association
Association of American Railroads
American Iron & Steel Institute
American Bankers Association
Security Owners Association
National Association of Mutual Savings Banks
National Industrial Conference Board
Railway Businessmen Association
Grain & Feed Dealers National Association
Institute of American Meat Packers
American Short Line Railroad Association
Associated Regulated Lake Lines

It was, therefore, only on the second basis referred to above that regulation could be demanded. As the Federal Coordinator of Transportation said in his 1935 report: "So far as regulation is directed against private and contract operators, it should be for the chief purpose of protecting the common carrier against unfair and demoralizing competition." (Report of Federal Coordinator of Transportation on "Transportation Legislation," Jan. 30, 1935, H. Doc. No. 89, 74th Cong., 1st sess., p. 17.)

The importance of keeping water transportation as free of regulation as possible was stressed by a representative of the port of New Orleans in testimony in 1935 on the pending water carrier bill, S. 1632, 74th Congress, 1st session.

Rene A. Stiegler, executive general agent, board of commissioners of the port of New Orleans, La., said:

"No great transportation system of water transportation can grow unless it has plenty of freedom" (p. 707).

"It appeared to me that regulation on the Mississippi River would give those people who are seeking regulation a tremendous advantage, in that it would practically run the contract carrier out of business" (p. 709).

"The issuance of certificates of necessity and convenience would tend to give the water carriers in operation now the same amount of monopoly that the railroads used to have" (p. 710).

"The more competition you have the more you can disseminate your farm products all around through the world markets" (p. 710).

3. The exemption was accordingly based upon the determination that there was no substantial competition between bulk transportation on the waterways and package transportation on the waterways or any transportation by rail, and that, therefore, the exemption did not place the regulated carriers under unfair competitive disadvantage.

As stated above under point 2, the Federal Coordinator of Transportation justified regulation of contract carriage by water only to the extent that it was necessary to protect common carriers against unfair and demoralizing competition. In hearings before the Senate committee on S. 1632, 74th Congress, 1st session, the Coordinator stated, in reference to the contract and private carriers who were not to be exempted from regulation:

"The regulation of these contract carriers and the private carrier is directed toward that end; namely, the protection of the common carrier against unfair competition practices" (p. 648).

On the other hand, with respect to contract and private bulk carriers, he said:

"Take the situation on the Great Lakes. There are at the present many boats which are controlled by industries, which are operating on the Great Lakes in the haulage of iron ore, for example. They may carry back coal for others on the return trip. Occasionally they may haul a cargo of grain. These boats are not competitive with the railroad in any substantial sense, because they operate so cheaply over those long water distances that the railroads could not hope to compete. Nor are they competitive in any substantial way with the common carriers operating on the Great Lakes who confine themselves largely to package freight. So long as a situation of that kind exists, where there is no apparent need for public regulation, the Commission should be in a position to relieve such carriers from unnecessary burdens * * *" (pp. 648–649).

And again:

"But personally, so far as I know anything about the situation [on the Great Lakes] if those contract vessels confine themselves to bulk cargoes, such as iron ore, grain, and coal, it does not seem to me that they are a demoralizing influence upon any form of common carriers, either the railroads or the common carrier boats" (p. 650).

The original recommendation was to extend the regulatory authority of the Interstate Commerce Commission over all contract carriers but to have the Commission use the authority sparingly.

In the course of considering legislation, however, the Senate Committee on Interstate Commerce concluded that regulatory authority over most contract carriage by water was unnecessary and therefore on this basis, unjustified, and it amended the bill of the Coordinator to provide that noncompetitive carriage should be excluded from regulation and that the Commission should proceed to determine what transpotration should thus be excluded. (Senate Report No. 925, 74th Cong. 1st sess., June 21, 1935, p. 2; see Congressional Record July 3, 1935, p. 10692, and July 8, 1935, p. 10738.)

The amendment proposed by the committee specifically referred to the factor of shipment in bulk as one of the possible factors in making contract carriage noncompetitive with common carriage.

This reasoning and the language of the Senate committee were followed in several subsequent bills down to the summer of 1939. (S. 1400 and H.R. 5719, 75th Cong., 1st sess.; and H.R. 4862 and S. 2009, 76th Cong., 1st sess.)

At that time, after having listened to testimony of representatives of inland water carriers and shippers, the House committee evolved an exemption for bulk transportation which was automatic and required no findings by the Commission. This was a provision almost identical with section 303(b) as it stands today.

The House committee, in explaining this provision in its report, said:

"The bulk-carrier exemption in section 303 was given water transportation on the theory that such transportation is not substantially competitive with land transportation * * *."

"The substitute bill gives the unqualified exemption, above referred to, on the theory that the water carriers, given this privilege, can carry such cargo at such low cost that the transportation is not substantially competitive with common carriers by water or with land transportation * * *."

"Subsections (b), (c), and (e) (of sec. 303) relate to exemptions in the case of contract carriers. Very painstaking consideration was given to the working out of these exemptions. Every effort was made to avoid imposing unnecessary regulation on carriers of this type which have never before been regulated, and at the same time to insure that the exemptions did not result in regulating carriers being subjected to unfair competitive disadvantages" (H. Rept. No. 1217, 76th Cong., 1st sess., July 18, 1939, pp. 4, 8, 20).

In debate in the House, Congressman Halleck said:

"Why were bulk carriers by water exempted? They were exempted because everyone recognizes that their carriage is so cheap that they are not in any substantial competition with any carrier (Congressional Record, July 22, 1939, p. 9709).

And Congressman Hinshaw said:

"As far as bulk carriers are concerned, those hauling sand and gravel, coal, oil, and similar materials in rough bulk, it was thought that those commodities were of such a nature that the handling of such cargoes was not competitive, consequently they were left out. In this bill we are interested in competition" (Congressional Record, July 22, 1939, p. 9750).

From this review, it appears that Congress considered regulation of water carriers justified only to the extent that it would protect common carriers against demoralizing competition, and it also is clear that Congress considered bulk transportation to be so entirely different in its range of costs from package transportation by common carriers by water or any transportation by rail as to be an entirely different field of competition. Thus, protection of common carriers, by water or by rail, could not itself justify regulation of bulk transportation by water.

4. The reasons for the bulk exemption extend as much to the inland waterways as to the Great Lakes and coastwise traffic.

While the most striking example of cheap bulk transportation may be found in the Great Lakes carriers of iron, oil, limestone, coal, and grain, the same reasons for exemption apply to bulk transportation on the Mississippi River system.

Bulk transportation normally involves special equipment, mechanical handling, more or less continuous operation, a limited number of stops on a voyage, all of which contrast with package transportation, making for far cheaper operation. As contrasted with rail transportation, water carriage, in general, is inherently cheaper.

These considerations apply on the inland waterways as well as on the Great Lakes. That Congress recognized this fact is shown by the unlimited scope of the bulk exemption in section 303(b), as contrasted with the exemption limited to international waterways such as the Great Lakes in section 303(c).

That these were intended to be two separate exemptions is indicated, not only by the form of the statute, but by statements of Congressmen responsible for the legislation.

Thus, Representative Halleck discussed these two exemptions as separate provisions in the following statement in the House:

"Why were bulk carriers by water exempted? They were exempted because everyone recognized that their carriage is so cheap that they were not in any substantial competition with any carrier. Why did we exempt the bulk carriers on the Great Lakes, and incidentally their exemption goes no further than the general exemption for all bulk carriers? Because we recognize that the lake carriers carry traffic 70 percent of the miles in many cases in joint operations with the railroads for 30 percent of the revenue. They are not in direct competition with the railroads. However, they are in direct competition with the Canadian carriers that have grown in importance to almost 50 percent of the traffic on the Great Lakes-Canadian carriers, who by their own Canadian Shipping Act are exempted from regulation * * *" (Congressional Record, July 22, 1939, p. 9709).

So also did Representative Hinshaw in the following passage:

"Mr. HINSHAW. * * * As far as the bulk carriers are concerned, those hauling sand and gravel, coal, oil and similar materials in rough bulk, it was thought that those commodities were of such a nature that the handling of such cargoes was not competitive, consequently they were left out. In this bill we are interested in competition.

"Mr. DONDERO. As it relates to the Great Lakes, is it not also true that the Canadian commerce is unregulated and that we could not compete with them unless our own Great Lakes traffic were also left unregulated?

"Mr. HINSHAW. I may say to the gentleman from Michigan that the Canadian commerce is regulated except for bulk carriers. Bulk carriers are excluded from Canadian regulation, and we have excluded American bulk carriers on the Great Lakes from this regulation * * *" (Congressional Record, July 22, 1939, p. 9750).

Senator Wheeler also recognized that section 303(b) had a wider application than the Great Lakes exemption of section 303(c). He said:

"These amendments are as follows: Section 303(b) exempts transportation by a water carrier of commodities in bulk when the cargo space of the vessel is being used for the carrying of not more than three such commodities. Section 303(c) exempts contract carriers by water of commodities in bulk in a nonoceangoing vessel on a normal voyage during which not more than three such commodities are transported and the vessel passes through waters made international for navigation purposes by any treaty. This is the exemption which covers the Great Lakes contract carriers. These contract carriers are in competition with Canadian or other foreign ships" (Congressional Record, Sept. 9, 1940, p. 11768).

Senator Reed, in discussing section 303(b), indicated specifically its application to river traffic, saying:

"We went further. On the Great Lakes there is what is known as bulk transportation. Such transportation in the main consists of coal which goes up the lakes, and steel, iron ore, grain, and limestone, which comes down. With relation to that transportation, we said:

"'Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count.'

"To help the river carriers, which use barges, we put in this sentence:

"'For the purpose of this subsection, two or more vessels while navigating as a unit shall be considered to be a single vessel.'

"I do not know what more we could do" (Congressional Record, Sept. 6, 1940, p. 11615).

As will be seen, several of these statements refer to the consideration that American bulk carirers on the Great Lakes are in competition with Canadian bulk carriers, and that the latter are unregulated. By some Congressmen this fact was evidently regarded as a separate reason for exempting the Great Lakes bulk carirers. And this consideration probably explains the presence in the statute of the unnecessary section 303(c), which, though limited to the Great Lakes, actually gives an exemption no broader than section 303(b).

The existence of this unregulated Canadian competition, however, should on any logical basis be recognized as justifying the exemption of bulk transportation on large parts of the Mississippi River system. As various witnesses testified before the House committee, the shipment of grain and coal in bulk on the Great Lakes is competitive with such shipments on the Mississippi River system. Changes in rates on the Great Lakes affect the flow of grain down, and coal up, the Mississippi. Thus, if Mississippi carriers were to be regulated, they would be at a competitive disadvantage with unregulated carriers on the Great Lakes, whether of American or Canadian nationality.

The testimony referred to follows:

C. E. Childe, chairman, Traffic Committee of Mississippi Valley Association:

"Section 2, dealing with scope and application:

"Paragraph (5) in this section, which provides that the act shall not apply to interstate contract carriers by water, which by reason of the inherent nature of the commodities transported, requirement of special equipment, shipment in

bulk, is not actually and substantially competitive with transportation of interstate commerce, we believe that is intended to carry out the railroad's suggestion that bulk freight carried on the Great Lakes shall not be regulated.

"Bulk freight carried on the Great Lakes is as much competitive with the common carriers on the rivers, and common carriers by rail, as bulk commerce on the rivers is competitive.

"On the Ohio River, on the Mississippi, the Missouri, and the Illinois, the great part of the tonnage today consists of transportation of such bulk commodities as coal, grain, and steel.

"The railroads propose to regulate all that and leave similar commerce on the Great Lakes free of regulation, which would, of course, destroy the movement of bulk freight on the rivers" (hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives on H.R. 2531 and H.R. 4862, 76th Cong., 1st sess., p. 1015).

Mr Bayless, counsel for the Mississippi River System Carriers' Association, Cincinnati, Ohio:

"Congressman MAPES. Is there any reason for controlling or regulating the contract carriers or private carriers on the Mississippi River system which does not apply to like carriers on the Great Lakes?

"Mr. BAYLESS. None that I know of, sir, none whatever. I do not see any. I do not know why all this distinction is made between the contract carriers on the Great Lakes and the contract carriers on the river * * *" (id., p. 1098).

Herman Mueller, secretary and general manager of the Port Authority of the City of St. Paul, Minn.:

"Part 3 of title I of H.R. 2531 would amend section 1 of the act so as to place the port-to-port rates of water carriers under the control of the ICC. However, there are important exemptions. The common carriers upon the high seas, the Great Lakes, and those engaged in intercoastal commerce through the Panama Canal are exempt. We in the Mississippi Valley have a very direct interest in transportation on the Great Lakes and via the Panama Canal. To a large extent the former is either directly or indirectly in competition with transportation via the Mississippi River system and to subject our river transportation to regulation, while permitting our competitors on the Great Lakes to enjoy unregulated transportation, could create a discriminatory situation that would require prompt correction" (id., p. 1127).

See also *Ex parte 165*, Interstate Commerce Commission staff report, p. 29, for recognition of the fact that the movement on inland waterways, as well as Great Lakes, was of concern to sponsors of the exemption and that the clear legislative intent was to exempt bulk movements in both areas.

APPENDIX

The Office of the Federal Coordinator of Transportation was created by section 2 of the Emergency Railroad Transportation Act (act of June 16, 1933, Public Law 68, 73d Cong., 1st sess., ch. 91, 48 Stat. 211). The Coordinator was to be appointed by the President subject to Senate confirmation or designated by the President from among the members of the Interstate Commerce Commission. Section 13 of the same act imposed on the Coordinator the duty to investigate and to submit recommendations for further legislation to improve transporation conditions.

The President appointed Commissioner Joseph B. Eastman as Coordinator. On March 10, 1934, the Coordinator submitted his first report entitled "Regulation of Transportation Agencies" (S. Doc. 152, 73d Cong., 2d sess.). This report recommended the extension of regulation to all forms of transportation. In making this recommendation the report stated:

"It is clear that no regulation or restrictions should be imposed upon any form of transportation merely for the purpose of benefiting some other form of transportation. The test must be the public interest" (p. 5).

"The quesion is whether regulation is needed in the public interest. Neither the fact that competing railroads may wish it for their protection nor the fact that many water carriers may desire it for similar reasons is in itself controlling" (p. 10).

The report recognized the special problem of contract carriers by water. It made the following statement:

"In transportation by water a distinction is recognized between large shipments in cargo or part cargo lots on contract or tramp ships, and the general run of common-carrier traffic. This distinction is without counterpart in the

railroad field. A flexible type of rate quoting or bargaining, often conducted informally on short notice, has always characterized these cargo or volume shipments by water. The regulation proposed will somewhat restrict this freedom of bargaining, but only to the extent that the contract carriers encroach upon the traffic for which the maintenance of common-carrier servie is essential. There is much bulk traffic, such as coal, iron ore, phosphate, rock, crude oil, and the like, which the ocean or Great Lakes common carriers do not undertake to handle. As to suh traffic, present practices of the contract carriers need not be seriously disturbed. The regulation of contract carriers of full and/or part cargo lots, to the the end that their rates shall not be depressed to levels which threaten the common-carrier service which the general public interest requires, violates no constitutional limitation so long as it is confined to that end" (p. 12).

Appendix F attached to the report contained a proposed bill for the extension of regulation to water carriers. Section 204(c) of this proposed bill read as follows:

"Whenever it shall appear from complaint made to the Commission or otherwise that the rates, fares, regulations, and practices of water carriers engaged in transportation to or from a port or ports of any foreign country in competition with carriers subject to this part, cause undue disadvatage to the latter carriers by reason of such competition, the Commission may relieve the latter carriers from the provisions of this part to such extent, and for such time, and in such manner as in its judgment may be necessary to avoid such undue disadvantage."

The Coordinator's proposed bill was introduced in the 73d Congress as S. 3172.

The next year, the proposed bill not having been adopted, the Federal Coordinator repeated his recommendation in a report on Transportation Legislation, January 30, 1935 (H. Doc. 89, 74th Cong., 1st sess.). This report also specifically recommended the regulation of motor carriers. Again the report commented on the special problem of contract carriers, stating:

"When it comes to the regulation of trucking and shipping, special problems of very considerable difficulty are encountered which are not found in the railroad industry * * *.

"These private and contract carriers might be ignored if they did not have a tendency to demoralize or impair the system of common carriage which undertakes to serve all alike and is of prime importance to the country * * *.

"The contract carrier may differ from the common carrier only in the fact that he undertakes to skim the cream of the traffic and leave the portion which lacks the butterfats to his common-carrier competitor. Obviously such operations can have very unfortunate and undesirable results.

"There are, however, private and contract operations which are not open to these objections. An outstanding example is the operation of the cargo boats on the Great Lakes which carry, chiefly, iron ore, coal, and grain. So long as they confine themselves to such forms of traffic, they apparently are, as a practical matter, not competitive either with railroads or with common-carrier steamship lines. There are similar instances in the coastwise, intercoastal, and inland waterway trades. So far as regulation is directed against private and contract operators, it should be for the chief purpose of protecting the common carriers against unfair and demoralizing competition. In the legislation which is here proposed, the effort has been to follow this principle."

Again the report was accompanied by a proposed bill for the extension of regulation to water carriers. This appeared in appendix VI to the report. Section 204(h) was almost exactly the same provision as section 204(c) of the bill proposed in the previous report. It read as follows:

"Whenever it shall appear from complaint made to the Commission or otherwise that the rates, fares, regulations, or practices of water carriers engaged in transportation to or from a port or ports of any foreign country in competition with interstate common carriers by water or interstate contract carriers by water, cause undue disadvantage to the latter carriers by reason of such competition, the Commission may relieve the latter carriers from the provisions of this part to such extent, and for such time, and in such manner as in its judgment may be necessary to avoid or lessen such undue disadvantage."

This bill was introduced as S. 1632 and H.R. 5379 into the 74th Congress, 1st session. In a message to Congress, on June 7, 1935 (printed at p. 885, Congressional Record, June 7, 1935; H. Doc. 221, 74th Cong., 1st sess.), the President urged the passage of the bill for the regulation of "intercoastal waterways trade and of some of the inland waterways carriers" prepared by the Coordinator.

Extensive hearings were held in the Senate on the bill before the Senate Committee on Interstate Commerce, but it was not enacted. The transcript of the hearings appears in a document entitled "To Amend the Interstate Commerce Act," part 2, pages 609–1344. The Senate committee made a report on this bill (S. Rept. No. 925, 74th Cong., 1st sess., June 21, 1935). On page 2 it indicated that it had amended the bill to provide certain additional exemptions for water carriers. The passage in this report reads as follows:

"Subsequently to the hearings the committee has studied the bill and the objections offered thereto, and it is believed that practically all objections of substance have been met in the amended bill herewith reported.

"As originally drafted, the bill proposed to make more comprehensive regulation of interstate contract transportation and some regulation of private carriage. The committee has amended the bill so as to exclude from regulation all private carriage and contract transportation 'not actually and substantially competitive with transportation by common carriers by water in the same trade or route' (sec. 302(b)). The bill is also amended to provide a minimum of regulation deemed necessary to prevent unfair competition by interstate contract water carriers in competition with interstate common carriers by water" (p. 2).

The Senate committee amendment in section 302(b), referred to in the above excerpt from the report, was offered on the floor of the Senate by Chairman Wheeler on July 3, 1935, and agreed to. (Congressional Record, July 3, 1935, p. 10692–3). It read as follows:

"*Provided*, That it is hereby expressly declared to be the policy of Congress to exclude from the provisions of this part transportation by interstate contract carriers by water which by reason of the inherent nature of the commodities transported, their requirements of special equipment, or their shipment in bulk, is not actually and substantially competitive with transportation by interstate common carriers by water in the same trade or route; and that the Commission shall proceed immediately to determine the transportation so to be excluded, and shall from time to time make such modifications of its findings as may be necessary to carry out the policy so declared."

As will be seen, this included the first proposal for an exemption based on the bulk character of shipment.

After the adoption of the committee amendment, Senator Wheeler explained it as follows (Congressional Record, July 8, 1935, p. 10738):

"Paragraph (b) of section 302 also contains an important statement of congressional policy. As originally drawn, the bill brought all interstate contract carriers within its terms. At the hearings various interests, particularly the Great Lakes bulk-cargo carriers and those operating tanker vessels, protested that they are conducting a special form of transportation and one which, because of its lower costs and the specialized facilities used, is not competitive with common-carrier service by water, and therefore is not in need of Government regulation. It is said that competition assures the fixing of reasonable charges and without harmful effects on other agencies of transportation. The committee found that such claims are in large part justified, and considered the possibility of amending the bill to exempt carriers of bulk commodities. Difficulty was found, however, in drawing up such an exemption. For example, a commodity, such as coal, may not be competitive with common-carrier service on one trade route, but competitive with it on another. So also with grain. It was therefore concluded to lay down a precise statement of policy and to instruct the Commission to determine the transportation which, because of its not furnishing actual and substantial competition with common-carrier service, could reasonably be relieved of any regulation. This policy is declared in the following language:

"It is hereby expressly declared to be the policy of Congress to exclude from the provisions of this part transportation by interstate contract carriers by water which by reason of the inherent nature of the commodities transported, their requirements of special equipment, or their shipment in bulk, is not actually and substantially competitive with transportation by interstate common carriers by water in the same trade or route."

Commenting on this bill, and particularly on this exemption, Commissioner Eastman testified 2 years later as follows (Hearings before the Committee on Merchant Marine and Fisheries of the House of Representatives, 75th Cong., 1st sess., on H.R. 3615, "Regulations of Water Carriers," Mar. 15 and 16, 1937, at p. 18):

"* * * that bill of 1935 was printed in the House as H.R. 5379, and that bill is identical with H.R. 3615 introduced by Congressman Ramspeck this year.

"That bill, in the form of S. 1632, was considered in 1935 quite thoroughly by the Senate Committee on Interstate Commerce. They had extensive hearings and that committee finally reported out a bill in modified form, the modifications being designed to meet the principal criticisms which were made at the hearings.

"Now in my report as Coordinator, last year, I explained very briefly what those changes were and I think I can cover that by reading this very brief statement:

"'* * * The more important may be described in general terms as follows:

"'1. *The authority over contract carriers was much restricted.*—This was done by declaring it to be the policy of Congress to exclude from the provisions of the act transportation by such carriers "which by reason of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk, is not actually and substantially competitive with transportation by interstate common carriers in the same trade or route." The Commission is directed to "proceed immediately to determine the transportation so to be excluded" and given authority to modify its findings from time to time. The regulation of contract carriers not so excluded is reduced to the minimum necessary to protect the common carriers, upon whom the general public must depend for water transportation, against unfair competition.'

"In other words, as this bill was reported out by the Senate Committee, there is no intention to interfere with contract-carrier operations except to the extent that they are competitive with common-carrier operations by water—not common-carrier operations by railroad, but common-carrier operations by water—and that exclusion language would at once remove from consideration many of these operations. For example, on the Great Lakes, the boats which carry the ore and the boats which carry the coal and the grain, and those constitute the great bulk of operations on the Great Lakes, are not competitive with either rail or common-carrier water operations, principally because of the tremendously low cost of those water operations."

Commissioner Eastman's report as Federal Coordinator of Transportation from which he quoted in the above testimony (Report of Jan. 21, 1936, H. Doc. No. 394, 74th Cong.) also stated at page 21:

"While it is not clear that the original provisions with respect to such carriers [contract and private] were not wise and desirable, this also is a matter which can well be left for future consideration, as experience in actual regulation is gained."

The bill, with the bulk exemption proviso recommended by the Senate Committee, was introduced in the 75th Congress, 1st session, by Senator Wheeler as S. 1400. A bill similar to S. 1632 of the previous Congress as originally introduced, without the proviso, was introduced by Congressman Ramspeck as H.R. 3615 in the 75th Congress. Hearings were held on the latter bill before the House Committee on Merchant Marine and Fisheries. Then on March 17, 1935, Congressman Ramspeck (by request) introduced a bill similar to S. 1400, including the proviso, as H.R. 5719, 75th Congress, 1st session.

In a letter to Chairman Lea of the House Committee on Interstate and Foreign Commerce of March 30, 1939, published in the hearings on H.R. 2531 (76th Cong., 1st sess., at p. 1560) Commissioner Eastman referred to water carrier bills sponsored by the Interstate Commerce Commission in the 74th and 75th Congresses containing the bulk exemption proviso. The reference obviously was to S. 1632, 74th Congress, 1st session, as amended by the Senate Committee, and to S. 1400 and H.R. 5719, 75th Congress, 1st session.

In 1938 the President appointed a committee of three members of the Interstate Commerce Commission, Chairman Splawn and members Eastman and Mahaffie. Their recommendations were transmitted in a message from the President to the Congress, dated April 11, 1938, in which conference was made to the recommendations of the Interstate Commerce Commission that water carriers be subject to regulations (H. Doc. No. 583, 75th Cong., 3d sess.).

Subsequently the "Committee of Six," consisting of three railroad executives and three leaders of railroad unions, was appointed by the President on September 20, 1938, to make a study of the situation of the railroads and recommendations for their relief. The committee's report, rendered on December 23, 1938, recommended extension of regulation to water carriers.

On January 13, 1939, Chairman Lea of the House Committee of Interstate and Foreign Commerce, introduced H.R. 2531 into the 76th Congress, 1st sess. This bill, by title I, part III, section 22, proposed to subject water carriers to regula-

tion, at the same time exempting Great Lakes common carriers. Section 22 of the bill read:

"Section 1(1) of such [Interstate Commerce] Act, as amended, is amended by inserting after subparagraph (b) a new subparagraph (c), as follows:

"'(c) The transportation of passengers or property by water upon the inland, canal, or coastwise waterways of the United States, but shall not include common carriers engaged in the transportation of passengers or property upon the high seas, the Great Lakes, or in intercoastal commerce by way of the Panama Canal;'."

The bill also provided, however, an administrative exemption for other water carriers. This was a somewhat broader exemption than had been provided originally in the bill recommended by the Federal Coordinator of Transportation, which seemed to have been designed to give a possible administrative exemption for Great Lakes carriers. The Lea bill provision authorized administrative exemption without limitation as to route. This provision read as follows:

"SEC. 23. Section 1(c) of such Act, as amended, is amended by adding at the end thereof a new sentence as follows: "if the Commission finds, from time to time, after investigation with or without a hearing, that any carrier or class of carriers included in subparagraph (c) is or would be unduly burdened by the enforcement of the requirements of this part, or of any provision of this part, or of any rule, regulation, condition, or limitation prescribed thereunder, by reason of the local nature or limited extent of, or unusual circumstances affecting the operations of such carrier or class of carriers, and further finds that as to such carrier or class of carriers, the enforcement of such requirements, or such provision, rule, regulation, condition, or limitation, is not required in the public interest, such carrier or class of carriers shall be exempt from such requirements, provision, rule, regulation, condition or limitation, to the extent designated by the Commission. In exercising its jurisdiction over carriers included by this subparagraph the Commission shall not apply to any carrier owned or controlled by the United States Government any different policy, or rule of ratemaking, or any different method of determining costs of service, or value of property, than it applies or would apply in the case of carriers not so owned or controlled."

The hearings on the Lea bill were held before the House Committee on Interstate and Foreign Commerce from January 24 to March 30, 1939.

While the hearings were going on, a bill embodying the recommendations of the Committee of Six and therefore frequently referred to as the "railroad bill" was introduced as H.R. 4862, and the hearings before the House committee were expanded to include this bill. The railroad bill, as distinguished from the Lea bill, contained an exemption specifically referring to shipments in bulk. Like the earlier bills recommended by the Federal Coordinator, it authorized an administrative exemption, requiring action by the Commission. The language was taken with only slight changes from the amended S. 1632 of the 74th Congress and from S. 1400 and H.R. 5719 of the 75th Congress. The authorization was contained in section 2(5), reading as follows:

"SEC. 2(5). Nothing in this Act shall apply to the transportation of property in interstate contract carriers by water which, by reason of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk, is not actually and substantially competitive with transportation by interstate common carrier; and the Commission shall proceed immediately to determine the transportation to be so excluded and shall from time to time make such modifications of its findings as may be necessary to carry out the policy so declared."

In the course of the hearings before the House committee, witnesses from the Mississippi Valley commented on the relationship between water transportation on the Great Lakes and on the Mississippi Valley system. It will be remembered that the Lea bill provided an outright exemption for common carriers on the Great Lakes, while the railroad bill contemplated a bulk freight exemption by administrative action. Following are quotations from the testimony of three witnesses:

(P. 1015:) C. E. Childe, chairman, Traffic Committee of Mississippi Valley Association, referring to the "railroad bill" (H.R. 4862), said:

"Section 2 dealing with scope and application:

"Paragraph (5) in this section, which provides that the act shall not apply to interstate contract carriers by water, which by reason of the inherent nature of the commodities transported, requirement of special equipment, shipment in bulk, is not actually and substantially competitive with transportation of inter-

state commerce, we believe that is intended to carry out the railroad's suggestion that bulk freight carried on the Great Lakes shall not be regulated.

"Bulk freight carried on the Great Lakes is as much competitive with the common carriers on the rivers, and common carriers by rail, as bulk commerce on the rivers is competitive.

"On the Ohio River, on the Mississippi, the Missouri, and the Illinois, the great part of the tonnage today consists of transportation of such bulk commodities as coal, grain, and steel.

"The railroads propose to regulate all that and leave similar commerce on the Great Lakes free of regulation, which would, of course, destroy the movement of bulk freight on the rivers."

(P. 1098:) Mr. Bayless, counsel for the Mississippi River System Carriers' Association, Cincinnati, Ohio, testified as follows:

"Congressman MAPES. Is there any reason for controlling or regulating the contract carriers or private carriers on the Mississippi River system which does not apply to like carriers on the Great Lakes?

"Mr. BAYLESS. None that I know of, sir; none whatever. I do not see any. I do not know why all this distinction is made between the contract carriers on the Great Lakes and the contract carriers on the river * * *."

(P. 1127:) Herman Mueller, secretary and general manager of the Port Authority of the City of St. Paul, Minn., said:

"Part 3 of title I of H.R. 2531 would amend section 1 of the act so as to place the port-to-port rates of water carriers under the control of the ICC. However, there are important exemptions. The common carriers upon the high seas, the Great Lakes, and those engaged in intercoastal commerce through the Panama Canal are exempt. We in the Mississippi Valley have a very direct interest in transportation on the Great Lakes and via the Panama Canal. To a large extent the former is either directly or indirectly in competition with transportation via the Mississippi River system and to subject our river transportation to regulation, while permitting our competitors on the Great Lakes to enjoy unregulated transportation, would create a discriminatory situation that would require prompt correction."

On the same day that the hearings terminated in the House committee, March 30, 1939, a water carrier bill was introduced in the Senate by Chairman Wheeler of the Senate Committee on Interstate Commerce, S. 2009, 76th Congress, 1st session. This bill contained a provision authorizing an administrative exemption of bulk shipments similar to section 2(5) of the railroad bill. Section 2(6) reads as follows:

"Nothing in this Act shall apply to the transportation of property by interstate contract carriers by water which by reason of the inherent nature of the commodities transported, and requirement of special equipment, or their shipment in bulk, is not actually and substantially competitive with transportation by interstate common carriers; and the Commission shall proceed immediately to determine the transportation to be so excluded and shall from time to time make such notifications of its findings as may be necessary to carry out the policy declared in Section 1."

Section 2(7) of the same bill authorized a general administrative exemption without reference to bulk but apparently aimed specifically at Great Lakes carriers. It was based on section 204(h) of S. 1632, 74th Congress, 1st session, which, it will be remembered, was the bill proposed by the report of the Federal Coordinator of Transportation filed in 1935. Section 2(7) of S. 2009 read as follows:

"SEC. 2(7). Whenever it shall appear from complaint made to the Commission or otherwise that the rates, fares, regulations, or practices of water carriers engaged in transportation to or from a port or ports of any foreign country in competition with interstate common carriers or interstate contract carriers by water, cause undue disadvantage to such interstate carriers by reason of such competition, the Commission may relieve such carriers from the provisions of this Act to such extent, and for such time, and in such manner as in its judgment may be necessary to avoid or lessen such undue disadvantage consistent with the public interest and the policy declared in section 1 of this Act."

Hearings on S. 2009 before the Senate committee were held from April 3 to 14, 1939. On May 16, 1939, the bill was reported with amendments in Senate Report No. 433, 76th Congress, 1st session.

On May 23, 1939, in the course of debate on the floor of the Senate a committee amendment to section 2(6) was adopted changing the number to (7) and inserting

after the phrase "interstate common carriers" the words "by water in the same trade or route" (Congressional Record May 23, 1939, p. 5962).

On May 24, 1939, Senator Brown, of Michigan, obtained the adoption by the Senate of an amendment providing for a specific outright exemption for bulk contract carriers on the Great Lakes (Congressional Record May 24, 1939, p. 6066). This exemption reads as follows:

"*Provided, however*, That nothing in this Act shall apply to contract carriers by water in the transportation of commodities in bulk on the Great Lakes whose vessels during the normal course of voyage pass within the international waters between the United States and Canada, and whose vessels compete in respect to the transportation of any such commodities in bulk with water carriers of a foreign country."

The bill then passed the Senate on May 25, 1939.

The House committee reported, on S. 2009, on July 18, 1939, in House Report hearings specifically on S. 2009, but relied on the testimony brought out at its hearings on H.R. 2531 (the Lea bill) and H.R. 486, the railroad bill.

The House committee reported, on S. 2009, on July 18, 1939, in House Report No. 1217, 76th Congress, 1st session. The report of the bill provided for striking out all of the text of the bill as passed by the Senate and substituting an entire new bill.

In commenting on the general aim of the bill, the report said:

(P. 2:) "The broad purpose of this legislation is to improve the Nation's transportation system. It recognizes that the welfare of our transportation agencies is a matter of concern to the whole people of the country * * *.

"It recognizes (among other things) * * * the right of the public to the most economic service * * *.

"This country is definitely committed to the theory of regulating all interstate transportation for the public. This policy is the outgrowth of experience. Transportation regulation places on the carrier certain duties and burdens and requires of him certain other obligations in return. A common carrier must give a service required by the interest of the public. He must provide that service on regular schedules and at regular rates. He must provide the service, rain or shine, profitably or unprofitably. He is required to give reasonable rates and equal prices in service to the public. In turn, he has a right to reasonable charges and protection against unjust competition.

"* * * Regulation of two competitors requires regulatory authority over each. Competition is two sided, not one sided. It requires a just umpire whose decision is binding on both sides."

It is at this point, with the submission of a substitute bill by the House committee, that the outright specific exemption of bulk carriers, with the three-commodities provision, appears for the first time, so far as research now discloses. The substitute bill reported by the House committee under the number S. 2009 on July 18, 1939, contained section 303(b) in substantially the form in which it now appears. At that stage section 303(b) read:

"Nothing in this part shall apply to the transportation by a contract carrier by water of commodities in bulk in a vessel the cargo space of which is used for the carrying of not more than three such commodities at any given time. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing customs of the trade in handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. This subsection shall not apply to transportation subject, at the time this chapter takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended."

This bill also contained three other exemptions which might be noted. In place of the proviso which had been adopted in the Senate on the proposal of Senator Brown of Michigan, the House committee substituted an exemption applicable to Great Lakes contract carriers of bulk commodities which was in the form of section 303(c) as now in effect. Section 303(d) as finally enacted was also included by the committee to provide an exemption for liquid bulk transportation. (The reference in sec. 303(d), as of today, to the Commandant of the Coast Guard in place of the Secretary of Commerce, is the result of a transfer of authority under the 1946 Reorganization Plan No. 3.) Section 303(e) of the committee bill was in the form of section 303(e)(2) as enacted and in effect today, except for differences in dates and cross-references.

In commenting on these exemptions the House committee report (H. Rept. No. 1217, 76th Cong., 1st sess.) made the following statement:

(P. 4:) "The bulk-carrier exemption in section 303 was given water transportation on the theory that such transportation is not substantially competitive with land transportation.

(P. 7:) "The regulatory provisions as to water carriers are in part III of the substitute bill.

"It gives general regulatory authority over interstate water transportation, including intercoastal and coastwise traffic, as well as traffic on the inland waterways and on the Great Lakes.

"Certain important exceptions are made, however. It is declared to be the policy of Congress to exclude from the provisions as to water carriers, transportation by contract carriers where, by reason of the inherent nature of the commodity transported, their requirement of special equipment, or shipment in bulk, such transportation is not actually or substantially competitive with transportation by common carriers by rail, motor vehicles, or water. This exemption is secured through application to, and approval by, the Commission.

* * * * * * *

"An unqualified exemption is provided for contract carrier by water of commodities in bulk in vessels used for the carrying of not more than three such commodities at any given time.

* * * * * * *

"Further exemptions are made of non-ocean-going vessels transporting, as contract carriers, not more than three commodities in bulk on the Great Lakes * * *.

(P. 8:) "The substitute bill gives the unqualified exemptions above referred to, on the theory that the water carriers, given this privilege, can carry such cargo at such low cost that the transportation is not substantially competitive with common carriers by water or with land transportation. The discretion given the Commission to make further exemptions as to bulk carriers is to cover those cases where there is no unqualified exemption of the bulk carrier, but where the facts show there is, in fact, no substantial competition with other common carriers by reason of the low cost of transportation of such bulk carriers.

(P. 20 and 21:) "Subsections (b), (c), and (e) [of section 303] relate to exemptions in the case of contract carriers. Very painstaking consideration was given to the working out of these exemptions. Every effort was made to avoid imposing unnecessary regulation upon carriers of this type which have never before been regulated and at the same time to insure that the exemptions would not result in regulated carriers being subjected to unfair competitive disadvantages.

"Subsections (b) and (c) are unqualified exemptions, and the carriers exempted are not required to apply to the Commission for exemption. These exemptions are written in terms of the transportation engaged in, so that any other transportation which the carriers may engage in will be subject to such regulation as may be provided for. Subsection (b) exempts transportation by any contract carrier by water of commodities in bulk in a vessel the cargo space of which is used for the carrying of not more than three such commodities at any given time. In order to further limit the exemption, it only applies in the case of commodities which are (in accordance with existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939), loaded and carried without wrappers or containers and received and delivered by the carrier without mark or count. It is provided that two or more vessels, while navigated as a unit, shall be considered as one vessel. This is necessary for purposes of the application of the 'three commodities' provision, and will apply in the case of barges and similar vessels physically connected with one another and towed or propelled under or by the same motive power."

Debate followed in the House.

Two members of the committee undertook to explain the bulk carrier exemptions. Congressman Halleck stated (Congressional Record July 22, 1939, p. 9709):

"Why were bulk carriers by water exempted? They were exempted because everyone recognizes that their carriage is so cheap that they are not in any substantial competition with any carrier. Why did we exempt the bulk carriers on the Great Lakes, and incidentally their exemption goes no further than the general exemption for all bulk carriers? Because we recognized that the lake

carriers carry traffic 70 percent of the miles in many cases in joint operations with the railroads for 30 percent of the revenue. They are not in direct competition with the railroads. However, they are in direct competition with the Canadian carriers that have grown in importance to almost 50 percent of the traffic on the Great Lakes—Canadian carriers, who by their own Canadian shipping act are exempted from regulation. * * *"

Congressman Hinshaw replied to the question as follows (Congressional Record, July 22, 1939, p. 9750):

"Mr. DONDERO. Why were the exemptions made for the Mississippi River boats, and also for the vessels on the Great Lakes?

"Mr. HINSHAW. * * * As far as the bulk carriers are concerned, those hauling sand and gravel, coal, oil, and similar materials in rough bulk, it was thought that those commodities were of such a nature that the handling of such cargoes was not competitive, consequently they were left out. In this bill we are interested in competition.

"Mr. DONDERO. As it relates to the Great Lakes, is it not also true that the Canadian commerce is unregulated and that we could not compete with them unless our own Great Lakes traffic were also left unregulated?

"Mr. HINSHAW. I may say to the gentleman from Michigan that the Canadian commerce is regulated except for bulk carriers. Bulk carriers are excluded from Canadian regulation, and we have excluded American bulk carriers on the Great Lakes from this regulation. * * *"

On July 26, 1939, the substitute bill was passed by the House.

On April 26, 1940, a first conference report was submitted (H. Rept. No. 2016, 76th Cong., 3d sess.).

The conference left the bulk exemption practically unchanged. The first change made was the substitution of the following sentence for the first sentence in section 303(b) as passed by the House:

"Nothing in this Act shall apply to the transportation by water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities."

The only other change made was the insertion of the word "transportation" before the phrase "mark or count."

Commenting on section 303(b) the conference report said:

(P. 77:) "Section 303(b) of the proposed part III of the Interstate Commerce Act, in the House amendment, exempted transportation by a contract carrier by water of commodities in bulk in a vessel the cargo space of which is used for the carrying of not more than three such commodities at any given time.

"In the conference substitute this provision is extended to cover common carriers by water as well as contract carriers by water.

"This provision as included in the House amendment was susceptible to the interpretation that, if at any time the vessel carried three bulk commodities or less, transportation thereon would be exempt as to (p. 78) any number of bulk commodities. Therefore, without making any change in the intended policy and in order to clarify this provision the first sentence has been changed to read as follows:

"Nothing in this act shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities."

"This subsection in the House amendment also provided that it should apply only in the case of commodities received and delivered by the carrier 'without mark or count.' In the conference substitute the word 'transportation' is inserted before the words 'mark or count'."

On May 9, 1940, the House rejected the conference report for failure to include certain other provisions and voted to recommit the bill to conference (Congressional Record May 9, 1940, p. 5887).

On August 7, 1940, the second conference report was submitted (H. Rep. No. 2832, 76th Cong., 3d sess.). This report contained exactly the same comments on the bulk commodity exemption which remained unchanged. This report was finally agreed to in the House on August 12, 1940 (Congressional Record, Aug. 12, 1940, p. 10194).

In the course of debate in the Senate the following statement was made by Senator Reed in explanation of the conference committee's acceptance of the House bill's bulk commodity exemption:

"We went further. On the Great Lakes there is what is known as bulk transportation. Such transportation in the main consists of coal which goes up the lakes, and steel, iron ore, grain, and limestone, which comes down. With relation to that transportation, we said:

" 'Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count.'

"To help the river carriers, which use barges, we put in this sentence:

" 'For the purposes of this subsection, two or more vessels while navigating as a unit shall be considered to be a single vessel.'

"I do not know what more we could do" (Congressional Record, Sept. 6, 1940, p. 11615).

The report was agreed to by the Senate on September 9, 1940 (Congressional Record, p. 11766).

Immediately after its passage in the Senate, Chairman Wheeler, who had been in charge of the bill, inserted in the Congressional Record an explanation of the changes made by the conference committee, which he said "would be helpful to the Interstate Commerce Commission in interpreting the various provisions of the act" (Congressional Record, Sept. 9, 1940, p. 11760). Included in this statement were the following passages concerning exemptions (Congressional Record, p. 11768):

"The Senate bill contained certain exemptions from the regulation proposed for water carriers. A proviso to section 2(1)(b) of the Senate bill exempted certain contract carriers of bulk commodities on the Great Lakes; section 2(7)(a) provided for exemption of certain contract carriers by water by the Commission; and section 2(5)(b) contained conditional exemptions of certain water transportation such as that within a single harbor. Section 303 of the conference substitute contains these and certain more liberal exemptions. The conferees felt that these and more liberal exemptions should be adopted at this time, on the theory that if experience should show that more extensive regulation is necessary that can be accomplished at a future time.

"These amendments are as follows: Section 303(b) exempts transportation by a water carrier of commodities in bulk when the cargo space of the vessel is being used for the carrying of not more than three such commodities. Section 303(c) exempts contract carriers by water of commodities in bulk in a non-ocean-going vessel on a normal voyage during which not more than three such commodities are transported and the vessel passes through waters made international for navigation purposes by any treaty. This is the exemption which covers the Great Lakes contract carriers. These contract carriers are in competition with Canadian or other foreign ships."

On September 18, 1940, the bill was approved by the President and became Public Law 785, 76th Congress.

Mr. WRIGHT. Since 1940, the cost differential between water and rail transportation has continued to grow, particularly in the carriage of bulk commodities, so that now more than ever, water transportation enjoys the most obvious inherent advantage.

6. Extension of regulation in the water transportation industry to the transportation of bulk commodities would substitute a regulated cartel for the free enterprise system:

On the principal inland waterways system, that of the Mississippi River and its tributaries, including the Gulf Intracoastal Canal, transportation of commodities under regulation is now confined almost entirely to six large carriers with their subsidiaries and associates. There is little or no competition between such carriers in nonbulk carriage.

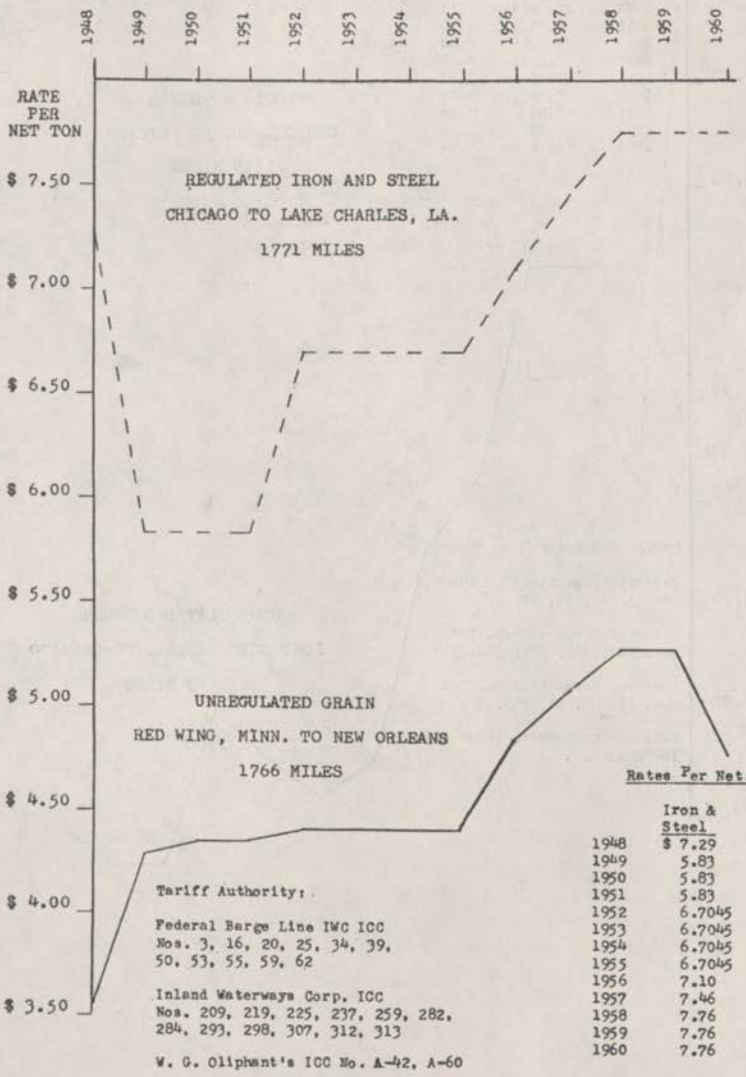
Rates for such carriage are fixed by common agreement. But all of these carriers engage, to greater or lesser degree, in carriage of bulk commodities under the exemption, and in such carriage they come into competition with unregulated carriers.

The result is keen competition in that sector. Rates have tended to fall or remain low for bulk transportation, while at the same time rates on nonbulk transportation have tended to increase. We have a number of charts comparing the trends of rates on certain regulated nonbulk commodities and unregulated bulk commodities over comparable mileage during the course of the years 1948–60.

I should like to file these as an exhibit to my statement, with the chairman's permission.

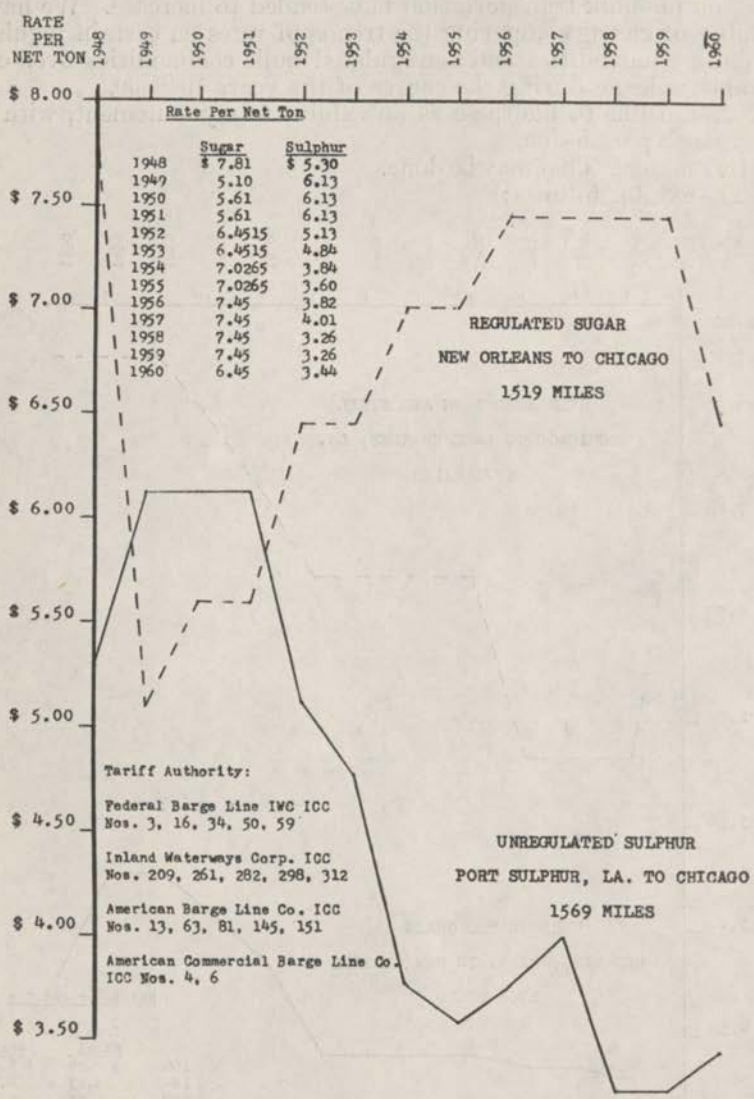
Mr. FRIEDEL. That may be done.

(The exhibit follows:)

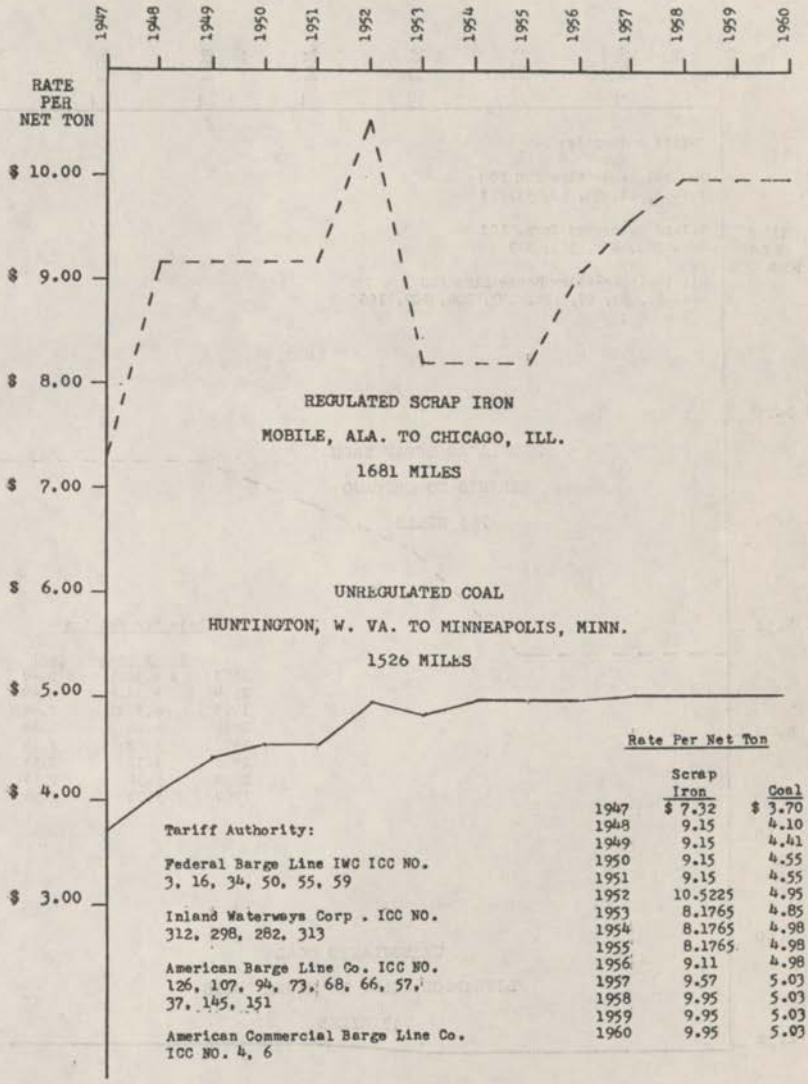


Rates Per Net Ton

	Iron & Steel	Grain
1948	$ 7.29	$ 3.565
1949	5.83	4.28
1950	5.83	4.35
1951	5.83	4.35
1952	6.7045	4.40
1953	6.7045	4.40
1954	6.7045	4.40
1955	6.7045	4.40
1956	7.10	4.85
1957	7.46	5.09
1958	7.76	5.29
1959	7.76	5.29
1960	7.76	4.79



	Sugar	Sulphur
1948	$ 7.81	$ 5.30
1949	5.10	6.13
1950	5.61	6.13
1951	5.61	6.13
1952	6.4515	5.13
1953	6.4515	4.84
1954	7.0265	3.84
1955	7.0265	3.60
1956	7.45	3.82
1957	7.45	4.01
1958	7.45	3.26
1959	7.45	3.26
1960	6.45	3.44



Tariff Authority:

Federal Barge Line IWC ICC NO.
3, 16, 34, 50, 55, 59

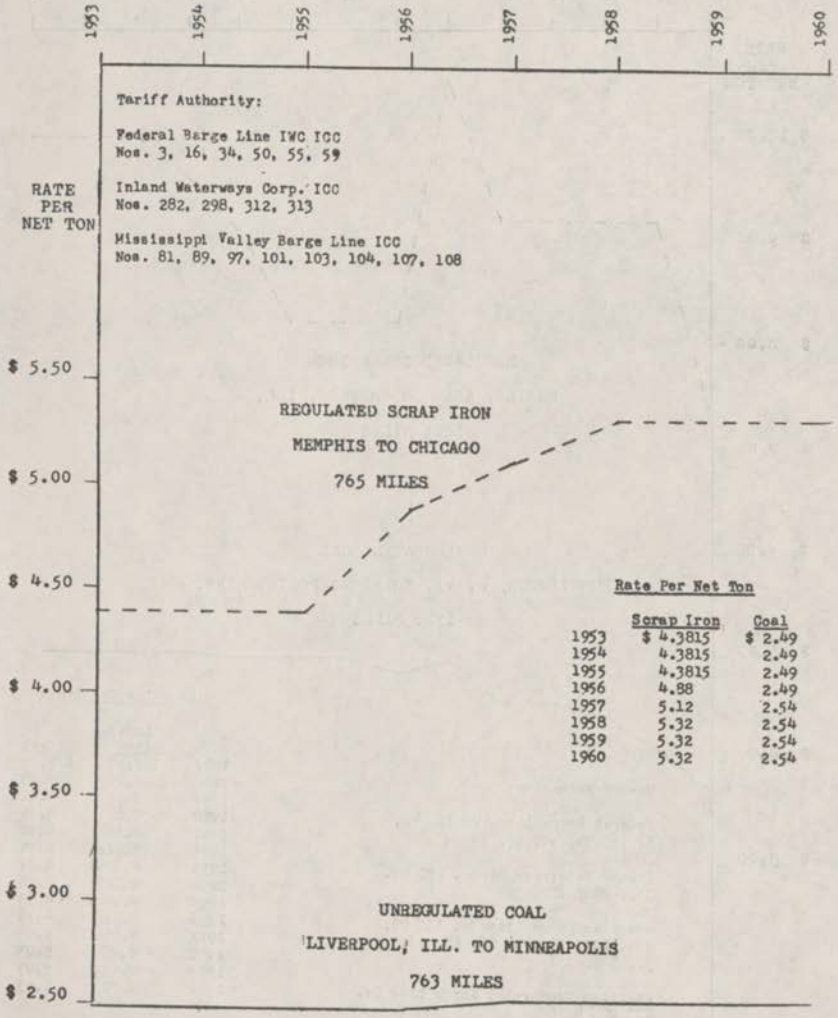
Inland Waterways Corp . ICC NO.
312, 298, 282, 313

American Barge Line Co. ICC NO.
126, 107, 94, 73, 68, 66, 57, 37, 145, 151

American Commercial Barge Line Co.
ICC NO. 4, 6

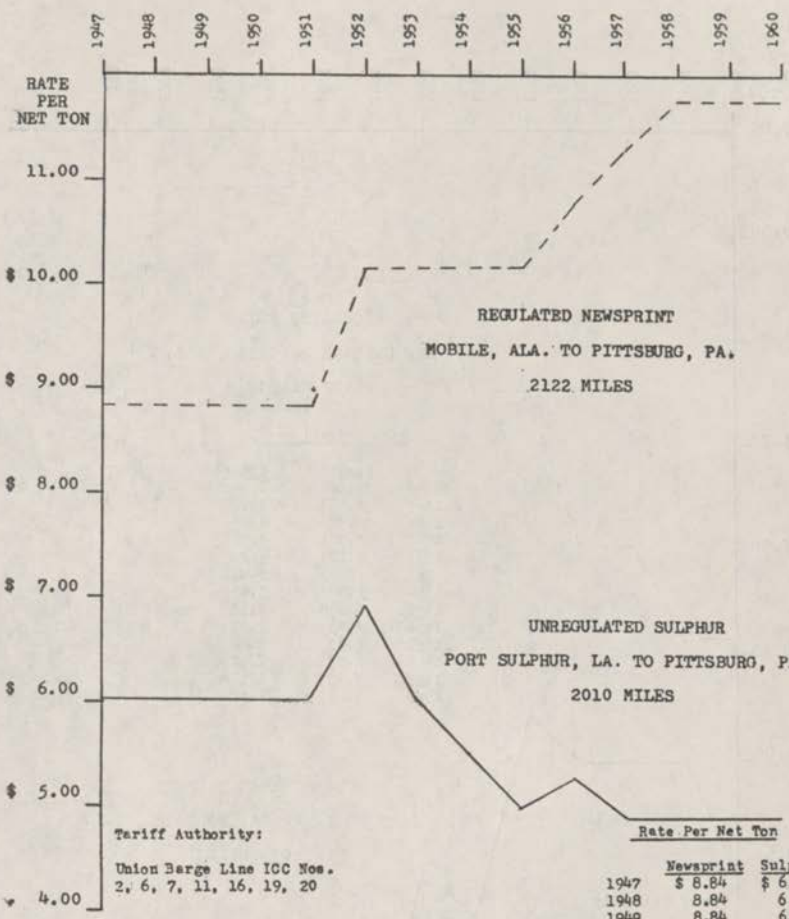
Rate Per Net Ton

	Scrap Iron	Coal
1947	$ 7.32	$ 3.70
1948	9.15	4.10
1949	9.15	4.41
1950	9.15	4.55
1951	9.15	4.55
1952	10.5225	4.95
1953	8.1765	4.85
1954	8.1765	4.98
1955	8.1765	4.98
1956	9.11	4.98
1957	9.57	5.03
1958	9.95	5.03
1959	9.95	5.03
1960	9.95	5.03



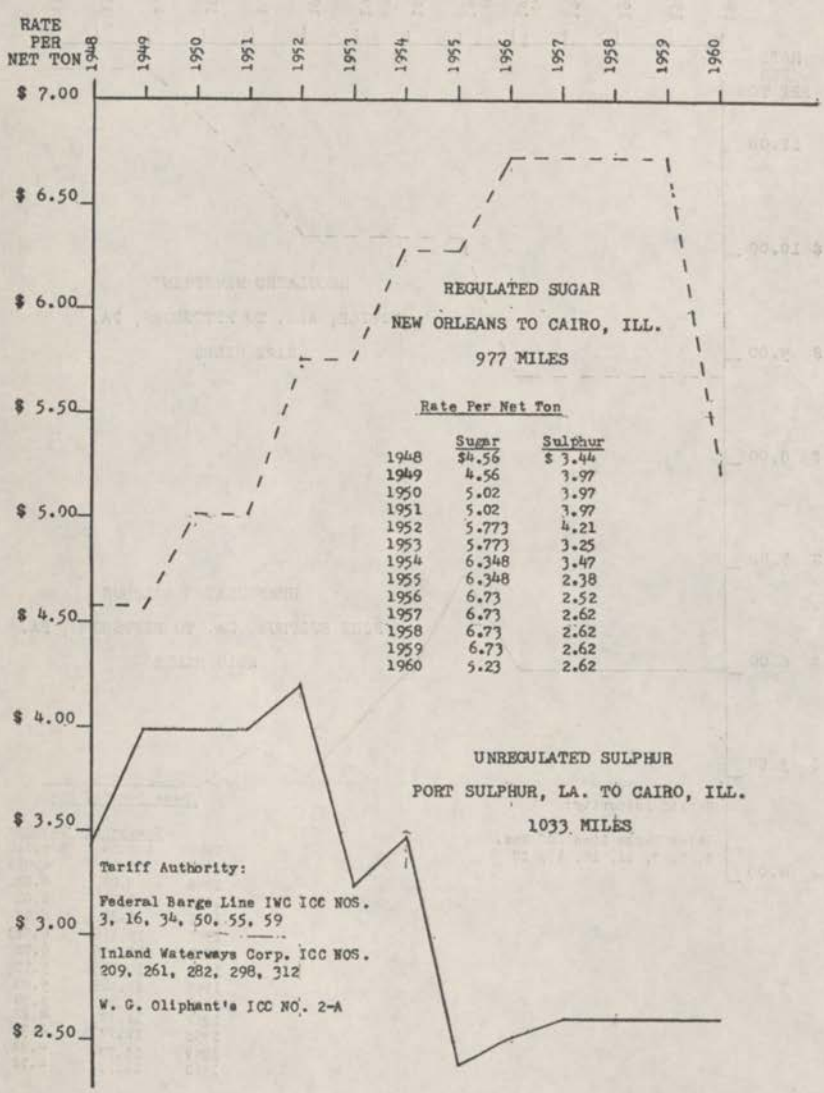
Rate Per Net Ton

	Scrap Iron	Coal
1953	$ 4.3815	$ 2.49
1954	4.3815	2.49
1955	4.3815	2.49
1956	4.88	2.49
1957	5.12	2.54
1958	5.32	2.54
1959	5.32	2.54
1960	5.32	2.54



Rate Per Net Ton

	Newsprint	Sulphur
1947	$ 8.84	$ 6.018
1948	8.84	6.018
1949	8.84	6.02
1950	8.84	6.02
1951	8.84	6.02
1952	10.166	6.923
1953	10.166	6.02
1954	10.166	5.52
1955	10.166	5.00
1956	10.78	5.30
1957	11.32	4.92
1958	11.77	4.92
1959	11.77	4.92
1960	11.77	4.92



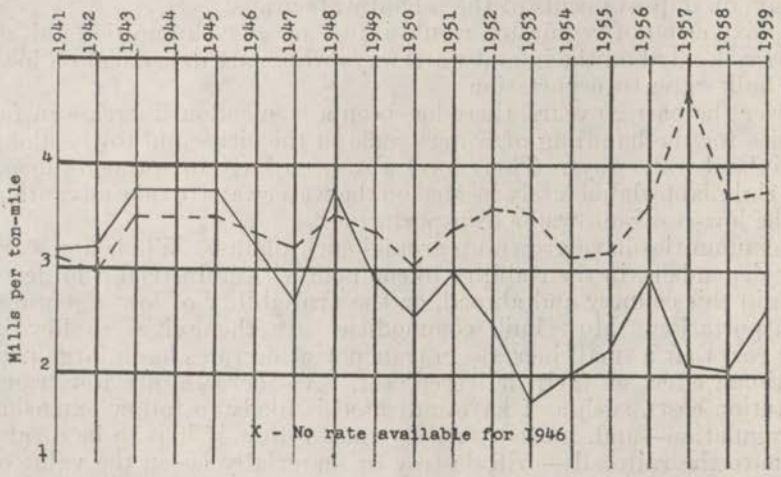
Rate Per Net Ton

	Sugar	Sulphur
1948	$4.56	$ 3.44
1949	4.56	3.97
1950	5.02	3.97
1951	5.02	3.97
1952	5.773	4.21
1953	5.773	3.25
1954	6.348	3.47
1955	6.348	2.38
1956	6.73	2.52
1957	6.73	2.62
1958	6.73	2.62
1959	6.73	2.62
1960	5.23	2.62

AVERAGE RATES PAID ON PETROLEUM PRODUCTS
BY YEARS
(Expressed in Mills Per Ton Mile)

Year	St. Louis &/or Hartford From New Orleans &/or Baton Rouge	Chicago From St. Louis &/or Wood River
1941	3.17	3.10
1942	3.20	2.99
1943	3.75	3.50
1944	3.75	3.50
1945	3.75	3.50
1946	--	--
1947	2.69	3.22
1948	3.75	3.54
1949	2.91	3.37
1950	2.57	3.03
1951	2.98	3.38
1952	2.50	3.58
1953	1.75	3.54
1954	2.00	3.13
1955	2.25	3.17
1956	2.95	3.63
1957	2.11	4.70
1958	2.06	3.68
1959	2.65	3.74
	(Solid Line on Chart)	(Dotted Line on Chart)

Petroleum Products in Bulk
Long Haul Lower River Rates Compared
With Short Haul Pool Water Rates On
Mississippi and Illinois Rivers



Mr. WRIGHT. The complexities and cost of compliance with economic regulation, if imposed upon the hundreds of carriers now engaged in exempt carriage, would result in the elimination of many of them. Even if "grandfather" rights should be granted to exempt carriers to continue existing carriage of bulk commodities under regulation, the resulting restrictions on undertaking new services or modifying existing services would eventually eliminate many presently operating carriers.

Every change of rate quoted could be made the subject of protest and lengthy proceeding upon challenge by either the railroads or the presently certificated water carriers.

The ultimate result would be the concentration of water carriage services in the hands of the more powerful carriers; namely, the existing group of large common carriers with presently widespread and dominating traffic rights. The probability of this result is indicated by the experience among the regulated carriers since the enactment of the Transportation Act of 1940.

The number of actively operating certificated carriers has declined drastically over the years, and the regulated traffic on the principal inland waterway system is now largely concentrated among a small group.

If, as we believe, extension of regulation would make such concentration more effective and competition more limited, this group could be expected to increase the rates on dry bulk commodities. This is why, to answer Congressman Springer's question of one of the previous witnesses, extension of regulation would result eventually in an increase in rates on the waterways, as well as in the creation of an oligopoly.

This is not the end for which the taxpayers have spent billions of dollars on improvements of the inland waterways.

7. Extension of regulation would injure many communities and industries located on the inland waterways which are dependent on low-cost bulk water transportation.

Over the past 20 years, there has been a tremendous increase in facilities for the handling of water traffic in the cities and towns along the inland waterways. There have also been huge investments in industrial plants deliberately located on the waterways to take advantage of the low-cost bulk water transportation.

Communities have grown up around such plants. Whole areas are now dependent, in their ability to compete with industrial complexes both in this country and abroad, on the availability of low-cost water transportation. Most bulk commodities are themselves so low in unit cost that a small increase in transportation rates has a large proportional effect on their delivered cost. An increase in water transportation costs, such as I have indicated is likely to follow extension of regulation—and, indeed, such as must follow if it is to be of any value to the railroads—will destroy or materially lessen the value of all these investments and destroy or lessen the ability of many communities, now dependent on low-cost water transportation, to survive.

8. Extension of regulation would result in the transfer of a large amount of for-hire water carriage of bulk commodities to private carriage:

To escape the predictable adverse effects upon shippers resulting from the extension of regulation, many shippers who now use for-hire water carriers would establish their own fleets of barges and towboats to carry, free from regulation, the bulk commodities which they use or produce.

To the extent that this occurred it would defeat the supposed purpose of extension of regulation—that of assisting common carriage. It would also result in hardship for the small shipper whose own traffic alone would not be sufficient to support the establishment of a fleet.

He would be at the mercy of the dominating regulated carriers who would eventually be in the position of being able to fix rates on bulk commodities by agreement among themselves, as they now do on non-bulk commodities. It is the exemption which today makes possible the existence of a large number of for-hire carriers, and it is their competition which assures the small shipper of the ability to secure transportation services on a reasonable basis.

9. Extension of regulation to water carriage of bulk commodities will not help the railroads unless national transportation policy is distorted:

As I have already indicated, the disparity between the cost of water and rail transportation is so great that, even if dry bulk water carriage were regulated, the railroads could not compete with the water carriers on a basis of quoting rates that return costs. Only by a distortion of regulation to such an extent as to violate the national transportation policy and to destroy the low-cost advantage of water transportation could the rates on water transportation be raised or the rail rates depressed to such an extent as to enable the railroads to compete.

We cannot believe that Congress would want such distortion, although the history of common carriers by water in coastwise, intercoastal, and inland waterways other than the Mississippi system is a tragic record of their progressive destruction through the selective rail rate cutting condoned by the Interstate Commerce Commission.

The fact is that in the carriage of bulk commodities, where low-cost water transportation is available as an alternative, the railroads on a cost basis are as obsolete as the old interurban electric railroads have become in their field. There is no point in trying to preserve, by legislation, an uneconomical mode of transportation where the service which, as a monopoly, it used to perform can now be rendered efficiently and at a far lower cost by another mode.

The importance which the railroads seem to attach to the proposal to extend regulation to bulk commodity by water transportation is, we believe, a mistake from their own point of view.

They can benefit from such regulation, as I have indicated, only if regulation is carried to the extent of destruction. On the other hand, we believe that their diagnosis is wrong and that their basic difficulties are not due to competition from water carriage. The railroads which are in the worst trouble are those in the northeastern section of the United States and along the middle Atlantic seaboard. But these railroads have little or no competition from water carriers.

On the other hand, some of the railroads which serve the Mississippi system and the Ohio Valley in particular, where the most economical inland water carriage of bulk commodities exists, advertise widely the advantages of water transportation to attract industrial plants

into their area. While bulk raw materials and fuel may move into these plants by water under the exemption, many of the finished products are shipped out by railroad.

Recently Mr. Robert Thomas, chairman of the executive committee of Missouri-Kansas-Texas Railroad, in speaking at a meeting on the subject of the development of the Arkansas Basin, said as follows:

> I firmly believe that the benefits to be gained by the Katy Railroad in the years ahead will far overshadow the loss, if any, of the traffic, et cetera, to the Arkansas River from lower so-called water compelled freight rates.

10. Repeal of section 303(b) would result in diverting large portions of Mississippi system water traffic to the Great Lakes water carriers:

One of the reasons for enactment of section 303(b) was the fact that, to a considerable extent, the Great Lakes and Mississippi routes are competitive. Since an exemption from regulation was being given in section 303(c) to Great Lakes bulk carriers to enable them to compete with the Canadians, it followed that competing Mississippi bulk traffic should be exempted.

Today the exemption provided for Great Lakes bulk carriers by section 303(c) is more necessary to their ability to survive than ever. As a result of the opening of the seaway, those carriers have, in addition to the competition of unregulated Canadian carriers, the competition, on oversea traffic, of other foreign-flag carriers.

Grain, which used to move from the West by the lakes to Buffalo for transshipment to oversea carriers, now can be shipped directly from the upper Great Lakes to oversea points. In the light of this situation, Congress would obviously not wish to add to the competitive difficulties of U.S. bulk carriers on the Great Lakes by putting them under regulation. But to leave them unregulated while imposing regulation on the Mississippi would result in a change in the competitive relationship of the two routes producing a diversion of much traffic from the Mississippi to the lakes; for example, outward shipments of grain and inward shipments of coal.

Such diversion would be of no value to the purported beneficiaries of this legislation—the common carriers by rail and water.

11. Repeal of the dry bulk exemptions in section 303(b) is no more justified than would be the repeal of section 303(d).

Neither the Interstate Commerce Commission nor the Common Carrier Conference recommends the repeal of the liquid bulk exemption. The reason obviously is that the liquid bulk exemption is fulfilling its purpose well, providing through competition good service at low rates for the shipping public.

There is no reason for treating the two bulk exemptions differently. If regulation of liquid bulk commodities is not necessary to protect common carriage, it is hard to understand why regulation of dry bulk transportation is necessary. The fact is that the keen competition of the exempt carriers of both dry and liquid bulk commodities provides the shipper with better protection than regulation would or could.

For all these reasons, Waterways Council urges that your committee again reject, as it did in 1956, the proposal to extend regulation over the transportation of bulk commodities on the inland waterways system, as provided in H.R. 5595.

Mr. FRIEDEL. Can you comment on why you think the Transportation Act of 1940 limited the dry bulk commodities carried exempt from the law to three?

Why does the legislation limit it to not more than three?

Mr. WRIGHT. It was the convention at that time in the use of bulk carriers on the Great Lakes systems to transport in the same vessel at the same time several different commodities, several different bulk commodities.

The number three was chosen because this at that time was felt to be the reasonable limit of practice, that not more than three bulk commodities were then simultaneously carried in one bulk carrier.

From that basis, the same principle was applied with respect to barges in the same tow in other waterways.

Mr. FRIEDEL. Haven't times changed?

Mr. WRIGHT. I believe it is still true that not more than three commodities are normally carried in a single vessel on the Great Lakes.

Mr. FRIEDEL. How do you feel about extending the bulk exemption to the railroads.

Mr. WRIGHT. Mr. Chairman, the President's transportation message has appeared since the last meeting of our organization. We have had no discussion or opportunity to determine a position on the part of the Waterways Bulk Transportation Council on many of the recommendations in the transportation message.

Therefore, I am not in a position to speak for the council on this subject and anything I may say would be my own view rather than necessarily that of the council.

It is my feeling, however, that with respect to the application of the exemptions to rail transportation this would be the quickest imaginable way to produce a nationalization of railways.

Mr. FRIEDEL. Thank you, Mr. Wright.

That will be all.

We have quite a few other witnesses who want to be heard and I would like to ask them if they will have their statements included in the record and briefly touch on the high points so that we can conclude by 5 minutes of 12.

The next witness will be Prof. L. L. Waters, professor of transportation at Indiana University.

STATEMENT OF PROF. L. L. WATERS, PROFESSOR OF TRANSPORTATION; ACCOMPANIED BY PROF. J. R. HARTLEY, ASSOCIATE PROFESSOR OF TRANSPORTATION, INDIANA UNIVERSITY

Mr. WATERS. Mr. Chairman, since I do have a rather lengthy statement, I will read a summary of the statement and I hope that the full statement will get complete scrutiny.

This statement was prepared with the assistance and joint preparation of Professor Hartley, who is with me today.

Mr. FRIEDEL. The statement may be inserted in the record at this point.

(The joint statement of Professors Waters and Hartley, follows:)

STATEMENT OF L. L. WATERS, PROFESSOR OF TRANSPORTATION, AND JOSEPH R. HARTLEY, ASSOCIATE PROFESSOR OF TRANSPORTATION, INDIANA UNIVERSITY

QUALIFICATIONS

Although our testimony is on behalf of the Waterways Bulk Transportation Council, Inc., and therefore is clearly relevant to their interests, we hope that the testimony has transcendent value to general policy. Before proceeding with the substantive portions of our testimony, we wish to identify ourselves.

Joseph R. Hartley is a native of Indiana and holds three degrees, including the doctorate, from Indiana University. He served on the transportation staff of General Cassady at AMC Headquarters in 1956–57. Since that time, he has been on the faculty of Indiana University. He is the author of well-known publications in the field of industrial traffic, two volumes on "The Effects of the St. Lawrence Seaway on the Grain Trade," and other monographs, including "Traffic Flow Through the Port of Indiana," "The Economic Effects of Ohio River Navigation," "Airport and Air Service Development in Indiana," and the collaborator on a recent study of economic development of the Magdalena Valley in Colombia, South America. Dr. Hartley was responsible for the portions of the latter dealing with transportation.

Professor Waters has been chairman of the transportation area at Indiana University since 1948. Previous to that time, he was director of the Bureau of Business Research and chairman of the Finance Department at the University of Kansas. He is the author of numerous studies dealing with transportation, manufacturing, and administration. Included in this has been "Steel Trails to Santa Fe," a comprehensive history of the Atchison, Topeka & Santa Fe Railroad. Prentice-Hall recently released his latest book of which he is coauthor, "Administering the Going Concern." Dr. Waters is a member of the board of directors of the American Society of Traffic and Transportation and has served as a consultant to transportation companies and governmental units in this country and in England.

SCOPE OF REGULATION TODAY AND TOMORROW

The role of regulation

The question is often asked, "Do we need to extend regulation or to contract it?" The answer usually sought is a categorical "Yes" or "No," depending upon whether one believes in centralized government or is opposed to it. But this should be an idle question. Instead, we should view the character and conditions under which transportation is offered today and try to think of the optimal role to be played by the Government if the private companies are to coincide best with national transport objectives and incidentally serve themselves. Governmental control is a service that can be good or bad, depending on its quality and whether there is a clear need for it. If we have too little control or too much, then it is good to shift to a proper amount. However, in the American free enterprise system it is axiomatic that regulation is not an end in itself so it follows that we should have no more than is necessary and useful. The burden of proof for expanding regulation should logically fall on those who request such expansion rather than on those interests that favor less regulation and more emphasis on competitive enterprise. The following discussion of the objectives of transport regulation should shed light on the issue facing you with regard to the merit of extending regulation to the exempt bargelines and barge services.

The objectives of regulation

Much of our transportation regulation has been ad hoc in nature, so it is difficult to determine all the reasons for past regulation. However, the following list summarizes the possible objectives or reasons for regulation that are relevant to the national transportation policy:

1. Optimal allocation of resources and traffic—that is, optimal transport efficiency.
2. Maximum dynamism of management and technology.
3. National defense requirements for transportation.
4. Provide transportation in underdeveloped or depressed areas for commercial development where existing demand will not support profitable transportation operations.

5. Social goals such as helping certain sectors of the economy, as farmers or laborers or coal operators.

6. Improve the environment for satisfactory operation of the competitive market system in transportation.

(*a*) Prevent undue concentrations of economic power within the control of a few carriers.

(*b*) Prevent various abuses such as unreasonable discrimination or poor service for certain shippers.

(*c*) Avoid excess capacity and chaotic competition.

(*d*) Insure common carrier service for the general shipping public.

Resource allocation and dynamism.—These first two objectives are the fundamental goals of any economic system. As far as economic criteria of success are concerned, all the other reasons for regulation are supplementary to these. Our national transportation task is to allocate labor, raw materials, and capital equipment to each transport mode and carrier so that the maximum satisfaction of shipper needs is produced at the least cost in productive resources. Dynamism comes from improvements in the three basic factors of production or in the way they are organized and utilized. The capitalistic, competitive enterprise system has been adopted in the United States for transportation and other industries because it meets these goals more effectively than any other economic system such as government ownership of capital. It also provides a minimum of conflict between the economic sphere and the political realm where democracy and freedom are overriding objectives.

We will not elaborate all of the reasons that the free enterprise system has met with notable success in transportation but a few are germane to the question facing you in these hearings. Competition between carriers forces all of them to strive to meet shipper needs in the best possible way. This emphasis on the shipper is a crucial hallmark of free enterprise because it stresses the very reason that an economy is operated—to satisfy customers. By the same token, the availability of a wide variety of competing transport services at various costs permits each shipper to select that combination of costs and services that suits him best. If he prefers contract service or his own private transportation to common carriage, he is free to choose. Naturally, any group of carriers is concerned that it receive the largest share of available freight; but the use of Government regulation to restrict or divert shipper selection in the transport market must be approached warily lest the regulators decide over a period of years that the shipper doesn't know what is best for him.

In addition to emphasis on shipper satisfaction, competition also performs a winnowing process based on survival of the fittest and thus minimizes waste and maximizes improvement in efficiency. New types of transport service, new ways of providing the same old service, and new companies will all win out over the old provided they are superior. New firms which offer new service but do it inefficiently soon die or lose traffic. Old firms suffer the same fate unless they remain flexible and alert to changing shipper preferences.

Among the various conditions necessary for successful competitive resource allocation, it is crucial that no firm or group of firms be allowed to dominate a market and thereby limit shipper choice. One of the most effective ways to insure this is by permitting freedom of entry for any new transport firm willing to take the risk of losing all in the competitive struggle. You are aware that there have been many instances in the past where Government regulation of entry or other aspects of the transport markets has improved resource allocation. However, regulation is by no means a panacea for everybody's problems in transportation. A good rule of thumb is to apply new regulation if it will clearly improve shipper satisfaction. The shipper should be a reasonably good judge of this.

By the same token, regulation should not be used to help a carrier or a class of carriers at the expense of shippers. The Government has not and should not guarantee a certain profit or a certain percentage of any transport market to selected carrier classes. Our transportation system is characterized by dynamic change so some carriers inevitably lose and others gain. Discovery that such changes are occurring should not be viewed with alarm. Rather, discovery that the roles, revenues, and profits of contract carriers, common carriers, water carriers, railroads, or trucklines have ceased to change would be cause for a serious review of regulatory policy.

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National defense requirements.—Regulation and Government investment of funds has sometimes been required in transportation because private shipper choice obviously does not directly include defense needs. However, the main emphasis with respect to defense is on sufficient capacity to meet wartime demands. The contract carriers by water and the exempt bargelines performed admirably during World War II just as did the common carrier by water and by railroad. Indeed, the unregulated water carriers are well suited to movement of goods in large blocks which is typical of many wartime needs so there is no need to increase regulation on defense grounds.

Transportation for undeveloped or depressed areas.—Insuring transportation for undeveloped or depressed areas is becoming less and less a reason for Government regulation in the United States. The days of the great land frontier are over and probably all regions have a sufficient transportation base for industrial development. The problem of depressed areas today is receiving separate attention by Congress and, in any case, cannot be solved by altering transportation regulation.

Social goals.—Regulatory policy has not infrequently been used to achieve social rather than economic goals. Railroad labor legislation or the Hoch-Smith Resolution of 1925 to aid farmers are examples. Such social control of transportation regardless of economic objectives is sometimes warranted but there is no major social problem with regard to exempt barge carriers.

Environmental shortcomings in the competitive markets.—The remainder of the suggested reasons for regulation deal with improving the environment for shippers and carriers and with shoring up or replacing the force of competition where it has failed to work as expected. Controls to avoid an undue concentration of economic or market power developed when the railroads were king.

The public will always demand some type of control for enterprises with assets in the multi-hundred million or billion dollar class. This is based on the national economic and political philosophy that protection of individual rights requires fragmentation or control of economic, political, and social power aggregations. There seems to be no such justification, however, for regulating the exempt bargelines. None of them are so large that they can dominate their shippers or competitors. Indeed, the existence of large railroads and some relatively large common carriers by water is a partial justification for unregulated bargelines that afford the shipper an alternative if he believes the common carriers are not meeting his needs.

Other abuses such as undue rate discrimination are always a reason to regulate rates. This has been one of the major reasons for regulating railroads since most of their costs are fixed or joint rather than variable. That is, the costs occur simply because the railroad exists rather than because a certain customer's car of freight is moved. Such a cost structure is unusual for most industries. Where it occurs, rate discrimination is always likely—not because of any maliciousness of carrier managers but because costs for any particular shipment can be assigned only in a very general and fuzzy way. Since costs per unit, the traditional guide to pricing, cannot be identified, the emphasis in ratemaking is on what the traffic will bear, which is another way of saying that individual rates are quoted to maximize volume and revenue so that the total mass of fixed costs can be covered. Unduly high or low rates for particular shippers, places, or commodities have sometimes resulted so rate regulation has been virtually inevitable for railroads. It will always be a problem unless cost accounting for railroads becomes far more effective than it is now.

Chaotic competition has been another reason to regulate carriers and has been especially important for railroads. Competitive theory assumes that a firm which loses money for a few years will quickly go out of business so that the remaining more efficient or more fortunate firms will have sufficient business to operate at a profit. Railroads did not follow this pattern because their assets had very long lives and no alternative uses. This coupled with high fixed costs caused railroads to use rate wars rather than shutting down as a solution to inadequate revenues. Before regulation, rates could and did go to zero in some instances. All carriers lost money and the automatic elimination of "surplus" firms to restore market stability did not occur. Under such circumstances it has been necessary to protect the carriers by regulating rate levels and by restricting entry. Similar problems occurred with motor carriers before regulation in 1935 but this was more a result of generally depressed demand due to the great depression and excess operators than because of some peculiarity of the trucking industry costs that prevented normal adjustments to equilibrate supply with demand. Highway safety was also a major reason for regulating the trucklines.

These are all good and sufficient reasons to restrict competition and the market mechanism but none of them seem to apply to the unregulated barge carriers. Their costs are generally variable so that one additional barge shipment inevitably incurs unavoidable additional costs. Therefore, destructive rate wars in which the rate level is depressed permanently far below bargeline costs have rarely occurred. It is important here to distinguish between chaotic and normal rate competition. In the latter, rates in the market stabilize at a level slightly above the costs of the most efficient carriers. These rates always seem unduly or destructively low to high-cost carriers but such rate competition is actually serving the shippers exactly the way it is expected. Regulation could be applied to lift the rates to the levels of the higher-cost operators but it would deprive the shipper of the economies of the most efficient service. Contrasted to this, chaotic competition depresses rates below the costs of all or virtually all of the carriers and service of all the carriers soon deteriorates. Highly variable costs, and relatively easy exit for unprofitable barge firms has prevented such a situation from becoming chronic in the inland river market since the great depression.

The close relation of rates to costs for barge operators has also prevented rate discrimination. We know of no evidence that shippers feel they have been abused by the unregulated carriers. Routine complaints are inevitable but there is no indication that a large group of river shippers feel they have been mistreated by unregulated carriers. Protection of common carriage service is the remaining economic reason for regulation. Since it is crucial in the question of extending regulation over exempt barge carriers, most of the following testimony will deal with it separately from the factors already discussed.

Reduced usefulness of the regulatory tool

Before turning to the common carrier question, we would like to call attention to the fact that regulation has lost some of its usefulness as a device to achieve the goal of optimal allocation of resources and traffic in transportation. In 1900 when the railroads were the only versatile and effiicient means of moving all freight and passengers, regulation of railroads was a very powerful tool. Even as other for-hire modes of transportation came on the scene, regulation was still the dominant means of controlling traffic allocation and protecting shippers. However, two other developments have occurred to set the pattern of transportation today in a very different manner than at the turn of the century. Much of the function of movement is primarily controlled by private transportation today. The vast majority of America's 12 million trucks and 62 million automobiles today are privately operated. Some view this with alarm but there is nothing fundamentally wrong with a family or company providing its own transportation; the general public surely believe this since almost all of them are doing it.

Private carriage has impinged on regulation in two ways that national transportation policy does not adequately recognize. The first is to reduce the need for regulation to protect shippers. Except for pockets of monopoly that still exist in some localities or for some commodities the shipper can always ship in his own private trucks, barges, planes, or rail cars. On the other hand, the regulator can no longer completely control the rates, service quality, traffic allocation, and competition in the for-hire markets. If the shipper does not like what the regulated for-hire transport market offers, he always has the option of private carriage. Thus, private transportation has become a second regulator of transportation that considerably reduces the range and effectiveness of Government regulation.

The local, State, and Federal Governments have become major investors in transport facilities since 1900. This, too, has reduced power of the regulatory commissions to control resource allocation through control of the transport markets. For instance, a congressional decision to invest or not to invest in public highways is resource allocation. It has far more to do with traffic allocation and capital distribution than the much maligned Interstate Commerce Commission's control of railroad, truck, and barge rates. The same applies to airways, airports, and waterways. The Nation cannot avoid such public investment because it is impractical for each truckline, airline, or bargeline to finance and own its own private route, in contrast with the railroads.

Regulations is still a third influence upon the division of traffic among the modes and among the firms with the modes. At times, regulation is essentially a modifier of the conditions under which carriers for hire operate among themselves and in relation to unregulated transportation. The fact that regulation has been relegated to a lesser role does not mean that it is not important. The

investment of transportation companies for hire is enormous in the absolute sense but no matter what the scale, whatever controls are necessary should be of an enlightened sort. In view of the altered role of regulation and the interests of the populace in private transportation, however, extension of regulation in the bargeline industry, even if it were proven necessary, would not accomplish the positive results the proponents expect.

THE STATUS OF THE COMMON CARRIER GROUPS

Today's situation

There is little doubt that much of the material emerging recently regarding the railroad common carriers describes many of them all too accurately. We are confronted with the fact that the railroads are operating with 13 percent less mileage than in 1921, and the diminution continues. Perhaps even more significant is that the volume of service is, in many cases, appreciably less. The optimal size of freight trains seems to be much larger, thereby, in many instances, entailing less frequent service. Employment of railroads recently was recorded at the lowest level since the ICC began to gather statistics on this topic in 1921.

While we speak of the railroad problem, we really should speak of the problem of some railroads. The distress is not uniform. The eastern carriers are in more difficulty than the western railroads and those in the most difficulty are concentrated in the New York, Pennsylvania, New Jersey, and New England region. Part of the problem there is the relatively short haul and outmigration of industry from New England. Regulating exempt water carriers will surely make little difference to eastern and New England railroads.

The situation of the common carrier in the trucking industry has not been good. Operating ratios have been running above 96 percent, but some improvement had developed by the third quarter of 1961 when carriers with revenues of $1 million and up averaged 94.7 percent and local carriers were 95.9 percent. Data available (by no means complete) suggests that most of the increase in the volume of trucking has been in the private sector rather than the common carrier. Since there is relatively little competition between common carrier trucklines and exempt water carriers, there is no need to elaborate on the condition of the former.

The regulated segment of river and canal service is reasonably healthy. Over the long pull ton-miles of shallow-draft water traffic have increased almost fivefold since 1939 and the regulated carriers have shared in this boom. ICC statistics show the following data for class A and B regulated carriers for the recent period of 1956 and 1960 in millions of dollars:

	Total revenues		Net income	
	1956	1960	1956	1960
Atlantic and gulf coast	$59	$52	$1.5	−$0.2
Mississippi River system	106	119	11.1	7.0
Pacific coast	34	40	2.1	2.0

Some analysts see a bleak outlook for the regulated carriers by water based on the past 4 years. It is true the revenues have risen more slowly since 1957 than the prior 3 years. Nevertheless, the situation is not permanent, since most of it is attributable to the sluggish recovery from the 1958 recession, the 1959 steel strike, and the 1960–61 recession. Barge traffic consists largely of raw materials in bulk for basic industries whose keen susceptibility to an inventory recession is proverbial. Both traffic and revenue are now on the upswing with the current recovery.

The steel firms suffered an especially sharp and protracted industry recession until mid-1961. Regulated bargelines naturally felt this in their steel traffic. An interesting result was their shift to more unregulated traffic to make up the lost freight. This frontal assault by the regulated carriers on the traffic markets of the unregulated operators magnified the normal competition between the two groups. To attract this traffic to their unused floating equipment the regulated carriers had to meet the low rates that had been normal for the exempt operators. This naturally seemed to be a rate war to the regu-

lated lines but should more correctly have been called heightened rate competition whose cutting edge was sharper than usual due to two recessions in 3 years.

Ratio of regulated to nonregulated barge traffic

Some attention must be devoted to the various analyses of the common carriers' traffic relative to unregulated traffic. Complete data simply are not available to make such comparisons with much confidence. Some figures showing that only 6 percent of the inland waterways traffic moves under regulation are misleading and probably wrong. They lump Great Lakes traffic with barge traffic and this distorts the relationship because very little of the Great Lakes traffic is of the type that would ever move via common carriers.

Second, the traffic statistics of the Corps of Engineers and in the annual reports of the regulated carriers to the Interstate Commerce Commission are inadequate to make such ton-mile comparisons. Even allowing for the distortion caused by the Great Lakes data, 6 percent regulated still seems too low. The American Waterways Operators, Inc., made a similar comparison by estimating revenue per cargo ton-mile of the regulated carriers and then applying this to the regulated revenues and tonnages reported by the carriers. This is difficult since the necessary data are not readily available but the technique should give a reasonably good estimate. The association of carriers applied this to 1954 traffic on the Mississippi system and concluded that from 30 to 34 percent of the system's traffic was regulated. This is a substantial volume but it is not too helpful for your purposes. Reliable data would be needed for the past 10 or 15 years to detect any upward or downward trend in the role of regulated barge operators.

Excess transport capacity

There is much to be said for the assertion that, at the present time, the United States has an oversupply of transportation facilities, many of which happen to be operated by some classes of common carriers. But the supply can be reduced as fast as physical depreciation occurs, although this can be accomplished easier for other modes than for the railroads. The latter can cut back in rolling stock easier than in trackage but shippers still complain about lack of adequate boxcars and gondolas. If, however, shippers do not choose to utilize the railroads more, then there must inevitably be a process of contraction of the principal physical plant to fit the demands. One can readily envisage the day when only 150,000 miles of railroad are necessary and the day may come far sooner than the United States needs this little than when it has this little. There is no point in endeavoring to support 50 percent more mileage when less seems required. The plight of the railroad should be examined critically and appropriate, permanent steps taken in the light of national transportation policy. If, instead, the Government resorts to palliatives of one type or another to preserve excess capacity, it may put the railroads in the same situation as agriculture.

STATEMENT OF WHY SOME COMMON CARRIERS ARE IN TROUBLE

If exemption of certain barge operation from regulation was a major cause of rail or motor common carrier difficulties, then extension of regulation would presumably solve the problems; but even if the exemptions were identified as a major contributing factor, the Government still would face the question of whether it is in the public interest to use artificial restraints to preserve a service which the public itself has chosen to use less and less. However, this latter issue does not have to be resolved to analyze the present regulatory proposals because the exemptions of water carriers have not, in fact, had much to do with the shift of traffic from the for-hire trucks and railroads. The broad sweep of many forces more powerful than regulation or its absence has been the chief cause of their traffic erosion. New technology in transportation, growth of private transport, shifts in the sources of basic raw materials, changes in plant location, new manufacturing processes and product designs such as weight reduction to avoid transportation, labor relations, unimaginative management in some instances, and many other factors are recognized as the basic causes of low earnings of railroad and common carrier trucks. Will more regulation for bargelines change these?

The worldwide pressure of new technology

Joseph Schumpeter once remarked that technology and capital improvement in a free enterprise system have caused a "perennial gale of creative destruction." Changing technology is the real cause of the distress of common carrier service, rather than too much or too little regulation. We have seen this all over the world. Dr. Waters visited in over a dozen countries of Western Europe 2 years ago studying the situation in transportation. The story was the same everywhere from England to Turkey with minor exceptions. Common carrier and private trucks are taking the business away from the railroads. Common carrier truckers and bargelines are complaining about private and contract carriers. Railroad lines are being abandoned. A proceeding in Great Britain for abandonment of branch lines and discontinuance of service looks just about like a proceeding in the United States. Local interests and government pressures require retention of service long after patronage has virtually disappeared.

At the turn of the century common carrier service as offered by the railroads was pretty much on a take-it-or-leave-it basis with some specialized equipment which was nothing in comparison with the vast array of facilities that are available to shippers now. Then it was proper to talk of the boxcar and the gondola but today we speak of glass-lined tankcars, pressurized cars, piggyback, tank barges, self-unloading ships, flying boxcars, and coal pipelines. Furthermore, the manufacturer of individual transportation units such as trucks, passenger cars, and airplanes has made it possible for individuals and firms to handle their own traffic in small or specialized units at surprisingly low cost with great flexibility, quality, and control. It is the reduction in the capacity unit and equipment specialization for both freight and passengers that has created a transportation revolution away from the train to the private truck, car, plane, or barge. This is coming at a time when trains are becoming larger.

Is the growing private carriage harmful?

Technology has made more use of private and contract carriage possible today and this has been harmful to many land common carriers and their stockholders. However, the issue you face is whether this shift is harming the public interest in transportation. The problem might be clarified if one were to forget the concept of the common carrier and simply classify firms as those that operate under certificates of convenience and necessity or on a contract basis, private, and exempt. Then perhaps the Government could concentrate upon the major problem of serving the public interest—that is, shippers or potential shippers—rather than preserving something that cannot be very well defined. This does not mean that the for-hire companies are unnecessary but their role may change without injury to the public.

The identification of the public interest with common carriage has its roots in the 19th century when railroads could haul freight and passengers "in common" more effectively than any specialized mode could. Many railroads had monopolies or partial monopolies and a tendency for rate discrimination due to their peculiar cost structure so Congress naturally felt the obligation to regulate them so that their service would be available to all shippers in common. New transport technology has made such railroad common carriage much less crucial now than before but the Government has not altered its seeming fixation on the belief that even specialized modes of transportation must be required to emphasize common carrier service in order to serve the public adequately. Yet the public seems to prefer private or contract service in many cases, so the need and appropriateness of common carriage is becoming more nebulous. Indeed, various firms that are termed common carriers today offer an extremely limited service. Many of the railroads themselves no longer haul passengers and one wonders whether or not this service should be included in order to qualify as a common carrier. Furthermore, equipment is becoming so specialized that the so-called common carrier is unable to serve all shippers or, again, in many instances the service that is offered may be of such low quality that question may be raised as to whether or not it is any real service.

Much of the recent literature and testimony in the realm of transportation has identified the common carrier interest with the public interest. While there may be some relationship between the two, the correlation is certainly not identical. The experience of the railroad and some motor common carrier interests during the last 15 years has not been particularly happy, yet this does not mean that the economy has been greatly impaired by their distress. Indeed, one of

the consequences of the prosperity which has come to the country has been the ability of individual and business interests to avail themselves of even more transportation of a noncommon characteristic. The trends which are underway are likely to increase the transportation in all noncommon carrier sectors.

Should the Government, therefore, regulate and restrict private shippers to preserve common carriage? Louis Rothschild, former Under Secretary for Transportation in the Department of Commerce, in an article in Traffic World in 1959 said many things both for and against common carriers and made this final comment:

"Where the advantage of private transportation is substantial and long range in character, I doubt if many businessmen would give much thought to preserving common carriage. Under our concept of competitive enterprise, he cannot afford to yield real savings to undefined and remote benefits to the public. Where the margin is narrow or temporary, progressive managers probably would take note, not so much of public interest, but of their companies' own long-range interests in having common carrier service available. There would seem to be some opportunity here for common carriers to show less farsighted managers how their self-interests might be advanced by using common carrier service."

Just previous to that remark, Mr. Rothschild made the statement "Government may endeavor to provide a more equitable setting for the competitive efforts of the common carrier, but in the final analysis it is the common carrier who can do the most to preserve and enhance his own status and utility."

We do not think that there is any obligation on the part of the Federal Government to preserve the common carriers as such. Rather, there is an obligation on the part of the Government to survey the field of movement to see that well-managed companies for whose services there is a demand can carry on. Our interurbans were common carriers but the Nation permitted them to go out of existence a couple decades ago and no one laments their passing except a few electric rail fans.

Other causes

New raw material flows.—A number of other developments are operative in the freight field which the subcommittee should recognize as having worked against the railroads. About 5 years ago, in a projection of Indiana's resources and potential, an estimate was made that the percent of intercity freight in 1970 handled by railroads in the United States would be no higher than 38 percent. The belief was expressed that in absolute amount the volume of railroad traffic would change very little but that the relative position would continue to decline. There are many reasons why this is so. The opening of the St. Lawrence Seaway obviously has transferred considerable grain trade from the eastern carriers. The effect of the seaway is to force railroad rate reductions on certain commodities and to transfer a fair amount of tonnage statistics out of interstate trade and into foreign commerce. Simultaneously, there has been a shift to increased need for oversea raw material supplies which presages further decline for the railroads. Prior to the war the United States imported approximately 2 percent of its iron ore needs. A couple of years ago this figure was up to 28 percent. Such bulk materials frequently come to the edge of salt water or the Great Lakes for processing in ports without any land hauls. Very little new railroad ton-mileage will follow from these movements.

Transmission of coal by wire.—A third creator of railroad ton-miles has been coal. The metallurgical industries have developed increased efficiencies in burning coal. The railroads have discontinued their role as a major coal user and each year the quantity burned for home heating declines. But the really significant shift that has occurred in coal has been in the substitution of electric transmission for railroad ton-miles. The area from which we come has demonstrated this change dramatically. There has been a tremendous relocation of the generating industry and expansion of the generating industry on the banks of the Ohio River or atop coal reserves. Moreover, experimentation in the transmission of high voltages comparable to what the Russians are doing suggests that 750,000-volt lines for 750 miles is possible. This would be a major blow at coal movement by rail, pipeline, water, and even truck. Furthermore, the prospects for large volume movements of coal by pipeline are improving.

Avoidance of transportation.—Decentralization of industry has had mixed influences. Now that some of the major automobile companies are buying many of their components on the west coast, the cross-country shipments of days gone by are diminished. Engineers today concentrate on the elimination of useless

weight. This further cuts down tonnages. The new role of traffic and distribution managers has made a virtual science out of close calculation of the transportation function. Warehouses and branch plants are located carefully in order to minimize all transportation.

The need for a wide range of transport service quality.—Once these facilities are located, the inbound and outbound products are shipped to reflect the optimal combination of rates, service, and function. Indeed, frequently, the rates are the last item that might be considered and, indeed, equal rates for rival modes could very well be a most unsound system of regulation and accomplish little. Dresses are frequently shipped by air when the rate for air cargo is far higher than truck or rail but the clothes can be put on hangers and need not be ironed at destination. The cost for pressing might be far greater than the cost of shipment per dress. Building stone from Bloomington, Ind., moves on occasions to all the continental States. The product is a fragile one and on arrival the driver is apt to call the building contractor to ask whether the stone is to be unloaded on the north or the west side of the building or half and half. This contrasts with an announcement that the stone is available on a siding in a distant railroad yard and the contractor had better get it before he begins paying demurrage.

Labor and others.—Other factors which have maximized the distress of the railroads have been the uneconomic conditions under which the work has been done; the costs of featherbedding at both the management and the operative levels have obviously been high. We suspect that the costs of seniority may have been even greater. In telling the story of such railroad distress to the public the image as created in the minds of the public unfortunately may have been more that of a bellyacher than someone who has been wronged. One has the impression at times that the same effort spent in propaganda and lobbying, if devoted to service and sales, might have been highly effective.

The best hope for a lasting solution

Much is to be said for the merger movement which is underway which has sometimes been described as an attempt of two sick friends to get well together. Real economies are possible provided that the railroads are permitted to take advantage of the economies. Certainly, the carriers should be permitted to discontinue unprofitable lines, yet it must be remembered that there can be such a thing as too much pruning so that the trees dies. The railroads must develop a feeder system because naked trunklines cannot exist. Whether this will be done with railroad-owned trucks or vehicles owned by others is yet to be determined. The greatest hope of all for the railroads lies in more positive and dynamic management and the new approach to a study of their own costs and the nature of demand for their services. Some of the business that has been lost is primarily attributable to being asleep. The organization of research departments among the carriers has already given many dramatic examples of recovery of the traffic at rates which are remunerative.

While it is easy to blame Congress, the Interstate Commerce Commission, inadequate regulation of competitors, and the labor unions for the current low returns of the railroads, the answer is more likely to be found in managerial problems of the railroad industry itself to a limited degree but, far more importantly, to changes in the economy and in technology which reduce the role that railroads play today and will play in the future. Because the latter two reasons are by far the most significant, an attempt to solve the problems of the railroad common carrier by imposing further regulations upon carriers or attempting to straitjacket private transportation is likely to yield disappointing results. It is difficult to alter the sweep of history. Efforts in this direction would be engulfed in the overwhelming pressures that prevail here as they do all over the world.

INHERENT ADVANTAGES OF WATER TRANSPORT

Considerable light can be shed on the success or failure of the existing legislation for regulating water carriers by examining the development of this particular mode of transportation and its service to the shipping public. Congress took serious interest in developing water transportation after 1900 and began to provide for major navigation improvements of our rivers. The Panama Canal Act of 1912 and the Shipping Act of 1916 were intended to provide a favorable environment for growth of water carriers. Congress stated in 1940 that the national transportation policy would be to regulate the various carriers so as

"to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service * * *." These objectives have not been perfectly fulfilled and they never will be, but the present regulation of water carriers or any other mode of transportation must be judged in terms of a reasonable achievement of the goals.

The remarkable development of the bargelines in terms of traffic and a genuine revolution in improved efficiency suggests that the inherent advantages of water carriage have proven to be genuine and that our Government regulatory policy has been reasonably successful. Such a conclusion, however, overlooks the fact that the national statistics for inland river traffic conceal divergent trends for various regions of the United States. Traffic and service on the Mississippi and Ohio River systems has grown steadily and rapidly but this is the most superior river system of the Nation. Barge traffic on the east and west coast waterways has recently risen at a much slower rate. The following data show the traffic trends for the various waterways in billions of ton-miles:

	1956	1959	Percent change
Atlantic coast	32.3	29.1	−9.9
Gulf coast	15.0	16.6	10.7
Pacific coast	5.2	5.3	1.9
Mississippi River system	56.8	65.7	15.7

Common carrier service on the coastal routes barely exists. We know of only one bargeline that offers significant common carrier service on the eastern seaboard and this has been a borderline operation as far as traffic growth and profit are concerned. Many barge firms there have dormant rights to serve as common carriers but no longer exercise them because shippers have not used the service.

The divergent trends among the river systems shed light on the question of whether there has been too much or too little regulation of the barge lines. We have previously pointed out that the common carriers as well as the exempt carriers on the Mississippi River system have shared in the traffic boom there. Would new regulation of exempt barge lines foster growth of common carriage on the coasts? No. For-hire service by water has encountered especially sharp rate competition with the coastal railroads in recent years and has simply not been able to survive. Thus, the numerous bargelines with common carrier certificates have let them become dormant and have resorted to lower-cost contract service which permits sufficiently low rates on some commodities to attract traffic despite rail competition. Even this action has not prevented the traffic by water from leveling off, as shown in the above table. Regulation of the exempt traffic with an eye to raising rates would not develop water common carriers. By denying shippers the inherent advantages of commercial water transportation it would force much of their traffic to private barges and towboats and stop the shipment of some of it. Regulatory erosion of all commercial barge service on coastal water systems is surely not compatible with the national policy statement in the act of 1940.

Early history of river service

The history of the role of American river transportation, which can be divided into three fairly distinct areas, sheds light on its proper economic position today. In colonial days the river reigned supreme as the prime mover of freight. The first economic application of steam mechanical power in transportation occurred on the rivers with the development of the steamboat because the weight and bulk of the early engines and their boilers made them impractical for use on the poor roads of 1800. This first wave of technology had not been absorbed, however, when the railroad came on the American scene in the 1830's and captured the imagination of the populace. The close of the Civil War also brought the close of significant river movement as the Nation's railroad network was expanded in 30 years from 30,626 miles in 1860 to 163,597 miles by 1890.

Reasons for the decline of water shipments

Inadequacies of water service, 1850–1900.—This second era in the history of water transport can be attributed to three factors. The first was that the railroad had many inherent advantages that 19th century water transport could not offer the shipping public. Operating on unimproved, unreliable rivers, water

transport was low, subject to seasonal service failure due to droughts and severe winters; risk was high on the steamboats; and the rivers could only serve a limited portion of America's vast landmass.

It seems quite clear that the railroad forged ahead of the rivers in this period because it was the most effective single solution to America's transport problems. Americans could not afford the capital for a simultaneous, comprehensive improvement of waterways, railroads, and highways so it is not surprising that they concentrated their efforts on the single mode with the greatest flexibility and versatility based on the technology of the last century.

Railroad economic power.—Superior effectiveness of the railroads was the major reason for the decline of the river transport routes but it was by no means the only one. The concentration of economic and financial power in the early railroad corporations enabled them to destroy river competitors in many instances at a pace bearing little relationship to the relative economic merits of the two transport media. There is no need to recite the various railroad abuses that led to passage of the first act to regulate commerce.

Requirement of public investment.—The final explanation of the decline of water service lay in its structural organization for capital investment. Because the rivers could not be used exclusively by one company, the river boat operators had to rely on the public to cooperate in improving the river channels as the private investors improved the floating equipment. Since the public was disinclined to do this on a major scale between 1850 and 1900, the operators had to do the best they could with relatively unimproved rivers. An industry such as a railroad or manufacturer that has full control over its own facilities can attract private capital with flexibility so that new demands for its services soon attract the new allocation of economic resources needed to meet the demands. Allocation of public capital is neither as simple nor as responsive. Regardless of the latent demand for river service, the public at large must be convinced that it exists before the funds are forthcoming to improve the waterways.

Any business endeavor which involves joint use of public and private capital is frequently believed to have an advantage over one which can rely solely on private funds, but this not not necessarily so. Bargeline managers even today must be as effective at politics as in business management. Of course, some argue that the public usually invests funds too rapidly in national economic improvements but this is by no means axiomatic. Of all the waterway projects that were clearly sound in terms of potential benefits related to costs, the St. Lawrence Seaway was. Every President since Theodore Roosevelt has sponsored the seaway but it took 50 years for the public to agree. Had the seaway been similar to a private automobile manufacturing plant, it would have long since been built. This may very well seem a paradox, and it is. The use of public facilities constitutes an advantage for the bargeline but it also is an inherent disadvantage.

Resurgence of water transport as a new mode

The latter point becomes clearer as one looks at the past 50 years of the water carrier industry. The third era of the industry started shortly after 1900 and can be traced almost entirely to a renewed public willingness to improve the waterways. Considerable disenchantment with the railroads had developed by that time and Congress as well as the general populace had decided that they had a bear by the tail. Regulation afforded some control but there was general agreement that competition from other carriers would also help insure that the railroads served the Nation rather than the railroads. Congress and shippers also concluded that the decline of freight movement by water had gone farther than could be justified by its relative efficiency vis-a-vis the railroads due to the artificial forces mentioned above.

The Nation's total domestic water traffic, excluding the Great Lakes, has risen at an extraordinary rate. It has increased fivefold from 20 million ton-miles in 1939 to nearly 120 billion ton-miles today. In the meantime the total movement of freight by all modes has risen about one and a half times. The use of waterways has recovered at a dramatic rate and it raises the question, "Why?"

We think it is attributable to the public improvement of the channels accompanied by a technological revolution in floating equipment and operating techniques. These have created new and real inherent advantages for barge service in today's many-faceted transportation environment. The availability of year-round deep channels with adequate widths, snags and sand bars removed, and navigation aids directly produce service reliability similar to that of railroads and trucklines. But the improved waterways have also permitted the operators

to take full advantage of a complete new technology. Dieselization of towboat produces so many efficiencies that space does not permit discussion of all of them in detail but perhaps a few examples will demonstrate the implications. Today's diesel towboats are smaller than the steamboats but have horsepowers ranging as high as 9,000 and averaging 2,000 as compared to 500 to 1,000 horsepower on the typical old steamboats. Compared to the steamboat, the diesel towboat is far more maneuverable, uses less fuel per freight-ton moved, is more reliable so that fewer hours are lost per year for maintenance, and it is more nearly automatic so that crew sizes have been reduced by one-half to two-thirds.

The twin- and triple-screw propeller is much more efficient than the paddle-wheel but can be used only in the deep, obstruction-free channels provided today by the public. Radar, radio, and telephone communications between towboats and shore have increased both safety and management control of fleets. The superwaterways coupled with these latter developments have made 24-hour operations typical whereas steamboats in the last century tied up at night.

An entire book could be written about the dramatic increase of technology on the rivers. Suffice it to say at this point that the modern towboat and integrated barge combination operating on controlled channels is literally a new mode of transportation and the Congress through regulatory policy and capital investment has wisely fostered its development. The automobile and semitrailer truck along with paved highways were hailed as a revolutionary new form of transport as compared to the horse and buggy or wagon. Truly they were and so, too, is today's shallow-draft inland waterways industry.

Inherent advantages today

Has the resurgence of water transport stemmed from freedom from artificial regulatory restraint afforded by the exemptions in the 1940 act or from fundamental forces rooted in genuine economic advantages? The above record of the development demonstrates that inland river transport service has made a comeback because new waterways and technology enable it to do certain transport tasks more effectively than other transport modes. Regulation that started in 1940 has played a minor role in the new story of bargeline service. Shippers may be very fortunate that more extensive regulation was not applied in 1940. Yet, some observers in the waterway industry and the railroad group wonder if transport service as a whole in the Nation wouldn't somehow be improved if comprehensive regulation were extended over all barge operators. They must either believe that this would improve barge service at an even faster rate than actually occurred or that it would slow down the development of barge service. The former hardly seems possible and the latter is open to question as a desirable way to help shippers. Some researchers seem unwittingly to imply that they desire to help common carriers for the sake of the carriers but surely the Government role in transportation is to help the traveling and shipping public rather than any particular group of transport firms. To assume that goods are transported so that carriers will have something to do is to put the cart before the horse. This is not good transport policy.

We have stated that the rebirth of inland river traffic was inevitable because the new barge operators have certain new and unique advantages; so these should be summarized. The economies of scale of the bargeline coupled with low capital cost per ton-mile of freight produces extremely low-cost mass transport for domestic purposes. Packaged freight does not move in significant volume by river because individual shipments are too small. However, bulky materials that can be concentrated in large masses and that are machine loaded and unloaded can move cheaper by barge than any general-purpose land carrier. Typical barge rates approximate about 0.4 cents per ton-mile while rail rates average about 1.6 cents per ton-mile but are probably 1–1.2 cents for the same consist as moves on barges. Truck costs are much higher than either of these but the service in many instances for high value goods on short hauls is superior.

On the other hand, barge service is low speed since the typical tow averages 8 miles per hour; and the routes are restricted to areas where the water is available. Neither of these seriously limits movements of basic, bulky materials such as ores, coal, petroleum products, chemicals, logs, aggregates such as sand and gravel for construction, and grain moving from elevators. Speed is not important and the plant facilities simply locate by the river banks where the low-cost transport is available rather than expecting the transport routes to come to the new facilities.

ORIGIN RATIONALE OF EXEMPTIONS AND FAILURE TO USE AVAILABLE REGULATION TO PROTECT COMMON CARRIERS BY WATER

Reasons for regulations in the act of 1940

An examination of the rationale underlying the regulatory provisions for water carriers in the Transportation Act of 1940 will shed considerable light on the current question of whether the exemptions in part III of that act should be continued or altered. World War I and the Great Depression contributed to the agitation that brought water carriers under regulation in 1940. The war had stimulated excess capacity, especially in the coastal shipping fleet, and the depression caused chronic inadequate demand for most forms of transportation.

Congress rightly cast about for actions it might take to help the carriers and it is no wonder that the decisions to bring the trucklines, the water carriers, and the airlines under regulatory control all came in 5 years from 1935 to 1940. Three factors contributed to the passage of the new regulation. One was the fact that the railroads and motor carriers felt that if they were regulated, certain classes of water carriers should be. They were particularly concerned with their relations to common carriers by water and competition for nonbulk traffic. The Federal Coordinator in his report in 1934 on the water industry and in later testimony pointed up the need for regulation where there was direct competition between the bargelines and the railroads. As a second reason, the report also noted what appeared to be excessive competition among the coastwise water carriers. A third factor that contributed to initiation of regulation for motor, air, and water was the desire to develop common carrier service in these new modes.

The first reason for regulating the common carriers still has merit. So does the third but, regarding the second, we believe our entire testimony demonstrates that there presently is no justification for giving added regulatory protection to the shallow-draft common carrier by water. Indeed, common carriage service is becoming relatively less important to the public interest. Besides, the chronic excessive competition among rail carriers in the 1930's did not prevail among river operators, and it appears that the inland river industry since 1940 has not generaly had persistent excessive competition. Its market has increased almost fivefold and it did not have serious wartime overtonnaging as on the high seas. Therefore, it is difficult to understand how analysts deduce that the inland river industry is characterized by so much chaotic competition (too little traffic for too many carriers) that even the extent of regulatory protection growing out of the Great Depression is now inadequate. The experience of the past two decades actually suggests that supply and demand for river service have been reasonably well equated so that the competition has not been of a debilitating type which requires regulatory controls more stringent than the existing provisions. There may have been some recent similarity with the depression in that there has not been full level economic ouput since the 1958 recession and freight shipments by water and land have been sluggish. Concern with excessive competition, due to inadequate demand and excess supply, has once again been elicited but the excess bargeline and other transport capacity may prove largely transitory as the Nation recovers this year from the current recession. It seems wiser to us to continue with the necessary steps to restore full levels of output than to extend longrun regulation to solve a shortrun recession-bred problem.

Reasons for the water traffic exemptions

The above analysis of the reasons for regulating water common carriers and carriers of nonbulk commodities in the act of 1940 produces no evidence for expanding these regulations at the present time. By the same token, the reasons that Congress exempted certain classes of water traffic from regulation in 1940 prevail in the present economic environment.

Section 303 of the act deals with the exemptions of water carriers of bulk commodities and noncompetitive transportation of contract carriers. Its other exemptions may be summarized as follows: transportation in terminal areas, transportation within a single harbor and by small craft, and transportation of property of the owner of substantially all the voting stock in the water carrier. A review of the various congressional reports and hearings on the regulatory bills between 1935 and 1940 reveals three major considerations that led to the bulk exemptions. The first and most significant dealt with the degree of competition, the second with supposed special conditions on the Great Lakes and the third involved the question of the equity of regulating some but not all carriers.

Not contributory to excessive competition.—The Federal Coordinator of Transportation, Commissioner Joseph B. Eastman, recognized a difference in the competitive relationships of contract carriers of bulk commodities and common carriers by water in his 1934 and 1935 reports. The bills introduced in Congress recognized the distinction by allowing for regulatory exemption of the contract bulk carriers. Commissioner Eastman, before the Senate committee on S. 1632, 74th Congress, 1st session, said that regulation of contract carriers would only be justified when it was needed for "* * * the protection of the common carrier against unfair competition practices" (p. 648). The House committee in 1939 explained the bulk exemption as follows:

"The bulk carrier exemption in section 303 was given water transportation on the theory that such transportation is not substantially competitive with land transportation * * *.

"The substitute bill gives the unqualified exemption, above referred to, on the theory that the water carriers, given this privilege, can carry such cargo at such low cost that the transportation is not substantially competitive with common carriers by water or with land transportation * * *" (p. 8).

Mr. Eastman went on to explain that every effort has been made to avoid unnecessary regulation of contract water carriers.

The various congressional documents relative to the 1940 legislation made it clear that Congress intended to control competition enough to provide an orderly environment for the common carriers but that they had no intention of guaranteeing any common carrier group complete protection from contract or private water carriers. They also saw no reason to regulate those bulk carriers whose specialized service and rates were so different from the common carriers that substantial competition did not prevail between the two types of service. The latter sections of our testimony deal with the question of whether competitive conditions and the economic environment in transportation today have changed so much as to invalidate the reasons for the exemptions in the 1930's.

We should underscore the fact that in the legislative history of the 1940 exemptions, the agitation for regulation of water carriers came from carrier groups that wanted protection from competition rather than from shippers who felt that competition was inadequate to give them good service. By the same token, we know of no grassroots movements on the part of shippers today to demand further water carrier regulation. Yet the prime purpose of Government regulation now as in the past should be to protect the shipper and the public interest and only secondarily to protect particular groups of transport companies.

Great Lakes exemption.—Much of the early evidence presented in favor of the bulk exemption dealt with the above arguments applied to bulk carriers on the Great Lakes. The Federal Coordinator noted this in his 1935 report (H. Doc. 89, 74th Cong., 1st sess.) when he referred to the types of cargo of the lake boats and said:

"So long as they confine themselves to such forms of traffic, they apparently are, as a practical matter, not competitive either with railroads or with the common-carrier steamship lines. There are similar instances in the coastwise, intercoastal, and inland waterway trades."

Many other witnesses testified to the same effect in the following years. The other reason for exempting the lake bulk carriers was that they competed with Canadian bulk carriers which were excluded from Canadian regulation. For example, it was generally concluded that regulation to protect common carriers, such as high minimum rates for the lake contract operators, would merely shift the cargo to Canadian contract operators rather than help any of the American common carriers. The same logic applies today and is complicated by the fact that the St. Lawrence Seaway has opened the lakes to foreign flags of all nations. A British tramp operator which takes a load of grain from Duluth directly overseas competes with an American domestic lake boat which quotes rates to haul the grain to Buffalo for transshipment to an ocean ship or to railroads which take it on to Baltimore for export.

Extension of regulation to the exempt barge operators while exempting lake carriers would create serious distortions because the unregulated lake bulk carriers compete directly with the inland river firms. This problem was raised in the discussions of the bills in the 1930's and it is more intense at present. The four major bulk commodities on the lakes are iron ore, coal, grain, and petroleum products. These are also prime revenue traffic for the river bulk carriers. Very direct and intense regional and route competition does occur between the inland rivers and the lakes. Grain in the northern

Great Plains can either move down by barge on the Mississippi River to New Orleans or move through lake ports such as Duluth. Depending on rates for lake boats versus barge service, grain moves either through Chicago by lake or down the Illinois Waterway and the Mississippi River or Tennessee River, respectively, as feed grain in the South. Grain moved by lake and river meets and competes at common market points both for export and domestic use.

Coal moves by barge from West Virginia fields down the Ohio River and up the Mississippi to the northern Great Plains market but it also moves in competition with this route by rail to Lake Erie ports for movement by exempt contract boat to the same region. Similar competitive relations exist for oil movements in some instances. A decision to regulate rates upward for the presently exempt river commodities to help common carriers will patently cause substantial traffic to be lost to the exempt Americans and foreign lake operators. Since the exemption for Great Lakes carriers must be retained in order to assist them in competition with unregulated Canadian carriers, the exemption for river carriers should be retained to permit the river carriers to compete with the carriers on the Great Lakes.

Equity: The case of coastal shipping.—A final problem that Congress encountered in the 1930's with the exemptions and which it faces now is the question of whether equity requires that all transport carriers be regulated if some are. Many common carriers since 1920 have repeatedly lobbied for new or added regulations of their particular groups. If they really feel that regulation was and is a handicap, they should not have encouraged it. The motor carriers are a case in point. A major upshot of regulation of common carriers is the certificate of convenience and necessity which obligates the Government to allocate a certain scheduled service transport market to some common carrier and to protect that market from excessive competition from other common carriers. The fact that certificates, i.e., routes, are often sold today by carriers for large sums of money shows that common carriers really think that Government control of routes is worth money in the bank to them.

Nevertheless, anyone can understand that regulation restricts management and creates unique private management problems. An additional point that must be considered is that the investment of capital in common carriers by land and water before 1940 was made in full cognizance of widespread, unregulated contract carriers by water. New investment since then has been made with the knowledge that Congress had specifically exempted certain carriers from regulation. This mitigates the possibility that unequal regulation will be inequitable.

A final aspect of equity is that Congress to date has felt no obligation to any carrier group to provide for regulation of all its competitors. It has exempted some while regulation of others varies from mild restraints to major controls. The degree of regulation for each carrier class should be based on economic factors and other national transport goals rather than a belief that all firms in the Nation should be treated with identical legislation.

Even where regulation of water carriers has existed alongside rail regulation, equity or fair treatment has not always resulted. Some laws may have intended equal treatment, but service questions have been raised about the degree to which the Interstate Commerce Commission has carried out equal treatment in fact.

The Commission wants additional power over contract operators to protect maritime coastwise common carrier service, but they have permitted railroad competition to make a frontal assault on this class of common carriage. Railroads have been unrelenting in adjusting rate structures to eliminate coastwise water competition. In the past they have used the following tactics, although some of these are now prevented by the Commission: long-short-haul relief to cut rates between ports served by coastal carriers, high local rates to and from ports to discourage shipments from inland points by rail-water, opposition to quoting joint rail-water rates even though the law requires them, depressed rates on major categories of coastal traffic, and reluctance to make proportional rate cuts except for all-rail traffic. If the railroads had been more judicious in cooperating to fulfill their obligation of providing common carrier rail and water service to the public, one could be more sympathetic with their requests for regulation of exempt water carriers.

We assume there is no need to amass evidence to support these statements since the report on August 29, 1960, of the Senate's Merchant Marine and Fisheries Subcommittee on the "Decline of the Coastwise and Intercoastal Shipping Industry" arrives at the same conclusions. Page 3 of the report presents the

following data for this industry from the period in 1939, just prior to the ICC's assumption of jurisdiction over domestic water carriers, to March 31, 1960.

	1939	1958	1960
Intercoastal service:			
Number of vessels	143		39
Short tons of dry cargo	7,066,000	3,625,828	
Coastwise service:			
Number of vessels	235		37
Short tons of dry cargo	30,813,000	12,241,867	

This severe decline has occurred while the total ton-miles of intercity freight traffic in the United States has grown 1½ times the 1939 volume. The near destruction of coastal and intercoastal shipping hardly supports enthusiasm for the Commission's desire to protect carriers by water. The majority view of the subcommittee in the report states on page 49 that "* * * the Commission's methods, procedures, and in some cases its judgment were not reasonably designed to achieve the objectives envisioned by the framers of the national transportation policy."

In justifying new regulation it is not enough to criticize the existing inadequacies or inequities of the transport marketplace as the proponents advocate. The proponents must also demonstrate that the added regulation will produce fewer and milder mistakes than the competitive environment.

WILL REMOVAL OF THE BULK EXEMPTION HELP THE SHIPPER AND THE GENERAL PUBLIC?

Control of entry

No conclusion can be drawn about the effect on the public of regulating exempt water carriers until the amount and type of proposed regulation is known. The suggestion has been made that the Interstate Commerce Commission should license presently exempt bulk carriers and control new entry to avoid excessive competition. It is very difficult to define excessive competition since a business operator may conclude that any competition from a more efficient competitor who attracts his customers is excessive. Such shifts in allocation of traffic or other goods are precisely what are expected from competition in a free enterprise system.

Common carriers sometimes feel that contract carriers are undue competition since the latter usually quote lower rates and attract business that might otherwise move on the common carriers. Where would the line be drawn in examining the request for a license from a new bulk water carrier? Would it be denied if he expected to get any business at all since this might come from common carriers? Or would approval be forthcoming provided he was to attract a little traffic by giving the shipers slightly lower rates but not if the shipper saving would be substantial so that they would ship large volumes with the new contract operator?

The proposal to license exempt bulk carriers also suggests that entry would be denied if it would "violate the national transportation policy or would otherwise be contrary to the public interest." A new bargeline could not succeed unless it offered better service and/or lower rates than some of the existing carriers by land or water. If the Commission found that it had to deny a license to a new operator because his better service or low rates would contravene the national transport policy, then the policy itself probably should be scrutinized.

Minimum rates to protect contract carriers?

The suggestion has also been made that the newly regulated carriers would file minimum rates and that these should "be based on cost formulas and should operate to insure reasonable return to efficient operators." The implications of this are even more fuzzy than control of entry to deny excessive competition. First of all, the cost formulas cannot be easily constructed. Shipers that use contract carriage by water usually have specialized shiping requirements so that each contract becomes a special situation. Application of a generalized cost formula will mean that rates will frequently be higher than necessary for special movements.

This is by no means the chief objection to proposed control of minimum rates. Presumably, rates should be high enough so that efficient operators will enjoy

reasonable returns. Which efficient operators? Water contract operators, or common carriers by water, or common carriers by rail? It seems implicit that the recommendation to control minimum rates contemplates protection of the efficient contract carriers. However, rate minimums set at levels reasonable for contract operators will still be too low to give much aid to common carriers of any type.

Bargain rates: Public enemy or friend?

If such a recommendation means, in fact, that minimum rates are to be set high enough that the contract carriers will have little or no rate advantage over water common carriers, then it denies low-cost transportation to the shippers. This conflicts with the goal of national transport regulation which we said in the beginning of this paper is to allocate traffic to the most efficient mode. There may be other national objectives besides economic efficiency that warrant superseding the free market but they should always be carefully identified and critically examined.

While the statement in the "National Transportation Policy," preliminary draft of a report prepared for the Committee on Interstate and Foreign Commerce, U.S. Senate, January 1961, certainly does not prescribe rate minimums with the stated objective of allocating traffic away from the low-cost carriers by water, it is clearly implied by the entire study. Comments such as those on page 36 of the study suggest that the prime objectives in extending regulation is to protect common carriers rather than those "licensed bulk carriers" that the Interstate Commerce Commission determines are "efficient operators" (see p. 532, No. 4). The statement is as follows:

"Finally, the principle that the public interest requires that transportation pricing produce a reasonable return, comparable to industry overall, should be enunciated by the Congress for the guidance of all concerned, carrier, user, and regulatory agency alike. Regulatory loopholes through which users of transportation seek bargain rates for their own shipments regardless of general effect should be closed."

On the previous page of this discussion entitled "The Concept of Bargain Transportation" the report says that the tendency toward bargain transportation must be stopped and that a "floor must be established under the pricing of each mode of transportation which will insure the public against the cumulative effect of widespread below-cost competitive pricing."

We do not see reason for alarm that business firms are trying to reduce costs whether it is in the buying of transport or of supplies. This is an underlying assumption in the capitalistic economy. The study cited above paradoxically suggests that when each individual shipper strives to receive transport service at "bargain rates" that the cumulative effect on the public will be to raise transport costs and rates.

"Future promotional and regulatory actions should reflect the fact that, in the long-range public interest, bargain transportation is inimical to a healthy economy."

The Government, therefore, is supposed to protect the public interest from the threat of long-range higher transport rates by using regulation to mandatorily raise rates in the short run. In the case of bulk water carriers, we do not comprehend how this will help the consumer who pays transport costs along with all other costs of doing business.

The role of competition

The free enterprise system uses the invisible hand of unremitting competition as a goad to force all firms to cut costs and become more efficient and to destroy those who do not. Economists do not suggest that competition in most markets should be mellowed so that it will treat firms gently and the antitrust laws are shaped to insure that it remain particularly intense. We have all seen a case in the electrical equipment industry a year ago in which the firms themselves set their own "minimum rates" to avoid "excessive competition" and "bargain rates." The decision is yours, of course, but we suggest it is often some competing businesses that dislike competition, rather than the public. Competition must be assumed to be the friend and protector of the consumer in any market until strong evidence to the contrary has been marshaled.

WILL REMOVAL OF THE BULK EXEMPTION HELP THE PLIGHT OF THE RAILROADS AND OTHER COMMON CARRIERS?

Railroads

Proposals for control of entry and rates for water carriers of dry bulk commodities will probably have little effect on any common carriers. Supposing that the regulation were established to meet the objective of protecting common carriers, the amount of traffic that would shift to common carriers will be surprisingly small. Most traffic moving by river today originates at river ports and is consumed at or very near other river ports. Most of this traffic enjoys such low rates by barge carriers in the neighborhood of 2 to 4 mills per ton-mile that the railroads cannot afford rates low enough to compete for it. In other words, the bargelines are moving bulk materials because of their inherent advantages of low-cost transportation. On some items the railroads are able to attract at least a portion of the traffic by quoting rates barely above their out-of-pocket costs with little allowance for their high overhead costs.

The new legislation might be framed in such a way as to require that barge rate minimums be raised near railroad out-of-pocket costs to help the railroads so that, considering the unequal service characteristics, each mode would be of the same attractiveness to shippers. This would deprive the shipper of the inherent low-cost advantages of the waterways but could not appreciably help the railroads' financial condition. By quoting all their rates on water-competitive commodities near out-of-pocket costs the railroads could attract perhaps a portion of the traffic presently moving by exempt bulk carriers. But common carriers will not be helped much by giving them marginal traffic. The kind of traffic that will help them is freight on which something near their full costs per ton-mile can be covered. An even larger increase of the barge minimums nearer the probable rail revenues on bulk commodities of 1 to 1.2 cents per ton-mile (approximate full rail cost for the same consist) would, however, be unconscionable. It would destroy the commercial bargelines of all types. But suppose for the sake of analysis that this action was deemed necessary as a desperation measure to help common carrier railroads. We doubt that even such extreme rate control would shift much traffic to them.

First of all, there is the obvious problem that many shippers could shift to their own equipment. The barge shippers today are predominantly material processors or basic industries such as steel, electricity generation, chemical processing grain processors, and oil refiners which can operate at optimal efficiency in large-scale plant units. Doubling or tripling exempt barge rates will not force these firms to ship via railroads. Many of them would not hesitate to purchase a towboat and a few barges to carry their own goods. Alarm has been expressed at the rapid increase of private carriage at the expense of common carriers, but the availability of commercial contract carriage at very low rates is the only factor that has prevented a more dramatic growth of private shipment.

Other alternatives available to frustrated shippers

High minimum rates will shift most of the present exempt water traffic of small and large shippers to private barge carriage but not all of it. Will much of the remainder move to the railroads? We think not. This can be demonstrated by examining a consist of the river traffic. The total domestic water commerce was divided as follows in 1959 on a tonnage basis:

	Percent		Percent
Petroleum and products	42.6	Grain	1.4
Coal and coke	18.0	Seashells	3.1
Sand and gravel	12.7	All other	8.0
Iron ore and steel	8.0		
Logs and lumber	4.0	Total	100.0
Chemicals	2.2		

On the Mississippi River and its tributaries, which carry the lion's share of America's barged traffic, the breakdown was as follows in 1960 out of a total 188 million tons:

	Percent		Percent
Coal and coke	37.8	Chemicals	4.6
Petroleum and products	25.6	Other	10.3
Sand and gravel	12.9		
Grain	4.8	Total	100.0
Iron, steel, Iron ore	4.0		

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The data demonstrate succinctly that 63 percent of the total water tonnage is coal and petroleum. A careful study of the petroleum industry and interviews with executives from major refineries in 1957 and 1958 leads us to believe that higher barge rates would divert to the railroads very little of the vast quantities of crude petroleum and refined product moving by river. Pipelines are used to ship oil long distances where rivers are not available and their costs are extremely low. Technology of pipelines and tank barges has simply eliminated the railroad as a practical alternative for this product. The battle is essentially between the bargelines and the pipelines owned by the refiners. Higher minimum rates for the exempt tank-barge operators will force the refiners to build more pipelines but it will not materially help the railroads, so even proponents do not suggest removing the liquid exemption.

In the introduction we discussed the developments in coal transportation. The extra high voltage transmission line is carrying steadily increasing volumes of coal and competes with both the railroads and the rivers. The electric power market used 11 percent of our annual coal consumption in 1940 and is approaching one-half of today's needs. The bulk of the barged coal is for this purpose. A number of utilities that recently built plants on the banks of the Ohio River stated that if river rates had been much higher, they would have located their plants on large coal mines and would have shipped it by wire. This has already occurred with a few of the generating plants. Coal pipelines offer still another alternative to shippers. Once again, regulated higher rate minimums will divert much less traffic than might be anticipated to railroads.

One-third of the total river traffic remains. Tonnagewise, stone, sand, and gravel for aggregates in construction rank next to coal and oil but the hauls are extremely short and would either cease to move, would move by private barges, or perhaps some would move by contract barges, despite the higher regulated rates. Considerable iron and steel might be diverted to railroad if it were not for the fact that most steel firms are large and already own some of their own barges and towing equipment and could expand their private fleets. Failing this in some instances, the steel movement might simply cease since it moves great distances due to low water rates and has thereby increased intermarket competition between steel-producing centers. Chemicals constitute a much smaller fraction of the river traffic but many of them move in highly specialized barges that are typically owned by the chemical firms themselves who contract with towing companies. Needless to say, higher towing rates will not force them to scrap their barge fleets merely for lack of company-owned towboats. Some chemical items would shift to rail but by no means the larger portion of the tonnage. Some grain shippers already own towboats and more own barges. Finally, many plants along the rivers were physically designed to receive or ship goods entirely by barge and could not ship by railroad under any circumstances.

By all odds, we think those who propose more regulation of water carriers to help railroads would be disappointed in 5 years. The sum total of the results would be about as follows: Private barge carriage would jump sharply encompassing the major portion of today's commercial water traffic; coal shipments by wire would rise substantially; petroleum and its products would move almost exclusively by private barge, pipeline, and tank truck. The railroads would acquire additional bits and pieces from the fringes, such as some coal, grain, and chemicals, but they would attract most of this only by continuing their policy of quoting water-compelled rates not far above out-of-pocket costs. The national cost of this policy would be to destroy most, if not all, of the contract barge carriers, thus denying small and large river shippers the economies of for-hire water movement or forcing them to ship in private equipment. As we said before, it is difficult if not impossible to change the sweep of history. To be sure, the above conclusion assumed high minimum rates which probably no one would recommend. If rates were not set high enough to cause traffic shifts, then they will have little effect on the common carriers one way or another.

We are well aware of the plight of the railroads and the problems of their overcapacity. Does the corrective lie in elimination of the overcapacity by major curtailment of unneeded mileage and other adjustments or does it lie in raising the rates of other commercial carriers in order to sustain an umbrella of nationwide proportions?

Common water carriers

There seems to be less concern about protecting common carriers by water than by land but their service is just as desirable in their sphere as that of the land carriers. However, the dilemma revealed in much of the above analysis also applies to regulatory attempts to increase their traffic, as in the case of railroads. Higher rates on exempt carriers to give common carriers more traffic would tend to shift the traffic to private carriage, pipelines, or wire, or simply discourage its movement.

Furthermore, much of the volume of major items such as coal and oil shipped via common carrier bargelines moves under the exemption so they have the same advantages as the exempt contract carriers. The proposal to set minimum rates contemplates raising rates on very roughly two-thirds of the traffic to help the shippers of the other one-third of the traffic. Since bargeline service is practical only for bulk commodities moving in large volumes for each shipment, a fundamental question can be raised as to whether or not the presently certificated common carriers are really common carriers. It may well be more logical to cease regulating the third of the water freight which they move at for-hire rates than to extend regulation to the other two-thirds. (As indicated earlier, no really accurate information exists on the common carrier share of total barge traffic but these approximations may have some validity.)

Users of domestic water service seem to have done very satisfactorily the past 20 years as reflected by the fivefold increase of traffic on the rivers, yet they have had only limited common carrier water service. In the face of this, the Interstate Commerce Commission and other groups have suggested that the water shippers need the aid of more regulation to give them added common carrier service.

In the final analysis the entire problem with the new proposals for added regulation is that it is no longer administratively feasible to expect regulation to provide common carriage a rainproof umbrella of protection from outside competition. For the various reasons discussed in this paper, today's shipper has many transport alternatives besides regulated common carriers by land or water and regulated contract water carriers. To preserve common carrier service, rate levels can be kept up and entry can be restricted for the commercial transport sector, but the large volume shipper of dry bulk goods cannot be forced to use the controlled service. The regulators are liable to find that they are judiciously guarding an empty bank in vain.

In the days of the regulated railroad monopoly the shipper had very little choice in selection of modes and type of transportation. A completely different environment prevails today and the average shipper in his new-found freedom and flexibility is not likely to let either the regulators or the carriers dictate to him his mode of transport, his transport service, or the rate that he will pay. Congress cannot effectively hamstring this new freedom of choice in transportation, and even if it could, it should not.

Legislative change from now on must recognize that as a consequence of technology and rising incomes the major control over intermodal competition and the maximum rates shippers are willing to pay is private transport. This is not a time to tighten control over water carriers; the contrary is more appropriate.

Professor WATERS. I will make one insertion in the statement that does not appear in the typed copy that you have. That will come after the first paragraph.

The national transportation task is to allocate labor, raw materials, and capital equipment to each transport mode and carrier so that the maximum satisfaction of shipper needs is produced at the least cost of productive resources.

The suggestion has been made that the Government extend regulation to additional water carriers as a means of equalizing competitive conditions and aiding railroads. This would be unwise. We think much of the railroad problem is attributable to changing technology and changing preferences among shippers.

The recent low earnings of common carriers, a year or two ago, are largely attributable to the 1958 recession, the 1959 steel strike and the 1960–61 recession. The current recovery is already being reflected in improved earnings of common carriers.

The Doyle committee of the Committee on Interstate and Foreign Commerce of the Senate of last year erred when they projected future common carrier traffic at a low level to 1975 by using the 1955–59 period as a guide to the future as shown in chart 1 on page 83 of the Doyle report.

Two types of projections were offered based on 1955–59 and 1946, 1959. The 5-year base points toward a very dismal future for regulated service but the 5-year span is perilously brief for making such projections and is difficult to defend. Such a trend line is unduly tilted downward by the economic boom of 1955–57 and recent recessions.

Addition of the 1975 estimates for both regulated and unregulated traffic yields a total national traffic volume that is 18 percent less in 1975 for 1959. Such a steady decline in national freight shipments could only come about from sustained economic stagnation or deterioration.

Our regulatory policy for the future should not be based on the expectation of such a dismal economic environment or on such dubious analyses.

Some shifts in traffic will go on inexorably in spite of efforts to control the shift by extension of regulation. Indeed, it is our belief that regulation now plays a somewhat restricted role in shaping the distribution of traffic.

If legislation were passed for control of entry and all rates for common and contract water carriers, we think that the amount of traffic that would shift to common carriers, whether water or rail, would probably be small.

Most traffic moving by river today originates at river ports and terminates at or very near other river ports. Most of this traffic enjoys such low rates by barge carriers in the neighborhood of 2 to 4 mills per ton-mile that the railroads cannot quote rates covering their full costs low enough to compete for it.

In other words, the bargelines are moving bulk materials because of their inherent advantage of low-cost transportation. On some items the railroads are able to attract at least a portion of the traffic by quoting rates barely above their out-of-pocket costs with little allowance for their high overhead expenses.

Why would the effect on railroad common carriers be so limited?

The new legislation might be framed in such a way as to require or to enable the Commission to require that barge rate minimums be raised near railroad out-of-pocket costs to help the railroads so that, considering the service characteristics, each mode would be of the same attractiveness to shippers. This would deprive the shipper of the inherent low-cost advantages of the waterways but would not appreciably help the railroads' financial condition.

By quoting all their rates on water-competitive commodities near out-of-pocket costs the railroads could attract some of the dry bulk traffic presently exempt under section 303(b).

But common carriers by rail will not be helped much by giving them marginal traffic. The kind of traffic which would help railroads is freight on which something near their full costs per ton-mile can be covered.

What would be the effect on commercial bargelines of raising rates on exempt traffic to near full railroad costs?

It would destroy the commercial bargelines of all types. But suppose for the sake of analysis that this action was deemed necessary as a desperation measure to help common carrier railroads. We doubt that even extreme rate control would shift much traffic to the railroads.

First of all, many shippers would shift to their own private barges. The barge shippers today are predominantly material processors or basic industries such as steel, electricity generation, chemical processing, grain processors, and oil refiners, which can operate at optimal efficiency in large-scale plant units.

Even doubling exempt barge rates will not force these firms to ship via railroads. Many of them would not hesitate to purchase a towboat and a few barges to carry their own goods. Alarm has been expressed at the rapid increase of private carriage at the expense of common carriers, but the availability of commercial contract carriage at very low rates is a factor that has prevented a more dramatic growth of private equipment.

The real consequences: More regulation, such as repeal of the bulk commodity exemptions which would enable the Interstate Commerce Commission to control minimum barge rates and entry, would yield undesirable results. If minimum rates were set at a high level to aid railroads, the sum total would be about as follows:

Private barge carriage would jump sharply encompassing a major portion of today's commercial water traffic; coal shipments by wire would rise substantially; petroleum and its products would move almost exclusively by private barge, pipeline, and tank truck. The railroads would acquire additional bits and pieces from the fringes, such as some coal, grain, and chemicals, but they would get most of this only by continuing their policy of quoting water-compelled rates not far above out-of-pocket costs. The national cost of this policy would be to destroy most, if not all, of the contract barge carriers, thus denying small and large river shippers the economies of for-hire water movement or force them to ship in private equipment. It is difficult, if not impossible, to change the sweep of history.

To be sure, the above conclusion assumed high minimum rates which probably no one would recommend. If rates were not set high enough to cause traffic shift, then they would have little effect on the common carriers one way or another. In the latter instance, the Interstate Commerce Commission would be very likely to find itself in the awkward position of pushing on a string if it tried to shift the newly regulated traffic to the common carriers.

We are well aware of the plight of the railroads and the problems of their overcapacity. Does the corrective lie in elimination of the overcapacity by major curtailment of unneeded mileage and other adjustments or does it lie in raising the rates of other commercial carriers in order to sustain an umbrella of nationwide proportions? We think the answer to second question is "No."

Would repeal of the bulk commodity exemption be any more helpful to water common carriers than railroads?

The dilemma revealed in much of the previous analysis also applies to the regulatory attempts to increase the traffic of common carriers by water as in the case of railroads. Higher rates on presently exempt traffic to give common carriers by water more revenue would tend to shift considerable traffic to private carriage, pipelines, or wires, or simply discourage its movement.

Furthermore, much of the volume of major items such as coal and oil, shipped via common carrier bargelines, moves under exemptions so that such bargelines have the same advantages as the exempt contract carriers. Therefore, it can hardly be argued that the common carriers are not being treated fairly. They can compete with the contract carriers for the exempt traffic, provided they quote the rates as low as those of the contract operators and operate their barge tows in the same manner.

A proposal to aid common carriers by water by setting minimum rates on exempt traffic would contemplate raising rates on very roughly two-thirds of the traffic to help the carriers of the other one-third of the traffic. Although many shippers would escape these artificially high rates by using their own equipment, some would be forced to pay the higher rates. The result would be an increase in the traffic and revenues of the large common carriers such as those operating on the Mississippi River system, at the expense of shippers and of contract carriers that are presently serving customers efficiently.

A poll of shippers asking them if they favored higher barge rates and a reduced number of bargelines in order to aid the water common carriers would hardly be expected to elicit support for the proposed regulation.

Has water transport failed to perform effectively in the last decade?

The primary objective of the national transport policy is to serve the shipping public as effectively as possible and at the lowest possible rates. Users of shallow-draft water service seem to have been very satisfied with the rates and service the past 20 years as reflected in the fivefold increase in traffic on the rivers, yet they have had only limited common carrier water service. It is ironic that in the face of this dramatic growth, the Interstate Commerce Commission and other groups have suggested that the water shippers need the aid of more regulation and higher rates to assist the common carriers by water.

Keep the shipper and the public in mind. Don't add regulations which are unneeded, ineffective, and inappropriate to the times.

In the final analysis the entire problem with the new proposals for added regulation is that it is no longer administratively feasible to expect regulation to provide common carriage a rainproof umbrella of protection from outside competition. For the various reasons discussed in the full statement, many of today's shippers have many transport alternatives besides regulated common carriers by land or water and regulated contract water carriers. To preserve common carrier service, rate levels can be kept up and entry can be restricted for the commercial transport sector, but the large-volume shipper of bulk goods cannot be forced to use the controlled service. The regulators

are liable to find that they are judiciously guarding an empty bank in vain.

In the days of the unregulated railroad monopoly the shipper had very little choice in selection of modes and type of transportation. A completely different environment prevails today and the average shipper in his new found freedom and flexibility is not likely to let either the regulators or the carriers dictate to him his mode of transport, his transport service, or the rate that he will pay. Congress cannot effectively hamstring this new freedom of choice in transportation, and even if it could, it should not.

Legislative change from now on must recognize that, as a consequence of technology and rising incomes, the major control over intermodal competition and the maximum rates shippers are willing to pay is private transport. This is not a time to tighten control over water carriers.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you, Professor Waters.

I would like to ask you one or two questions.

Professor, how do you feel about extending the bulk exemption to the railroads?

Professor WATERS. Well, I am, of course, speaking for myself here and not for the water carrier interests in this. This is one in which I will give you a response and it is one that I won't give you the sponse that I would probably give you after I have studied this for about 2 months.

This is an incredibly complex thing and about the time I find that I have a simple pat solution to something on first blush, then I think about it and I don't have such a simple one.

While the thrust of our testimony has been for greater freedom, you don't go the whole gamut to no regulation at all. You stop and study for a long time to figure out how far you can edge forward in this direction and what will be the consequences of the movement.

I think it is good to start out with the target but you would sure stop and consider the following items: I think you would still have a lot of water transportation even if freedom from regulation were extended. You wouldn't have the same companies because I think that in the short run a very considerable number of them would be wiped out.

I think over a period of time, the sweep of history, you would have a lot of barge transportation and in the short run probably the effect of it would be to kill off not only a fair number of the bargelines but a certain number of the railroads, particularly if they engaged in competition among themselves. You see the evidence of that in the battle between the L. & N. and the Southern going on right now in reduction of rates.

Secondly, I would not want to make the move unless I figured out what I was going to do about the merger movement.

That is, it is one thing to open the doors to competition when there are many to compete.

Mr. FRIEDEL. In other words, you just can't answer this question yes or no as to what you would think?

Professor WATERS. No. There is one other item I would like to put in. I would sure hate to go ahead with this without raising the question as to whether or not I would want to repeal the Reed-Bulwinkle Act.

I know your problem. This is a tough one.

Mr. FRIEDEL. Thank you very much, Professor.

Our next witness will be Mr. Jesse Brent, of the Brent Towing Co. of Greenville, Miss.

Mr. WRIGHT. Mr. Chairman, Mr. Brent sends his apologies. As I indicated in my statement at the beginning, he was unable to be present because of a conflict.

Mr. FRIEDEL. Does he have a statement to put in the record?

Mr. WRIGHT. With your permission we would like to have an opportunity to file a brief statement on his behalf later on.

Mr. FRIEDEL. Granted.

(The statement referred to was not submitted to the committee.)

Mr. WRIGHT. In addition, with your permission we would like permission to file a statement on behalf of James F. Knudson who has prepared an extensive statement but is unable to be here today.

Mr. FRIEDEL. That may be also included in the record at this time.

(The statement referred to follows:)

STATEMENT OF JAMES K. KNUDSON ON BEHALF OF THE WATERWAYS, BULK TRANSPORTATION COUNCIL, INC.

My name is James K. Knudson. I appear on behalf of the Waterways, Bulk Transportation Council, Inc., whose business address is 21 West Street, New York, N.Y. I am an attorney and a transportation consultant of the firm of Eisen & Knudson with offices in Washington, D.C. and New York City. I once had the honor of serving as a member of the Interstate Commerce Commission and was also concurrently Administrator of Defense Transportation during the Korean war. As a Government official I had occasion to study, investigate, judge the merits of, and learn to appreciate all the parts of our great transportation system, including domestic water carriers of this country, and also of some other countries.

Before serving on the Interstate Commerce Commission and as Defense Transport Administrator, I served as Commerce Counsel for four different Secretaries of Agriculture, in which capacity I appeared in many cases, including water carrier cases, before the Interstate Commerce Commission and other regulatory tribunals and courts in which the welfare of the farming community was involved and there learned how intimately bound up agriculture has become with transportation and particularly with the so-called exempt carriers, including the carriers of dry bulk commodities on our domestic waterways.

After leaving the Government to practice transportation law, I was called back twice, once to serve as Director of a Transportation Task Force for the Hoover Commission, second as a consultant to the U.S. Army Transportation Corps.

Academically, I am trying to keep abreast of the major developments by teaching transportation in the School of Transportation of the (YMCA) Southeastern University and as contributing editor to a number of transportation journals.

Numbered among our clients are shippers, motor carriers, water carriers, "piggy-back" and "fish-back" operators. We represent both regulated and nonregulated carriers.

I venture these personal details only for purpose of qualification.

My appearance today will be, of course, devoted to an effort to convince this committee that, from a public interest standpoint and from a technical regulatory standpoint, the "dry-bulk" exemptions of the Interstate Commerce Act should not be repealed, modified, or otherwise abrogated as is proposed.

I shall endeavor not to duplicate the approach to the subject taken by other witnesses but to develop certain technical, regulatory, and legalistic public interest features of the issue.

As I understand it, you have been asked to enact repeal legislation that will have the effect of requiring regulation of the great preponderance of water carriers of this country who, in terms of numbers, have been hertofore exempt from regulation. The major question that you will have to decide is whether the public interest requires Government regulation of these presently exempt carriers.

The burden of proof shall be upon the proponents of repeal to demonstrate unequivocally that they represent the public interest. Unless this can be done, there is no foundation upon which the legislative process can rest in an undertaking of the kind you are asked to pursue.

With the foregoing by way of qualification and introduction, I should now like to develop four pertinent points, namely:

1. There should be no regulation of transportation for regulation's sake but only in the public interest.
2. The regulation of the "little" (exempt) water carriers will produce intolerable burdens that many will not be able to survive.
3. Regulation of the dry bulk carriers will bring cartelization of this segment of the industry in its wake, diminish competition, and reduce the availability of low-cost water transportation.
4. The repeal of section 303(b) will place the Congress in the position of enacting class legislation of the most grossly discriminatory kind.

1. To repeal the bulk commodity exemption would be contrary to the long-standing legislative policy of avoiding regulation for regulation's sake in the transportation field and utilizing regulation only to meet specific abuses of the public interest.

In the statement of Mr. David Wright, speaking for the Waterways Council, facts and circumstances are set forth demonstrating that no overriding public interest is being damaged because of the exemption of carriers of bulk commodities on the inland waterways from Interstate Commerce Commission regulation. To be sure railroads and large regulated water carriers constitute part of the public but their interest is not overriding. Accepting this premise, in which I concur, on my knowledge of the facts, it would be a sharp departure from the legislative policy that the Congress has historically followed for it to extend regulation in this hitherto unregulated area of transportation in order to meet the asserted needs of the major proponents.

Government regulation of anything in a democratic society has only one reason for existence—the public interest, or as the Congress has otherwise expressed it, to meet the public convenience and necessity. If regulation ever loses that identity or falsely assumes it, the government that sanctions the regulation has either become autocratic or socialistic.

This question of public interest can be measured by the yardstick of history, which has given great impetus as times to legislative undertakings both to impose and to remove Government controls over business. All of us have elected to follow one or another of the economic doctrines that have been promulgated through the years. Governmental controls are not a new thing in the world. As far back as the days of Charlemagne in 814 the law had become fixed so that no one could sell his goods at a higher price than that which had been declared in times of abundance or times of scarcity. In the days of Thomas Acquinas in 1274 all conceptions of price could be summarized in two words "just price." This is where we obtained the word "just" that is now in the Interstate Commerce Act in the section dealing with "just and reasonable' rates. During the days of England's great colonial expansion the control of prices was looked upon as an instrument of economic warfare. But the patron saint of most moderns who believe in an absolute minimum of Government controls over any kind of private business is Adam Smith, who believed in a free competitive market as the ideal or natural market. He decried all regulation' by Government. His was a beguiling philosophy and one that should be reviewed occasionally. Just how this approach is to be reconciled with the recommendation to put the water carrier industry under more strict controls is difficult to perceive. However, there are, on the other hand, those who believe with John Stuart Mill that it is a complete mistake to assume that competition can be the exclusive regulator of the economic affairs of the world and those who subscribe to his theories will agree that Government regulation, at times, is advisable.

Other economists such as Alfred Marshall reached the conclusion that competition would produce those forms of business enterprise best adapted to their environment—a truckline or a railroad or a waterline for instance, but he went on to say that the fact that they were best adapted to their environ-

ment did not mean they were the most beneficial to their environment. He thought of free competition as a workable factor but not necessarily the best possible way of life.

It seems to be safe to say that, as far as the Congress of the United States is concerned in its approach to the enactment of regulatory type statutes, there has been a genuine amalgam of economic thought devoted to the problem but that the end result has reflected truly a valid cross section of public interest. It is as Chief Justice Marshall stated in *Gibbons* v. *Ogden*, the pioneer case in interstate commerce, 9 Wheat. 1, 6 Law ed. 23, at 195:

"It is the power to regulate; that is to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States. *The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at election, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.* [Italics ours.]

There is in regulation of industry by Government a fitting time and place element. The time was fit in 1887 for railroad regulation; in 1935 for truck regulation, in 1938 for air regulation, and in 1940 for partial water carrier regulation, and the record in each instance will so prove. Until the public need for regulation is proved none of the foregoing reasons for exerting Government controls come into play. Laissez faire is not an evil doctrine per se. It is only bad when the public interest suffers; adding a regulating control is only justified when the public interest is suffering.

There have been times in this country when it was necessary and advisable for this august body to enact regulatory laws to protect the public interest.

You did so in 1887 when railroads were running riot with discriminatory practices, speculative orgies and rate rebates, which not only became a public evil but threatened the welfare of the railroads themselves.

You strengthened this legislation, in the public interest, in 1903, and in 1906 because the courts had emasculated the original Interstate Commerce Act. In legislation that still bears the names of great Congressmen—the Elkins Act of 1903 and Hepburn Act of 1906—you dealt forcefully with rate discriminations and deviations from public tariffs and gave the Interstate Commerce Commission authority to prescribe maximum rates for the future, and otherwise regulate the railroads.

In 1910, because of a resurgent public outcry and a demonstrated public need, you passed the Mann-Elkins Act, which gave the Commission authority to suspend and investigate new railroad rate schedules.

Three important additions were made to railroad regulatory legislation during the period between the enactment of the Mann-Elkins measure and the beginning of Federal control on January 1, 1918. The first of these was the Panama Canal Act, approved in 1912, which forbade railways to continue ownership or operation of water lines when competition would thereby be lessened. This provision was designed to prevent concentrated control of ship lines by rail companies. Jurisdiction was conferred upon the Commission to determine the fact of such competition and to allow continuance of vessel operations by railways under certain conditions. The Panama Canal Act further empowered the Commission to require equal treatment of water lines by rail lines, and to require through physical connections and to establish through routes and rates for combination rail-water movements.

The second addition was the Valuation Act of 1913. An authoritative valuation of the carriers' property had been the subject of much discussion after the decision of the Supreme Court in *Smyth* v. *Ames*. But by many it was regarded as a necessary requirement for effective regulation.

A third regulatory measure was the Esch Car Service Act of 1917. The purpose of this statute was to alleviate traffic difficulties, particularly car shortages

(we are still hearing about those) and congestions, which became of serious proportions with the increase of traffic resulting from wartime conditions. The Esch Act gave the Commission authority to determine the reasonableness of car service rules and prescribe reasonable rules in place of those found unreasonable. During World War I you allowed the railroads to be taken over and operated under Federal control, again in the public interest, largely because the ability of the railroads to serve the public adequately at war under private management had broken down.

In each of these instances it was a specific public interest which was being currently abused that the Congress endeavored to serve and protect, and the legislative history of each of these acts will so show. There was widespread public support for all of these measures.

This same public interest philosophy was read into the Transportation Act of 1920 when it was found that the public interest also required attention to a fair rate of return for railroads, which was linked to a rule of ratemaking.

In the 1920 act, the Commission was also authorized to fix minimum rates and to bring intrastate rates into line if they discriminated against interstate traffic.

This legislation had the general backing of the public. Many of the organizations representing the shipping public that have spoken or which will speak on this record opposing repeal of section 303(b) supported the legislation that I have been talking about. The legislative history of each of these enactments will indicate that the Congress held fast to the concept that only undeniable proof of public need would warrant the enactment of regulatory controls.

Congress hewed closely to this ideal in other regulatory fields. It was only after demonstrated public need that there was enacted such regulatory laws as the Packers and Stockyards Act, the Pure Food and Drug Act, the Federal Reserve Act, and the Commodities Exchange Act, each of which was patterned upon the original Interstate Commerce Act.

Even during the 1930's, when public welfare as distinguished from the public need became emphasized, the Congress demanded categorical factual assurances of that principle to back up the need for such regulatory-type legislation as the Securities and Exchange Act, the National Labor Relations Act, and the Communications Act.

When the Motor Carrier Act of 1935 was enacted, there was a spontaneous demand for the legislation, not only by the railroads, who then saw the handwriting of competition on the wall, but dimly, but also by most of the motor carriers themselves and by many shippers who saw dangers in unrestrained competition. In an official Interstate Commerce Commission publication, "Interstate Commerce Commission Activities 1887–1937," a historical statement * * * published in connection with the observance of the 50th anniversary of the creation of the Commission, the Commission stated:

"In their attempts to enforce regulatory statutes, the States soon found that they were hampered by difficulties of jurisdiction with respect to the operations of motor carriers engaged in interstate commerce within their boundaries or across their lines. It was only natural, in the interest of effective regulation that the States should attempt to apply their motor vehicle laws to all vehicles operated within their borders. Their right to do so was soon challenged in the courts. A statute of Maryland which requires certificates of registration for all motor vehicles operated upon the highways of the State, the procurement of operator permits for the operation of such vehicles and the payment of stated charges for such certificates and permits was held by the Supreme Court of the United States to be valid as a proper exercise of the police power of the State.[1] The Court said that in the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others—and to that end may require the registration of such vehicles and the licensing of their drivers for reasonable fees.

"Efforts to settle the many new questions in connection with use of the highways, routes, congestion of traffic, dimensions of equipment, load limits, etc., gave rise to conflicting decisions and regulations in the different States which caused increasing dissatisfaction to interstate operators. Many proceedings, therefore,

[1] *Hendrick* v. *Maryland*, 235 U.S. 610, 59 L. ed. 385, 35 Sup. Ct. Rep. 140 (1915).

came before the courts for definition as to the extent of the authority properly within State jurisdiction and that lodged with the Federal Government. Outstanding decisions of the Supreme Court were those of *Buck* v. *Kuykendall*, 267 U.S. 307, 69 L. ed. 623, 45 Sup. Ct. Rep. 324, and *Bush & Sons Co.* v. *Maloy*, 267 U.S. 317, 69 L. ed. 627, 45 Sup. Ct. Rep. 327 in 1925, upon certain restrictive laws of the States of Washington and Maryland, respectively It was held that appropriate State statutes adopted primarily to promote safety upon the highways and conservation of their use are not obnoxious to the interstate commerce clause of the Constitution, where the indirect burden upon interstate commerce is not unreasonable, but that statutes requiring common carriers by motor vehicle operating over State roads to obtain certificates of public convenience and necessity were unconstitutional as applied to such carriers engaged exclusively in interstate commerce, because such laws regulated not merely the use of the highways but the persons by whom the highways may be used and thus regulated interstate commerce; that the effect of such regulation is not merely to burden interstate commerce but to obstruct it. Other decisions of the same import rapidly followed. Even where highways have been built with Federal aid, the same principle was applied. In *Bush & Sons Co.* v. *Maloy*, supra, the Court said that Federal-aid legislation in this connection was of significance because it made clear the purpose of the Congress that State highways shall be open to interstate commerce. The effect was to render such State action ineffectual in the absence of parallel Federal regulation, and to make the State commissions vigorous proponents of Federal regulation of motor carriers in interstate commerce.

Where is there public interest of such intensity, substance, and sweep underlying the recommendation to repeal section 303(b) and put hundreds of water carriers under regulation?

Consider next, if you will, the circumstances that led to the enactment of the Civil Aeronautics Act of 1938—the next regulatory act, in times of any consequence affecting transportation. One of the keenest students of this act has said that—

"A limited air traffic potential and the relative ease with which, at the time, new concerns could enter the industry, produced the competition and economic instability among the smaller operators that characterized the industry in the years just prior to the passage of the act of 1938. At the same time, the operational advantages of large aircraft and the importance of a high utilization of available plane space were creating an ever-tightening core of oligopoly within the industry; that is, only a small number of airlines were doing the greater part of the business between the chief traffic-generating cities. Such a development was advocated by the major lines as the cure for the ills of destructive rivalry. This cure was, however, but another illness, for in it lay the germs of monopolistic inefficiency, lessened emphasis on improved technology and reduced cost, and the maintenance of inflexible rate schedules. To cope with this abnormal situation—the existence of cutthroat competition and oligopoly in the same industry—the type of regulation introduced by the act of 1938 seemed imperative if air transportation was to develop and become an important part of our national transportation system" (from "Commercial Air Transportation," Frederick, pp. 174–175).

There is no situation paralleling the foregoing insofar as the dry bulk carriers on our waterways are concerned. The Commission talks about its inability to "stabilize" the water carrier industry—but where is the proof of the instability? What public interest is there aroused or demonstrable that is exerting justifiable pressures on the legislative process to have something done about an allegedly existing evil? Where is the evil? How does it manifest itself? Who is being hurt? Who is benefiting unjustly? These are but a few of the basic questions that must be asked and answered in circumstances such as those with which you are presently confronted, before you are authorized in the democratic process to act.

And what is equally important for consideration is why the Commission has singled out dry bulk carriers for regulation. Why not liquid bulk carriers also? Why not lake carriers? Are these two types to remain unmingled from regulation and the dry bulk carriers to be placed under regulation? If so, what is the justification for such discrimination?

Beginning in 1934, as will be ascertained by checking the legislative history of the Civil Aeronautics Act, the air carriers themselves sought Federal regulation, realizing that the history of transportation demonstrated that the absence of such

regulation led to evils from which not only the public but the industry itself would suffer. It was in that year that the whole air transport industry was thrown into confusion when all Federal mail contracts were canceled because of alleged collusion between the mail carriers and post office officials and other abuses. Also, since the act of 1926 had been passed before air transportation of passengers and mail developed into a business enterprise, there was a growing sentiment that the law had become outmoded, particularly because it made no provisions for the regulation of services, rates, and charges of common carrier airlines.

There is not, I repeat, a parallel situation existing in this year of 1961 with respect to the hundreds of small water carriers of dry bulk commodities who are getting along well and serving the public well and in whose presence other carriers are also doing well.

This brings us to the Water Carrier Act of 1940, as it sometimes is called, or rather to the Transportation Act of 1940, in which title III, including section 303(b), was added to the Interstate Commerce Act. I shall not here duplicate in detail the recitations of legislative history of this act that have been given you by Mr. Wright and is fully incorporated in detail in the statement submitted by him entitled "Analysis of Legislative History of Section 303(b) of the Transportation Act of 1940."

Suffice it to say for my purposes, however, that this legislative history shows that Congress determined at that time, after painstaking and exhaustive study and deliberation and debate, that considerations of the public interest did not then warrant regulation of the dry bulk carriers.

It thus appears that, as distinguished from all of the other regulatory acts, there was a well-considered decision made by the Congress that enacted section 303(b) that the public interest did not warrant regulation by the Federal Government of dry bulk water carriers in 1940. There were other exemptions also.

The main question that you gentlemen of the Congress must decide now is whether changed conditions warrant the extension of governmental controls over another important segment of our national economy and a most important adjunct to our transportation community, which you have heretofore immunized from such controls, with good reason, good intentions, and public acquiescence.

As an ex-member of one of these regulatory agencies, may I say that one of the cardinal points that a regulator always looks for before undertaking to endorse or to justify an extension of regulation in rates, charges, or practices, is the changed condition. You should ask yourselves the same question here and now—Are there changed conditions warranting the repeal of section 303(b)—changed conditions since 1940?

The lakes, rivers, coastal waterways, and oceans over which these carriers operate are still basically the same as nature made them. They ebb and flow as they did when Adam ran for a figleaf. Man has improved somewhat on nature in the width, length, and depth of some of these water arteries. But, by comparison with nature's handiwork, man's improvements are puny, indeed.

The hauling vessels which, in terms of numbers, are for the most part nonself-propelled barges that ply the inland rivers and the sheltered coastal waterways and the self-propelled craft that operate on lakes and bays and oceans are still basically the same. There have been technological improvements, to be sure, but these have been but relative to other forms of transportation. That is to say, relatively speaking, the railroads are at no greater disadvantage as far as technological improvements are concerned than they were in 1940, for they have also made forward strides in technical operations.

The commodities that are hauled by these vessels, dry, wet, and packaged, are still basically the same—coal, fertilizer, sulfur woodpulp, iron ore, grain, sugar, molasses, petroleum and petroleum products, chemicals, et cetera. As a matter of fact there are only about three dozen commodities now handled by water carriers, whereas railroads handle thousands of items.

The type, kind, and class of users (shippers) are the same. To be sure, there are more of them but basically they are users who want, need, and can't get along without low-cost water transportation and who have found the dry bulk carrier to be the most economical form.

It is not going too far to say that in my opinion were the exempt dry bulk carriers to be regulated out of business as many of them will or if they lose their exemption, the big shippers of dry bulk will institute private carrier operations in order to take advantage of low costs and thus, the traffic that the rails hope to get by the repeal of the exemption would not go to them in any event. This

seems to me to be realistic thinking because big shippers are not going to stand by and see water carrier rates as they will be under regulation. Now, are they, the shippers, going to allow water services to disappear and thus have no holddown effect on the going rail rates?

The loading characteristics of the commodities are thhe same. There have been innovations in the way of improved marine legs, conveyor belts, lift devices, et cetera, but here also the developments are also relative to other forms of transportation.

What about the operators of the vessels—oil carriers are now hauling dry bulk commodities—have they changed? Yes, a few of the inland waterway operators have grown into sizable companies, but in the main they are still "small businesses" which, stripped of their freedom of enterprise would have a difficult time surviving in the big league competition into which they would inevitably be plunged. (I shall say more about this later.) They have varying degrees of fitness, willingness, and ability to serve the public. On the whole, it must be admitted, they are doing a more effective job than they were in 1940. But are they now to be shackled for having succeeded? Governmental restraints are ordinarily put on men for the evil they do—not for the good they accomplish—and there is no doubt but that the carriers of dry bulk commodities have rendered a very beneficial service to the shipping public both in the field of service and on holding rates of other carriers in check.

What about the comparative position of dry bulk carriers on the rivers and the lakes—has that changed? No, the dry bulk carriers still operate on a proprietary basis for steel companies on the Great Lakes in substantial part and haul coal northbound on their return journeys. They still compete with Canadian carriers in these hauls and more particularly in the grain hauls. They still offer the type of low-cost water carrier service with which no other carrier can hope to compete. These lake carriers bring upward of 85 million tons of ore down from the head of the lakes annually. What would happen, with the existing rail car shortages, etc., if this traffic load were suddenly to be dumped on the rail carriers by virtue of their being able to compete on a rate basis under regulation with these dry bulk operators. There would be a transportation crisis. The only changed condition on the lakes has to do with the enlarged capacity of the St. Lawrence Waterway. This has opened lake ports to trade on a larger basis and has increased the need for service by the domestic dry bulk carriers operating to such ports as Chicago, for instance. I can conceive of a situation whereby Canadian grain could arrive at lake ports under exemption and American grain being denied exemption would be that much less competitive in a world market.

The river and inland waterway carriers are otherwise in the same relative position with respect to the lake carriers that they were in 1940. Both have acquired additional tonnage, both use basically the same transportation techniques. The regulation of one, without the other would be gross discrimination.

And the alleged competing carriers—the rails and the regulated water carriers—or, better said, the water carriers who choose for their own dollars-and-cents purposes to be regulated—are they really hurt in any manner suggesting a change for the worse in their relative position? The railroads, generally speaking, have never been in a better physical condition than they are today. Their freight carrying plants are, with the exception of chronic car shortages, which, as I shall demonstrate later, makes in itself a valid reason for not repealing section 303(b), in excellent condition. Their bonded indebtedness is much less than it was in 1940. Their earnings are much lower, but according to your own chairman, Mr. Harris, there is not a crisis existing by any means. I feel sure that if railroads which parallel the momentum of the Mississippi River and who compete therefore with exempt water carriers were looked upon, that their financial status would not warrant the change sought in the law. Some of the large regulated water carriers who want repeal of the section are in good condition. None of them are in such shape that panic buttons have to be pushed.

I am firmly convinced that the kind of low-cost water transportation offered by the exempt water carriers cannot be matched by the railroads unless they are willing to and allowed to operate at noncompensatory rates merely to acquire the traffic once they get these carriers into position where their rates are also controlled. Once the public undertakes this possibility, there will be a sharp reaction to the proposal.

Consider a few specific examples of railroads that parallel some of the Nation's primary waterways. How are they faring?

[1940]

	Railway operating revenue (Acct 501) line 7 R & E	Railway operating expense (Acct 531) line 16 R & E	Net railway operating income (19, 20, 21) line 22 R & E	Ratios: Expenses to revenues (14÷7) line 23 (one decimal place required)	Net income (item 7 less item 8) from I.B.S. line 9	Total current assets (items 14 to 24) from I.B.S. line 24
Atlantic Coast Line	$50,087,984	$39,567,509	$3,757,234	79.0	$1,823,537	$13,890,875
Seaboard Air Line	48,490,966	39,270,764	4,404,333	81.0	4,973,349	12,029,635
Southern	105,905,395	72,870,181	21,457,294	68.8	7,352,072	34,997,496
Baltimore & Ohio	179,175,465	132,600,799	30,618,531	74.0	5,549,497	43,428,229
Pennsylvania	477,593,408	338,454,678	86,499,486	70.9	40,775,830	145,179,218
Illinois Central	114,266,410	85,966,279	16,865,461	75.2	880,130	27,167,109
Missouri Pacific	87,124,189	67,087,679	10,083,018	77.0	9,564,457	32,059,730
New York, Chicago & St. Louis	46,423,402	31,111,419	8,492,405	67.0	3,610,829	12,582,606
Atchison, Topeka & Santa Fe	170,003,639	129,656,637	24,017,625	76.3	12,745,371	79,476,787
Southern Pacific	177,117,783	126,679,829	26,751,574	71.5	6,730,944	60,501,166
Union Pacific	168,164,258	120,949,111	23,358,960	71.9	19,445,880	76,993,753
Gulf, Mobile & Ohio	18,701,182	14,298,788	1,505,525	76.5	604,345	5,784,421

[1960]

	Operating revenues	Operating expenses	Net railway operating revenues	Net income after fixed charge and other deductions	Total current assets
Atlantic Coast Line	$162,244,662	$130,444,485	$9,876,631	$10,576,423	$44,095,995
Seaboard Air Line	157,505,412	124,033,731	15,463,123	15,012,742	35,432,141
Southern	261,059,945	182,630,925	36,107,599	30,702,542	78,021,668
Baltimore & Ohio	389,402,595	320,224,235	15,107,156	2,611,646	90,213,188
Pennsylvania	843,705,224	698,677,208	4,227,190	(7,819,112)	190,696,638
Illinois Central	260,224,639	211,149,272	11,693,936	11,092,742	90,091,868
Missouri Pacific	297,260,777	228,127,039	30,941,499	11,837,934	96,819,755
New York, Chicago & St. Louis	149,251,106	106,938,970	15,285,254	12,030,800	59,974,581
Atchison, Topeka & Santa Fe	614,017,338	482,069,908	43,744,356	51,596,697	164,033,428
Southern Pacific	535,774,107	425,642,955	45,307,246	48,276,692	196,837,877
Union Pacific	494,184,464	359,741,036	32,835,294	65,312,512	200,578,075
Gulf, Mobile & Ohio	76,752,567	60,725,016	3,803,485	1,548,237	38,179,061

As you will note from these charted figures, in every instance the railroad is substantially, in some instances phenomenally, better off than it was in 1940. This is no personal conclusion of mine, unsupported.

In 1950 there was submitted to the President by the President's Water Resources Policy Commission,[2] a distinguished three-volume report on water policy. The report contains thoroughgoing and well documented conclusions, on many subjects, and with respect to the matter at hand says:

"The railroad argument does not recognize that:

"1. Low-cost water transportation through the stimulus that it gives to the general economic development of the area it serves, creates new traffic for the railroads, probably greater in volume and profitability than traffic diverted from the railroads to the waterways. The railroads have had no net loss of tonnage; on the contrary, traffic on the railroads paralleling our improved inland waterways has increased along with the growth of traffic on the waterways" (vol. I, p. 212).

I must conclude that it will be time enough to regulate the many hundreds of dry bulk carriers when their impingement upon the transportation economy is such as (1) to impair the efficiency or adequacy of other carriers necessary for our commerce or defense; (2) when they are indulging in ruthless, unfair, or unlawful trade practices that brand them as social and economic outlaws; (3) when the benefits of their services to the public in terms of low cost transpor-

[2] The members of the Commission were: Paul S. Burgess, Lewis Webster Jones, Samuel B. Morris, Leland Olds, Roland R. Reene, Gilbert F. White, and Morris L. Cooke, Chairman.

tation are genuinely met by the competition of other carriers operated in a manner so as to produce reasonable profits; (4) when the asserted need for regulation is not just a "cover" for the means of gaining economic advantage and transportation monopoly.

The sum total of comparative conditions, 1940 versus 1956, does not indicate, to me at least, that this time has come as yet.

It thus appears, gentlemen, that no matter how this subject is approached, it comes back to the basic fundamental consideration which, posed in the form of a rhetorical question, would be: "Does the public interest demand or command the regulation by Government of the presently unregulated part of the great water carrier industry?" Our answer, of course, is an unequivocal "No."

II. The extension of regulation to the little water carriers of dry bulk commodities will lay upon them intolerable burdens so that many will not be able to survive.

May I now address my discussion to the second point, namely, that the regulation of "little" water carriers will produce intolerable burdens that many will not be able to survive.

First, why do I call these carriers "little" water carriers? Because that is exactly what they are.

According to the table inserted in the record in connection with Mr. Wright's testimony concerning the "number of regulated and unregulated inland waterway barge and towing vessel operators and their floating equipment," it appears, according to figures of the U.S. Corps of Engineers for the year 1959, that of the approximately 1,498 nonregulated carriers on the inland waterways, the average number of towing vessels owned is 2.3, while the average number of barges owned is 7.8, or a total of 10.1 vessels per operator.

Thus, it will be observed that the average exempt carrier is an individual or small company owning a relatively small number of tows and watercraft whose size stands in sharp contrast to the large certificated common carriers who own vessels in the hundreds. This average exempt carrier, we may conjecture since accurate figures are nowhere available, will have an investment in capital equipment of approximately $300,000 and employ 15 to 20 persons. The businesses of many might be described as "family" business. They are not large stock companies. Their securities do not appear on any exchange and their access to capital is limited to their own and local sources of credit. They are truly small business in the sense that it is known and accepted in governmental policy-making circles.

When we speak of little carriers in this statement, we mean such carriers as Walter G. Hougland, Inc., a bulk exempt operator on the Mississippi River system. This company had its beginning in the early nineties when Capt. Walter G. Hougland bought the gasoline powered MV *Calista*. Captain Hougland, a farm boy from Booneville, Ind., had gone to work at the age of 14 as a cabin boy on steam packet boats operating on the Ohio and Mississippi Rivers. He soon became a deckhand and coal passer and was licensed as a mate upon reaching the legal age of 18 in 1887.

He used the *Calista* for the transportation of passengers, mail, and cargo from the railhead at Livermore on Green River in Kentucky to nearby communities isolated to all forms of transportation except water.

Surviving records show that between 1900 and 1920 he owned the steamers *Ned I. N. Nook*, *Red Star*, *Reliance*, *Resolute*, and possibly one or two others. These towboats were used with a fleet of 100-foot wooden barges for the transportation of crossties, lumber, coal, and occasionally grain from origins on the Green River and its tributaries to Owensboro, Ky., Rockport, Ind., Evansville, Ind., Paducah, Ky., Nashville, Tenn., and St. Louis, Mo.

One historic trip was made with the steamer *Norwood* with cargoes from Cincinnati and Louisville to New Orleans. Upon arrival at New Orleans Captain Hougland secured cargo for the return trip and then discovered that the *Norwood* did not have sufficient power to push its loaded tow upstream in the Lower Mississippi River. It was therefore necessary to install larger machinery on the boat before the return could be made.

In the early thirties the older towboats were disposed of and a new fleet was built to be used exclusively in towing rock asphalt from mines at Kyrock, Ky., to a processing and distributing plant at Bowling Green, Ky. These towboats moved about 800,000 tons of this material in each of the next 8 or 9 years.

In the early thirties rock asphalt lost its competitive position as paving material and it became necessary to secure other employment for the fleet. A small diesel towboat was built at the company's shipyard at Calhoun, Ky., and other

diesel boats were built for the company by Howard Shipyard, Jeffersonville, Ind., and Nashville Bridge Co., Nashville, Tenn. These vessels together with the two remaining steamboats were used variously for towing rock to riprap sites on the Ohio River, sand and gravel for construction of Joe Wheeler Dam on the Tennessee River and other similar bulk movements.

What immediate burdens of regulation would fall on these hundreds of "little" carriers if the bulk exemption were repealed? I will describe them briefly:

ICC water carrier regulations, that is, the "do's" and "don'ts" and "mays" and "musts" published by the Interstate Commerce Commission under its limited authorization to control the domestic water carriers that are subject to regulation, occupy about 35 pages of very fine print. The regulations include:

1. Fixed and detailed obligations to file annual reports.
2. The necessity for contract carriers to formalize exempt transportation requests by filing specific and detailed application for such exemptions.
3. The necessity for all new carriers seeking operating rights to file detailed applications therefor.
4. The necessity for all regulated carriers in being who seek to institute new operations or to revise present operations, to file detailed applications therefor.
5. Compliance with certain specific notice provisions whereby all potential competitors in the States affected, et cetera, must be told by the applicant of its ICC filing.
6. The necessity for filing detailed applications to cover extension of operations.
7. Observance of rules relating to harbor limits.
8. The filing of applications to operate over uncompleted portions of waterways over which a carrier is authorized to operate.
9. The filing of joint applications by transferee and transferor in the event rights are to be transferred.
10. Documented representations supported by many exhibits, et cetera, where there is a sale of rights to a noncarrier.
11. Where the sale is to or the merger is with another carrier, compliance with complex regulations relating to section 5(2) of the act come into play. (These are demanding to the point where scores of pages and intricate detailed documentation, explanations, assurances, et cetera, are involved.)
12. Allowances for releasing freight in advance of payment of charges.
13. Provisions for obtaining surety bonds from shippers whose credit rating is questionable.
14. Provisions to extend credit.
15. Provisions requiring carriers to present freight bills on schedule.
16. Provisions for delaying collection of demurrage charges.
17. Time provisions for filing tariffs.
18. Provisions as to the size of tariffs.
19. Provisions for the filing of tariffs on short notice.
20. Provisions for having carrier agents file tariffs.
21. Provisions for changing tariffs or filing supplements.
22. Multifarious provisions as to contents of tariffs, having to do with indexing, participating carrier part points and places, abbreviations, typography, arrangement, cancellation of items.
23. Provisions as to special permission to publish tariffs.
24. Provisions as to short notice.
25. Applications for waiver of rules.
26. Provisions as to giving power of attorney to agents.
27. Provisions as to rejection or revocation of tariffs.
28. Provisions as to filing schedules of contract carriers.
29. Schedules required to be in book form.
30. Provisions as to time for filing schedules.
31. Provisions for affecting changes in schedules.
32. Provisions requiring tables of contents and indexes in schedules.
33. Complete explanation of actual minimum rates and charges maintained.
34. Provisions for posting schedules with carrier agents.
35. Provisions for short notice, waiver of rules, et cetera.
36. Provisions for contract carriers to get exemptions to tow floating objects, haul oil field equipment, etc.
37. Provisions to get certain small craft (vessels under 100 tons) removed from regulation.
38. Provisions for competitive bids on securities under Clayton Antitrust Act.

39. Provisions for uniform systems of accounts for regulated carriers.
40. Provisions for classifying carriers.
41. Provisions for preservation and destruction of records including (a) permission to destroy, (b) preservation by photography, (c) who may destroy, (d) certificates of destruction, (e) committees for destruction, (f) methods of destruction, (g) duplicate records, (h) periods of retention.

I am sure that most of us are inclined to the idea that regulation is just a big, round, fat word that means something less specific than all of these onerous details that go along with regulation. And the foregoing is just a résumé of some of the regulations that would circumscribe the doings of these carriers if they become regulated.

In operation these regulations take on genuine proportions. For instance, suppose you are a small carrier regulated and want to sell your equipment and rights to another carrier.

1. You file an application which is of such a nature that in its documentation you must hire a lawyer and an accountant to work on it.
2. You notify all of your potential competitors and the Governors of the States in which the seller and buyer operate.
3. If the application draws protests, which it inevitably will, or even if it doesn't and the ICC thinks best, it is set for hearing before an Examiner.
4. The burden is upon you, the applicant, to make your case. The Examiner can sit and wait for you to do so. If you fail, you lose.
5. You hire a lawyer and produce witnesses, experts, and laymen, whose expenses you bear—out of pocket and fees. From 1 to 10 or more lawyers from railroads and other water carriers show up at the hearing to examine your witnesses and produce a coterie of their own. The techniques of the opposing lawyers is to belittle your claims and to exalt their counterclaims. The hearings may last for a day, a week, or a month. You must buy the transcript of record, let your business run itself and stay on deck while the hearing is in motion.
6. If the Examiner orders it, which he usually does in water carrier cases, a brief is filed by you and all opponents to "assist" the Examiner in preparing a proposed report. The brief requires the lawyer who prepares it to make an abstract of the transcript and to search out and cite all applicable law.
7. When the Examiner files his proposed report, several months later, it is subject to exceptions and replies to exceptions. Ordinarily your lawyer will file both to protect your interest.
8. The case is then submitted to a division of the Interstate Commerce Commission. The Division may or may not set the case for oral argument. About 4 months later, after the Division has heard argument, if it decides to do so, a Division report and order is issued. If these are favorable you rest and your opponents file a petition for reconsideration and/or oral argument within 30 days. If the report and order are unfavorable you file a petition for reconsideration and/or oral argument within 60 days. Both sides reply to the other's petitions.
9. If the case is argued, your attorney comes to Washington with such retinue as you may be able to afford to send.
10. If the case is not argued the petition for reconsideration may be granted or denied. If it is granted, the Commission will ordinarily put out a new report and order overriding the Division. If it is denied, a simple denial order will inform you of your misfortune.
11. If there is an error you can take the matter to court for judicial review. There are three courts in most instances to go through, sometimes only two depending upon the statute you invoke.
12. The Interstate Commerce Commission proceeding will cost you from $10,000 to $100,000 depending on the number of witnesses, the number of pleadings and the number of lawyers you have to bring in, file and employ. It will take a minimum of 12 months, usually 18, to put the case through the Commission. If you go to court it is "double or nothing" in terms of time and expense at least.
13. Meanwhile your business is suffering because neither your help nor you nor your patrons know what the outcome is going to be and they all "run for cover" as it were.

Now the foregoing is just a bare description of the procedure in a transfer-of-rights case. Essentially the same routine is followed in extension of rights proceedings, a rate case, or an investigation set at the motion of the Commis-

sion for alleged violations, etc. The only way to cover the variable expense items that arise in connection with such matters is to increase your traffic load. Since you are now a regulated carrier that is easier said than done because just about every means of doing so is controlled by such circumstances as I have outlined. There is competition, to be sure, but it is controlled competition and in such circumstances "the big carrier" has a potent initial advantage.

Not only would the repeal of the bulk commodity exemption require these numerous small water carriers to submit to a full course of regulation by the Interstate Commerce Commision, but they would have, in the first instance, and as a condition precedent to lawful operation, to obtain a certificate of convenience and necessity as a common carrier or a permit as a contract carrier in order to be able to carry on operations at all. This would be done under the "grandfather" clauses which would enable the exempt carriers who operated as common carriers or contract carriers to secure certificates or permits authorizing those operations and only those operations which the carrier engaged in on the "grandfather" date. This certificate or permit would fix the outer limits of the carrier's operating authority, would define the routes, ports of call, and the commodities that could be carried. It would freeze the operation based on the narrow period around January 1, 1961.

As a practical matter, in this industry where flexibility is of the essence, the heretofore unregulated carriers would thereby not only be deprived of any opportunity for change or growth, unless it was endorsed by the Interstate Commerce Commission, but also would be placed in an untenable economic position. For example, a particular contract carrier may have been operating under contracts for the past year which required only transportation directly from Memphis to New Orleans. Next year it may be that the shipper with whom he has been dealing, or a new customer, will desire that the carrier call at some inbetween port. The permit, under the "grandfather" clause, would only permit transportation directly from Memphis to New Orleans and the contract carrier would be forced either to give up the business or to file an application and go through the procedural hoops that I have described above herein.

Similarly the contract carrier's business on January 1, 1961, may have been such that he only transported certain commodities during that period, wholly apart from seasonal variation, although the prior years he had a history of transporting all exempt commodities. The proposed legislation is framed to limit a carrier to transporting only those commodities which he was transporting on January 1, 1961, thus squeezing him out of what had been historically a part of his business. Again, the contract carrier's business may have been such that for the period in question either he found it profitable, under the particular contract he had entered into, to come back from New Orleans to Memphis without cargo, or more likely, he could not, during that brief period, obtain any business on the return route from New Orleans to Memphis. Despite the fact that he had operated over the years carrying cargo in both directions, under the "grandfather" clause he would be shut out.

Not only would the "grandfather" clause drastically limit the carrier's rights, as a historical matter, but the carrier would probably have a very difficult time in obtaining the rights to which he would be entitled under this narrow grant of authority. Under the existing law and Interstate Commerce Commission regulations all water carriers who operate over the same route or routes, or a portion thereof, and any rail or motor carrier which conceivably was a competitor, would be entitled to intervene and be heard in connection with the carrier's application for the certificate or permit and, although "grandfather" rights' applications do not customarily involve the same complexity or quantum of litigation that subsequent applications involve, they are contested and they do involve production of witnesses, traffic data, etc. which some small carriers may find it difficult to produce. It is conceivable that if these carriers were to become enmeshed in the I.C.C. procedure and have to face the opposition of a battery of experienced opposition counsel, well versed in the art of delay, the newly regulated carriers would find themselves in a sort of economic limbo. They would be able to expand only if they could prove their initial rights and their expansion problems would be difficult indeed. Entering into firm contracts for any substantial period of time, acquiring new equipment, financing their operations, all would be enshrouded in various degrees of difficulty until the operating rights were established with certainty assuming, arguendo, that the carrier could afford to defend its rights and acquire the "grandfather" certificates or permits in the first instance.

In passing, I wish to point out that unless the seasonal service proviso in the common and contract carrier "grandfather" clauses, proposed to be added to section 18, will take care of the difficulty, the date of January 1, 1961, is an exceedingly unfortunate date for the reason that many of the waterways over which carriers operate are frozen up on that date, stopping operations completely and entirely. As I read the seasonal service provisos it doesn't necessarily take into account this circumstance.

What the little carriers are worried about is that new entries into inland waterway transportation or extensions of existing entries would be substantially eliminated by the proposed legislation. They would not be able, in other words, to offer low-cost water transportation on the basis of open and uncontrolled competition in the future. In view of the established position of the members of the dry bulk conference, that is the big carriers, who virtually blanket the waterways with certificated rights, and in view of the history of their repeated interventions and oppositions in the obtaining of competitive rights by other carriers, and in view of the delays and costs involved in attempting to secure new rights in proceedings before the Interstate Commerce Commission and the courts where necessary, the existing exempt carriers look with great misgiving upon the prospect of regulation. Few inland water carriers begin operations with funds, the time, the professional talent which are necessary to indulge in protracted regulatory litigation. When a carrier can operate on an unregulated basis while it is in quest of such rights, it at least has the means of securing revenue during the period of delay and litigation.

The entrenched carriers with large sums of money available to them unquestionably would have field days debating the availability of traffic and revenues, while the new applicant, who may have made studies fully sufficient to satisfy a prudent businessman, will find that the cost of rebutting the professional witnesses and the delay involved is more than he can afford.

Shippers have a tendency to commit themselves to do business with carriers who can perform services on a going basis and not with those who must seek or obtain new or extended rights. The shipper, meanwhile, will seek other means of transportation even though it may be more costly or less convenient. It is impossible to obtain operating rights on the basis of proffer of lower rates, for the Commission has outlawed this approach to the shipping community. Thus the applicant's business vanishes during the period of delay required to obtain new or revised rights.

The President's Water Resources Commission, to which I have referred, has made this finding with reference to the fate of the small water carrier before the Interstate Commerce Commission:

"Under certificate and permit provisions, very similar to those applying to motor carriers since 1940, the Commission has been liberal in granting operating authority to domestic water carriers in 'grandfather' cases, but in recent years largely has closed the door to the small businessman who would seek to enter the regulated common carrier water transport field. A petition presented to the ICC for such a certificate is invariably followed by lengthy litigation, a series of hearings in different cities, further hearings, compilation of additional evidence, and presentation of testimony, all of which costs so much that many small businessmen are fearful of making the gamble.

"Most water lines do not have the wide and diversified range of traffic enjoyed by the railroads and generally cannot afford the time and expense entailed in uncertain rate litigation before the Interstate Commerce Commission, whereas the railroads severally and jointly have legal and technical staffs quite well prepared to engage indefinitely in a lawsuit over rate matters. The result usually is that bargelines turn away from the prospect of such litigation and prefer to stick to uncontested traffic. Representatives of the bargelines maintain that if proceedings before the Commission were not required or were simpler and conducted against more specific standards, the bargeline industry would be more aggressive in expanding its traffic, thereby increasing the tonnage and variety of traffic on the river system. The benefits of cheaper water transportation resulting from the large expenditures of public funds on the improvement of channels would flow in an increasing volume to an expanding segment of the shipping public" (p. 433).

The repeal of the dry bulk exemption would carry in its wake all of the foregoing difficulties. These difficulties would be compounded by proposed amendments to other sections of the Water Carrier Act which apparently have been designed to go hand in hand with the dry bulk carrier exemption by those

who framed the legislation. It might even be said that they "framed" the water carriers as well.

III. The repeal of section 303(b) would be enactment of class legislation of the most discriminatory type.

May I pass now to point three in this discussion; to wit, that the repeal of section 303(b) would place the Congress in a position of enacting class legislation of the most grossly discriminatory kind.

We recognize that class legislation though bad per se may at times be necessary. It has become so with respect to many fields of our national, social, and economic life. Exemptions in laws such as the Interstate Commerce Act are one manifestation of class legislation and there are examples in all titles of this act. In the legislative process, the "class" that is unduly favored by legislation is soon discovered and exposed and the legislation is repealed if it is not right in the first place. But, if the personalized law thus made has good reason to continue to exist, the public ordinarily does not demand its change. The dry bulk exemption was right ab initio. The public is not demanding a change.

The repeal of the bulk carrier exemption proposed by the railroads, a few water carriers, and the cabinet committee has no underlying public pressures requiring the repeal. There are no widespread complaints or righteous indignations concerning it. A few railroad presidents who waited on the administration contended in 1954 that the railroads were in financial trouble and that something ought to be done about it, so an advisory committee was set up and this committee gave birth to the idea that one way to help the railroads is to hamstring the water carriers. This is proposed class legislation of the boldest variety.

In title I of the Interstate Commerce Act, that is the part dealing with regulation of railroads, we find exemptions and exceptions having to do with—

1. Free passes for ocers, agents, and employees and their families;
2. Free or reduced rates for the benefit of Federal and other governments;
3. For charitable purposes;
4. For fairs or expositions;
5. For disabled soldiers;
6. For ministers of religion;
7. For military personnel;
8. For seeing-eye dogs;
9. In case of floods, fire, famine, etc.

Since the railroads are by nature and inheritance common carriers and since regulation affecting them was carried over from the common law they, themselves, have never been as exemption conscious or felt need of special exceptions, such as have been granted to other types of carriers, which I shall now talk about. This probably accounts for their desire to have the exemption affecting dry bulk water carriers removed. The railroads have few problems of entry since they reached the peak of their trackage in 1910. Their main problem in the area of public convenience and necessity is to be allowed to abandon unprofitable branch lines. The water carriers are not opposing the legislation that will give the railroads more freedom of action in this field.

In part II of the Interstate Commerce Act, which deals with the regulation of motor carriers, there are exceptions or exemptions relating to the interstate operation of—

1. Private carriers,
2. School buses,
3. Taxicabs,
4. Hotel vehicles,
5. National park vehicles,
6. Farm vehicles,
7. Cooperative association vehicles,
8. Vehicles carrying livestock,
9. Vehicles carrying fish,
10. Vehicles carrying unmanufactured agricultural commodities,
11. Vehicles carrying newspapers,
12. Vehicles operating to and from airports,
13. Some commutation services between municipalities,
14. Casual or occasional reciprocal transportation,
15. Carriers operating wholly within a single State.

Part III of the Interstate Commerce Act, which contains the regulatory laws relating to water carriers, in addition to the dry bulk carrier exemption, with which we are here concerned, has also the following exemptions or exceptions from regulation:

1. Furnishing of vessels under charter for use in private carriage.
2. Water carriage to Puerto Rico.
3. Vessels passing through international waters for navigation purposes.
4. Transportation of liquid cargoes in bulk, in tank vessels.
5. Transportation of passengers between points in the United States via foreign ports.
6. Contract carriers not competing with rails, motor carriers, et cetera.
7. Railroad and motor carrier water carriage, such as the use of car ferries, lighterage, towage, et cetera, incident to part I and part II of the act.
8. Local pickup and delivery service.
9. Transportation within harbor limits.
10. Transportation by small craft (under 100 tons).
11. Private carriage.
12. Intrastate commerce.

I wish to place particular stress on the exemptions relating to liquid cargoes in bulk and to the exemption relating to vessels passing through international waters, since these exemptions are related to the dry bulk exemption, which is recommended for repeal.

Part IV of the act relating to freight forwarders also contains exemptions and exceptions from regulation, it being expressly provided that the provisions of this part are not to apply to—

1. Service performed by or under the direction of a cooperative association.
2. By a federation of cooperative associations.
3. By a forwarder where the services performed have to do with ordinary livestock.
4. Where the services rendered have to do with fish.
5. Where the property consists of agricultural commodities.
6. Where it consists of household goods.
7. To the operations of a shipper or group or association of shippers in consolidating or distributing freight for themselves or for the members thereof on a nonprofit basis.
8. To the operations of a warehouseman or other shipper's agent in consolidating or distributing pool cars.

There isn't a single one of these exemptions or exceptions in any of the four parts of the act that does not have an effect on the total community of transportation interest that the balance of the act encompasses or specifically upon the other types of transportation. Who is to say, for instance, whether the railroads are not suffering as much by furnishing free transportation to their employees and their employees' families as they are by a diversion of a little dry bulk traffic to the unregulated water carriers? I personally have been on railroad passenger trains when most of the people in the car have been traveling on passes. It is a notorious fact that the railroads are running hundreds of millions of dollars a year into the red in operating their passenger carrying services. This committee should ask itself whether the several hundred small water carriers should by placed under regulation in order to succor the railroads who would be in good condition were it not for the passenger department deficits that hang around their collective necks like the well-known millstone.

Or, take the agricultural exemption. There are thousands of itinerant trucks in this country hauling raw agricultural produce. The peach crop of Georgia could not be harvested on time without the assistance of these trucks and much of agriculture's perishable produce would be handicapped in its movement to market were these exempt carriers not available. Of course there are abuses, but by and large the exempt carrier performs a necessary service for agriculture. Unless and until the railroads and other common carriers can render effective service for these exempt carriers it is poor policy to talk about restricting their operations by Government controls.

This committee should ask itself whether, in this attempt to knock out exemptions, it will be fair to repeal the exemption relating to dry bulk carriers and thereby stultify the operations of several hundred small water carriers and at the same time leave intact the exemptions relating to the transportation of agricultural produce by motor carrier. The farming community, to be sure, is bigger and more powerful in a legislative battle than the water carriers but

what about the principle of the thing? And what about the fact that these water carriers also move many agricultural commodities also?

The two most glaring inconsistencies proposed have to do with the repeal of the exemption relating to dry milk transportation and the continuance in effect of the exemptions relating to liquid commodities and the dry bulk carriers operating on the Great Lakes. One is tempted to ask whether lake water is any holier than river water or whether petroleum and liquid chemicals are more politically potent than grain or coal or iron ore in the legislative scheme of things.

In the minds of several hundred dry bulk carriers there would be discrimination of the grossest kind and class legislation of the most indefensible kind occur if the Congress were to repeal section 303(b) and leave standing all of the other exemptions in the Interstate Commerce Act, particularly those upon which I have laid stress.

The committee might also ask the question: Where is this trend toward the lifting of the exemptions going to stop? This year we are asked to raise the exemption on dry bulk commodities. Next year it will be liquid commodities, the year after that farm commodities or fish or disabled soldiers or transportation by small craft and so on, ad infinitum. Where will you stop once you start?

It will be demonstrated by these small water carriers and their supporting witnesses before this proceeding is closed that it will be setting an exceptionally unjust precedent for the Congress to repeal the dry bulk exemption. Several shippers of coal, iron ore, grain, fertilizers, and other commodities will tell you why this is so. From my vantage point as a transportation consultant I believe repeal at this time is unwise and unnecessary.

IV. Summary.

In summary the position of these several hundred small carriers of dry bulk commodities with respect to the proposed legislation is that:

1. That public interest, and particularly the shippers' interest, is being and will be better served by them as carriers exempt from Federal Government regulation in that they are, by virtue of the existing exemption, able to offer to the shipping public the lowest cost and the lowest priced transportation for the commodities that they haul.

2. The imposition of Government controls will burden, handicap and stultify their services in a manner that will actually injure the shipping public that has come to rely upon these carriers by subjecting them to rules, regulations, and practices that will have the inevitable effect of raising the costs of operation and consequently the prices of transportation to the shipping public.

3. The pattern of discrimination that will be established by the repeal of the dry bulk exemption will not only ruin the going dry bulk operations but will set a precedent to eliminate other exemptions that will disastrously affect large communities of interest such as agriculture, the petroleum industry, the fishing industry, etc.

It is accordingly respectfully requested that this honorable committee and all other units of the Congress that deal with this matter give serious and considerate attention to these representations and allow section 303(b) to stand as it is in the law.

Mr. FRIEDEL. Floyd A. Mechling, vice president, A. L. Mechling Barge Lines.

STATEMENT OF FLOYD A. MECHLING, EXECUTIVE VICE PRESIDENT, A. L. MECHLING BARGE LINES

Mr. FRIEDEL. Do you have a summary of this?

Mr. MECHLING. Yes, sir.

Mr. FRIEDEL. Your whole statement will be included in the record.

Mr. MECHLING. Thank you, sir, and considering your request I will briefly summarize the statement, then. My name is F. A. Mechling and my business and home address is Joliet, Ill. I am employed by the A. L. Mechling Barge Lines as executive vice president. I am testifying before this committee today as a private citizen interested in the future welfare of the Nation's transportation community, as vice

president of our bargeline, and also as a spokesman for the Waterways Bulk Transportation Council. If I had been permitted to read my complete statement into the record, Mr. Chairman, I would have shown that Mechling Barge Lines is a typical exempt-type water carrier on the Mississippi River system. We also operate under the certificate of the Interstate Commerce Commission as a common carrier over many sections of the system and the Illinois Waterway and the Gulf of Mexico. I show that the Mechling Co., is family owned and operated; a carrier that has been built up over 42 years of effort as a family enterprise. We have provided good service to the public, at our own risk and this has been done in the main without Government control. I also show in my statement that exempt carriers such as Mechling are closely associated with the particular shippers and but for the type of service that we render this type of traffic would fall into private carrier service by the shippers performing their own transportation service. I contend in my statement, in light of our experience, the repeal of the bulk exemption would divert this traffic to private carriage in large part and that common carriers would not fall heir to the traffic. I show that such shippers are best served by bulk exempt carriers for the various reasons contained in my statement. I show in my statement that in fact the bulk exempt carriers are the low-cost carriers and the rails cannot legally compete on a cost basis and meet the rates of the bulk exempt carriers. I also show that if Mechling were to lose its identity and lose any of its small number of large bulk commodities that it moves in its traffic, consisting mainly of four or five large bulk items that move by barge, constituting about 80 percent of its sustaining revenue, that it would fall immediately into a deficit operation. My statement also shows and illustrates various examples where Mechling over a period of its history of over 42 years has pioneered many hauls in exempt traffic on the inland rivers systems and the Gulf of Mexico. I also show that Mechling must have bulk exempt traffic to balance its hauls and make its entire operation profitable and I show, too, that we feel the same considerations that led Congress to adopting and maintaining the bulk exemption in the 1940 act, maintain and continue today.

Mr. Chairman, that, I believe, summarizes my statement.

Mr. FRIEDEL. I want to thank you very, very much for cooperating.

(The statement referred to follows:)

STATEMENT OF F. A. MECHLING, EXECUTIVE VICE PRESIDENT, A. L. MECHLING BARGE LINES, INC.

My name is F. A. Mechling. My home and business address is in Joliet, Ill. I am making the statement first as a private citizen interested in the future welfare of our Nation's transportation community, then as vice president of our bargeline—A. L. Mechling Barge Lines, Inc., and finally as a authorized spokesman for a group of bargelines, shippers, and other interested parties who have become associated under the heading of the Waterways Bulk Transportation Council, Inc. You have already learned that this council speaks for a large number of bargelines somewhat similar to ours. It has occurred to us that a rather definitive statement relating to the operations, history, and prospective future development of a somewhat typical exempt bargeline operation might assist the committee in its determination as to whether such a radical change as repealing the bulk exemption clause in the Interstate Commerce Act is the right and proper thing to do.

In qualifying myself to make this statement, may I say that I have spent my entire working life in the bargeline business. I shipped aboard our towboats with my father when I was only 12 years old. I have since progressed from one stage to another in our barge business, both afloat and ashore, until I am now managing the business. It's a good business, and our Mechling family, which owns the bargeline, desires to continue it in operation. I have broadened my activities in inland water carrier interests by becoming a member and officer of this council, of the American Waterways Operators, Inc., whose membership includes the regulated water carriers, and for 3 years was a member of the U.S. Department of Commerce Transportation Advisory Council.

The advantage of low-cost water transportation envisaged by every Congress is realized today, and chiefly in bulk-exempt transportation, as foreseen by the authors of the exemption.

In this connection, I wish to make the categorical statement here and now that the inland water carrier industry as we know it today would not have come into being except for the presence of the bulk-exemption clause in the Interstate Commerce Act and, in my opinion, that industry in its present form cannot survive the repeal of that clause.

Most of the bargelines that would be affected by such a repeal are small independently owned and operated companies. They are in the main family owned. There is no public equity stock outstanding. They know the rivers. They have no statutory monopoly. Competition among them forces a progressive policy, responsive to what shippers want. They exist on hauls of a very limited number of bulk-exempt commodities. They are small businesses. They survive only because they operate according to the decisions of management with a minimum of governmental controls (with all of the attendant costs and redtape associated with Government controls) because they have attracted the patronage of shippers who use these carriers because they can perform a service tailored to the needs and the economies of such shippers. These exempt carriers are for-hire carriers. They are, for the most part, wedded to the traffic of identifiable shippers, many of whom, but for the availability of these exempt carriers, would be in the water carrier business themselves as private carriers. In my opinion, the repeal of the bulk exemption clause will not divert this traffic to common or contract or regulated carriers or hold it to the going exempt carriers. The traffic, for the most part, will become privately handled. Many of these existing carriers will sell their barges and towboats to their customers and enter into operating contracts on a salary basis to run them or become unemployed. If the object of the Congress nowadays is to help the common carrier who claims, justifiably or not, to be in distress, such as some railroads, the driving of bulk-exempt traffic to private carriage will do little for them of substantial significance.

Let me illustrate: We haul alumina for a large chemical company. Alumina moves as exempt traffic under term contracts between the company and the bargeline as to the rate to be charged. If this bargeline were forced under regulation by virtue of the repeal of the bulk exemption, this shipper would immediately acquire barges and operate as a private carrier. We can do it better as an exempt carrier. But the shipper can do it for himself better and cheaper than the regulated carriers. The economics of transportation are all in favor of the private carrier as against the regulated carrier in such a situation, particularly where the company, as in many instances, is large enough and diversified enough in its interests to generate a two-way haul, which can be done nowadays by many such companies. We give the small shipper the advantage of our low-cost bulk-exempt transportation today. He would lose it to the big shipper, operating his own fleet, if we were forced under regulation.

I know another bargeline that hauls grain for a large interest. If the grain is stripped of its bulk-exempt identity, the patron in this event would simply take over the bargeline. It would be difficult indeed for a small exempt carrier, whose main steady income depends on the steady business or two or three shippers, to avoid this eventuality. The inevitable end result would be the disappearance of many small, independently owned bargelines and the creation of private barge departments in a number of large industries.

I have serious doubts that the large common carrier bargelines, who are sponsoring the legislation, would realize any substantial benefit from its enactment.

In this connection, I wish to point out that the large common carrier bargelines that are supporting this legislation all have either operating subsidiaries that haul bulk-exempt traffic, or they haul same themselves in noncertificated operations. There isn't a single bargeline on the Mississippi River system that

does not exercise its privilege of hauling bulk-exempt traffic. They have to do it in order to get the traffic. Their published rates are too high to attract the traffic otherwise. This situation reinforces my contention that such traffic would trend toward private transportation if it were forced by law under economic regulation.

These shippers that I have been talking about, in my opinion, are best served by bulk-exempt carriers. When a barge carrier becomes obligated by law as a common carrier to serve all patrons of a given class, he cannot serve any one of them with the particularity required. Special, ever-ready service, with quick spotting of barges and towboats committed to that specific traffic, uninterrupted turnarounds, single line service not dependent on transfer of lading, interchange of barges, or interchange of towboats is called for by the shipper. Experience has proved that the regulated common carrier cannot furnish such service.

Again, let me illustrate: The United States is building a dam on the Ohio River near Cincinnati. For the enormous quantities of concrete required, it needed 40,000 tons of aggregate monthly to start, rising to a peak of around 90,000 tons month, all to come by barge. Regulated common carrier barge service was obviously unable to divert enough barges to meet that need. The flexible service of exempt water transportation was available, however, and it is the exempt carrier operating under the bulk exemption that has done the job.

Some shippers have tailored their barge loading and unloading facilities to fit the operations and equipment of their bulk-exempt carriers. There is mutual accommodation and mutually realized convenience and economy that would be impossible under the hard and fast general requirements of regulated transportation.

The personal relations that are built up between the managements of bulk-exempt carriers and their patron shippers are very close at times, amounting to a deep interest in the success of each other's enterprises in the service rendered. There is mutual pride in doing a good job. Regulation cannot foresee every day-to-day requirement. The best plan is the one that develops good workmen. Such relationships are alien to impersonal common carriage.

The primary inherent advantage of inland water transportation is its low cost. If it were not so, shippers would not use such transportation. The railroads themselves have recognized this advantage and in case after case, since the Congress amended section 15 of the Interstate Commerce Act, have attempted regardless of economic consequences to their own operations, to meet water carrier rates or go below them. Neither the rails nor the certificated water carrier, in their rate adjustments, have been able to go all the way down to exempt water carrier charges. These carriers are still the low-cost-to-user carriers and they can remain so in their present identity as bulk-exempt carriers. This is because their overhead and operating expenses are not as great in most instances as are forced by regulation on the more elaborately tailored and organized common carriers. The exempt carriers have more Indians and fewer chiefs. As long as they can maintain this identity, they will be the low-cost carriers. Once obligated to the rigidity of service, the reports, the regulations, and all the requirements of Government control, they will lose this identity. This, of course, is precisely what the common carriers want. It is an indirect, but sure means, of destroying competition.

It used to be and still is in an ever-narrowing sense, the practice of the Interstate Commerce Commission to recognize the need for a differential between the rates of railroads and water carriers in recognition of the low-cost inherent advantage of water transportation. That low-cost advantage is greatest in the transportation of bulk commodities. The bulk-exempt water carrier is the low-cost, and low-rated water carrier. This is his attraction to the shipper, and the shipper will, in my opinion, not willingly give up this attraction. The authors of the Transportation Act have been unwilling to destroy the bulk-exempt, for-hire water carrier, and limit the low-cost advantages of such transportation to those shippers who can own their own fleets as private carriers.

I don't mean to suggest by this statement about differentials that the exempt carrier. As a matter of fact, many of the bulk-exempt carriers have the latest carrier. As a matter of fact, many of the bulk exempt carriers have the latest type and most efficient equipment, both barges and power boats. Unregulated water carriers adopted the low-cost diesel engine to transportation a generation ahead of the regulated railroads. Bulk-exempt carriers own and operate the latest and best equipment in substantial numbers as Mr. Wright has already

told you. I can testify from firsthand experience that the bulk-exempt carriers are rendering service equal to and in some ways superior to that of the common carriers.

Yet again, let me illustrate: We lease, own, and operate 31 dual-purpose barges with which we can go directly across the Gulf of Mexico and either up or down the Mississippi River without interchanging lading at New Orleans. Most of the other carriers have to reload their cargoes between Florida and upriver points into river barges upstream and oceangoing barges to cross the gulf. We have acquired at great expense two oceangoing boats to tow the barges across the Gulf of Mexico and have helped develop a terminal in Tampa, Fla., to accommodate the bargeline and our shippers. Aside from these 31 barges, subsequently two other such oceangoing barges have come into operation on the Mississippi River, but our barges pioneered this haul, and we could not have done it as a regulated carrier. This movement has grown and prospered hauling bulk items. We were able, because of the existence of the exemption, to commence operating as soon as we had equipment. This operation has grown and expanded from about 12,000 tons of grain per year in 1952 and 1953 to over 102,000 tons of grain in 1961. We added sewage sludge transporting from 18,714 tons in 1954 to 85,617 tons in the year 1961. At the same time we commenced bulk-exempt movements, we petitioned the ICC for operating authority to transport iron and steel articles which are not bulk exempt, so we could haul them under regulation. It took from 1953 to 1956 to process this application under regulation. The railroads objected and fought against this grant even though they could not provide the shippers the desired service. Since securing the authority, after 3 years of effort, we hauled 9,174 tons of steel to Florida in 1957, the first full year of this service, and 20,281 tons in 1961.

It took an exempt carrier, operating under the exemption, to open up this important avenue of commerce. But under regulation he cannot always succeed in doing so. To show the effect of regulation in such a movement, the ICC has just refused Mechling the privilege of extending its operating rights to include other regulated items to Florida, because the railroads and the common carriers by water were able to convince the Commission that their admittedly higher priced and less efficient dual-line service was good enough for the shipping public.

I know personally of a number of bulk-exempt carriers who have pioneered barge operations with specialized equipment and progressive and imaginative thinking and acting. The exempt carriers as a whole have made an outstanding contribution to the science and utility of barge transportation.

Under these discouragements most exempt carriers have given up all effort to expend their operations under regulation. Only a handful have continued in the face of great odds to fight for expansion of operating territory under regulation. We believe that many new low-cost water movements to distant market areas have been strangled in the cradle by the delays that result from years of uncertain proceedings before the ICC.

The fleet that moves bulk-exempt commodities was seen by the congressional authors of the exemption, to be an essential part of our national transportation, exempted because, and only because, it realized the inherent low-cost advantage of water transportation as regulation could not.

While I am on this point, let me state that this bulk-exempt community of water carriers is an indispensable adjunct to national defense. Without the bulk petroleum barge carrier, our defense efforts in World War II and the Korean war would have been handicapped. Without the bulk-exempt chemical carriers present defense preparation would be shortchanged. Without the bulk-exempt grain carrier operating to gulf ports, moving vast amounts of grain in barges, the food aspects of defense would be burdened with freight car and grain elevator shortages and high costs of delivery; without the bulk-exempt coal barge carrier, atomic energy installations and powerplants producing electrical energy for defense would be stultified. Without the bulk-exempt fertilizer barge carriers, the farmer would realize less from his crops.

The bulk-exempt bargelines that would be affected by a repeal of section 303(b) all have histories rooted in the American tradition of free enterprise and growth and development responsive to the needs of domestic commerce they move.

Allow me, for a moment, to illustrate with the history of our own line.

A. L. Mechling Barge Lines Inc., of Joliet, Ill., commenced operations about 1920 as a one-man operation. The owner, A. L. Mechling, was approached by officials of counties located on the Hennepin Canal in central Illinois, with a re-

quest that he ship sand and gravel from along the banks of this canal and deliver it to various adjacent county roadbuilding sites. Mr. Mechling thereupon placed in service a small gasoline-powered boat and leased a small barge from the U.S. Government, which had a capacity of about 75 tons and commenced to haul the gravel. He and his hired help loaded the barge by wheelbarrow 1 day and the next towed it to the unloading point where they unloaded it, also by wheelbarrow. The next year, Mr. Mechling built a small boat from purchased parts and bought a barge with a capacity of 150 tons and continued hauling gravel with this "rig." He also secured a mechanical loader and later, about 1925, built a small gravel screening plant. This operation continued until about 1930 when the gravel deposits on the Hennepin Canal were exhausted. This was the same year of the great depression. Mr. Mechling was then approached by a grain company from Pekin, Ill., and asked to tow grain in its barges from various locations on the Hennepin Canal and points on the Illinois River to Pekin, Ill. By this time, Mr. Mechling had converted his small boat to diesel power and had also bought another towboat from the grain company and took over the towing of grain in the company's barges. My father, Mr. Mechling, was the pilot. My mother and brothers spent considerable time aboard the boat during the school vacations. My mother did the cooking for the crew. In 1930, my brother was a deckhand on the boat during vacations. I started working on the towboat from the time I was 12 years of age. My brother continued as a pilot until the 1940's. With this 45-horsepower towboat, my father next commenced operations on the upper Mississippi River hauling grain, but as he has said "the upper Mississippi River was pretty rough going in those days. We never knew when we would have a channel deep enough to operate in. During this period of time, we helped build brush and rock wing dams between Savanna, Ill., and McGregor, Iowa, in order to protect the early 6-foot river channel." This channel, incidentally, was the predecessor of the present 9-foot channel. My father survived the depression by taking business under small contracts and as he put it, "Often our little firm found itself short of capital to undertake another job, but hard times seemed to make everyone try harder."

When the Illinois Waterway was opened to navigation in 1933, our barge had made the initial voyage from Pekin, Ill., to south Chicago with cargoes of grain. The company hauled Argentine corn from south Chicago back to Pekin. These first movements were made in 300- to 500-ton barges via the Sag Channel and the Calumet Harbor. The company pioneered a steel haul from Chicago to Moline, Ill., which was the first through movement of any commodity between these places by water. Grain was hauled back to Chicago.

When World War II came on, my father joined the Coast Guard as a commissioned officer and spent the war years in the Mississippi Valley supervising ice breakers and the movement of submarines and landing craft to the gulf for war service. The bargeline during those years placed its boats in service towing petroleum barges loaded with aviation gasoline, Bunker C and fuel oils, from points in Texas to ports on the Ohio and Mississippi Rivers. Such service by Mechling and other barge lines led the Office of Defense Transportation to state: "If our waterways rendered no service beyond that of transporting petroleum and its products during the war, they would have amply justified their improved existence." During the war, also, the Mechling Barge Line performed extensive hauling of grain for the Commodity Credit Corporation from Chicago to various destinations including Chattanooga and Nashville, Tenn., and Guntersville, Ala. Mechling also transported coal in 1944 for the Tennessee Valley Authority from Kentucky to points in Tennessee.

After the war ended, the company entered into contracts for the transportation of bulk petroleum products and is still engaged in this service.

In 1952, as I have already stated, the company began loading bulk cargoes at Tampa, Fla., for various upper Mississippi River and Illinois Waterway destinations. These Tampa cargoes consisted of triple superphosphate and phosphate rock.

This operation continued to prosper and with it an entire new market for the distribution of grain grown in the Midwest. Since this Florida operation was started, the bargeline has learned how successfully to cross over the Gulf of Mexico directly to and from Florida. This river-ocean type single line transportation has eliminated the need for interchanging traffic from river barges into coastwise barges at New Orleans, and with it the extra cost to the shipper involved. We operate many barges in this trade today.

The bargeline is still completely owned by the Mechling family, there being no outside stockholders.

Our bargeline is in part a regulated carrier, holding a number of ICC certificates, and in part a company operating in the exempt transportation of dry and liquid bulk commodities. Recently, it has commenced operations on the Missouri River as far as Omaha, Nebr. In 1961 we towed the Government barge containing the Saturn missile and delivered the second Saturn missile to Cape Canaveral in February 1962.

From 1955 through 1959, A. L. Mechling Barge Lines, Inc., has handled the following commodities: wheat, corn, maize, oats, barley, rye, flour, cornmeal, soybeans, soybean meal, malt, lard, cattle hides, coal, coke, iron ore, alumina, bauxite, illmonite, manganese ore, sand, gravel, stone, paving flux, asphalt, salt, phosphate rock, sulfur, fluorspar, gasoline, fuel oil, furnace oil, heater oil, diesel and burner oil, kerosene, crystalite, petrox, benzol, jet fuel, aviation turbine fuel, dicalcium phosphate, chemicals, n.o.s. ammonia sulfate, sulfuric acid, soda products, salt cake, methanol, alcohol, n.o.s. triple superphosphate, sludge, fertilizer, pitch, tar, creosote, pig iron, steel ingots, tinplate, manufactured steel, contractor's equipment, molasses, scrap iron, zinc ash.

Mechling Barge Line operates on a route over 4,000 miles long, and holds common carrier authority between the Chicago area and St. Louis, Mo., to transport general commodities, can transport grain and grain products between Minneapolis, Minn., and Stillwater down the Mississippi River to and including Memphis, Tenn., to Tampa, Fla., can transport iron and steel articles between Clinton, Iowa, and St. Louis, Mo., to Tampa, Fla., and from the Illinois Waterway to Tampa, Fla., can transport sludge, grain, iron and steel articles to Tampa, Fla., and in the reverse direction can transport phosphate and phosphate material, and scrap iron from Tampa, Fla., to points in the Midwest along the Mississippi and Illinois Waterway from St. Louis and north.

The main sustaining revenue of the company is still in five or six bulk-exempt commodities.

In 1955 Mechling transported a total of 2,253,198 tons; in 1956, 3,185,823 tons; in 1957, 3,138,125 tons; in 1958, 3,151,145 tons; in 1959, 3,675,408 tons; and in 1961, 3,805,693 tons.

If Mechling were to lose the grain traffic alone which is now in large part exempt and makes up 25.3 percent of its revenues, its operating ratio, which was 90.54 in 1961, would immediately be converted to a figure in excess of 100 percent by the loss of such traffic; it would be broke.

The same would be true if it lost the phosphate traffic.

The same would be true in Mechling lost the dry chemical traffic.

The book cost of Mechling's line equipment and other physical assets in 1961 was $7,339,139. These figures indicate the investment Mechling has at stake. Mechling has a substantial fleet of nine river towboats and two oceangoing tugboats. Mechling operates 154 river barges and 31 oceangoing barges, having a total carrying capacity of 234,780 tons. In 1961, Mechling employed 320 employees, paid $2,026,025 in wages. Many of these employees have been with the company from 20 to 25 years.

I have recited these factors relating to our bargeline to show on what a tenuous basis our success depends. Stripped of bulk-exempt commodities, we would be but a shadow of our present self as a company.

If we were not free to contract on our larger bulk-exempt hauls, so as to balance our operations, we simply could not exist as a bargeline of the kind and quality that our family has worked so hard to bring into being. Hundreds of other small bargelines on the country's waterways are in that position in an even higher degree.

The basic conditions that led Congress to enact the bulk exemption in 1940 still persist. Nothing has changed except that the regulated common carriers, particularly the rails, want to transport, for higher rates compelled by their higher costs, the bulk traffic that we can move for less.

I suppose that four basic facts lie at the root of this situation.

First: The cost of moving these bulk commodities in tows or vessels confined thereto, in large quantities loaded and unloaded by machine, is so much less, that other methods cannot be economically competitive. The congressional authors of the bulk exemption pointed that out repeatedly. Mr. David Wright has read you typical statements from the Congressional Record.

Second: Other methods of transportation cannot cut their rates low enough to compete, without actually incurring a loss; and they cannot legally do that because that is what the minimum-rate rule forbids.

Third: Other methods of transportation can afford to cut rates and take losses on bulk commodities long enough to put the bulk exempt carriers out of business, because they have revenue from other kinds of traffic with which to finance such temporary losses. That is the way the railroads cut the throats of their water competitors before the Transportation Act of 1940, and I have appended a description of the process by the late Joseph B. Eastman, long a distinguished Chairman of the Interstate Commerce Commission.

A current example is a recent decision of the ICC allowing the railroads to cut their rates on corn from the West up to Kankakee, Ill., a movement in which they compete with regulated water carriers on the Illinois Waterway to Chicago, to below the railroad's actual out-of-pocket costs, because (the ICC said) the railroads got enough when the corn went on from Kankakee by rail to the east coast—a haul on which they have no barge competition—to make up their loss on the western water-competitive leg of the haul.

Fourth: The exempt carrier cannot cut his rates on the bulk commodities below his cost. He has no other traffic with which to make up such losses. And he does not have to. Operating at rate levels below those of regulated carriers, he prospers. And the public has the benefit of low-cost transportation of the basic commodities that lend themselves to bulk water transportation. In our competitive system, reductions in transportation costs of such basic commodities are eventually reflected in reductions of prices throughout the economy.

In closing, may I earnestly commend your attention to the validity and the practicality of the existing bulk exemption. It is working well in the interests of large and important communities, returning the full measure of low-cost water transportation to the shipping and consuming public, and should not be disturbed.

For all these reasons we urge that your committee reject this proposal to extend regulation on dry bulk commodities moving by water as proposed by H.R. 5595.

Appendix to the Statement of F. A. Mechling

In *Petroleum Products from New Orleans, La. Group*, 194 ICC 31 (1931) the question was whether the railroads should be allowed to charge lower rates for longer water-competitive hauls than for the shorter hauls where there was no water competition. Specially concurring at pages 44–45, Chairman Joseph B. Eastman (afterward Coordinator of Transportation in World War II) said:

"* * * The railroads in their early years encountered stiff competition from many steamboat lines plying upon these waters, and they proceeded to meet this competition ruthlessly. Eventually they swept the waters clean of the competing craft, except on the ocean and the gulf, and even there the competition was greatly weakened.

"This was done by cutting rates where the competition existed, to whatever extent was necessary to paralyze it, at the same time maintaining rates at a very high level elsewhere. The steamboats did not have this reservoir of noncompetitive traffic to help them out, and hence perished in the unequal struggle. Some large interior cities which did not have water competition were able to utilize the competition of the railroads with each other to break down their rates in somewhat the same manner, but interior points which had little or no competition of any character were out of luck. Their rates were on what the railroads called a 'normal level,' which was preposterously high. All this made, of course, for a very uneven development of the country, and it was one of the main factors which precipitated the creation of this Commission in 1887.

"The theory on which the railroads drove out water competition by these low rates was a simple but, as I see it, dangerous theory. They argued that their trains would run anyway, that the added expense of taking on more traffic would be comparatively little, and that if they could get water-competitive traffic at some margin over this 'added' or 'out of pocket' expense, it would help them just that much. The danger in this theory is twofold. In the first place, the railroads have always had very imperfect knowledge of this 'added' expense, and in the old days it was more of a theory than anything else. They went out frankly to cut the throats of their water competitors and made the rates whatever was necessary for this purpose. In the second place, the theory places the chief burden of sustaining the profits and credit of the railroads upon the noncompetitive traffic, and this burden is likely to increase progressively. Commerce and industry tend to center at the favored competitive points, and their traffic tends to increase while that at the 'normal rate' points tends to decrease. Gradually the traffic moving on the low rates ceases to be mere

'added' traffic and the 'out of pocket' expense swells in volume. So does the burden upon the noncompetitive traffic.

"The danger of following this theory under present conditions is obviously much greater than it was in the old days, for the trucks, pipelines, and electric tranmission lines have greatly curtailed the amount of strictly noncompetitive traffic.

"After the railroads swept the inland waterways practically clean of competing traffic, two influences set in. One was a public demand upon Congress for appropriations for the improvement of the waterways, so that they could handle traffic more cheaply and efficiently. The other was a gradual revision of the railroad rate structure to a so-called dryland basis, owing to the absence of water competition which could be used to justify fourth-section relief. These two influences have brought a return of the water competition which had disappeared, and it is progressively increasing."

Mr. FRIEDEL. The meeting is now adjourned. The hearing will resume tomorrow morning at 10 o'clock.

(Whereupon, at 11:50 a.m., the subcommittee adjourned, to reconvene at 10 a.m. on Wednesday, April 11, 1962, as noted above.)

WATER CARRIER BULK COMMODITY EXEMPTION

TO REPEAL INLAND WATERWAYS CORPORATION ACT

WEDNESDAY, APRIL 11, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m. in room 1332, New House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The committee will be in order, please.

Our first witness this morning is Mr. Vescelius.

Mr. Vescelius is a member of the Traffic Committee of the Manufacturing Chemists' Association.

STATEMENT OF CLINTON H. VESCELIUS, CHAIRMAN OF THE COMMITTEE ON WATERWAY BULK COMMODITY EXEMPTION OF THE MANUFACTURING CHEMISTS' ASSOCIATION, INC.

Mr. VESCELIUS. Mr. Chairman and members of the subcommittee, my name is Clinton H. Vescelius. I am chairman of the Committee on Waterway Bulk Commodity Exemption of the Manufacturing Chemists' Association, Inc. (MCA), located at 1825 Connecticut Avenue NW., Washington, D.C. I am also general transportation manager of Olin Mathieson Chemical Corp., New York, N.Y., and in that capacity serve as a member of the association's traffic committee. I have been authorized by the association to submit this statement on behalf of its members with respect to H.R. 5595, which proposes to repeal section 303(b) of the Interstate Commerce Act relating to the waterway carrier bulk commodity exemption.

The Manufacturing Chemists' Association, Inc., is a nonprofit trade association of chemical manufacturers organized in 1872. Its members comprise over 90 percent of the productive capacity of the chemical industry within the United States. They have more than 1,000 plants in the United States with representation in almost every State.

Manufacturing Chemists' Association members employ all modes of transportation in the assembly of raw materials to be used in manufacturing processes and in the distribution of manufactured products. The chemical industry is therefore necessarily vitally concerned with preserving the economic health and welfare of our Nation's transport system generally. However, since the early days of the chemical industry and in direct proportion with the recent widespread expan-

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sion of new chemical facilities, many chemical company plants have been purposely located on the inland waterway system to take advantake of low-cost water transportation. The extent of waterway use, according to latest available industry figures, indicates that 26.2 million tons of chemical and related products moved on the inland waterways during 1959.

The chemical industry, as represented by members of the Manufacturing Chemists' Association, is opposed to H.R. 5595 which would repeal section 303(b) of the Interstate Commerce Act.

Arguments favoring elimination of this exemption and the placing of this traffic under regulation are generally that the imposition of regulatory restrictions might enable competing carriers to secure some of the traffic. It is argued that regulation would be for the benefit of the public or the elimination of demonstrated abuses. Neither of these contentions has been proven by the proponents of additional legislation.

This association believes there have been no substantial changes in the facts and circumstances of transportation which affect the public interest or which would justify or require canceling the bulk exemptions. Government regulation should be based on public need or for protection of the public—not on the theory that existence of regulation in one area justifies new regulation in another area.

According to the Doyle report, federally regulated total ton-miles on the inland waterways ranged from 124 billion ton-miles in 1946 to 189 billion ton-miles in 1958. These statistics indicate that federally regulated ton-miles remained a constant 6 percent of the total for each year in this 13-year period. For comparison, motor carriers over a comparable 10-year period, from 1948 to 1958, show a decline in percentage of regulated tonnage from 40 percent in 1948 to 32 percent in 1958, thus indicating a trend to more unregulated highway tonnage. We believe it highly significant that, insofar as inland waterway carriers are concerned, there has been no perceptible erosion of regulated tonnage into the unregulated area over a period of 13 years.

The group which by far has the largest stake in competitive bulk transportation is the consumer. Unfortunately, he is generally unaware of the impact which this problem has on the multiplicity of products and services he buys. The products do not as a rule reach him in the form in which they are originally barged. Nevertheless, the consumer will inevitably pay higher prices resulting from increased transportation costs.

Without question, removal of the present bulk exemptions, under which river traffic has prospered both financially and technologically over the past 20 years, would increase the chemical industry's cost of doing business. Basic raw materials shipped by barge are low in unit cost and, therefore, very sensitive to transportation expenses in moving them from mines and other raw material sources to processing plants. Such typical chemical industry commodities as phosphate rock and sulfur, moving in large quantities over the inland waterways, enter into the manufacture of basic chemicals and have thousands of uses.

Most discussions with major common carriers relating to proposed bulk business have been treated by the carriers as negotiations for transportation under the exemption and, in some cases, the carriers

have declined to publish rates covering such movements in tariffs filed with the ICC. Certificated bargelines can and do compete for dry bulk cargoes without regulation on exactly the same terms and conditions as their competitors. For the most part, they do not prefer to do so—instead they propose to have Congress extend Federal regulation over their competitors. The regulated bargelines presently hauling approximately 6 percent of the ton-miles involved have apparently concluded that regulation would afford them higher rates on dry bulk commodities. Unfortunately for the consumer, this would be true; for, free and open competition is what keeps these rates currently low. The extension of regulation would substitute for free enterprise a relatively limited group of carriers with the ability to determine rates without regard to normal competitive pressures.

Chemical shippers are more sensitive to the importance of the transportation dollar now than at any time in the past. Many have spent millions on waterfront plants and marine facilities in reliance upon the principle declared by Congress that bulk water transportation would be free from regulation and would, therefore, remain a low-cost medium. The cost of transportation is a significant factor in final cost and, in some instances, this cost may determine with life and death finality whether a shipper may compete at all.

If the bulk exemptons are repealed, one of the effects would be an even greater increase in private carriage as more big shippers acquire and put into operation their own marine equipment.

For-hire transportation must keep its services more desirable for shippers than private carriage in order to survive. It can do so only under the stimulus of competition. Repeal of the exemptions would stifle water carrier competition. Rates would go up immediately. Shippers who can afford to launch their own fleets will not hesitate to do so when rates of for-hire carriers are increased.

Extensive use of contract transportation of commodities as exempted by section 303(b) of the Interstate Commerce Act stems principally either from the special nature of equipment required for the most efficient transportation or because of the necessity for assuring reliability of the transportation medium. In the case of special equipment, it has been necessary that long-term commitments be made in order to justify expense of construction.

As a common carrier operating under an act where dry bulk is subject to regulation, the carrier may not be able to make the type of contract, advantageous to carrier and shipper alike, for long-term, "tailormade" service which characterizes, to a large extent, the current contract carrier business.

Under these circumstances, no barge operator would be willing to take the chances involved in making the investment necessary for extensive new facilities with no assurance that they would be used constantly. On the other hand, a customer with large requirements might not be willing to undertake a movement by water if he had to rely on the handling of his business on the basis of "when, as, and if" the barge operators can provide the necessary equipment and service.

Such conditions of uncertainty would greatly inhibit the continued normal growth in the movement of bulk commodities exempt from regulation which has taken place under existing law that permits complete freedom to make contract arrangements specially designed

to meet the needs of operator and shipper. Under existing law, this growth should continue to the mutual benefit of carrier and shipper and in the public interest.

The thousands of inland waterways shippers, including industries of all kinds who have benefited from the low rates of dry bulk water transportation resulting from free competition, would find their rates increased in the hands of a monopoly.

Those who have sought and obtained low rates in return for a long-term commitment would, in most cases, lose this advantage. Would-be shippers who plan barge movements of such volume or nature as to require equipment not now available would have no alternative for maximum economy but to invest in private transportation facilities.

Industries which have located their plants at waterside to take advantage of lowest cost transportation rates would suffer a loss of property values on enactment of this bill.

Because of the discriminatory features of the bill under which regulation is extended on inland waters generally, while the Great Lakes and the offshore trades remain exempt, there would be many a plant on the rivers or canals whose raw materials costs would rise out of proportion to those of its competitors.

Finally, with the growing realization that our efficiency as a nation must shape up favorably against competition from the rest of the free world as well as the Communist areas, the ability to compete domestically is no longer the sole concern of shippers and carriers. Foreign competition will grow in volume and efficiency and will demand that costs be kept down by all domestic producers.

The chemical industry believes that to impose regulation on over 90 percent of traffic now moving free from regulation would not in the long run benefit our common carrier system and would be harmful to a basic American industry through increased costs at a time when the strength and welfare of this industry should be fostered.

We greatly appreciate this opportunity to present these views.

Mr. WILLIAMS. Thank you very much.

Is Mr. Dorr here?

STATEMENT OF LESTER J. DORR, EXECUTIVE SECRETARY, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. DORR. Mr. Chairman, and members of the subcommittee, my name is Lester J. Dorr, of Silver Spring, Md. I am the executive secretary of the National Industrial Traffic League, which is located here in Washington.

I appreciate this opportunity to appear before you today and to present the views of the league and its members with respect to H.R. 5595 and H.R. 9046, and also, although it is not in my statement, a remark or two about H.R. 10542, the bill to amend the Inland Waterways Corporation Act.

In the interests of conserving the time of the committee, I shall not undertake to read the statement which has been prepared and offered on behalf of the league.

I would like to make certain, however, that the statement will be received as if read and made a part of the record, rather than filed as an appendix.

Mr. WILLIAMS. The committee will be glad to accept your statement in its entirety.

Mr. DORR. Thank you, sir. One or two observations seem in order.

The important point, we think, to keep in mind is the fact that there is absolutely no shipper support for H.R. 5595.

Not only is there no shipper support for the bill, there is actually outright shipper opposition.

I should point out that the National Industrial Traffic League is a nationwide organization of shippers. Its membership also includes chambers of commerce, boards of trade, and similar commercial organizations whose members likewise have a substantial interest in transportation matters.

The league has no carriers in its membership. It represents and expresses the interests of those who actually ship and receive freight, in other words, the users and payers of transportation charges. Its membership is drawn from all parts of the United States and includes practically every line of industrial and commercial activity.

Members make use of all forms of transportation, by rail, motor, water, air, and pipeline. The league is not railroad-minded or truck-minded, or water-minded, or slanted in any other way than to foster sound economic transportation.

As I say, there is no shipper support for the bill. There is actually outright shipper opposition.

The league has considered legislation similar to H.R. 5595 on a number of occasions, and each time has rejected such legislation.

The lack of shipper support for H.R. 5595 has been pointed out by previous witnesses, notably Drs. Waters and Hartley of Indiana University, as well as representatives of shippers and shippers groups.

While I did not have an opportunity to hear Drs. Waters and Hartley yesterday, I made a thorough study of their written statements and would recommend that the committee give special attention to the very clear analysis which they have presented.

They correctly point out that H.R. 5595 in the long run will not materially help the common carriers by water, nor the rail carriers. Its ultimate effect will simply mean higher rates for shippers and a further expansion of private transportation.

These same points are often made by league members in their consideration and discussions of the bulk commodity exemption. The league would urge that your committee reject H.R. 5595 and that it favorably report on the bill which will allow the 6-month extension of the exemption to common carriers by water.

Now, one comment with respect to H.R. 10542, the bill to amend the Inland Waterways Corporation Act.

Captain Ingersoll, in his testimony before your committee on March 28, correctly reported that the league's inland waterways committee, which is primarily concerned with questions of inland waterways transportation, recently voted to support H.R. 10542. Time has not permitted the handling of the inland waterways committee's recommendation through established league procedures, but I believe, and I am authorized by the league's officers to state that they, too, believe, the league as a whole would adopt the committee's recommendation. That recommendation is basically in line with the league's position to the Inland Waterways Corporation, and I believe would be sup-

ported by the league, having due regard for appropriately safeguarding the public's interest in the light of the consideration earlier mentioned by witnesses for the Interstate Commerce Commission and the Department of Commerce.

Mr. Chairman, I would like to thank you for this opportunity and I hold myself ready to try to answer any questions, if you have them.

Mr. WILLIAMS. Thank you, Mr. Dorr.

Mr. Friedel, have you any questions?

Mr. FRIEDEL. Just one. On page 5 of your prepared statement, you quote:

> The league approves retention of the bulk commodity exemptions appearing in sections 303 (b) and (c) of the Interstate Commerce Act, modified or amended by elimination, first, of the present "three commodity" restrictions * * *

Do you want to have unlimited exemptions, instead of five or seven?

Mr. DORR. We recommend that it be unlimited.

Mr. FRIEDEL. Unlimited?

Mr. DORR. That is right.

Mr. FRIEDEL. And you are opposed to the railroads having the same exemption?

Mr. DORR. Oh, no, sir; not quite. I cover that on page 10 of my statement.

Mr. FRIEDEL. I will put my question this way: Do you oppose the railroads having the same exemption?

Mr. DORR. This is a little bit technical, Mr. Friedel. We are not in favor of extension per se. We believe what was recommended in the President's message is sound; that is, the removal of the Commission's minimum rate power. We believe that management should have the discretion to make rates. We believe that the other sections of the act should be continued; that is, those against discrimination, filing and posing of rates, et cetera. This is just a little bit different from outright extension of the exemption, but it is along the same line.

Mr. FRIEDEL. Thank you.

Mr. WILLIAMS. Any other questions?

Mr. Dorr, in regard to removing the so-called mixing rule, is it your contention that the exemption should apply to the commodity rather than to the shipper?

Mr. DORR. I would think I would answer that this way: The league has never seen the need for the three-commodity limitation. We feel that in the interest of sound economic transportation there should be no regulation of bulk commodities.

Mr. WILLIAMS. Whether those bulk commodities are carried in mixed tow or not, is that correct?

Mr. DORR. That is right.

Mr. WILLIAMS. Then, as I take it, the exemption, according to your way of thinking, should apply to the commodity itself and not to the shipment or not to the numbers of various commodities that might be carried in the ship.

Mr. DORR. I think the answer is "Yes." The fact that it is a bulk commodity should be determinative.

Mr. WILLIAMS. I want to ask you the question that I intended to ask the previous witness. If there is justification for removing the exemption on dry bulk commodities, wouldn't the same justification apply to liquid bulk commodities?

Mr. DORR. Well, No. 1, I don't think there is any need for justification for it. The liquid bulk, of course, has always been recognized as pretty much an extension of the manufacturing process. There again, if the liquid bulk exemption were removed, it certainly won't go to railroads. It is primarily in competition with pipelines and private transportation.

Mr. WILLIAMS. In spite of the testimony that has been given by this committee, I may say that I am rather surprised that we would have any shippers in here asking for an extension of regulations. I would think that most of the shippers would be asking to be free of regulations.

Mr. DORR. That is correct. This is especially true in this case, Mr. Chairman, where the only result means high rates, and high rates, we feel, will drive shippers to more and more private transportation.

Mr. WILLIAMS. What effect do you feel that regulation would have among competition among water carriers, among the water carriers themselves, without respect to other modes of transportation?

Mr. DORR. If we remove the bulk commodity exemption, you are asking what effect will it have on the other carriers in the same mode?

Mr. WILLIAMS. Yes, on competition within the bargeline industry.

Mr. DORR. Well, I think that competition would necessarily be increased but it would be regulated competition.

The competition is there regardless of whether they are under regulation or not.

Mr. WILLIAMS. Well you feel that the removal of the exemption would make it less competitive or more competitive?

Mr. DORR. I don't see that it would. It means higher rates. That is the main point that we are trying to make.

Mr. WILLIAMS. Wouldn't it remove to some extent the application of the law of supply and demand?

Mr. DORR. Would it remove it?

Mr. WILLIAMS. To some extent.

Mr. DORR. To the extent that right of entry is controlled, yes.

Mr. WILLIAMS. It would be necessary, in other words, for the ICC to apply uniform rates, wouldn't it?

Mr. DORR. Well, no, the Commission wouldn't have to apply uniform rates, Mr. Chairman. The carriers would still be free to initiate their own rates. There would be the possibility of suspensions and litigation, but carriers would still be free in the first instance to establish their own rates.

You would have the many other things that go along with regulation. You would have an end to the freedom, as has been pointed out here, to contract, to move the traffic, this thing, as a private industry would handle its own transportation.

Mr. WILLIAMS. When a carrier filed its own rates, that would be subject to possible objection by other carriers?

Mr. DORR. That is right.

Mr. WILLIAMS. And also by other modes of transportation?

Mr. DORR. That is correct.

Mr. WILLIAMS. That is about all I have.

Does anyone else have any questions?

Thank you very much.

Mr. DORR. Thank you, sir.
(The statement of Mr. Dorr follows:)

STATEMENT OF L. J. DORR ON BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

My name is Lester J. Dorr, of Silver Spring, Md., I am the executive secretary of the National Industrial Traffic League and I am appearing today to set forth the league's views with respect to H.R. 5595 and H.R. 9046.

The National Industrial Traffic League, appreciative of making known its views and representations to this committee, respectfully urges that the bill H.R. 5595 which proposes in substance to repeal the bulk commodity exemptions in section 303(b) of the Interstate Commerce Act is not desirable legislation and should be so reported to the House and that the related but wholly dissimilar bill H.R. 9046 which proposes to broaden the application of such exemptions for a trial period of 6 months should be enacted into law.

This statement is on behalf of the membership of the league collectively rather than individually, and reflects the interest of the public in the use of the inland waterways of this country for the vast movements of materials. The Interstate Commerce Commission is authority for the statement that only about 10 percent, tonnagewise, of domestic water transportation is subject to economic regulation by the Commission.

The subject of bulk exemptions is one which has been regarded by the league as of very great importance to shippers and has been under annual consideration and repeated league action since the first passage in 1940 of the extension of carrier regulation by the Interstate Commerce Commission over all-water transportation.

The National Industrial Traffic League, as its name implies is a national organization with members in every State and representing practically every line of industry and production and limited to those actually engaged in the shipment and receipt of commodities with the addition of chambers of commerce, boards of trade and commercial trade and traffic organizations which are interested in general traffic and transportation matters. No carrier of any kind or description is a member of the league. The members include many shippers who use extensively water transportation under wide variety of circumstances and conditions.

On innumerable occasions through the years, the league has had the privilege of appearing in congressional hearings in respect to transportation legislation. It has been active in proceedings before the Interstate Commerce Commission and other administrative agencies where matters of principle and policy or law were involved and it has been recognized in decisions of the Supreme Court as a leading organization devoted to the object of sound conditions in transportation. The overall policies of the league are strikingly in harmony with the declaration of national transportation policy which forms the preamble of the Interstate Commerce Act.

H.R. 5595 should not be enacted

In true candor, the subject of imposing regulation on bulk water transportation is controversial, with many features and room for disagreements, as is evidenced by the fact that the repeal of the present bulk commodity exemptions in section 303 of the act was favored in the so-called Bricker report of October 1951 (S. Rep. No. 1039), again in the so-called Weeks report to the President in April 1955 and again in the more recent so-called Doyle report of 1961. And such repeal has been recommended by the Interstate Commerce Commission in its annual reports to Congress in 1958, 1959, 1960, and 1961 chiefly as a measure of intended protection of regulated common carriers.

On the other hand, examination of the aforesaid reports and of the transcripts of hearings where previous bills for the repeal of such bulk exemptions were involved, will confirm that there has been almost no support by shippers or the general public and a markedly divided opinion among representatives of water carriers. Almost the entire urging for extension of regulation over bulk water transport has come from certain common carrier water operators, as well as railroads, and their friends who have envisioned benefits to the regulated common carriers. Such benefits obviously would have to be the indirect effect of handicapping or burdening the now exempt water movement.

The railroads historically have opposed all exemptions granted water or motor carriers; apparently they deem it politically most difficult, if not impossible to have these exemptions repealed and, therefore, have asserted the position that, unless repealed, railroads should be granted similar exemptions of bulk movemnts by railroad, which sounds good but on analysis will be found wholly unjustified by the circumstance of transportation.

Fundamentally, the league's position and its present plea is that governmental regulation of transportation should be based primarily on the need for protection of the public interest, which is quite in contrast with the theory frequently pleaded by regulated carriers that the existence of regulation in one area of transport requires, or at least justifies similar regulation in all other areas. This comment is distinctly pertinent to the present proposals.

Having in mind the desirability of reducing rather than increasing the extent of Federal regulation of transportation it would be difficult to escape the conclusion that the imposition of bulk water regulation would place an unnecessary and artificial hamper upon this type of carriage. Whatever complaint rail carriers may have as to any inequality of opportunity which hampers them, primarily rests upon expenditures of government funds for facilities which are used by their air, water, and highway competitors and not in the matter of regulation.

Experience for over 60 years has demonstrated that efficient and low-cost transportation has not been secured as the result of Government regulations of any sort; each addition to the structure of Government control has resulted in the hampering of transportation agencies and the growth of complicated rules which too frequently have gone beyond the point of commonsense.

The exemptions of bulk transportation on the waterways were created as part of the Amendatory Act of September 18, 1940, when the Commission's regulation over railroads and rail-and-water transport, as well as highway transport, were broadly extended over all-water interstate transportation by common and so-called contract carriers. In the extensive hearings preceding that legislation, the league took an active part, opposing the full extension over water transportation of regulation of the full pattern and degree which had been so successful as to railroad traffic; and in particular the league urged great differences in conditions of bulk transportation, which are difficult to treat with protection to the public inerest. The Congress recognized this by specifically exempting bulk movements. Subsequently, the subject of bulk exemptions was kept alive by carrier interests, threats of legislation from time to time and on each occasion the league membership upon careful studies of its committees adhered to the position which is reflected in one of the basic declarations of policy adopted by the league as part of its program for sound conditions in transportation. This reads:

"The league approves retention of the bulk commodity exemptions appearing in section 303 (b) and (c) of the Interstate Commerce Act, modified or amended by elimination, first, of the present 'three commodity' restrictions, and second, of the present 'as of June 1, 1939,' restriction, retaining, however, the present nonapplication of the exemption to transportation subject to the provisions of the Intercoastal Shipping Act, 1933, as amended."

In the beginnings of congressional treatment in 1940 and at all times since, it has been recognized that basically the movement of bulk commodities on the Great Lakes and inland waterways is not directly competitive with railroad transportation; certainly not in any long-range sense. That is to say, under no condition could the railroads long enjoy movement of considerable proportions of the principal bulk commodities which are now handled in exempt water movement.

The reasons for exempting bulk transportation on the Great Lakes and inland waterways are sound and sensible and in the public interest because they are based on the important facts of the traffic involved. This is true no less today than at the time when the Congress in putting water transport under Commission regulation provided there particular exemptions.

On the Great Lakes, grain, iron ore, coal and limestone are leading bulk commodities, and they move only in bulk. There is and always has been as to grain the competition of Canadian vessels and commerce not subject to any U.S. regulation; other bulk commodities move in large lots and to a very large extent in vessels of private ownership. Neither the railroads nor common water carriers could enjoy much of this traffic, if made nonexempt, unless under conditions (very difficult to forecast) which would compel the shippers to pay the high rates the common carriers would have to maintain.

On the inland waterways, much the same situation obtains with an enormous bulk movement in barges owned or controlled by large industrial concerns. This traffic would qualify for private (unregulated) movement by the larger industrial companies (even if the bulk exemptions were annulled), by applying the principal business test which governs so-called private transport by highway vehicle under part 2 of the act.

The position of the petroleum interests, with respect to exemption of liquid cargoes, in bulk, is that the movement of crude oil from producing points to refineries and the movement of products through various channels to distribution centers or retail outlets is decidedly an integral part of the process of manufacturing and distribution rather than involving a distinct transportation service. It may be doubted that transport by pipeline, tank ship or tank barge is truly competitive with rail or highway service, when the extreme difference in costs is regarded; and even with the contention that there is such competition, it could hardly be urged that the cost of tank barge or tank ship movements should be increased by the artificial incidence of Government restrictions.

As to the exemptions of bulk dry commodities on the rivers, certainly much of this traffic is in fact of a competitive nature. Thus for example, on the most heavily used segment of the Mississippi River system (including the Monongahela and Ohio Rivers) a substantial part of the millions of tons of coal now moving (bulk exempt) by water might move necessarily be railroad as a short-term proposition, although from different mining districts, if the exemption were removed. But in the long run, questions of locations of power plants and industries directly served by water, competition of other fuels, methods of transmission of energy, as well as such attractive substitutes as moving coal through pipelines (presently under consideration) collectively would prove determinative of the volume of coal which the railroads might enjoy. It is most doubtful that any degree of regulation of bulk water movements of coal would make it possible for rail carriage to become competitive in price with river transport. This is highly theoretical competition in the final sense.

The smaller business concerns are confronted with a serious threat if they are deprived of the present opportunity to ship by barges for hire (exempt from regulation), whereas the largest concerns able to make the investments in facilities and having the largest volume of bulk traffic are able to continue using the waters in privately owned barges not subject to Commission regulations.

The differences are very great in the characteristics of the transportation service between motor carriers and railroads on the one hand and the larger volume of water traffic which bulk commodities represent. Trucks and railroads move goods in relatively small units. Bulk water movements are in large quantities. One of the significant elements of this distinction is the ability of larger concerns to avoid the consequence of unduly burdensome costs by owning and operating their private vehicles which smaller concerns cannot do. As to the matter of interagency or intermodal rivalries: There is very definite competition between contract carriers and common carriers in the vast network of highways so that rather obviously the contract carriers, if unregulated might destroy the common carriers so closely related are their respective services and traffic. This effect extends less directly against the railroads. It is not at all true in water transportation. The merit of the present plan of regulating both common and contract carriers on the highways is not at all applicable to water transportation. Here there is, and historically has been, the widest distinction between tramp steamers bulk cargo and charter ships on the one hand and common carriers on the other. Consequently there are serious practical questions as to both the needs and the effects of regulating any contract carrier water transportation is sensible protection of common carrier water movements.

In conclusion, the League suggests that the committee take notice of the absence of any public or shipper demands for repeal of the bulk exemptions, which is mainly the objective of regulated common carrier water operators and is in the direction of controlling and abating competition. The recommendations of the Interstate Commerce Commission in its annual reports and in the appearance of Chairman Murphy before this committee quite evidently reflect that same purpose of regulating competition, in the interest of carriers of various types, which the Commission has been showing in its treatment of intermodal pricing under the ratemaking rule of section 15a of the act.

The League submits that this bill is not in the broad interest of shippers or of the public generally and should not be enacted.

H.R. 9046 is desirable legislation

Experience under the provisions of section 303 as applied and interpreted through the years since the 1940 amendment providing Commission regulation of water transportation, indicates that the limitation to three exempt commodities in one vessel or tow has unjustly handicapped regulated water carriers in handling bulk commodities and this has been against the general interest of shippers. There is no sound reason for thus restricting the exemption. The proposal of this bill is that for 6 months, presumably an experimental period, exempt bulk commodities (as clearly defined in this section) may be moved by common or contract carriers in vessels or tows with any number of exempt or with ordinary non-exempt commodities.

This might well be enacted as a permanent rather than temporary measure; and it would probably go far toward relieving the pressure from regulated water carriers for repeal of the exemptions.

The President of the United States in his "Message on Transportation" dated April 5, 1962, which I may properly remark is a sound and comprehensive review of the problems of transportation and is along the same lines as the League's position and favored program, specifically recommends as to present water transport bulk exemptions "extenting to all other carriers the exemption from the approval or prescription of minimum rates."

This contemplates that railroads, for example, may establish reduced rates on bulk grain, to be published in regular tariffs and adhered to under section 6 of the act, subject also to the substantive provisions of sections 1, 2, 3 and 4. The League membership and committees have had no opportunity to consider this proposal. I am authorized by the officers, however, to state that in their opinion the League would strongly support this recommendation, to which the officers see no ground for objection or adverse comment.

Mr. WILLIAMS. Mr. Alvin Shapiro, vice president, American Merchant Marine Institute. Mr. Shapiro.

STATEMENT OF ALVIN SHAPIRO, VICE PRESIDENT, AMERICAN MERCHANT MARINE INSTITUTE

Mr. SHAPIRO. Thank you, sir.

My name is Alvin Shapiro. I am vice president of the American Merchant Marine Institute, Inc. Our organization is a national one representing the owners and operators of a vast majority of American-flag vessels in the deep sea or ocean trades. Many of these operators are engaged in the domestic deep sea trades in the movement of bulk commodities, both liquid and dry. We are, therefore, deeply concerned with the principles involved in H.R. 5595 calling for the elimination of the dry bulk exemption as contained in Section 303(b) of the Interstate Commerce Act.

For reasons which we will enumerate, we are strongly opposed to this proposal and have become additionally concerned with what is intended thereby when, during the course of these hearings, it became obvious that in addition to dry bulk commodities, liquid bulk commodities were involved. Moreover no distinction has yet been drawn between the deep sea domestic trades and other domestic trades, all covered by section 303 of the act.

We have listened attentively at these hearings to date, and those in 1956, and frankly are impressed with the logic and perception of opponents of this legislation who have appeared before you. For reasons already made clear, we believe, even if confined to the inland waterways, the proposal is without substantial validity.

Much has been said by proponents to the effect that the proposal is in the "public interest." We promise to use this expression hardly ever, if at all, because we feel that the public interest and that of

particular modes or types of carrier may not be identical. It is impossible, in my opinion, for the shipper or user community to be as consistently opposed to this bill as is the case and still characterize it as one in the public interest. Perhaps from the point of view of the subcommittee this consideration is the one most worthy of evaluation.

We would like to call to your attention a number of considerations most, if not all of which, have not yet been presented.

I know this committee is primarily concerned with developing a sound and well balanced American transportation system. In theory it might therefore appear equitable to submit all carriers of all types and modes to regulation by the same body. In fact, however, this very submission may throw the transportation system out of balance. In this connection we are not theorizing. The U.S.-flag deep sea common carrier fleet is a skeletonized remnant of the fleet of which the shipping community, its users, and our Nation were once proud. Many factors have accounted for the demise of that fleet, not the least of which has been the treatment it has received at the hands of governmental regulation which has allowed competitive modes tremendous freedom in dissipating many of the natural or inherent advantages of waterborne transportation which ordinarily would have reflected themselves in favorable water rate differentials.

I shall not burden the subcommittee with great detail on this situation except to mention that a Subcommittee of the Senate Committee on Interstate and Foreign Commerce (now Commerce) thoroughly explored this issue and in a report dated August 29, 1960, concluded:

> * * * it further appears to your subcommittee that the Commission's methods, procedures, and in some cases its judgment were not reasonably designed to achieve the objectives envisioned by the framers of the national transportation policy * * *

And further:

> The Commission should generate a genuine interest within its ranks in discharging its duties with respect to water transportation. More of the Commission's resources being devoted to the problems of water transportation would be a manifestation of such genuine interest.

If this proposed legislation were enacted, advance publication of rates would be required. Let me give you an example of the implausibility of advance rate publication in our trades showing how it breaks completely with the custom and tradition of deep sea movements, and point out its potential serious disadvantages to the shipping public.

If an American-flag vessel is coming north from Latin America in ballast, or with substantial unused cargo space, it could at very limited expense to itself move to a U.S. gulf port and pick up sulfur destined for a U.S. North Atlantic port. Because the real costs on the leg to the North Atlantic need only cover the brief diversion time from its otherwise ballast route back plus cargo handling, a low rate can be offered by the bulk carrier to the sulfur shipper—in this case, let's say $5 per ton. However, if the vessel is in a North Atlantic port and must move to the gulf in ballast in order to load sulfur bound for the North Atlantic the diversion or ballast time is infinitely greater and the ship will require a rate perhaps twice the rate on the previous voyage northbound from Latin America—let's say $10 per

ton. Hence what shall be used in publication of the sulfur rate from the gulf to the North Atlantic? Obviously the rate, say $5, under the former situation is entirely too low to cover the latter situation and the rate, say $10, under the latter situation is too high under the first described circumstances. In fact, then, what one would be doing by advance rate publication is drawing a circle around a particular loading area and then assuring one's self that all vessels positioned outside of that circle would economically be barred from trading at the lower rate. This would raise rates and seriously reduce service through the pure coincidence of position of carrier. Thus we would destroy the traditional ratemaking basis in the ocean bulk trades.

Now these are not unusual circumstances. Bulk rate quotations in the domestic and in fact the international trades are largely determined by the position of the vessel and the requirement for the movement of a particular bulk commodity. Please bear in mind that the ocean carrier in the bulk trades is not confined to any narrow waterway, any fixed roadbed, or any highway, but exists only because of his ability to roam the high seas.

We feel, therefore, that advance rate publication if applied to the deep sea trade would be disruptive and could probably go further than any one single imposition or regulation to destroy at its very heart, bulk movements in the coastwise deep sea trades.

And this, Mr. Chairman, gets directly to the point that you have just mentioned.

These trades in the United States and elsewhere have always reflected the free market situation or the impact of supply and demand. They remain today a rare if not the sole remnant of the free market in the U.S. economy.

Prior witnesses have properly indicated that great competition exists between the regulated and exempt inland carrier in carrying bulk commodities by water. Rates have reflected this competitive situation and the shipper has been served well. The railroads, we feel, because of their higher cost structure, if compelled to employ a proper rate level would not be able to compete successfully for the vast majority of these bulk movements.

Thus one might properly question why we would oppose the repeal of the bulk exemption since in fact we feel strongly that it will not signifiicantly divert cargoes from water to land nor from the nonregulated to the regulated water carriers. In answer, I would say that our fundamental objection is to Government intervention where this is not proven to be necessary. It would be a mistake to destroy the free marketplace which the exemption has provided and substitute in its stead Government regulation dedicated to altering existing transportation patterns and practices which have already served the public well.

I will not complicate the record further except to indicate that rate questions in the ocean trades are vastly more complicated than those in inland waterways and frequently reflect strong feelings on future conditions by both the shippers and carriers, sometimes in advance as far forward as 10 and 20 years.

One word on secret rates in our trade. I have in my briefcase the last 7 consecutive days of the New York Journal of Commerce showing on the concluding page the rates quoted in ocean trades. These

are public, known to almost anyone interested and available to anybody for 20 cents.

All of this does not mean that we do not recognize that the railroads have serious problems nor are we unsympathetic to seeing that those problems are appropriately resolved. However, in the long list of potential steps that might be taken by all interested parties in helping the railroads in their present plight, we feel the repeal of their bulk carrier exemption would be well toward or at the bottom.

Moreover we believe that the repeal of the bulk carrier exemption would definitely promote the use of private carriage. While I personally believe that much of what Government agencies say about public disadvantage under this potential development is somewhat overdrawn, I nonetheless think it can be fairly said that the growth of private carriage is viewed with alarm by Government agencies concerned with our transportation system.

Now, I have frequently heard it said that the lack of available cargo for backhaul may tend to limit movement by private carriers in the water trades. This may be a retarding influence in our inland navigation but it will not be an obstacle in our deep sea domestic trade. I say this because of the established fact that the deep sea bulk trades are today overwhelmingly and have always been without backhaul in the dry bulk area and totally without backhaul in the liquid bulk area. Thus, lack of backhaul will not be a barrier to the promotion of deep sea private carriage, should bulk transportation lose its existing exemption.

Finally may be add our belief that transportation is a cost of doing business. The long-range implication of the removal of the bulk carrier exemption to the inherently low-cost water operator can only increase the cost of doing business for the manufacturer, the farmer, the trader, and ultimately the consumer. Within and without the administration there is serious concern at this very moment about our domestic economic growth and our ability to export abroad because of present and emerging price levels.

The step contemplated in H.R. 5595 is, in light of this, a serious backward one, for the removal of the bulk carrier exemption will put increasing pressure on raising the cost of doing business in this country.

Thank you.

Mr. WILLIAMS. Thank you, Mr. Shapiro.

Mr. Friedel, do you have any questions?

Mr. FRIEDEL. I want to compliment Mr. Alvin Shapiro for his very fine statement. I think it is of tremendous interest and will enlighten the committee on these problems.

Mr. SHAPIRO. Thank you, sir.

Mr. WILLIAMS. Mr. Shapiro, you made an excellent statement in support of maintaining the bulk commodity exemption. You base that statement on the proposition that through the exemption the public interest is best served.

Mr. SHAPIRO. Yes, sir.

Mr. WILLIAMS. The reason the public interest is best served is that through competition and the operation of supply and demand, the costs are held down for the shipping public, is that a fair statement?

Mr. SHAPIRO. Yes, I think that is a good general premise.

Mr. WILLIAMS. Now, in the light of that, what would be your attitude with respect to removing the ratemaking authority of the ICC altogether and putting all of this on a competitive basis in order to permit each mode of transportation to exploit its advantage to the fullest extent possible?

Mr. SHAPIRO. This is a very serious problem, Mr. Chairman, and of course it is one that has recently emerged and has gotten considerable prominence because it was contained in the President's message.

This particular proposition has not been formally taken up by our membership. Personally, however, it has long been my feeling and precisely within the framework discussed within the President's message, that this is the better of the two approaches in connection with bulk-carrier exemptions.

However, there are several most vital considerations bearing on the wisdom of providing bulk exemptions for the railroads. The first: Railroads operate on a private roadbed with the Federal certificates.

Mr. WILLIAMS. Let me say this. I wasn't referring to the bulk-commodity exemption so much as I was to removing all regulations of rates in interstate commerce.

Mr. SHAPIRO. Mr. Chairman, my comments would really go to this problem just as well, because I think it is virtually an identical situation.

The railroads operate on a private roadbed with a Federal certificate in which, to all intents and purposes, there is no free entry of competitive carriers. Under this situation and where the railroad is the sole provider of the service or the basic provider of the service because of the absence of competitive carriers, and there are these particular geographic situations——

Mr. WILLIAMS. You are not suggesting that the trucks are not competitive with the railroads?

Mr. SHAPIRO. Well, the trucks are not competitive with the railroads for a vast majority of the railroad commodities which happen to be in the bulk area. In the general type commodities, the truck is, of course, a competitor, but you must remember that the railroads themselves have indicated very positively the tremendous amount of their transportation which is in bulk commodities.

Mr. COLLIER. Will the gentleman yield for a clarification of that?

Mr. WILLIAMS. Yes.

Mr. COLLIER. Isn't it true, however, that the volume of bulk commodities shipped by trucks has increased tremendously in the last 10 to 15 years?

Mr. SHAPIRO. Yes, and I think one of the reasons for this increase has been the tendency of users of bulk transportation to equip themselves with proprietary carriage. In other words, they have gone in for private carriage. I do not have the figures available to me, but I doubt very substantially whether there is any significant common carrier bulk commodity movement by truck.

Mr. COLLIER. Take, for example, liquid commodities. I have certainly no objection to this type of free competition, but to clarify your statement, are not the new types of equipment being used by the common carriers in the trucking industry such now that they are increasing and will continue to increase bulk commodity shipments?

Mr. SHAPIRO. Mr. Collier, there is no question that as physical equipment improves the opportunity for, let's speak specifically about your bulk transportation and liquid commodities, that as your equipment improves and as progress moves forward you can carry a more substantial volume in trucks, as a specific example. But that same equipment progress is taking place in a vast number of other areas in the transportation field and I doubt very seriously whether you are going to see in the next 20 years any significant shift in the pattern by which trucks haul a greater proportion than they are now hauling of liquid commodities.

Mr. COLLIER. One of the prime problems, however, is the identification or classification of liquid bulk commodities that complicates the problem for the trucking industry.

Mr. SHAPIRO. Yes, no question. This is a problem.

Mr. Chairman, if I may go on, because I think this is somewhat of a significant point.

Mr. WILLIAMS. Yes.

Mr. SHAPIRO. Now, under a situation in which a railroad operator—and if I may, let me confine myself to the bulk trade for the moment—under the situation in which the railroad has a rather unique position without competition in a certain leg or a certain run, or from loading point to destination point, without Government supervision of his rate, there could be a tremendous shipper disadvantage in the acceleration of that rate or in the raising of that rate. This is a serious problem to shippers who find themselves with the sole source of transportation in these bulk trades being the railroad.

Now, it is entirely up to this committee, really, to make a judgment as to whether these rates for these shippers, who are geographically unique, should be left to the absolute free action of the carrier.

However, in the bulk railroad trades, where there is competitive water transportation, the railroads could push rates down without regard to their own individual costs or without regard to a proper rate structure, and sustantial losses could accrue to them in these particular trades. Such losses would, of course, have to be made up in other areas, particularly in the general commodity movements.

Now this latter group of shippers would find themselves picking up the ante that results from losses resulting from the railroads trying to compete outside of a normal rate structure with competitive water carriers.

Now, these are considerations that just make me hesitate about accepting the Presidential recommendation in regard to the railroad bulk carrier exemption extension. I don't say that they turn me against it, but I say that these are considerations that certainly must be studied very carefully before that recommendation is embodied into law.

As a principle, I repeat, it seems very nice to say either regulate everybody or don't regulate everybody. I would agree with that basic philosophy but when you get beyond the philosophy, you then have to deal with the very realistic facts of particular transportation situations. This is your burden. This is a heavy one.

Mr. WILLIAMS. Thank you very much.

Any further questions?

Thank you, Mr. Shapiro.

Mr. SHAPIRO. Thank you.

Mr. WILLIAMS. Mr. M. E. Iten, representing Monsanto Chemical Co.

STATEMENT OF MELVIN E. ITEN, TRAFFIC MANAGER, MONSANTO CHEMICAL CO., ST. LOUIS, MO.

Mr. ITEN. Mr. Chairman and members of the committee, my name is Melvin E. Iten. I am traffic manager of Monsanto Chemical Co., St. Louis, Mo.

Monsanto Chemical Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware engaged in the manufacture of chemicals, acids, plastics, et cetera, with 25 plants at various points in the United States.

Monsanto unequivocally opposes enactment of H.R. 5595, which would repeal the water carrier bulk commodity exemption as found in section 303(b) of the Interstate Commerce Act.

Monsanto is a large manufacturer of many intermediate and heavy chemicals and, as such, has a vital interest in transporting raw materials and finished products by water. Eighteen of Monsanto's 25 plants, involving millions of dollars, have been located on navigable waterways to have access to economical water transportation. Thirteen of these plants have barge and other marine facilities which represent a combined capital investment of approximately $10 million. These enormous expenditures were made by Monsanto in reliance on continued low-cost water transportation under bulk exemption.

Monsanto is presently involved in construction of two multimillion-dollar projects, both of which are totally reliant on bulk transportation by water. No other mode of transportation is available.

Monsanto's waterborne tonnage during 1961 approximated 2 million short tons. Of this amount about 250,000 tons were dry bulk commodities, on which the average haul was about 1,250 miles. Our forward planning indicates dry bulk tonnage will increase to about 600,000 short tons in the next few years. Any increase in water transport cost can seriously affect our plans for the future, and investments in this area. A few cents per ton is, indeed, a significant factor when consideration is given to the fact that existing transportation costs, in many instances, exceed the unit cost per ton of the commodity being transported.

Large volume tonnages must continue to enjoy the flexibility that currently prevails and which we believe will be destroyed through economic regulation.

We firmly believe it is unnecessary to regulate commerce where the shipping public has a wide choice of carriers who are freely competing. In fact, the choice is not limited to existing carriers, including the certificated carriers, but to anyone desiring to enter the field and who can provide better and more economical service.

With the inception of water carrier regulation approximately 20 years ago, Congress gave recognition to the need for the bulk commodity exemption.

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After 20 years without regulation, what justification is there now to implement controls which go against the best interest of the public and reduce efficiencies which benefit millions of consumers?

The certificated common carriers are effectively competing under the 303(b) exemption with the unregulated carriers. Monsanto employs the services of both types of carriers.

Competition assures low-cost water transportation, which provides a wide distribution of products by bulk and the public benefits by the lower costs.

Now, to explain why regulation will result in higher costs and reduce service efficiency; and why water transportation must keep its service flexible and desirable for shippers:

Normally, exempt carriage is designed to the service requirements of each shipment. This particularly applies to large volume movements. Such special services permit direct expedient service, full utilization of special-type equipment, low working inventories, and the rates are based upon factors relevant to each commodity and each movement. Regulation will nullify these advantages. They cannot be expressed in terms of rigid rates, rules and regulations of tariffs filed with the Interstate Commerce Commission which, of necessity, must be designed to reflect the costs and other factors pertinent to all regulated carriers.

Certificated carriage is not designed to each specific movement but is based on average requirements. It is evident that averages penalize efficiency and will increase costs. Time and efficiency are cost factors and cost is too important to rely on averages. By virtue of details connected with regulation the exempt carriers' overhead will increase.

The proposed legislation would grant existing unregulated carriers "grandfather rights"—however, operations for the future would be restricted and prevent economical operation. This would place them in a "straitjacket" of regulation that would destroy their opportunity to continue to service the public.

Today, regulated coastal steamship service has practically disappeared. The only water carriers operating profitably in coastwise service are those operating as bulk carriers, exempt from regulation. In the interest of maintaining domestic water commerce and the need of it for national defense, we are opposed to any regulations which may destroy it.

Regulation will have an adverse effect on both carriers and shippers. Should bulk cargoes become regulated, and service and freight rates are set at a level above that which is economical, it will then encourage our industry using water transportation extensively to provide its own equipment and enter into private carriage. The small barge operators will eventually be eliminated. Further, small shippers having insufficient tonnage or capital for private carriage will be put to a competitive disadvantage.

Elimination of small business is a trend to monopoly. Elimination of competition is a trend to inflated costs.

Repeal of exemption would materially lessen or destroy the value of favorable geographic location of chemical plants on navigable waterways to take advantage of lower water costs.

The chemical industry is fighting desperately to protect dwindling margins and its investors. We respectfully urge your disapproval of H.R. 5595.

Gentlemen, in conclusion, I would like to say that I realize that your interest is the objective of preserving transportation in the public interest. I have cited here the case of an individual company which I think is typical of the chemical industry generally. The water transportation cost is quite important to the future growth of our country, as well as to the economic welfare of our Nation, and I appreciate your indulgence.

Thank you.

Mr. WILLIAMS. Thank you, Mr. Iten.

I notice on page 2 a statement that you have made which I think is very significant. You state:

> We firmly believe it is unnecessary to regulate commerce where the shipping public has a wide choice of carriers who are frequently competing. In fact, the choice is not limited to existing carriers, including the certificated carriers, but to anyone desiring to enter the field and who can provide better and more economical service.

I would like to pose the same question to you that I posed to the previous witness, and that is, What are your feelings regarding a removal of authority from the ICC to fix rates, placing all transportation on a free, competitive basis?

Mr. ITEN. Mr. Chairman, I do not believe that that would be in the best interest of our country to remove entirely the jurisdiction of the ICC in ratemaking. I very firmly believe that some liberalization is necessary which will give all carriers the right to exercise their managerial discretion in establishing rates and service.

As an example, I do not believe that any mode of transportation should be permitted to establish rates that are below their out-of-pocket costs and certainly that has happened in the past. Conversely, I do not feel—there should be some control to prevent carriers from charging excessive rates.

The CHAIRMAN. A carrier couldn't operate long if it didn't meet its out-of-pocket costs, though, could it?

Mr. ITEN. That is correct, sir.

The CHAIRMAN. And don't you feel that if unregulated competition among the carriers should be amicable to dry bulk commodities and liquid commodities, that it should also be amicable to manufactured products and agricultural products? Why wouldn't the same principle apply? That is the question that I wanted to get across.

Mr. ITEN. Well, over the years the railroads and other carriers who are called upon to provide a service have established rates that—I am going back—that have reflected their out-of-pocket costs plus the return on investment. I believe that the railroads and other modes of transportation should be granted some freedom in this area, but as I said before, and I repeat again, to not be in a position to establish rates that reflect at the level of out-of-pocket costs or below for the purpose of gaining this transportation and then some 5 years hence, after obtaining those movements and perhaps driving the other carrier out of business, and then raise their rates.

The CHAIRMAN. Are there any carriers in this country who could deliberately and with intention operate at a loss for 5 years for the purpose of running other modes of transportation out of business? Are there any of them that could stand taking a deliberate loss for 5 years?

Mr. ITEN. On a selective basis of movements, that might be possible where other commodities and other movements would be then subsidizing the commodities on which the rates were established at out-of-pocket costs or below.

The CHAIRMAN. Well, now, we have antitrust laws that would cover that. Don't we have antitrust laws that would move in to take care of that kind of a situation?

Mr. ITEN. That is possibly true, sir. The railroads, however, and motor carriers and many forms of transportation are exempt from the antitrust laws under the Interstate Commerce Act.

The CHAIRMAN. Let me clarify the question that I am asking.

Why wouldn't the public profit from removing the ratemaking authority from the ICC and bringing transportation under the antitrust laws?

Mr. ITEN. Conceivably the public would profit, sir.

The CHAIRMAN. You think possibly the public would profit under that kind of a situation, is that your answer?

Mr. ITEN. Yes, sir.

The CHAIRMAN. Thank you. Any questions, Mr. Staggers? Mr. Friedel? Mr. Devine?

Mr. DEVINE. No questions, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Blewett.

STATEMENT OF W. G. BLEWETT, VICE PRESIDENT, PEABODY COAL CO., ST. LOUIS, MO.

Mr. BLEWETT. Mr. Chairman, and members of the committee, I have a very short statement I would like to read into the record, and then make myself available for questions.

The CHAIRMAN. Thank you, sir.

Mr. BLEWETT. My name is W. G. Blewett. I am vice president of Peabody Coal Co., with general offices in St. Louis, Mo.

We concur in full with the statement made before this committee by Dr. Myles E. Robinson, director, economics and transportation, National Coal Association, although we would like to add a little to that statement.

Gentlemen, doesn't it seem strange to you that this move, and other similar moves now being made to restrict transportation on the waterways, is coming at a time when the words "economic growth," "expanding the economy," and other associated remarks, are constantly before us in one way or another? In fact, I doubt if any one of us goes through a day without seeing them or hearing them in some way.

How can we possibly have restrictions on the one hand and growth on the other? It certainly comes within the definition of the word "incompatibility."

A given mode of transportation can only contribute so much to the economic picture of a country. The horse and the cart gave us so much, the railroads can give us so much, the trucks on the highways so much, but certainly we have seen in the last few years the contribution to the expansion of the economy by the methods of transportation on our inland waterways. Billions of dollars have been invested in industry along our waterways during recent years at a

rate which a short time ago would have been considered unbelievable and there is every indication that this phase of our growth is going to continue at a very rapid rate. Certainly this is no time to change the rules of the game. Some of us who watched the growth are of the opinion that all of it would grind to a stop if restrictions such as the one now being considered were to be imposed, but beyond this it could be considered as bad faith because all of it was predicated on the rules now in effect. Some of the rules have a congressional history going back to the Northwest Ordinance. However, I would like to confine my remarks to the matter as it affects coal directly.

Repeal of the exemption rule would be a staggering blow to our industry. It will have its effect on other industries depending directly and indirectly on coal. In fact, it will go directly to the householder in the form of higher cost for his electricity, most of which is, as you know, generated by coal-burning plants.

Some 100 million tons of coal are moving about our inland waterways at rates which have been hammered down by competition, which the exemption rule permits. In the main, and this is quite important to say, it is coal which would otherwise not move at all. The margins in our industry are very slim indeed. Competition is keen within the industry itself, but, of course, we get competition from other fuels, natural gas and oil, and I might add, a substantial part of this competition comes from other countries—gas at several points in the Northwest from Canada and there are moves to bring in Canadian gas at points in the East. Natural gas from Mexico is in the offing, and, of course, millions of tons of coal are displaced on the east coast by foreign residual oils which are dumped at ridiculous prices. It all points up to the slim margins, which, of course, mean that any increase in transportation cost to any segment of coal would be a very, very serious matter indeed. Some of us in coal are proud to make the statement, the gist of which is that during the past 10 to 12 years the average cost of coal at the mine has actually declined and this is especially significant when considered with the fact that during this period labor in coal has been elevated to the highest paid in the land. We have been able to do this because of many things—good labor relations, mechanization, and good overall progress—but one of the biggest contributing factors which is not mentioned often enough is the tremendous movement of coal by water which permits the creation of mining properties producing the lowest cost energy in the entire world.

This movement of coal by water has come about in a very natural sort of way. Like other bulk commodities we were restricted by the mode of transportation available to us. It started a few years ago with an occasional barge of coal which necessarily had to mix in a tow with other commodities, but in sharp contrast to this small beginning, we have today the solid coal tows which put together 25,000 to 30,000 tons moving in a single unit. This is equivalent to 400–500 average railroad hopper cars.

Mr. Chairman, I have a few pictures here—I realize you gentlemen see many pictures of mixed tows, and I would like to pass them along to you, if I may—of a solid coal tow. I am sorry we don't have enough to pass around to each and every one. But that tells the story much better than I can.

One of the prime examples of this coal development is the Florida coal movement. Today coal moves down the Ohio, then on down the Mississippi River, where it is transferred at New Orleans to an ocean coal-carrying vessel and sent across the Gulf of Mexico to Tampa, Fla., for the Tampa Electric Co. These are other large unusual movements of coal. I say "unusual" in retrospect, of course—which I could illustrate that have come about through low-cost water transportation.

It makes it very difficult indeed to think of restrictions in the face of such growth. On the contrary, I think that we should go ahead and try to find even better ways of getting our product to the marketplace.

Thank you.

The CHAIRMAN. Thank you, Mr. Blewett.

Mr. Staggers, any questions?

Mr. STAGGERS. I was noticing your statement here on page 3. You state there "Like other bulk commodities, we were restricted by the mode of transportation available to us."

Mr. Blewett, what do you mean by that?

Mr. BLEWETT. Well, along about 1950 or thereabout, the coal industry was in a rather serious state, shall I say. We had lost the domestic market to oil and gas. The railroads had almost completed their dieselization program, and where we were going to go from here, we didn't know.

We looked to the electric-generating utility business, and knowing the kind of a job we thought we could do for them, we immediately started to exploit that field.

I can understand why the railroads said to us that they could not afford to invest too much in the coal industry, because very few of them had any confidence in its future. They couldn't supply us with a sufficient number of cars, and when they did give us a number of cars, it could be the opposite type that we required. And then on top of that, of course, was the rate which absolutely put us out of the market.

We turned to water. First we turned to the common carrier. He, to a great extent, felt like the railroads felt—that we were not going very far. And then we turned to the contract carrier, and of course, the rest is history.

Mr. STAGGERS. Following that up, then, you are supplying different ones of these electric companies by continual supply in different parts of the country, is that right—I mean the coal industry is.

Mr. BLEWETT. Yes, I would say the bread and butter business for the coal business today is definitely the utility industry.

Mr. STAGGERS. In talking about the common carrier, I would like to know can the common carriers avail themselves of the advantages of the bulk exemption ruling?

Mr. BLEWETT. Yes.

Mr. STAGGERS. That is all, Mr. Chairman. Thank you very kindly. I think you have made a very good statement.

The CHAIRMAN. Thank you, Mr. Blewett.

Mr. H. G. Miller, representing Dow Chemical Co.

STATEMENT OF H. G. MILLER, MANAGER OF DISTRIBUTION DEVELOPMENT, DOW CHEMICAL CO.

Mr. MILLER. Mr. Chairman, I have filed a complete statement with the secretary. With your permission, I will highlight that and condense it slightly for the convenience of the committee.

The CHAIRMAN. I notice you are here in opposition to H.R. 5595, removal of the exemption.

Mr. MILLER. That is right, sir.

The CHAIRMAN. And I would presume that the basic reasons for your opposition have already been stated by other shippers.

Mr. MILLER. They are similar. I have a few points I would like to emphasize.

My name is H. G. Miller, and I am manager of distribution development for the Dow Chemical Co. I have been active in the management of marine transportation of chemicals for the Dow Chemical Co. for the past 14 years.

The Dow Chemical Co., a Delaware corporation with its executive offices in Midland, Mich., manufactures a wide range of chemicals, plastics, and metals, with sales of $817,500,000 in the fiscal year ending May 31, 1961. The Dow Chemical Co. has invested substantial amounts of capital in plant locations on the inland waterways and ocean ports and is dependent on water transportation for the movement of products and raw materials. Locations dependent on water transportation include production plants at the deep sea ports of Allyn's Point, Conn.; Williamsburg, Va.; Plaquemine, La.; Freeport, Tex.; Torrance, Calif.; Pittsburg, Calif., and Kalama, Wash. On the Great Lakes, we have production plants located at Midland, Mich.; Bay City, Mich.; and Ludington, Mich. On the inland waterways we have production plants located at Pevely, Mo.; Madison, Ill.; and Hanging Rock, Ohio. In addition, we use 18 public terminals located on the navigable waterways of the United States.

During 1960, the Dow Chemical Co. received by water or shipped by water over 2,300,000 tons of product and raw material, of which volume over 820,000 tons consisted of dry bulk commodities as defined in section 303(b) of the Interstate Commerce Act.

The Dow Chemical Co. is opposed to any changes in section 303(b) of the Interstate Commerce Act which would eliminate or restrict the right of unregulated carriers to transport dry bulk products and we are opposed to any attempt to eliminate or restrict the right of unregulated carriers to transport bulk liquid products. We feel that any restriction or limitation of these exemptions would be contrary to the interests of the general public, as well as the chemical industry. We are familiar with the testimony presented to this committee today by the Manufacturing Chemists' Association and the Dow Chemical Co. strongly supports the position of the Manufacturing Chemists' Association in opposition to passage of H.R. 5595.

For your convenience, I would like to summarize three basic arguments for retention of the dry bulk exemption.

(1) The unregulated carrier or private fleet operator is best equipped to offer the flexible service required.

Most of our dry bulk movements are one way hauls requiring specialized equipment. The unregulated carriers are presently furnishing the required equipment on a competitive and flexible basis. If the dry bulk exemption is eliminated, many of these would be moved by private carriers, rather than by other regulated carriers.

(2) The present free competition results in efficient transportation to the benefit of both the public and American industry.

In a June 9, 1961, hearing before the Senate Commerce Committee in regard to ICC docket WC–5, Mr. J. W. Hershey, president of American Commercial Barge Lines, testified generally to the effect that published rates on dry bulk products moved by water had been reduced substantially as follows:

	Cost per gross ton	
	1954	1960
Sulfur, Port Sulphur, La., to Pittsburgh	$5.24	$3.50
Salt, Louisiana to St. Louis	5.65	4.00

This testimony seemed to carry an implication that such rate reductions were undesirable. Since the rate levels were set by competition of individuals and companies free to enter or leave the trade, efficiency was stimulated to the benefit of the shipping and consuming public.

For example, the common carrier rate on drum chemicals from New Orleans to Pittsburgh, Pa., is $8.31 per short ton in 600-ton lots. The rate on 600 tons of sulfur is $4.60 per short ton. Where no unregulated competition exists, the rate is 80 percent higher on a comparable move.

Regulation cannot provide incentive for economical operational practices. Competition is necessary to serve as a check and balance and should not be eliminated. On Dow's movements from the Gulf of Mexico to Chicago, where we move both regulated and unregulated commodities, our average rate on regulated commodities in carriers' equipment greatly exceeds the rates for comparable movements of nonregulated commodities in the carrier's equipment. The long-range effect of regulation would be the elimination of the smaller operators and removal of competitive forces which stimulate increased efficiency and a reasonable level of rates.

(3) And most important, the current system serves consumers' needs. It has resulted in an efficient system of movement of dry bulk commodities, which are necessary for utilities, for agriculture, and for industry. The result has been a flexible and efficient system for the movement of dry bulk commodities necessary for utilities, agriculture, and industry. The result has been lower cost of agricultural products, utilities, and industrial products. These have benefited the consuming public throughout much of the United States. It also has stimulated industrial investment and provided jobs, which is of particular importance in those underdeveloped areas where transportation has been a problem.

For these reasons, we feel repeal of section 303(b) of the Interstate Commerce Act would be contrary to the general public interest. We appreciate the chance to appear before you.

The CHAIRMAN. Thank you very much, Mr. Miller.
(The statement of Mr. Miller follows:)

STATEMENT OF H. G. MILLER, MANAGER OF DISTRIBUTION DEVELOPMENT, FOR THE DOW CHEMICAL CO.

Mr. Chairman and members of the committee, my name is H. G. Miller, and I am manager of distribution development for the Dow Chemical Co. I have been active in the management of marine transportation of chemicals for the Dow Chemical Co. for the past 14 years and, in my present capacity, am responsible for the determination of the most economic methods of moving the products and raw materials of our company and for the long-range planning and direction of the marine operations.

I graduated from Baldwin Wallace College in 1944 with majors in economics and mathematics and completed 2 years of graduate work at Columbia University School of Business with majors in accounting and foreign trade. I served in the U.S. Navy for 3 years as a deck and navigation officer of naval transport vessels.

The Dow Chemical Co., a Delaware corporation with its executive offices in Midland, Mich., manufactures a wide range of chemicals, plastics, and metals. with sales of $817,500,000 in the fiscal year ending May 31, 1961. The Dow Chemical Co. has invested substantial amounts of capital in plant locations on the inland waterways and ocean ports and is dependent on water transportation for the movement of products and raw materials. Locations dependent on water transportation include production plants at the deep sea ports of Allyns Point, Conn.; Williamsburg, Va.; Plaquemine, La.; Freeport, Tex.; Torrance and Pittsburg, Calif.; and Kalama, Wash. On the Great Lakes, we have production plants located at Midland, Bay City, and Ludington, Mich. On the inland waterways we have production plants located at Pevely, Mo.; Madison, Ill.; and Hanging Rock, Ohio. In addition, we use 18 public terminals located on the navigable waterways of the United States.

During 1960, the Dow Chemical Co. received by water or shipped by water over 2,300,000 tons of product and raw material, of which volume over 820,000 tons consisted of dry bulk commodities as defined in section 303(b) of the Interstate Commerce Act.

The Dow Chemical Co. is opposed to any changes in section 303(b) of the Interstate Commerce Act which would eliminate or restrict the right of unregulated carriers to transport dry bulk products and we are opposed to any attempt to eliminate or restrict the right of unregulated carriers to transport bulk liquid products. We feel that any restriction or limitation of these exemptions would be contrary to the interests of the general public, as well as the chemical industry. We are familiar with the testimony presented to this committee today by the Manufacturing Chemists' Association, and the Dow Chemical Co. strongly supports the position of the Manufacturing Chemists' Association in opposition to passage of H.R. 5595.

For your convenience, I would like to summarize the three basic arguments for retention of the dry bulk exemption:

First. The unregulated carrier or private fleet operator is best equipped to offer the flexible service required.

Most of our dry bulk movements are one-way hauls requiring specialized equipment. The unregulated carriers are presently furnishing the required equipment on a competitive and flexible basis.

Second. The present free competition results in efficient transportation to the benefit of both the public and American industry.

In a June 9, 1961, hearing before the Senate Commerce Committee in regard to ICC Docket WC–5, Mr. J. W. Hershey, president of American Commercial Barge Lines, testified generally to the effect that published rates on dry bulk products moved by water had been reduced substantially as follows:

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Port Sulphur, La., to Pittsburgh (sulfur)	$5.24	$3.50
Louisiana to St. Louis (salt)	5.65	4.00

This testimony seemed to carry an implication that such rate reductions were undesirable. Since the rate levels were set by competition of individuals and companies free to enter or leave the trade, efficiency was stimulated to the benefit of the shipping and consuming public. Regulation cannot provide incentive for economical operational practices. Competition is necessary to serve as a check and balance and should not be eliminated. On Dow's movements from the Gulf of Mexico to Chicago, our average rate on regulated commodities in carriers' equipment greatly exceeds the rates for comparable movements of nonregulated commodities in the carriers' equipment. The long-range effect of regulation would be the elimination of the smaller operators and removal of competitive forces which stimulate increased efficiency and a reasonable level of rates.

Third, and most important, the current system serves consumers' needs.

A flexible and efficient system for the movement of the dry bulk commodities necessary for utilities, agriculture, and industry. The result has been lower cost of agricultural products, utilities, and industrial products. These have benefited the consuming public throughout much of the United States. It also has stimulated industrial investment and provided jobs, which is of particular importance in those underdeveloped areas where transportation has been a problem.

For these reasons, we feel repeal of section 303(b) of the Interstate Commerce Act would be contrary to the general public interest.

The CHAIRMAN. We have two more witnesses scheduled for this morning. One is Mr. Clyde Parks, Allied Chemical Corp. The other is Mr. Jacob Hershey, representing the Inland Waterways Common Carrier Association. I think perhaps we should let Mr. Hershey wind this up.

Is Mr. Parks here?

STATEMENT OF CLYDE PARKS, TRANSPORTATION MANAGER OF ALLIED CHEMICAL CORP.

Mr. PARKS. Yes.

The CHAIRMAN. Mr. Parks, come on up, please.

You represent the Allied Chemical Corp.?

Mr. PARKS. That is right.

The CHAIRMAN. Is your position on these bills the same as Dow Chemical and Monsanto?

Mr. PARKS. We are in opposition to the repeal; that is right.

The CHAIRMAN. I would presume that the reasons given in your statement are practically the same as the premise upon which they base their opposition?

Mr. PARKS. In general, yes; with more specific——

The CHAIRMAN. I am trying to avoid as much repetition as possible.

In the interests of time, I am wondering if you would let us accept your statement for an insertion, and then, perhaps, cover the high points in your statement.

Mr. PARKS. All right, sir. I am manager of transportation for Allied Chemical, 40 Rector Street, New York.

I will then go to the paragraph 3, on page 2.

Of prime interest to the subject at hand are Allied's plants located on these navigable waterways. Allied operates 56 plants or mines, and maintains 31 terminals, that regularly use water transportation for the movement of raw materials and finished products. During 1961 Allied moved approximately 6,845,000 tons of raw materials and 1,676,000 tons of finished products by water (a total of 8,521,000 tons) into and out of our waterside locations.

Some of the bulk materials which Allied moves in substantial quantities by water are:

Sulfur, coke, phosphate rock, sodium sulphate, electrode binder pitch, chrome ore, salt, fluorspar, bauxite, soda ash, mixed fertilizers, coal, ammonium sulphate.

Allied Chemical employs all modes of transportation, including private carriage, in the movement of raw materials to be used in its manufacturing processes and in the distribution of manufactured products. As a major individual producer and member of the chemical industry we are, therefore, vitally concerned with the preservation of the economic health and welfare of our industry, as well as the preservation of all facets of the Nation's transport system. I will then go to the specific, on page 4, paragraph 1.

The arguments that have been presented favoring elimination of bulk exemption and placing under regulation the traffic now moved by contract carriers are generally that the imposition of regulatory restrictions would enable the competing regulated carriers to secure a major portion of this traffic. The common carriers further argue that regulation would benefit the public by eliminating open competition.

It is our sincere belief that these contentions are not valid in any sense and have not been proved by the proponents of this legislation. It is also our belief that there have not been any developments or substantial changes in the conditions, facts, and circumstances related to bulk transportation by water which affect the public interest and which justify, or require, repeal of section 303(b). Any change in section 303(b) should be based on need for protection of the public interest and not on the theory that regulation is good for all carriers, or that imposition of regulations in one area requires and justifies regulations over different segments of the industry in other areas. Quite to the contrary, regulation in one area may well be essential to protect the public interest, while in another area the opposite can, and is often, true. For example, where land transportation is involved in many instances only one or two services are available to the shipper so that it is important that shippers, and the public, be assured of adequate service and be protected from unreasonable rate demands by the carrier. Inasmuch as the waterways are available to all unregulated carriers, the shippers have a wide selection of transportation service at their disposal and it is not possible for the carriers to exercise or gain monopolistic control in this area, with the result that the public's interest is best served by the exercise of normal competitive forces and not by regulation.

If the regulated water carriers, who are among the chief proponents of legislation to eliminate section 303(b), see fit to compete for transportation of dry bulk commodities there is no valid reason why they may not do so under existing practices. The exemption from regulation which is provided for bulk commodity transportation by the Interstate Commerce Act is open equally to regulated and unregulated carriers. As a matter of practice it has been shown that between 50 and 60 percent of the traffic carried by the common carriers on the Mississippi River system consisted of dry bulk commodities, much of which did, and all of which could have moved under bulk exemption. Common carriers have not lost any of the regulated non-

bulk traffic to the unregulated carriers since the latter cannot by law haul such traffic. Accordingly, the facts are, that the present common carriers are seeking to have materials moving in bulk brought under regulation so as to provide traffic for them under conditions and privileges which are not and would not become available to other carriers.

The regulated water carriers have claimed that they are at a disadvantage in that the unregulated carriers need only look at the regulated carriers' published rates and then set rates a few cents per net ton under the regulated carrier rates to secure business. It is our experience that it is not a matter of a few cents per net ton under the published rates, but rather that there are differentials in the order of 10 to 300 percent between the published rates and the rates available on an unregulated basis from contract carriers. I would like to call your attention to the differentials on four major movements that Allied makes. In one instance the published rate by regulated carriage is $7.20 per net ton, while the contract carrier rate is $2.90 per net ton; in another instance the published rate is $11.43 per net ton, while the contract carrier rate is $4.75 per net ton; in another instance the published rate is $8.04 per net ton, while the contract carrier rate is $3 per net ton; and in still another instance the published rate is $4.50 per net ton, while the contract carrier rate is $2.23 per net ton. This should make it clear that the regulated carriers in many areas do not seek to compete for the traffic on a regulated basis, and that if shippers had no alternative but to use the published rates much of the commerce which is now being carried on would be entirely eliminated as the movements would not be economically justified.

Let me now briefly outline some additional reasons why Allied Chemical would strongly urge that the exemption from regulation now provided by section 303(b) be retained in its present form.

1. Growth and stability of water carriers operating under section 303(b): The proponents of repeal of section 303(b) have had much say about the economic plight of the regulated water carrier industry. However, I would like to call your attention to the fact that the contract carriers, working without regulation, have been tremendously successful with their operations, as proven by the growth that they have enjoyed over the past two decades.

I will skip them to page 11, item 4.

Water transportation of commodities (subject to count and weight) now under regulation is confined almost entirely to eight large carriers with their subsidiaries and associates. These eight carriers handle 80 to 85 percent of the total regulated inland waterway traffic, that is, traffic on the Mississippi River and its tributaries. There is little or no competition between these regulated carriers as the rates are fixed by common agreement through the Waterways Freight Bureau. All of these carriers engage to a greater or lesser degree in the carriage of bulk commodities under exemption and under such carriage they come into common competition with unregulated carriers. Should section 303(b) be repealed, the result, in time, would be to concentrate water transportation services in the hands of the more powerful carriers, namely, the existing common carrier group which presently holds widespread dominating traffic rights for handling general commodities, rights that would not be available to the present unregulated carriers.

5. Common carriers by water attribute lack of adequate return on investment to lack of regulations: The registered water carriers declare that their decline in profits is due to competition from contract carriers on the movement of exempt bulk cargoes. This contention will not stand up under even casual examination and certainly not under an objective analysis. The common carriers have stated time and time again that water transportation under present conditions is an "economic jungle" and must be corrected. Mr. Chairman the "economic jungle" to which they refer is the one into which the shippers go each day in search of commerce. Apparently the common carriers are of the opinion that they should be a privileged segment and should not have to compete in the market, but that the shippers should do all the scrambling in the so-called jungle.

We hope that this subcommittee will agree with the vast majority of the shippers and water carriers in this request and will, therefore, vote against H.R. 5595 and that the bulk exemption will remain in force.

(The full statement of Mr. Parks follows:)

STATEMENT OF CLYDE PARKS, TRANSPORTATION MANAGER, ALLIED CHEMICAL CORP.

Mr. Chairman and members of the committee, my name is Clyde Parks, transportation manager of Allied Chemical Corp., 40 Rector Street, New York, N.Y.

I am authorized by Allied Chemical Corp. to submit this statement in its own behalf and in support of the position taken by the Manufacturing Chemists' Association in opposition to H.R. 5595 which would repeal section 303(b) of the Interstate Commerce Act, which section relates to bulk commodity exemption on materials moved by waterway carriers.

We appreciate very much the opportunity to present to the subcommittee our views on the proposals and we strongly urge retention of the bulk exemption provided by section 303(b) as we feel that it would not be in the public interest to repeal the same.

The United States is characterized by a system of waterways which links together most of the major cities. Navigation on these channels provides agriculture, industry, and the public with a highly efficient means of transportation for the movement of those low-cost bulk commodities which are the basic materials of manufacture, animal food, plant food, highway and building construction.

Allied Chemical Corp. is engaged in the manufacture of various types of chemicals, operating well over 100 manufacturing plants, and maintaining a number of distribution warehouses and terminals throughout the United States. Generally speaking, over 95 percent of the traffic that Allied Chemical moves on the inland waterways consists of bulk materials. Thus, the proposals that have been made are of great concern to us.

Of prime interest to the subject at hand are Allied's plants located on these navigable waterways. Allied operates 56 plants or mines, and maintains 31 terminals, that regularly use water transportation for the movement of raw materials and finished products. During 1961 Allied moved approximately 6,845,000 tons of raw materials and 1,676,000 tons of finished products by water (a total of 8,521,000 tons), into and out of our waterside locations.

Some of the bulk materials which Allied moves in substantial quantities by water are:

Sulfur	Fluorspar
Coke	Bauxite
Phosphate rock	Soda ash
Sodium sulfate	Mixed fertilizers
Electrode binder pitch	Coal
Chrome ore	Ammonium sulfate
Salt	

Allied Chemical employs all modes of transportation including private carriage, in the movement of raw materials to be used in its manufacturing processes and in the distribution of manufactured products.

As a major individual producer and member of the chemical industry we are, therefore, vitally concerned with the preservation of the economic health and welfare of our industry, as well as the preservation of all facets of the Nation's transport system.

Since the time Allied was first organized in 1920, it has utilized water transportation. Many of its major plants have been located on the waterways systems of the United States to take advantage of low-cost water transportation. These installations would not have been economically sound had not low-cost water transportation been available in the area.

The arguments that have been presented favoring elimination of bulk exemption and placing under regulation the traffic now moved by contract carriers are generally that the imposition of regulatory restrictions would enable the competing regulated carriers to secure a major portion of this traffic. The common carriers further argue that regulation would benefit the public by eliminating open competition.

It is our sincere belief that these contentions are not valid in any sense and have not been proved by the proponents of this legislation. It is also our belief that there have not been any developments or substantial changes in the conditions, facts, and circumstances related to bulk transportation by water which affect the public interest and which justify, or require, repeal of section 303(b). Any change in section 303(b) should be based on need for protection of the public interest and not on the theory that regulation is good for all carriers, or that imposition of regulations in one area requires and justifies regulations over different segments of the industry in other areas. Quite to the contrary, regulation in one area may well be essential to protect the public interest, while in another area the opposite can be and is often true. For example, where land transportation is involved in many instances only one or two services are available to the shipper so that it is important that shippers, and the public, be assured of adequate service and be protected from unreasonable rate demands by the carrier. Inasmuch as the waterways are available to all unregulated carriers, the shippers have a wide selection of transportation service at their disposal and it is not possible for the carriers to exercise or gain monopolistic control in this area, with the result that the public's interest is best served by the exercise of normal competitive forces and not by regulation.

If the regulated water carriers, who are among the chief proponents of legislation to eliminate section 303(b), see fit to compete for transportation of dry bulk commodities there is no valid reason why they may not do so under existing practices. The exemption from regulation which is provided for bulk commodity transportation by the Interstate Commerce Act is open equally to regulated and unregulated carriers. As a matter of practice it has been shown that between 50 and 60 percent of the traffic carried by the common carriers on the Mississippi River system consisted of dry bulk commodities, much of which did, and all of which could have moved under bulk exemption. Common carriers have not lost any of the regulated nonbulk traffic to the unregulated carriers since the latter cannot by law haul such traffic. Accordingly, the facts are that the present common carriers are seeking to have materials moving in bulk brought under regulation so as to provide traffic for them under conditions and privileges which are not and would not become available to other carriers.

The regulated water carriers have claimed that they are at a disadvantage in that the unregulated carriers need only look at the regulated carriers' published rates and then set rates a few cents per net ton under the regulated carrier rates to secure business. It is our experience that it is not a matter of a few cents per net ton under the published rates, but rather than there are differentials in the order of 10 to 300 percent between the published rates and the rates available on an unregulated basis from contract carriers. I would like to call your attention to the differentials on four major movements that Allied makes. In one instance the published rate by regulated carriage is $7.20 per net ton, while the contract carrier rate is $2.90 per net ton; in another instance the published rate is $11.43 per net ton, while the contract carrier rate is $4.75 per net ton; in another instance the published rate is $8.04 per net ton, while the contract carrier rate is $3.00 per net ton; and in still another instance the published rate is $4.50 per net ton, while the contract carrier rate is $2.23 per net ton. This should make it clear that the regulated carriers in many areas do not seek to compete for the traffic on a regulated basis, and that if shippers had no alternative but to use the published rates much of the commerce which is now being carried on would be entirely eliminated as the movements would not be economically justified.

Let me now briefly outline some additional reasons why Allied Chemical would strongly urge that the exemption from regulation now provided by section 303(b) be retained in its present form.

1. *Growth and stability of water carriers operating under section 303(b).*—The proponents of repeal of section 303(b) have had much say about the economic plight of the regulated water carrier industry. However, I would like to call your attention to the fact that the contract carriers, working without regulations, have been tremendously successful with their operations, as proven by the growth that they have enjoyed over the past two decades. For example, the tonnage has increased from roughly 260 million tons in 1946 to 390 million tons in 1959, representing 35 billion ton-miles in 1946 and 117 billion ton-miles in 1959. Statistics indicate that regulated carriers ton-mile participation on the inland waterways remained at a constant 6 percent of the total for each year in this 12-year period. We believe that this is highly significant insofar as the inland waterway carriers are concerned as there has been no perceptible erosion of the regulated carriers tonnage into the unregulated area over that period of 12 years. This rapid growth has not come about through full regulation, and neither has stagnation or lack of profits been the result, but rather the growth has been fostered and encouraged through the operation of free competition in the water transportation market.

2. *Waterway carriers and activities as of 1959.*—As of 1959, the latest year for which we have the complete figures, there were approximately 4,353 towboats and tugs, 472 self-propelled vessels, and 15,888 barges of all kinds. At that time there were 1,700 companies operating these vessels, of these about 1,300 were for-hire carriers, including 174 which held certificates from the Interstate Commerce Commission to perform transportation services as common carriers, and 46 that held permits from the Commission to perform towing services.

The foregoing breakdown shows that the water carrier industry is one generally of small businesses. Many of these companies started operations within the last 20 years, and the substantial growth which they have experienced in tonnage and in ton-mile-volume further demonstrates that success in this business can be attained in a competitive market. Accordingly the benefits of the lower cost operation have been passed on to the shipping and consuming public.

3. *The bulk commodity exemption, section 303(b) has been and continues to be in the public interest.*—As shown, bulk commodity transportation has grown spectacularly in the past 21 years since the Transportation Act of 1940 became effective. The growth through this period clearly indicates that the present system has served the shipping public and the carriers in an entirely satisfactory manner.

During the period since the enactment of the Transportation Act of 1940 there has been substantial expansion in the existing industrial facilities located on the waterways and important new installations have been located on the waterways to take advantage of the service provided by the bulk commodity carriers. Had the companies that established these facilities not believed that this service would continue to be available in substantially the same form the decision to locate plants on the waterways might well not have been made. To chemical manufacturers the value of the transportation dollar is now of greater importance than at any time in the past. Allied Chemical has spent hundreds of millions of dollars on waterfront plants and marine facilities, based on the principle declared by Congress that water transportation of bulk commodities would be free from regulations and would remain a low-cost transportation medium. For-hire transportation of bulk materials must keep its services at a reasonable cost level in order for both the shipper and the carrier to endure and remain prosperous.

4. *Extension of regulation to cover transportation of bulk commodities by water would substitute regulated cartel for free enterprise.*—Water transportation of commodities (subject to count and weight) now under regulation is confined almost entirely to eight large carriers with their subsidiaries and associates. These eight carriers handle 80 to 85 percent of the total regulated inland waterway traffic, that is, traffic on the Mississippi River and its tributaries. There is little or no competition between these regulated carriers as the rates are fixed by common agreement through the Waterways Freight Bureau. All of these carriers engage to a greater or lesser degree in the carriage of bulk commodities under exemption and under such carriage they come into common competition with unregulated carriers. Should section 303(b) be repealed, the result in

time, would be to concentrate water transportation services in the hands of the more powerful carriers, namely, the existing common carrier group which presently holds widespread dominating traffic rights for handling general commodities, rights that would not be available to the present unregulated carriers.

5. *Common carriers by water attribute lack of adequate return on investment to lack of regulations.*—The regulated water carriers declare that their decline in profits is due to competition from contract carriers on the movement of exempt bulk cargoes. This contention will not stand up under even casual examination and certainly not under an objective analysis. The common carriers have stated time and time again that water transportation under present conditions is an "economic jungle" and must be corrected. Mr. Chairman, the "economic jungle" to which they refer is the one into which the shippers go each day in search of commerce. Apparently the common carriers are of the opinion that they should be a privileged segment and should not have to compete in the market, but that the shippers should do all the scrambling in the so-called jungle.

We hope that this subcommittee will agree with the vast majority of the shippers and water carriers in this request and will, therefore, vote against H.R. 5595, and that the bulk exemption will remain in force.

The CHAIRMAN. Thank you very much, Mr. Parks.

We have one more witness, Mr. Hershey.

STATEMENT OF JACOB W. HERSHEY, CHAIRMAN OF THE BOARD, AMERICAN COMMERCIAL BARGE LINE CO.

Mr. HERSHEY. Thank you, Mr. Chairman. My name is Jacob W. Hershey and I am board chairman of American Commercial Barge Line Co. of Houston, Tex., and Jeffersonville, Ind. I appear here today in behalf of the Inland Waterways Common Carriers Association, a group of the leading common carrier bargelines operating on the Mississippi-Ohio River system and the Gulf Intracoastal Canal.

The membership of our association, in addition to my own company, is as follows: Mississippi Valley Barge Line Co. of St. Louis, Mo.; Union Barge Line Corp. of Pittsburgh; the Ohio River Co. of Cincinnati; the John I. Hay Co. of Chicago; Federal Barge Lines of St. Louis; Coyle Lines of New Orleans; and Arrow Transportation Co. of Sheffield, Ala.

The carriers I represent perform approximately 80 percent of the regulated transportation on the Mississippi River and the Gulf Intracoastal Canal. This means regular service at nondiscriminatory rates over 6,000 miles of waterway reaching approximately half of the Nation. On the Ohio River, our carriers are the principal suppliers of steam coal for the power industries and of metallurgical coal for the steel industries. We play a large role in the transportation of chemicals for the chemical industries located in the Ohio Valley. At the same time, we are a principal means of transportation for iron and steel products of the steel industry in the Pittsburgh area.

Through the Illinois waterway we perform the same function for the industrial complex around Chicago. On the main stem of the Mississippi, we carry steel and grain downriver to New Orleans for export and grain into the Southeast to help serve the great poultry-raising industry of Alabama and Georgia. Northbound we carry iron ore, sulfur, sugar, alumina, and other essential industrial building blocks needed by industry in the middle America region. This will briefly indicate our role in the Nation's economy.

I want to say how grateful our industry is to this committee for your courtesy in granting us this hearing. H.R. 9046 is a bill to amend the bulk exemption provision of the Interstate Commerce Act to per-

mit the mixing of regulated and unregulated commodities in a single tow as long as the exemption continues.

Ours is an emergency problem growing out of a new interpretation of the Interstate Commerce Act made in 1960 by the Interstate Commerce Commission. If allowed to stand, this interpretation would gravely and unfairly handicap the common carrier. We do not believe that the Congress intended any special handicap for the common carrier; indeed, we understand that the reverse is the case. Having exhausted our administrative remedies, our only recourse is now to come to Congress for a hearing on a proposal to make a change in the law which we believe would be in the public interest.

Congress granted the regulated carriers the right to operate in the regulated field and also the right to operate in the exempt field. What complaint can we possibly have under such circumstances?

Our complaint grows partly out of a change in technology and partly out of the necessity for common carriers to operate more and more in the exempt field if they are to remain competitive for large segments of traffic they have traditionally served.

Acting on the results of elaborate research into ways of improving common carrier efficiency, the regulated bargelines began introducing larger and larger towboats in 1955. Over the next few years, productivity doubled on the lower Mississippi River, but, at the same time, in order to achieve this increased productivity, larger and larger tows had to be assembled.

This would have been no problem if the common carriers could have continued to handle, under their published rates, all the commodities they transported, as had been the custom since the passage of the Transportation Act of 1940. But circumstances changed. While the common carriers were developing their improved technology, exempt competition for the bulk traffic grew rapidly, and the common carriers had to begin operating on an exempt basis in order to retain a fair share of the bulk exempt traffic.

It was at this point that the improved technology which promised such large savings to the shipping public, ran head on into the legal problem of whether it was possible to mix regulated and unregulated commodities in a single tow. Clearly the volume of both regulated and unregulated commodities was needed if the efficiencies of the new technology were to be passed along to the public.

Now it has become essential, if the regulated carriers are to remain competitive for the dry bulk commodities, that we have the right to mix both regulated and unregulated commodities. I should point out that from the beginning we have always physically mixed these commodities, but of course no legal problem arose because all commodities formerly traveled at published rates.

The alternative is to go back to small tows and less efficient low-powered towboats, or concentrate entirely on the bulk exempt commodities at the expense of the common carrier service. This would force us to forfeit economies which we have already passed along to the public in the form of a 10-cent saving on every transportation dollar. At the same time, it will deprive the public of the benefit of some 10 years of research into improved efficiency on the rivers, which I know you will agree is contrary to commonsense.

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Since our unregulated competitors have flourished during the past 5 years—some of them have increased in volume many times—we see no possible harm that can come to anyone from permission to continue to mix our tows. Understandably, our competitors have seen an opportunity to handicap us with a legal technicality and are vigorously urging that we not be given relief. However, we rely on this committee's judgment. You will be well able to decide, in fairness, whether there is any cause for the alarm that some of our unregulated competitors have expressed. We will take up their specific complaints in detail. But the fact that they are here at all demonstrates one central fact of extreme importance. These carriers are vigorous competitors of ours, fighting every day for every ton of dry bulk traffic that moves on the river.

Flexibility in meeting changing demands for service is one of the most important qualities necessary to survival in the transportation industry. As conditions have changed, the regulated carriers have adjusted to the changes and provided the service our public has demanded. Placing us now, after we have demonstrated our adaptability, in a straitjacket by requiring the artificial separation of regulated and exempt commodities, would impose an intolerable burden on those carriers with the responsibility, under regulation, of providing regular, dependable, nondiscriminatory service to the general shipping public.

We are not here to discuss the broad question of how the common carriers of all modes can be strengthened. We endorse fully the testimony of G. C. Taylor who appeared in behalf of the Common Carrier Conference of Domestic Water Carriers in support of H.R. 5595 to repeal the exemptions in sections 303 (b) and (c). We will continue to advocate a rationalization of the present system as your study of these important matters progresses.

This is a dramatic moment in the long debate over the exemptions. Only last week, in a message to the Congress, the President advocated a reversal of the 75-year policy of public control of rail transportation rates on a wide range of bulk commodities. He said in part: "While recognizing that a revision of the magnitude required is a task to which the Congress will wish to devote considerable time and effort, I believe the recommendations below are of sufficient urgency and importance that the Congress should begin considering them at the earliest possible date."

It seems possible therefore that some action on the bulk exemptions, either extension of the principle to the railroads or repeal of them altogether, will soon take place. Hence, there is all the more reason to grant the common carrier bargelines permission to mix their regulated and unregulated commodities until the whole matter is decided by the Congress.

Discussions before this committee of the plight of some common carriers have revealed criticisms of the competitive spirit of the certificated companies. It is said they are not competitive enough, that they are not flexible enough, that they do not respond to changing conditions and that they are laggard in modernizing their services.

Gentlemen, I will demonstrate to you that the common carriers on the inland rivers are endeavoring to be all these things, and it is precisely because of our competitive vigor, our flexibility, our responsive-

ness to changing conditions and our pioneering in introducing modern, more efficient methods that we find ourselves in our present uncomfortable predicament.

Exemption from regulation on the river is permitted under sections 303(b), 303(d) and 303(f)2.

Section 303(b) reads as follows:

> Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. This subsection shall not apply to transportation subject, at the time this part takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended.

Please note that there is nothing in this wording which limits the right of a certificated carrier to mix bulk-exempt and regulated commodities in one vessel or tow.

When a portion of the water traffic came under regulation in 1940, nearly all the carriers then operating who applied were given certificates. Practically all traffic, except oil, some shuttle movements of coal, and local movements of sand and gravel was transported by the regulated carriers under tariffs on file with the Interstate Commerce Commission.

Early in the administration of part III of the act, the ICC interpreted 303(b) as forbidding the commingling of bulk exempt traffic with nonbulk commodities. No legislative history exists to show that Congress intended such an interpretation. But this was of little consequence at the time because almost all long haul dry traffic, whether bulk or nonbulk, moved on tariffs on file with the Commission. In other words, the certificated bargelines who handled practically all the traffic voluntarily submitted all their traffic to regulation by offering service on the basis of published tariffs, since the "secret" rate competition of the exempt carriers had not yet arrived in any strength.

It was not until after World War II that exempt carriers began to appear. When they did, certificated carriers began to use them for incidental towage, and it was only then that "mixing" in the context of the present problem began.

In a typical situation, a regulated bargeline would bring a tow up the river, give a single barge to an unregulated carrier for delivery up a tributary, and continue up the river with the main tow. This promoted efficiency and economy in transportation and gave the certificated carrier flexibility in service. At the same time, of course, it gave the new unregulated operator a substantial amount of valuable business.

This practice is permitted under section 303(f)2, a particular section which exempts from regulation the furnishing of incidental towing to a certificated carrier. Since the exempt carrier might simultaneously move for his own account bulk cargo exempt under section 303(b), regulated and unregulated cargo were often mixed in a single tow.

The legality of this practice was questioned by the Commission's Bureau of Water Carriers. In 1944, after considerable correspondence, Division 4 of the Commission directed the Bureau of Water Carriers to issue a ruling approving the combining of bulk and nonbulk freight by an exempt carrier when it was providing incidental towing service for a regulated carrier. Both certificated and exempt carriers felt secure in this interpretation and the practice continued unquestioned until 1957. By that time bulk traffic, particularly northbound on the Mississippi, was increasing very rapidly. In addition, exempt competition for this bulk traffic had grown to formidable proportions. If the certified carriers were to continue to give good service on regulated commodities, they had to find an effective way to retain a fair share of the fast-growing bulk business, on the same basis as their exempt competition.

As segments of unregulated bulk traffic grew in size they became prizes to be bid for by unregulated competitors who had little difficulty in making long-term contracts with shippers by cutting a few cents off the published rates. Characteristically, great blocks of traffic would be siphoned off by the exempt carriers not just for one movement on a day-to-day basis, but for 5- or 10-year contracts.

The problem represented by exempt competitors was clearly foreseen by Representative Wolverton, of New Jersey, during the debates on the Transportation Act of 1940. He also stressed that regulation of rates doesn't necessarily mean that rates will go up. He said:

> * * * It has also been said that this bill would raise the rates of water carriers to the level of rail rates. This is just as preposterous as the charge that the bill seeks to destroy water carriers. Opponents of motor regulations when that bill was under consideration by this House made similar statements. The administration of the act in the succeeding years has proved the falsity of the charge. I do not hesitate to say that no one engaged in the motor carrier industry would want that act repealed. Why? Because regulation has stabilized the whole industry to the mutual advantage of carriers and shippers. It eliminated the "chiselers" whose operations had brought chaos and distress. The administration of this act will prove just as beneficial to the water carriers and the shippers who utilize their service. It is the "chiseler" in the water-carrier industry, as in others where they exist, who oppose regulatory measures such as this bill provides.—Record, July 26, 1939, p. 14011.

That is still our problem, Mr. Chairman. I couldn't say it any more clearly today than Representative Wolverton said it nearly 23 years ago.

The first reactions to the inroads of the exempt carriers were a reduction in the published freight rates. An example of this is the reduction in the published sulfur rate from $5.24 per gross ton from Port Sulphur, La., to Pittsburgh in 1954 to $3.50 in 1960 as well as the decline in published salt rates from Louisiana to St. Louis from $5.65 per net ton in 1950 to $4 in 1960. This defense against loss of traffic proved inadequate. The advantage of a secret rate against a published figure and the ability to choose only the most attractive traffic proved to be decisive weapons in the hands of the exempt carriers. Accordingly, the certificated carriers began to consider other methods of competing, on a fair basis, in the exempt trades.

The merger of Commercial Transport Corp., a large exempt carrier, of which I was then president, and American Barge Line Co., a major certificated carrier on the Mississippi-Ohio River system, was one company's answer to the problem. By utilizing the towing exemp-

tion provided in 303(f)2, as interpreted by the Water Carrier Bureau in 1944, the towing capacity of Commercial Transport Corp. could be used to increase the economy and flexibility of the related certificated carrier, would be free to engage on equal terms with its unregulated competition. But the efforts to make the operations of both exempt and certificated carriers more efficient did not work out. Protestants in the finance docket relating to the merger questioned the 1944 interpretation.

In 1957, the Commission reversed the 13-year-old ruling and declared that an exempt carrier could not mix incidental towing of nonbulk freight with its own exempt freight. The Supreme Court affirmed the new ruling. This door was closed.

Constantly increasing competition both within and outside the industry made the issue of improved efficiency one of first importance. The search began for another method for common carriers to arrest the erosion of their bulk traffic and to improve efficiency of operations. Another door appeared still to be open.

If it was illegal for bulk-exempt carriers to tow regulated freight for certificated carriers in combination with their own exempt freight, the common carriers might legally use their published towing tariffs to reverse the process. Perhaps an arrangement could be worked out for certificated carriers to tow bulk freight for exempt carriers in combination with their own regulated freight.

If a towage tariff was on file with the Commission, all transportation performed under it would be legally regulated, but at the same time the transportation arrangement between the exempt carriers and its customer would, it was believed, continue to be exempt.

Encouragement for this approach was furnished by a decision of Division 4 of the Commission in 1955. Federal Barge Lines had proposed to tow exempt freight of Coyle Lines under a published towing tariff. Division 4 affirmed that the transportation arrangement between Coyle and its customers continued to be exempt.

Thus, mixing of exempt and regulated commodities by a regulated carrier under a published towing tariff appeared to be legal, but mixing by an exempt carrier was not. The practice of towing exempt traffic for other carriers on published towing tariffs was adopted by a number of the regulated carriers.

However, to say the least, the situation was a confusing one, with the ICC itself apparently uncertain as to what the law really meant. In an attempt to clarify the issue, Federal Barge Lines, American Commercial Barge Line, and Mississippi Valley Barge Line Co. filed a petition in 1959 asking for a declaratory order.

The Commission replied with another change of direction.

On August 25, 1960, the Commission declared that an exempt commodity delivered for towing under tariff conditions to a regulated carrier by an exempt carrier lost its exemption when it was mixed into a regulated tow. Where, in 1955, division 4 had said that the exempt relationship between Coyle Lines and its customers was retained after the barge had been mixed into Federal Barge Line's regulated tows, the Commission, in 1960, said exactly the opposite.

Last May the Commission refused a petition for reconsideration thus extinguishing the last hope for administrative remedy. We now

see no alternative but the present appeal to Congress for a modification of the law to clarify this chaotic situation.

As circumstances now exist, the certificated carriers must, unless this relief is granted, retrace the steps they have taken, especially since 1957, to meet their competition.

The crowning irony is that the certificated carriers have pioneered certain technological advances which are dependent on mixed tows for their success. Beginning in 1956 and now almost universally adopted, the certificated carriers have fostered a trend to more powerful towboats. Nowhere are the advantages and economies of these boats more apparent than on the lower Mississippi. Where once a 3,200-horsepower towboat was standard, today horsepowers of 6,000 to 9,000 are common in this area. These boats are capable of pushing tows of 25 to 35 barges at a time which regularly contain 8 to 10 different commodities and frequently more. But tows of 30 barges cannot be made up unless the bargelines are permitted to mix regulated and unregulated commodities. If the present ruling remains in force, investment in this more modern equipment will, in effect, be frustrated and hard-won efficiencies wasted to the detriment of common carrier service. We must revert to obsolete methods, with resultant higher costs per unit of transportation and higher freight rates to the public.

I would like now to show you some statistical material which will document the statements made earlier. For convenience, I have reduced the material to chart form. The figures are derived from consolidation of three representative bargelines: American Commercial Barge Line, Federal Barge Lines, and Mississippi Valley Barge Line Co.

First, I show you a picture of a modern Mississippi River tow. This towboat, MV *Alquist*, was christened and put in service early last year. It is 7,000 horsepower. Other large boats vary from 6,000 to 9,000 horsepower but all have the capacity to push barge tows of 25 to 35 barges. Contrast this with a typical tow of the early 1920's of the steamer *Iowa* leaving New Orleans with one empty and six loaded barges. Now look at this dramatic photograph of the meeting of the MV *United States* and the MV *America* of the Federal Barge Lines. This is by far the most efficient shallow-draft transportation in the world and compares in importance as an advance in technology to the huge new tankers on the oceans. Tows such as you see in this picture cannot be made up, in the face of today's exempt competition, except under the most unusual circumstances, under the law as interpreted by the WC–5 decision.

Charts 1 and 2 document the growth of the importance of dry bulk traffic in the past 6 years. As you see, northbound the dry bulk cargo has more than tripled for the average tow on the lower Mississippi since 1955. It has grown faster than the nonbulk even in the southbound direction.

(Charts 1 and 2 appear on pp. 232 and 233.)

Chart 3 gives the situation for the first 4 months of 1961 and is particularly significant. It emphasizes that, from New Orleans northbound, over half of the traffic in a typical tow is dry bulk.

(Chart 3 appears on p. 234.)

Charts 4 and 5 demonstrate the steady increase in the number of barges per tow for the same period.

(Charts 4 and 5 appear on pp. 235 and 236.)

Chart 6 shows that we have been able to more than double our productivity on the lower Mississippi in cargo ton-miles per boat operating day. We have translated this increase in productivity into reductions in average revenue per cargo ton-mile despite new labor contracts which, in recent years, have greatly increased our costs. Since 1958, our average revenue per ton-mile has declined 10 percent from 3.95 mills per ton-mile to 3.6 mills per ton-mile. Thus, the benefits of the new technology have already been passed along to the public.

(Chart 6 appears on p. 237.)

A significant factor is the extent to which the certificated carriers have been able, even since the 1957 decision, to give business to incidental towers. Records of 3 of our companies show that no less than 87 different companies were employed as incidental towers in the first 4 months of 1961 despite the adverse ruling of 1957. Many more would be used if mixing were permitted. As the law stands there can be little if any coordination of service between regulated and exempt carriers. This practice has, as described, had important mutual benefits, increasing the flexibility of the regulated carriers and at the same time providing substantial business for the exempt towers.

I would like to emphasize again that this technical change in the law which we are here requesting today is not a part of the larger question of reform of the regulations affecting common carriers.

We do not believe that the exemption provisions were written with the intention of handicapping the common carrier. Conditions have changed since they were written, new technology has been developed, the customer is demanding different services.

We have vigorously worked to improve our efficiency. We have demonstrated our flexibility in meeting changing conditions despite the legal maze in which we have found ourselves. We have given our customers excellent service.

We are not asking here for a new weapon to aid us in combating unregulated competition. We are simply asking for the right to meet exempt competition, while discharging our obligations as common carriers as efficiently as large mixed tows permit while Congress decides on the broader question of how to deal with the exemptions. Will this hurt the exempt competition? Judging by its vigor in recent years, when we have been allowed to mix tows, we are certain it will not.

If, however, you do not permit us to mix tows, the common carrier will be most severely injured. This will place an intolerable cost burden on us which can only be borne by passing part of it on to the public who depends on us to provide a common carrier service. Whether, in that event, we could remain competitive for the bulk traffic we have retained by our own ingenuity and adaptability, I cannot say. I ask you to remember, however, that the certificated carriers have the burden of serving all ports of call and all traffic, at various minimum weights. We cannot pick and choose among them and select only the fattest prizes.

For many years we voluntarily submitted our rates to regulation, and we would still prefer to do so. But in order to remain competitive and survive, we have been forced more and more into the exempt business. Congress granted us the right and the obligation to perform regulated service. Congress also granted us the right to perform exempt service. We believe the right to mix these two functions is inherent in the law. We have had the right under varying interpretations. Now it has been suggested that it be taken away from us.

Originally, bulk carriers were exempted from regulation because they did not compete with the regulated carriers. Representative Hinshaw of California, during the debates on the passage of the Transportation Act of 1940 made the issue very clear:

> As far as the bulk carriers are concerned, those hauling sand and gravel, coal, oil, and similar materials in rough bulk, it was thought that those commodities were of such a nature that the handling of such cargoes was not competitive, consequently they were left out. In this bill, we are interested in competition—Congressional Record, Jully 22, 1939, p. 13597.

or the definitive statement of Representative Halleck of Indiana:

> As a matter of simple justce, as a matter of equity, as a matter of fairness, I say that if regulation is good in one part of the field of transportation, then regulation should be applied evenly over the whole field of competing transportation systems. We have exempted from this bill now those parts of water transportation that are noncompetitive. We have been fair in this bill.—Congressional Record, July 26, 1939, p. 14009.

I trust there is no doubt in anyone's mind that the regulated carriers and the exempt carriers are now very competitive, a change in the situation from the time section 303 (b) was passed.

The basic issue before you is whether the right of the common carrier to compete for exempt traffic, specifically granted by Congress, will be effectively preserved.

If the common carrier does not mix his tows, he cannot at the same time perform common carrier service and meet the exempt competition in the bulk traffic. Further, if he does not mix his tows, he will lack sufficient volume to exploit fully the new technology. He and his customers and, through them, the public, will lose the economies of the more efficient towboats. These economies have already been passed on to the customers and have been built into the prices of products throughout the country.

Le me dispel one misrepresentation of the exempt carriers. Rate reductions do not occur exclusively on traffic subject to exempt competition. I mention here only a few of the major reductions of the past few years on completely regulated traffic. Our aluminum rates from Port Comfort, Tex., to Davenport, Iowa, have been reduced 24.2 percent from $10.70 a ton in 1953 to $8.10 a ton today. Sugar rates from New Orleans to Louisville, Ky., have been slashed 24.29 percent from $7.41 in 1956 to $5.61 today. Newsprint paper rates have undergone reductions of 40 percent on the service from Calhoun, Tenn., where one of the large paper mills is located, to Houston, Tex. Rates in 1959 were $13.95 a ton and are now $8.30 a ton.

The fair interim solution is to allow the carriers to continue to do physically what they have been doing for 20 years pending final determination of the solution to the exemption problem.

What of the arguments of the opposition?

One of the most discouraging ones, we find, is the argument that emphasizes as a reason for not giving us relief that our rate of return on invested capital was around 5 percent for 1960, the latest available year, although it has declined drastically since 1956, as the records show. The argument would almost say that unless you are very nearly dead, you are not entitled to any relief. Our rate of return has declined to a figure below the industry cost of borrowing money. There are, of course, worse results in the transportation industry than ours. We appear to be later in the disaster cycle than airlines and railroads. But, there is no question but that we are on the same slide.

A useful study of the rates of return of various industries has been made by the First National City Bank of New York. For 1960, for instance, the rate of return on net assets of various branches of industry were as follows:

	Percent
Manufacturing	10.5
Mining	7.3
Trade (Chainstores, etc.)	10.4
Public utilities	10.0
Services (Amusements, etc.)	9.7
Finance	7.0
IWCCA members	5.3

I think Commissioner Hutchinson, then Chairman of the ICC had some wise advice in testimony last August 30:

> In short, the Commission believes the common carrier industry is in serious trouble. The picture is not all dark. Some railroads are making money. Some motor carriers are doing well. But let us not be drawn into inaction, Mr. Chairman, by the financial health of some, when a plague is attacking others.

Nor do I think the developments of the past week will encourage private investors to seek out the common bargelines. If the railroad traffic is to be deregulated, as proposed by the President's Transportation Message, and the "law of the jungle" is to become the law of the transportation industry, then we will be in a bare-knuckles fight with the railroads having a 90 to 1 advantage in sheer economic size. And in that context, of course, you will all have heard of the predicament of Willy Jones, a young fellow who got into trouble in my native State of Texas.

Willy was hauled into court and listened to the indictment.

"The State of Texas v. Willy Jones," it said.

There was a silence and then Willy Jones was heard to remark:

"Lord God, what a majority!"

Our friends in the railroad industry, testifying late in March made much of the fact that the mixing rule has been thoroughly litigated before the Commission. As I demonstrated to you earlier, one door after another has been closed to us as we have tested various alternatives. There should certainly be no question in anyone's mind that, from the beginning this has been a most confusing and complex issue. The only way to bring order out of this chaos was to take the complexities a step at a time and try one door after another. Either we found an equitable solution to our problem or else we found there was no solution and, hence, an appeal to the Congress was required.

As we have stated above, we favor the repeal of the exemptions.

We have heard an interesting echo of the debates of 1939 and 1940 in these discussions. Then, as now, the charge has been made that a

regulated service is more costly than unregulated service. Then, the charge was shown to be groundless. Now, charts are offered to show how much more per ton is charged for regulated steel, sugar, and paper than for unregulated commodities.

As Mr. Taylor pointed out to you on March 30, this makes fine propaganda, but is highly misleading. Our unit of production is a barge moving on the river, just as the railroad's unit of production is a railroad freight car moving on the railroad. It costs about the same to move a 600-ton load as it does a 1,300-ton load in a 195-foot barge, now the common size river vessel. You will note from the following figures that the revenue per barge for the hauls on regulated materials may actually be less than the revenue for the bulk-exempt commodities. As a general rule the revenues are close to each other.

Using Mr. Wright's own examples of yesterday and up-dated tariff quotations as of today, you get this kind of a comparison:

	Revenue per barge
1. Regulated sugar: New Orleans to Chicago, 1,519 miles, $6.55 per ton multiplied by bargeload of 600 tons	$3,930
Unregulated sulfur: Port Sulphur, La., to Chicago, 1,569 miles, $3.50 per ton multiplied by bargeload of 1,300 tons	3,950
2. Regulated iron and steel: Chicago to Lake Charles, La., 1,771 miles, $7.97 per ton times bargeload of 600 tons	4,776
Unregulated grain: Red Wing, Minn., to New Orleans, 1,766 miles, $4.51 per ton times bargeload of 1,300 tons	5,863
3. Regulated scrap: Mobile, Ala., to Chicago, Ill., 1,681 miles, $10.17 per ton times bargeload of 600 tons	6,102
Unregulated coal: Huntington, W. Va., to Minneapolis, Minn., 1,526 miles, $4.62 per ton times bargeload of 1,300 tons	6,006
4. Regulated scrap: Memphis to Chicago, 765 miles, $5.54 per ton times bargeload of 600 tons	3,324
Unregulated coal: Liverpool, Ill., to Minneapolis, Minn., 763 miles, $2.62 per ton times bargeload of 1,300 tons	3,506

This demonstration not only knocks to pieces the contention that the regulated rates return more to the common carriers than the unregulated rates, but completely destroys the argument that the common carriers will use their excessive profits on regulated rates to reduce rates on bulk commodities to uneconomic levels in order to cut the throats of the exempt carriers. Nothing could be more absurd for there is no excessive profit.

Witnesses from the exempt group have stressed the fact that there is no shipper support for the extension of regulation. We would like to stress it too, but for a different reason. It is naive to suppose that the large shippers of the Nation would support a plan to bring order out of the present pricing chaos and attendant "bargain counter" in the transportation industry. It would be equivalent to a proposal to shoot Santa Claus. There was no shipper support for the Transportation Act of 1940.

But the sum of the selfish interests of shippers is not at all the same thing as the public interest. As we have warned you before, the survival of common carrier transportation is in your hands. Although shippers may not be farsighted enough to see the need in the public interest for preserving the health of the common carrier service, we must rely on the Congress to come to commonsense conclusions on the subject.

We would also agree with Mr. Mechling that repeal of section 303(b) by itself would probably invite resort to private carriage by more of the Nation's large corporations. But Mr. Taylor very clearly suggested the fair remedy for this. At the same time the bulk exemptions are repealed, it is essential that corporations operating private fleets be prevented from commingling for-hire and private carriage. The object of this is eminently fair: to force the private carrier to rely on the economics of any given service by itself. He should not have the right to invade the for-hire field for what our trucking friends call "gas money," charging uneconomic rates which unfairly undercut the company which must depend on transportation alone for his livelihood.

In conclusion, I would endorse the statement of Mr. C. C. Taylor on March 30. Approximately 40 percent of the ton-miles of traffic on the Mississippi River and tributaries and the gulf intracoastal canal is handled by the regulated carriers. Obviously, our carriers play an important role in providing service to the inland waterway shipper. Yet, equally obviously, we do not play a dominant role.

Our petition to you today is to grant us relief in recommending the passage of H.R. 9046 so that a special handicap is not placed on the common carrier, pending congressional action on the exemption question generally. When H.R. 9046 was introduced last summer, it was expected that the Congress would take action on this general problem early in this session. Now, in the light of the scope of the President's transportation message it is possible that no final action on this problem will be taken in 1962. Therefore we urge that the 6-months' relief from the mixing rule proposed in H.R. 9046 be extended for an appropriate period to permit congressional consideration of the larger questions involved in the exemption issue. Meanwhile, the pioneer, who, through technological improvement, produces savings of 10 cents in every transportation dollar for his customer should not be penalized because a law passed in good faith 20 years ago needs modernization.

That concludes my statement, Mr. Chairman.

CHART 1

TONNAGE CHART
FOR NON-BULK and DRY BULK COMMODITIES
AVERAGE NET TONS PER LOWER MISSISSIPPI RIVER TOW
YEARS 1955-1960
NORTH BOUND

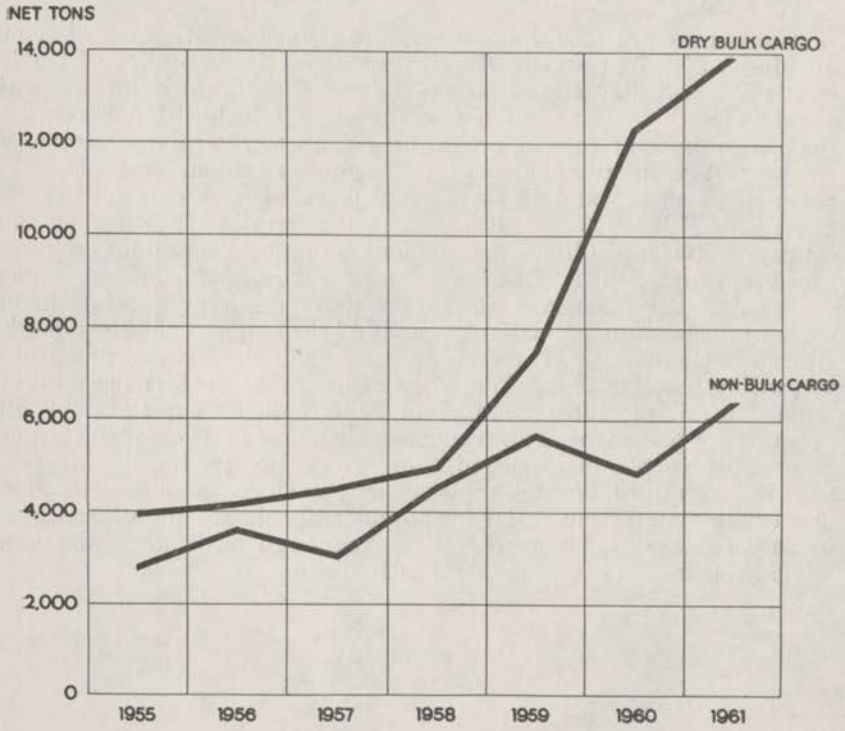


CHART 2

TONNAGE CHART
FOR NON-BULK and DRY BULK COMMODITIES
AVERAGE NET TONS PER LOWER MISSISSIPPI RIVER TOW
YEARS 1955-1960
SOUTH BOUND

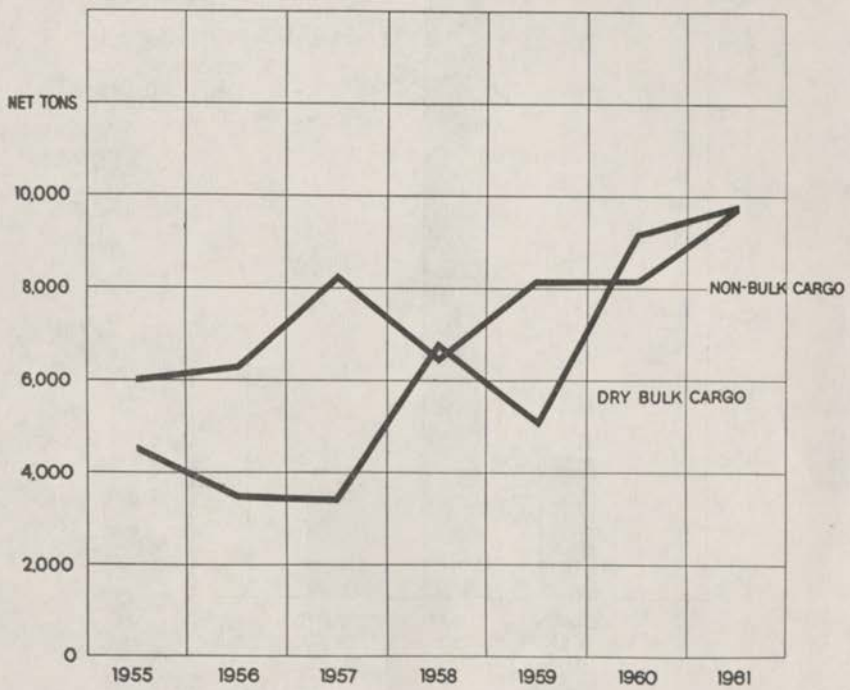


CHART 3

NORTH BOUND TONNAGE FOUR MONTHS 1961
BY CLASS OF COMMODITY

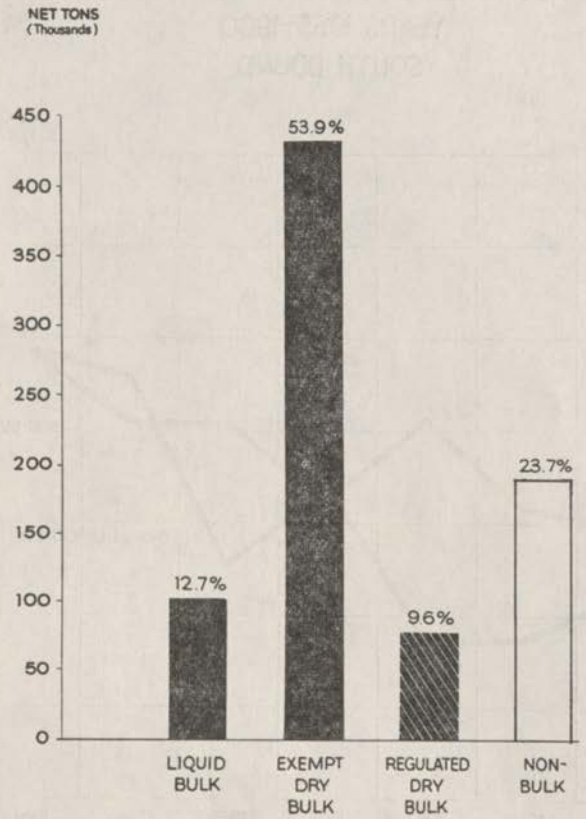


CHART 4

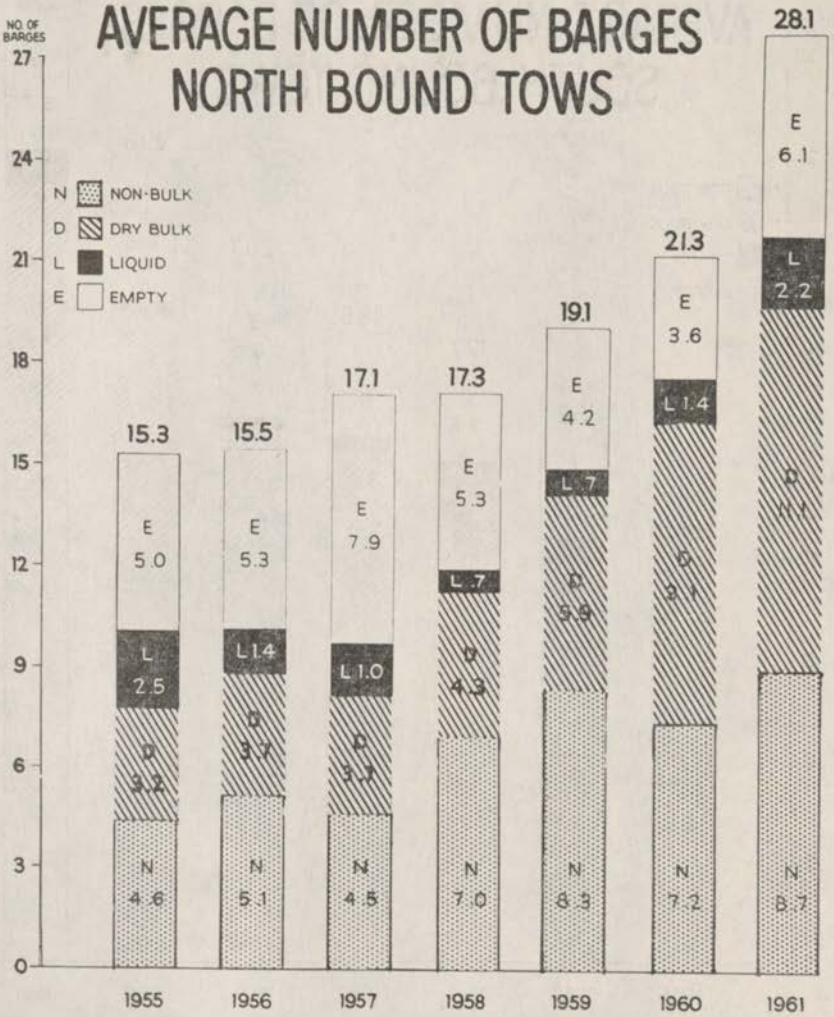

AVERAGE NUMBER OF BARGES
NORTH BOUND TOWS
NO. OF BARGES
N NON-BULK
D DRY BULK
L LIQUID
E EMPTY
0
3
6
9
12
15
18
21
24
27
15.3
E 5.0
L 2.5
D 3.2
N 4.6
15.5
E 5.3
L 1.4
D 3.7
N 5.1
17.1
E 7.9
L 1.0
D 3.7
N 4.5
17.3
E 5.3
L .7
D 4.3
N 7.0
19.1
E 4.2
L .7
D 5.9
N 8.3
21.3
E 3.6
L 1.4
D 9.1
N 7.2
28.1
E 6.1
L 2.2
D 11.1
N 8.7
1955
1956
1957
1958
1959
1960
1961

CHART 5

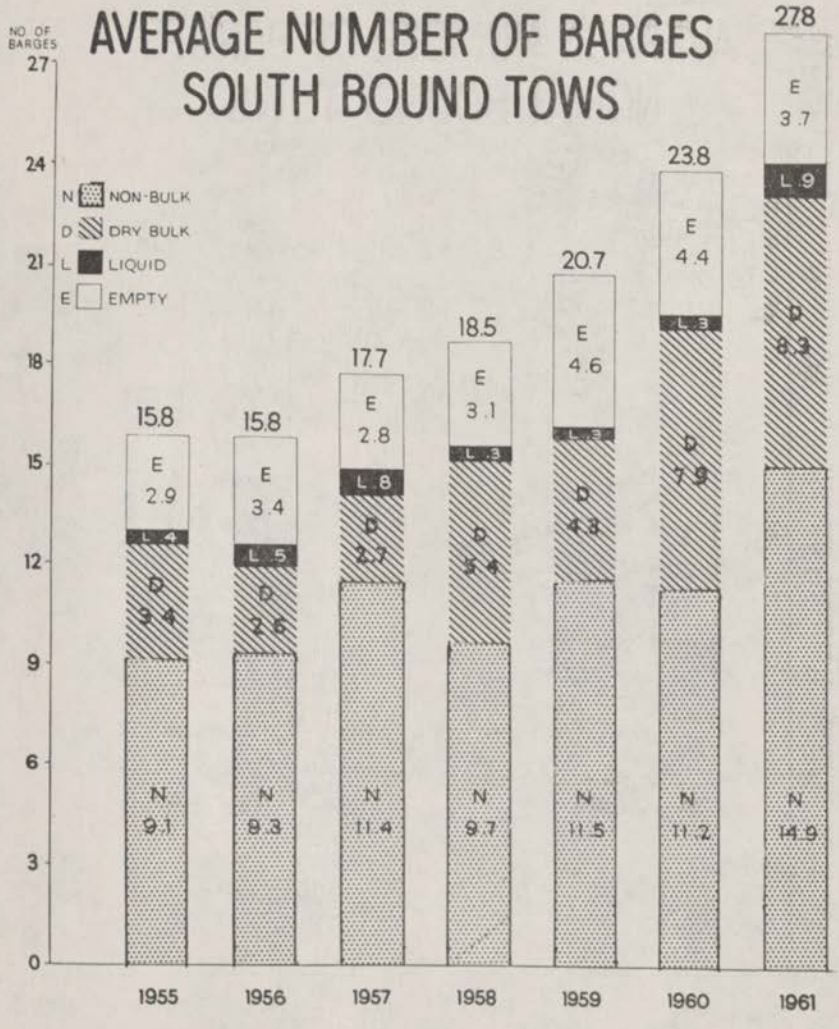

AVERAGE NUMBER OF BARGES
SOUTH BOUND TOWS
NO. OF BARGES
27
24
21
18
15
12
9
6
3
0
N NON-BULK
D DRY BULK
L LIQUID
E EMPTY
15.8
E 2.9
L .4
D 3.4
N 9.1
15.8
E 3.4
L .5
D 2.6
N 9.3
17.7
E 2.8
L .8
D 2.7
N 11.4
18.5
E 3.1
L .3
D 5.4
N 9.7
20.7
E 4.6
L .3
D 4.3
N 11.5
23.8
E 4.4
L .3
D 7.9
N 11.2
27.8
E 3.7
L .9
D 8.3
N 14.9
1955
1956
1957
1958
1959
1960
1961

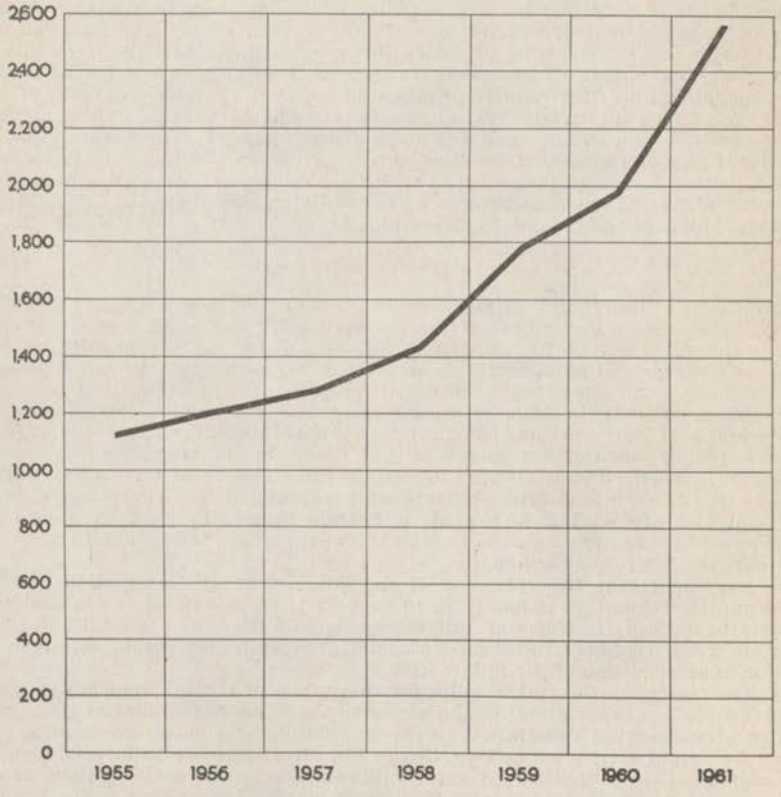
CHART 6

TOWBOAT PRODUCTIVITY CHART

LOWER MISSISSIPPI RIVER TOWS

YEARS 1955-1961

Cargo Ton Miles (Thousands) Per Operating Boat Day



The CHAIRMAN. Thank you very much, Mr. Hershey.

The record will remain open for 5 legislative days. If any additional material is received, it may be inserted in the record at this point.

83168—62——16

(The following material was submitted for the record:)

STATEMENT OF NATIONAL COUNCIL OF FARMER COOPERATIVES

POSITION OF THE COUNCIL

The National Council of Farmer Cooperatives is opposed to the repeal of section 303(b) of the Interstate Commerce Act, as amended, relating to the water carrier bulk commodity exemption, as proposed by H.R. 5595.

The authority for the council's opposition is contained in a policy resolution adopted by the official delegates of council members in annual session on January 17, 1962, reading as follows:

"*Bulk commodities exemption.*—The council is opposed to legislation to either repeal or restrict the bulk-commodity exemption, dry or liquid, applicable to inland waterways, intercoastal and coastwise water transportation."

IDENTIFICATION OF THE COUNCIL

The council is a nationwide organization whose members are farmer-owned and farmer-controlled cooperative associations serving nearly 3 million farmer memberships in the marketing of agricultural commodities and the purchase of farm production supplies. The council's member associations, numbering about 5,700, including all of their county, State, and regional affiliates, are users of all modes and types of surface transportation—railroads, exempt and regulated water carriers, and exempt and regulated motor carriers. It is therefore in the short-range and long-range interest of council members that a strong national transportation system be preserved in which each mode and each type of carrier may fully utilize its inherent advantages in rendering an economical and efficient service to shippers and the public generally.

VIEWS SUPPORTING COUNCIL POSITION

Agriculture's direct and primary economic interest in the preservation of the dry bulk and other water-carrier exemptions in the Interstate Commerce Act is the retention of an important means for low-cost transportation of products such as grain and fertilizer which can move in bulk and large volume by this mode. Our members so situated as to be able to use these services are convinced that their transportation needs would not be met as economically or efficiently if only certificated carriers were permitted to move the traffic. We are told by some of our members that the water carrier bulk commodity exemption has helped substantially to sustain farm income in their areas. The services of these water carriers have proved very beneficial to farmers because they can and are willing to provide a flexible service to meet the needs of shippers which vary from season to season and the needs of consuming markets which are subject to constant change.

The argument that the operation of the bulk commodity exemption results in inequitable regulation is not valid to support its elimination. Each mode of transportation has its inherent differences, capabilities, and limitations. To apply uniform treatment to all modes would produce highly inequitable results through nonrecognition of the differences.

To preserve fairly the full benefits for the public of the inherent advantages of commercial transportation on the waterways of the Nation and at the same time to give deserved recognition to the complaints of competitive modes, the course for sound action, we believe, lies in the direction of relaxing any regulatory restraints now imposed on these other modes which prevent them from rendering the most efficient service they are capable of rendering at the lowest possible compensatory cost.

We respectfully urge that you do not approve H.R. 5595.

STATEMENT OF ANGUS MCDONALD, ASSISTANT DIRECTOR, DIVISION OF LEGISLATIVE SERVICES OF THE NATIONAL FARMERS UNION

Mr. Chairman and members of the committee, I am appearing here in opposition to H.R. 5595, which would repeal the so-called dry bulk exemption contained in the Interstate Commerce Act. This exemption, we feel, since its enactment in 1940 has been of great benefit to farmers, particularly the producers of wheat and other grains.

It is perhaps pertinent to call attention to the fact that many thousands of our farmers residing in the Missouri and Mississippi River Valleys are engaged in the production of grain. About 200,000 of these farmers are members of the Farmers Union Grain Terminal Association which handles around 200 million bushels of grain annually.

Much of this grain is transported on the Mississippi River and its tributaries and on the Great Lakes and St. Lawrence transportation system. The inherent advantages of water transportation which are a part of the policy laid down in the ICC Act should not be tampered with.

In general, the National Farmers Union, over a period of many years has supported the act as written. Experience has proved that it is a good law and has made possible the achievement of the greatest transportation system in the world. We emphasize the fact that we support policy which will result in strengthening all segments of our transportation system, including the railroads. Although there may be instances where the act can be improved, we strongly feel that H.R. 5595 would weaken and not strengthen the act.

STATEMENT OF MILLERS' NATIONAL FEDERATION

The Millers' National Federation, whose members produce 90 percent of the flour milled in the United States, urges the passage of H.R. 5595. As we understand the measure, it would restrict the exemption granted to the water carriage of bulk commodities to those persons presently engaged in operations under the exemption.

As receivers and shippers of large volumes of raw agricultural commodities and finished food products, we are keenly aware of the inequities imposed on us by this and the agricultural exemption under the Motor Carrier Act. And, while we support all efforts designed to provide the Nation with an efficient, low-cost transportation system, we believe all modes of transportation should be given the opportunity of achieving efficiencies under substantially equal regulatory restrictions.

Efforts in the past to afford advantages to one mode of carriage over another, depending on the nature of the product transported or the nature of the carriage itself, have caused substantial economic distortion and damage within the milling industry. The industry relies heavily on rail, water, and truck transportation; and the resulting competitive pattern is highly complex. The ability of some carriers to adjust rates at will and vary them from shipper to shipper frequently upsets the very delicate competitive relationships among mills. It is this balance we seek to maintain, for it permits the largest number of mills to compete in the largest number of markets.

H.R. 9046, which your committee is also considering would permit, for a period of 6 months, the application of the bulk commodity exemption when other commodities are transported concurrently in the same vessel. This would reverse present ICC policy.

Consistent with our comments above, we believe such an extension of the bulk exemption would simply bring about further distortions and discriminations and add to the patchwork system which we understand has already permitted some 90 percent of domestic water carriage to be exempt from regualtion.

We respectfully urge, therefore, on behalf of the Millers' National Federation, that you oppose H.R. 9046 and support H.R. 5595.

[Telegram]

WASHINGTON, *D.C., March 28, 1962.*

Hon. JOHN BELL WILLIAMS,
Chairman, Transportation and Aeronautics Subcommittee, House Interstate and Foreign Commerce Committee, New House Office Building, Washington, D.C.:

At meeting yesterday board of directors our bureau voted unanimously to support repeal Inland Waterways Corporation Act as proposed on H.R. 10542, the board being of the opinion Federal Barge Lines should be permitted to operate as private corporation without more Government restrictions than other barge common carriers.

A. SCHWARTZ,
New Orleans Traffic & Transportation Bureau.

DIAMOND CRYSTAL SALT CO.,
St. Clair, Mich., April 11, 1962.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE HARRIS: Various transportation publications and the newspapers have recently contained items that proposed legislation to repeal the so-called bargeline dry bulk commodity exemption under bill H.R. 5595 is being handled currently by your committee. As a user of water transportation on the Mississippi and Ohio River system and its tributaries, and the Great Lakes, we are violently opposed to legislation that will regulate this transportation.

From our mine at Jefferson Island, La., located approximately 150 miles west of New Orleans and connected by a series of canals with the Intracoastal Waterbeing handled currently by your committee. As a user of water transportation way, we ship bargeloads of salt as far east as East Liverpool, Ohio, with shipments to such other points as Cincinnati, Ohio, Chicago, Ill., Louisville, Ky., Charleston, Tenn., Tampa, Fla., Sheffield, Ala., and Monsanto, Ill. In 1959 there were 291 bargeloads, in 1960 there were 371 bargeloads, and in 1961 there were 401 bargeloads. Of the 752,925 net tons of salt shipped from Jefferson Island, La., by rail, motor, and water for the year 1961, there were 473,384 tons shipped by barge transportation.

Diamond Crystal Salt Co. is a so-called single area rock salt producer with only this one mine in Louisiana. It competes with other large salt companies who have plants located adjacent to the prime markets where it is possible to ship smaller quantities by rail and truck. To meet this competition Diamond Crystal has set up depots along the river where it can take advantage of low water transportation and thence ship by rail or truck to be competitive. These other salt companies would very much like to see barge rates regulated by the Interstate Commerce Commission so they could use every means to prevent low water transportation costs.

It is noticed that the railroads are claiming to be greatly prejudiced in competing with water carriers for the movement of various commodities. We cannot convince ourselves this is fact. Barge transportation of our commodity consists of minimum weights, ranging from 500 to 1,400 tons. The minimum weight offered to the railroads is from 40 to 70 tons for single car shipments. Their equipment and facilities are incapable of transporting in excess of these amounts.

The present unregulated barge transportation provides the means for our company to market its product outside of the small area that surounds our plant. Salt is a commodity where ofttimes the freight charges exceed the value at destination. Around each point of production there exists an area outside of which the rail and motor freight charges are so great that competition from other fields becomes first a limiting and then a deciding factor. As is indicated by the figures shown above, each succeeding year shows an increase in the number of barge shipments which ultimately means to us an expansion of our sales area.

Apparently affected also by this bill is water transportation on the Great Lakes, which we used effectively during the year 1961 to market approximately 160,000 net tons of rock salt bought through a sales agreement. Depots on the water were set up at Detroit, Mich., Port Huron, Mich., Toledo, Ohio, Cleveland, Ohio, Ashtabula, Ohio, and other points. Here, again, water movement is employed to be competitive with other salt companies located in Michigan and Ohio. If this unregulated form of transportation was not available to us we could not compete in these markets.

It must be remembered that the present unregulated form of water transportation was, to an extent, a deciding factor in the building of many industries adjacent to water facilities and to enact legislation at this time will only lead to more private carrier operations with a harmful effect on our present water carriers.

It is respectfully requested that you and your committee consider our objections to this legislation in your deliberation of this bill.

Yours very truly,

JACK E. RICHERT, *Traffic Manager.*

WYANDOTTE TRANSPORTATION CO.,
Wynadotte, Mich., March 29, 1962.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics, House Committee on Interstate and Foreign Commmerce, House Office Building, Washington, D.C.

DEAR CONGRESSMAN: Congressman John Dingell has recently advised me that he has arranged with the clerk of your committee for appearance on April 10, 1962, on the hearings on H.R. 5595. Although I highly appreciate your courtesy in extending this opportunity to be heard in person, I believe that I can best transmit my feelings and those of the company which I represent by filing this brief written statement.

Wyandotte Transportation Co. has been engaged in the transportation of coal, limestone, and other bulk commodities on the Great Lakes for 54 years. The Great Lakes bulk commodity exemption has been greatly relied upon in the past and will be in the continued successful operation of our fleet of lake vessels. True, it is a small fleet of only four vessels of maximum 9,000 tons capacity, but it is a busy fleet. It serves many of those smaller Great Lakes ports which the larger 16,000-ton-plus vessels cannot reach.

We sincerely hope that this fleet will be enabled to continue in operation under the assurance of the Great Lakes bulk commodity exemption.

We endorse and support in full the statement of Vice Admiral Hirshfield, vice president of the Lake Carriers' Association, to be presented to your committee tomorrow, March 30, 1962.

In brief, we profoundly oppose H.R. 5595. We strongly oppose any such legislation which would tend to handicap or restrict or penalize the continued operation of American freighter operation on the Great Lakes.

Eight copies of this letter are enclosed for the convenience of all members of your subcommittee.

Very truly yours,

GEO. W. SCHWARZ, *Vice President.*

STAUFFER CHEMICAL CO.,
New York, N.Y., April 3, 1962.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We would like to submit the following statement in regard to H.R. 5595, which proposes to repeal section 303(b) of the Interstate Commerce Act relating to the exemption of dry bulk commodities by inland water carriers.

Stauffer Chemical Co. is a multiplant chemical manufacturer with plants throughout the United States. We have invested millions of dollars in plant facilities located on the inland waterways primarily to take advantage of low-cost water transportation for both our raw materials and finished products. These low-cost transportation factors have enabled us to reach distant marketing areas which, in many cases, are located quite a distance from the inland waterways. We firmly believe that the elimination of section 303(b) would increase our transportation costs with the end result that due to competitive conditions, the elimination of the bulk exemption could seriously affect our marketing programs. There is no doubt that the competition a local manufacturer is faced with has tended to keep his prices at reasonable level. These benefits ultimately accrue to the consumer.

It may be argued by those supporting the elimination of the bulk exemption that stabilization of rates would result and all shippers and receivers would know what his competitors are paying for transporting his goods from origin to destination. In our opinion, any capable transportation executive who is familiar with water transportation would have very little difficulty in reasonably calculating what his company's or his competitors' water costs are between any two points on the inland waterways. The fact that rates charged by unregulated carriers are not published has not proved a handicap to our company in effectively competing for any business in areas we may wish to market our products.

The regulated bargelines may plead that they cannot compete with the unregulated carriers. In our opinion, this is not true, since they presently are permitted to haul exempt commodities and in fact many of them are doing so today.

It may be argued by railroad interests that they cannot compete because of the exemption. Here again, we believe that is unrealistic. Some of the financially soundest railroads in the country are those which parallel the inland waterways. These lines have gained valuable traffic from distribution centers on traffic originating from distant points which had a prior movement by exempt water carriers.

We believe that elimination of the bulk exemption would result in higher transportation costs, destroy the small independent inland water carriers who are a vital factor in the national transportation programs, have served shippers and receivers well and at reasonable rates, and would stifle and eventually eliminate true competitive transportation pricing to the detriment of the consuming public. It would do irreparable damage to communities and industries located on our inland waterways. We do not believe that the elimination of the bulk exemption is in the national interest.

Yours very truly,

W. N. SAABY, *Director of Transportation.*

AMERICAN TRUCKING ASSOCIATIONS, INC.
Washington, D.C., April 18, 1962

Re H.R. 5595.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to inform the committee that the American Trucking Associations, Inc., favors the above-entitled bill, which provides for the repeal of the so-called dry bulk exemption of part III of the Interstate Commerce Act.

It is our belief that the solution to the present problem of the regulated carriers of America lies in the direction of repeal (rather than extending) the present exemption provisions contained in the act. Those exemptions not only place the regulated carriers in a precarious competitive position but also encourage and provide a fertile field for the evasion of regulatory restrictions which have been found to be necessary in the public interest. It is largely because of them that our public transportation system is being dangerously weakened.

We feel that this bill is a step in the right direction. In fact, the action proposed should be supplemented by action which would likewise repeal the other bulk exemptions in part III and sharply curtail those contained in part II of the act.

Respectfully submitted.

JOHN V. LAWRENCE,
Managing Director.

MANUFACTURING CHEMISTS' ASSOCIATION, INC.
Washington D.C., March 22, 1962.

Subject: H.R. 5595, Interstate Commerce Act, section 303(b), water carrier bulk commodity exemption.

Hon, JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington D. C.

DEAR SIR: We have been notified that the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce will hold hearings on H.R. 5595, H.R. 9046, and H.R. 10542, on March 27, 28, and 30, 1962. The proposed legislation covered by H.R. 5595, to repeal section 303(b) of the Interstate Commerce Act relating to the water carrier bulk commodity exemption, is of vital interest to our members, and therefore, it is our intention to present testimony in opposition to its adoption. The purpose of this letter is to respectfully request a postponement of the hearing on H.R. 5595 for approximately 2 weeks in order that we may properly prepare our case, as the time which has been allowed is inadequate.

The Manufacturing Chemists' Association is a nonprofit trade association of chemical manufacturers, organized in 1872. Its members comprise over 90 percent of the productive capacity of the chemical industry within the United States. They have more than 1,000 plants in the United States with representation in almost every State. They have a major interest in and use all types of transportation in connection with the assembly of raw materials to be used in manufacturing processes and in the distribution of manufactured products. Many of these companies have purposely established plant facilities on our inland waterways to enjoy the benefits which this means of transportation provides, and they ship and receive large quantities of chemicals, coal, and other commodities in bulk by water in interstate commerce. A substantial proportion of this traffic is handled by water carriers operating under the exemption set out in section 303(b) of the Interstate Commerce Act.

A recent spot check with only 14 of our 198 members disclosed that in 1960 they moved, by inland waterways, chemicals and related products totaling 11,204,797 net tons for a total of 10,761,172,912 ton-miles. At least 22 of these member companies have one or more plants in the constituencies of Mississippi and Arkansas. Naturally, these movements were not all subject to the exemption under section 303(b); however, I am sure you will appreciate from the few facts we have given in this letter, the widespread impact the adoption of such legislation could have. In view of this, we trust that you will act favorably on our request to enable us to prepare an adequate presentation for your studied consideration.

Very truly yours,

F. H. CARMAN.

THE COMMON CARRIER CONFERENCE
OF DOMESTIC WATER CARRIERS,
St. Louis, Mo., April 16, 1962.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
New House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As stated in testimony presented before your committee on March 30 by Mr. G. C. Taylor on behalf of the Common Carrier Conference of Domestic Water Carriers, this conference supports H.R. 9046.

On April 11, detailed justification for H.R. 9046 was presented by Mr. J. W. Hershey, president of the Inland Waterways Common Carriers Association. Mr. Hershey is also vice chairman of the Mississippi Valley-Gulf Coast Division of the Common Carrier Conference. The conference adopts and subscribes to this testimony on this piece of legislation which be believe important to the welfare of the common carriers by water in the Mississippi Valley-gulf coast area.

Respectfully yours,

A. C. INGERSOLL, Jr.

WATERWAYS BULK TRANSPORTATION COUNCIL, INC.,
New York, N.Y., April 17, 1962.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. WILLIAMS: On behalf of the Waterways Bulk Transportation Council, Inc., I would again like to thank you for the opportunity afforded to us last Tuesday for our witnesses, including myself, to give testimony in connection with your hearings on two bills proposing changes in the bulk commodity exemption.

In reviewing the testimony of Mr. Jacob W. Hershey for the Inland Waterways Common Carriers Association, I would like to have the privilege of correcting a series of figures cited by Mr. Hershey in commenting upon my own testimony, a series which may otherwise give an incorrect impression.

Mr. Hershey's statement suggests that revenues per barge be compared as between a minimum bargeload of 600 tons of regulated commodities on the one hand and a full bargeload of 1,300 tons of unregulated bulk commodities on the other. His statement is correct that the cost of moving a 600-ton load is about the same as the cost of moving a 1,300-ton load in the same barge.

The rate comparisons made by Mr. Hershey, however, are all based on rates quoted in the tariffs of the various regulated carriers, in which a 600-ton

minimum applies just as well to the unregulated bulk commodities as it does to those which are required by law to move only under regulation. According to the published tariffs of these carriers a shipper has no more reason to load more than the minimum 600 tons of a bulk commodity in a barge than of a nonbulk commodity.

Accordingly, in order to put the comparison on an equal footing, using the 600-ton minimum bargeload in all cases, the revenues are as follows:

	Revenue per barge
1. Regulated sugar: New Orleans to Chicago, 1,519 miles, $6.55 per ton multiplied by bargeload of 600 tons	$3,930
Unregulated sulfur: Port Sulphur, La., to Chicago, 1.569 miles, $3.50 per ton multiplied by bargeload of 600 tons	2,100
2. Regulated iron and steel: Chicago to Lake Charles, La., 1,771 miles, $7.97 per ton times bargeload of 600 tons	4,782
Unregulated grain: Red Wing, Minn., to New Orleans, 1,766 miles $4.51 per ton times bargeload of 600 tons	2,706
3. Regulated scrap: Mobile, Ala., to Chicago, Ill., 1,681 miles, $10.17 per ton times bargeload of 600 tons	6,102
Unregulated coal: Huntington, W. Va., to Minneapolis, Minn., 1,526 miles, $4.62 per ton times bargeload of 600 tons	2,772
4. Regulated scrap: Memphis to Chicago, 765 miles, $5.54 per ton times bargeload of 600 tons	3,324
Unregulated coal: Liverpool, Ill., to Minneapolis, Minn., 763 miles, $2.62 per ton times bargeload of 600 tons	1,572

It was not the intention of our rate charts to point to excessive profits of the regulated carriers, although the inland water carrier industry in general is proud of the impressive earnings record of the regulated carriers on the Mississippi system. We intended rather to demonstrate that under regulation the rates of nonbulk commodities which by law can only be handled by regulated carriers are, in fact, substantially higher and less stable than tariff rates on bulk commodities whose rate structure is affected by exempt competition. We believe the point has now been adequately made.

It is requested that this letter be entered in the record of the hearings.

Yours very truly,

DAVID A. WRIGHT, *Chairman.*

INLAND WATERWAYS COMMON CARRIERS ASSOCIATION,
Chicago, Ill., April 16, 1962.

Congressman JOHN BELL WILLIAMS,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN WILLIAMS: I wish to thank you for the opportunity which you gave me to represent the common carrier industry on the rivers at the hearings last Thursday in Washington. At the same time, I would like to assure you that our industry is perfectly willing to cooperate in any way we can with other segments of the industry in removing purposeless impediments to the efficient operation of modern river equipment.

I should also like to correct one error which seems to recur in much of the testimony presented concerning the participation of the regulated carriers in the traffic on the inland waterway system. Frequently, the figure 6 percent has been used. The origin of these erroneous statements apparently is in the Doyle report and if you will examine the report you will find that this figure was a pure estimate and that, furthermore, it was generally used to describe tonnage rather than ton-miles. As you are well aware, a vast amount of the tonnage on the inland waterways is accounted for by oystershell, sand, gravel, and very short-haul coal. Usually this transportation is a mere adjunct to the mining or construction industry which requires the cargo and, although it produces vast tonnages, is not so significant measured in terms of ton-miles.

In any event, starting from the figures on file with the Interstate Commerce Commission for 1960, it appears that the regulated carriers transport approximately 38 percent of the total ton-miles on the Mississippi-Ohio River system, including the gulf intercoastal canal.

Sincerely yours,

J. W. HERSHEY.

DIAMOND ALKALI CO.,
Cleveland, Ohio, April 4, 1962.

Hon. JOHN B. WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR SIR: We are strongly opposed to H.R. 5595 which, if passed, would repeal section 303(b) of the Transportation Act.

For many years we have contracted for the transportation of between 1 and 1½ million tons of limestone from quarries on the Great Lakes to our manufacturing plant at Painesville (Fairport), Ohio. This commodity is carried in large self-unloader vessels which are specially designed and constructed to carry such materials, in bulk, as limestone, coal, etc.

If this movement were to be removed from the exempt category, as it is today under the provisions of section 303(b), and be made subject to the regulations which attend common carrier transportation, it is a serious question as to whether it could survive. The carriers for hire would not have the necessary funds with which to maintain enough equipment to hold themselves out as common carriers. Likewise, industry for whom such service is performed could not be sure of an adequate coverage of their needs. This stability in this respect is now obtained through the medium of term contracts which are bilateral, obligating the carrier to furnish the equipment and perform the service, also obligating the receiver to furnish the tonnage to be moved. This gives the contractor adequate assurance to warrant his furnishing and maintaining adequate equipment to maintain the required schedules.

If common carrier restrictions were placed upon these carriers, the cost of moving the goods would materially increase, which, together with the hazard of obtaining an adequate service, would undoubtedly force such movements into private carriage.

We urge your Committee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce to recommend against this legislation in the Congress.

We appreciate this opportunity of expressing our views in this matter and respectfuly request that they be made a permanent part of the record.

Very truly yours,

J. H. WILHARM,
Director of Traffic.

The CHAIRMAN. The committee will now adjourn.

(Whereupon, at 11:50 a.m., the hearing was adjourned.)

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