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CONTROL OF ILLEGAL INTERSTATE MOTOR CARRIER TRANSPORTATION

(AMENDMENTS TO INTERSTATE COMMERCE ACT)

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HEARINGS

BEFORE THE

SURFACE TRANSPORTATION SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2560 and S. 2764

STRENGTHENING THE ROLE OF AUTHORIZED TRANSPORTATION SERVICES AND THEREBY IMPROVING THE RELATIVE STATUS OF INTERSTATE COMMON CARRIERS BY ALL MODES OF TRANSPORTATION IN ORDER TO MAKE MORE ADEQUATE OUR NATIONAL TRANSPORTATION SYSTEM

FEBRUARY 7, 8, APRIL 24, AND 25, 1962

Printed for the use of the Committee on Commerce

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CONTROL OF ILLEGAL INTERSTATE MOTOR CARRIER TRANSPORTATION

(Amendments to Interstate Commerce Act)

WEDNESDAY, FEBRUARY 7, 1962

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TRANSPORTATION,
Washington, D.C.

The subcommittee was called to order, pursuant to notice, at 10:55 a.m., in room 5112, New Senate Office Building, by Hon. George A. Smathers (chairman of the subcommittee).

Senator SMATHERS. The meeting will come to order.

First, I might say as chairman of the subcommittee that we are, of course, always honored and delighted when we have the chairman of the full committee who is here with us, Senator Magnuson, and he is going to stay with us while we have the testimony of our first witness whom we will more appropriately welcome in just a minute.

I want to welcome to our hearing this morning the new ranking minority member of the Surface Transportation Subcommittee, Senator Thruston Morton of Kentucky. Don't let that "new" label deceive you. He is an old hand at transportation problems.

The direct problem before us today is how to improve controls over so-called gray area or unlawful interstate carriage on our highways. But there is a broader issue involved which recognizes that transportation is one of a few key items in economic soundness and price stability.

In terms of sheer size, transportation represents 20 percent of our gross national product. It accounts for 17 percent of total Federal taxes collected, and employs 17 percent of this country's total working force. Should the present eastern railroad depression be contagious nationwide or should the operating ratio of motor carriers continue its downward trend, the effect on our Nation's economy would be like lifting the center stone of a building's foundation. If the economy is to grow, transportation must grow—and it must grow at a better and faster pace than it has during the past few years.

There is another and largely overlooked dimension to this problem—transporation's relation to price stability. Transportation is at the heart of the American system of distribution. It may, in fact, be the genius of our system. As such it is as much a cost to be borne by the consumer and the public as raw materials and labor and advertising. We, as a people, properly fear inflation and cost/price spirals. Yet,

(NOTE.—Staff counsel assigned to this hearing: Gerald B. Grinstein.)

unless transportation achieves economic stability, there can be no stability in the economy as a whole. The cost of moving and distributing products is at the core of the ultimate cost—if one fluctuates, the other must necessarily reflect these vacillations.

It is our hope then that the bills before us are looked at in the broader context—not to penalize the bona fide motor vehicle operator, whether he be a one-truck farmer or a transcontinental common carrier. The intended effect is to stabilize a vital segment of the economy and in that way to provide a greater degree of cost and price stability than has been known in the past.

I am convinced that no carrier wants to operate illegally and no shipper wants to patronize the unlawful operator. Yet the pressures of competition sometimes compel practices that are not consistent with the longer-range concepts of the public interest. To overcome this, S. 2560 is designed to improve the structure of the regulatory laws so that the vicious cycle can be stopped and constructive competition be substituted for destructive. S. 2764 would make the civil forfeiture provisions of section 222(h) of the Interstate Commerce Act applicable to unlawful operations and safety violations by motor carriers. We cannot have a stable transportation system until the carriers compete on equal terms and the shippers know what price their competition is paying.

I will insert at this point in the record copies of S. 2560 [1] and S. 2764, also the request from the Interstate Commerce Commission which resulted in the introduction of S. 2764:

[S. 2560, 87th Cong., 2d sess.]

A BILL To amend the Interstate Commerce Act, as amended, so as to strengthen and improve th national transportation system, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier operating in interstate or foreign commerce within the borders of that State—~~

~~"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, or (in the case of any other type of motor carrier operating in interstate or foreign commerce) to register and disclose its status;~~

~~"(2) to identify its vehicles;~~

~~"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or~~

~~"(4) to file other securities or agreements,~~

~~such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which might constitute a burden, financial, administrative or otherwise, on the operations of such carriers. In establishing such standards the Commission shall give recognition also to the differences which exist in the operations of such carriers as common carriers, contract carriers, private carriers, and carriers operating under exemptions provided for in section 203(b) of this part by promulgating different sets of such standards for each of the classes of carriers. The Commission may consult with the regulatory bodies of the several~~

[1] Committee Prints Nos. 1, 2, 3, and 4 of S. 2560 are included as app. A to this record.

States and with representatives of motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any State requirements respecting interstate operations which do not conform to the provisions of this paragraph shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier operating pursuant to a certificate, or permit issued by the Commission under the provisions of sections 206, 207, 208, and 209 of this part) operates in violation of any provisions of this part (except as to the reasonableness of rates, fares, or charges, and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder any person or the Commission or its duly authorized agent may apply to the district court of the United States for any district where such person operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirements of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States, the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

~~SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows:~~

~~"SEC. 226. (a) In order to insure that motor carriers operating vehicles pursuant to the provisions of section 203(b)(6) subject only to the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, have adequate knowledge of such rules and regulations, and to promote compliance therewith, each such carrier shall, on or before September 1 of each year, file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the number of vehicles owned or operated."~~

~~SEC. 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods."~~

~~(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:~~

~~"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."~~

~~(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:~~

~~"SEC. 410. (a) (1) FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS. If any person (or it predecessor in interest) was in bona fide operation on September 15, 1961, as a freight forwarder as that term is defined in section 402(a)(5) of used household goods in commerce between any place in the United States and any place in a territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on September 15, 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 such applicant or its predecessor in interest had no control, the Commission upon proof of such bona fide operations and after hearing shall issue a permit authorizing such operations without requiring further proof that the service is or will be consistent with the public interest, and without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date of the enactment of this subparagraph. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Any carrier which, on the date of the enactment of this subparagraph is engaged in operation as a freight forwarder (as defined in section 402(a)(5) of used household goods but was not engaged in such operation on September 15, 1961, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within one hundred and twenty days after the date of the enactment of this subparagraph, continue such operation without a permit pending the determination of such application in accordance with the provisions of section 410."~~

That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier subject to regulation by the Interstate Commerce Commission (other than regulation solely pursuant to the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment) operating in interstate or foreign commerce within the borders of that State—

"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission;

"(2) to identify its vehicles;

"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or

"(4) to file other securities or agreements,

such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of such motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which might constitute a burden, financial, administrative or otherwise, on the

operations of such carriers. The Commission may consult with the regulatory bodies of the several States and with representatives of such motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any such State requirements which do not conform to the provisions of this paragraph shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier holding a certificate or permit issued by the Commission under the provisions of sections 206, 207, 208, 209, and 210a of this part) operates in clear and patent violation of any provisions of section 206, 207, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person operates, for the enforcement of such section, or of such rule, regulation, requirement, or order; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c), shall forfeit to the United States the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as folllws:

"SEC. 226. (a) In order to insure that motor carriers operating vehicles of three or more axles pursuant to the provisions of section 203(b)(6) except carriers who engage in casual, occasional, or reciprocal transportation of commodities within the purview of that section, have adequate knowledge of the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and in order to promote compliance therewith, each such carrier shall, before commencing operations and on or before September 1 of each year,

thereafter file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2), the location or principal address of the carrier, and (3) the number of such vehicles owned or operated."

SEC. 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods".

(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:

"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."

(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:

"SEC. 410. (a)(4) FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS.—If any person (or its predecessor in interest) was in bona fide operation on August 15, 1962, as a freight forwarder as that term is defined in section 402(a)(5) of used household goods in interstate commerce between points in the United States or between any point in the United States and any point in a territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on August 15, 1962, 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 such applicant or its predecessor in interest had no control, the Commission upon proof of such bona fide operations and after hearing shall issue a permit authorizing such operations without requiring further proof that the service is or will be consistent with the public interest, and without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date of the enactment of this subparagraph. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful."

(d) Section 417(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any freight forwarder fails to comply with or operates in violation of any provision of this part, or any rule, regulation, requirement, or order thereunder, or of any term or condition of any permit, the Commissioner or the Attorney General of the United States (or, in case of such an order, any party injured by the failure to comply therewith or by the violation thereof) may apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this part or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such freight forwarder and any officer, agent, employee, or representative thereof from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition, and enjoining obedience thereto."

"(2) If any person (not including a freight forwarder holding a permit issued by the Commission under the provisions of section 410 of this part) operates in clear and patent violation of any provisions of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person operates, for the enforcement of such section, or of such rule, regulation, requirement, or order; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission."

[S. 2764, 87th Cong., 2d sess.]

A BILL To make the civil forfeiture provisions of section 222(h) of the Interstate Commerce Act applicable to unlawful operations and safety violations by motor carriers, 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 (h) of section 222 of the Interstate Commerce Act, as amended (49 U.S.C. 322(h)), is amended to read as follows:

"(h) Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with the Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part; or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States, the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by the Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., January 25, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: I am submitting herewith for your consideration 40 copies of a draft bill, together with a statement of justification therefor, which would give effect to legislative recommendation No. 4 in the Commission's 75th annual report.

We would very much appreciate your assistance in having this bill introduced and scheduling a hearing thereon.

Sincerely,

RUPERT L. MURPHY, *Chairman.*

RECOMMENDATION NO. 4

This proposed bill would give effect to legislative recommendation No. 4 of the Interstate Commerce Commission as set forth on page 186 of its 75th annual report as follows:

"We recommend that section 222(h) be amended so as to (a) extend the civil forfeiture provisions therein to unlawful operations and safety violations by motor carriers, (b) permit the Commission to institute forfeiture actions directly in the courts, and (c) increase substantially the amount of the forfeitures prescribed."

"A BILL To make the civil forfeiture provisions of section 222(h) of the Interstate Commerce Act applicable to unlawful operations and safety violations by motor carriers, 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 (h) of section 222 of the Interstate Commerce Act, as amended (49 U.S.C., sec. 322(h)), is amended to read as follows:

"'Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part

with respect to the filing with the Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part; or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of sections 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by the Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found.'"

JUSTIFICATION

The purpose of the attached draft bill is to provide the Interstate Commerce Commission with a more effective means of combating the spread of illegal and so-called "gray area" motor carrier operations which are sapping the strength of the Nation's regulated common carrier system. It is also designed to aid the Commission in its stepped-up motor carrier safety enforcement program.

Under existing law, procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective. Criminal prosecutions, for example, must be brought in the district in which the violations occurred. Thus, in the case of multiple violations by a carrier with extensive territorial operations it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. Civil forfeiture proceedings, on the other hand, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Moreover, less time is needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the operation an appearance of legality, but the principal enforcement advantage that would accrue would be when the operator, by means of an alleged vehicle lease or an alleged purchase of the commodity hauled, has attempted to give the operation an appearance of private carriage. More specifically, an owner of a vehicle may enter into a vehicle lease arrangement with a manufacturer, under which the manufacturer allegedly uses the vehicle in private carrier operations. Such arrangements range all the way from a bona fide lease of a vehicle, at one extreme, to the most obvious sham at the other. No enforcement action is, of course, involved in the case of a bona fide lease. The obvious shams, however, are the subject of criminal prosecution.

While there are a number of vehicle arrangements which the Commission believes to be illegal for-hire carriage by the vehicle owner, it is doubtful that a criminal conviction could be secured because of the necessity of showing knowledge and willfulness and proving guilt beyond a reasonable doubt. In addition, in a criminal proceeding there can be no appeal from an acquittal. Such cases are now handled in the civil courts, but an injunction against such operations in the future is all that can be secured. The possibility of a civil injunction action, where there is no pecuniary penalty or criminal stigma involved, has very little effect as a deterrent to would-be violators. A civil forfeiture action, such as that proposed, carrying with it substantial monetary penalties should, on the other hand, have a strong deterrent effect against questionable leasing arrangements.

Operations sometimes referred to as "buy and sell" operations are very similar in effect. By allegedly purchasing merchandise the transporter represents the operation to be private carriage. As in the case of leasing arrangements these operations have many variations, some of which present close questions as to whether the operation constitutes for-hire carriage. Some are obviously illegal for-hire operations and are handled as criminal cases. Others, however, are not so clearly unlawful as to warrant criminal action for the reason stated above in connection with questionable leasing arrangements, but which, in the Commission's view, are nevertheless unlawful. Such operations may be continued for substantial periods during the pendency of a civil injunction proceeding and before a cease and desist order is issued by the court. If the proposed amendment were enacted a number of these cases could be made the subject of a civil forfeiture action which, if successful, the operator would suffer a money judgment or forfeiture.

Enactment of the proposed legislation would also greatly facilitate the Commission's enforcement activities in the important area of motor carrier safety. Although a very high percentage of cases involving violations of the Commission's safety regulations are disposed of by pleas of guilty or nolo contendere, investigations looking toward such prosecutions are nevertheless extremely time consuming because of the necessity of proving to the court every element of the alleged criminal offense. Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number thereof under the recommended forfeiture procedure.

The Commission's efforts at more effective and expeditious enforcement would also be greatly enhanced if it were authorized to institute forfeiture proceedings directly in the courts instead of proceeding through the Department of Justice as it is now required to do. Delays would be avoided not only by eliminating the mechanics involved in taking the extra step, but also by the elimination of such delays as may be caused by the time consumed in convincing the U.S. attorney that an action should be filed.

These proposed amendments, coupled with a substantial increase in the amount of the forfeitures prescribed, would strengthen the Commission's hand considerably in dealing with some of the principal factors contributing to the decline of regulated common carriers.

Senator SMATHERS. Our first witness this morning is the Honorable Edwin C. Johnson, former chairman of this full committee, who not only is a great friend of all the members of the committee and most of the people in this industry, but who obviously knows a great deal about this problem. We feel honored in having him as our first witness this morning.

So, Senator, and Governor, and former chairman, whatever your title is now, we would love to have you come up and start your testimony.

Mr. JOHNSON. Thank you, Mr. Chairman, for that very nice introduction. I am very pleased to be back here with you momentarily. I want to offer you and this committee condolences for the loss of Andy Schoeppel. He was a great Senator and a devoted member of this committee and took a great interest in everything that took place here. I know it is a great loss to you and I want to share in the sorrow that you feel toward what has happened.

Senator SMATHERS. May I interrupt you right there to say, Mr. Chairman, we certainly agree with you and recognize it is a great loss and the full committee has already sent a resolution to Mrs. Schoeppel expressing our very deepest regrets at his passing.

We join in that sentiment with you, sir.

STATEMENT OF HON. EDWIN C. JOHNSON, FORMER CHAIRMAN OF THE COMMITTEE ON COMMERCE, DENVER, COLO.

Mr. JOHNSON. Thank you. I am honored today to have the chairman of this committee present here today. I had the great honor of being succeeded by him and I know he has done a grand job.

I read a few months ago—it is months now—about the big barn-buster out home that they held for him. Nothing like that ever happened to me. I know it was a great thing and a great compliment and I want to congratulate the chairman on receiving such a show of affection and regard.

Now, Mr. Chairman, I have reviewed your hearings of last year on S. 2560, word by word and sentence by sentence, and I am duly impressed. Chairman Smathers, the witnesses who testified here and the members of the Senate Commerce Committee who participated in those hearings, earned the respect and the gratitude of everyone interested in having a first-class transport service in America.

This committee's remarkable grasp of the subject matter, revealed as it is, by the questions the chairman and the committee members raised during these and other related hearings on the unfortunate decline of regulated common carriage, has convinced me that today I should be listening and you Senators should be testifying, and after hearing the chairman's opening statement this morning I know that that is true.

I should be the listener and I did listen to what he said and agree with him completely in every statement that he has made here this morning.

Your discernment, the discernment of the committee, of the nature of the problem, your diligence in marshaling an array of the pertinent factors and your conscientious objectivity in seeking constructive and fair solutions, stamps your hearings as outstanding.

The importance of restoring the common carriers of these United States to their rightful place as the bulwark of our transport system has not escaped you. Until that is done there cannot be sustained strength and stability in this business. And until that is done our national defense, our agricultural economy and our tremendous industrial potential cannot be deemed to be satisfactory.

It has been charged by persons not familiar with the developments of that period that a grave and basic error was made in 1935 when the interstate trucking industry was brought only partially under the regulation of the Interstate Commerce Commission. It is true that in that act Congress provided an outright exemption from regulation for certain cargoes and for certain carriers. And it is true that a system of half-regulated and half-unregulated carriers was provided. But had such a concession not been made to the congressional enemies of regulation there would have been no bill. It was the price that had to be paid to obtain any regulation at all. However, the close and direct relationship of the common carrier concept, to regulation in the public interest, was understood by the congressional authors of the legislation.

They regarded the common carrier as the backbone of the transportation system they were creating, just as your chairman has stated today. They made no concessions on common carriers or on what they regarded as basically fundamental.

They decreed that the services and freight charges of the common carriers would be uniform to every shipper, large or small, profitable or not so profitable. Common carriers were obligated to adopt and adhere to rigid schedules operating in certain territories and, under all conditions, to serve the public faithfully.

To borrow from Herodotus "neither snow, nor rain, nor heat, nor gloom of night would stay the common carrier from the swift completion of his appointed rounds, in serving the public with whatever transportation it required, when it required it."

A certificate to operate as a regulated common carrier was not a license to do what the carrier pleased. To the contrary the unregulated carrier, under the law, may go where he pleases, when he pleases and how he pleases, provided his load is either agricultural exempt commodities or his own property.

But these fellows needed backhauls to make their trips pay and they began looking for loopholes in the law and they found them. They discovered some slick ways to beat the law and they began digging pretty deep into common carrier traffic for their backhauls.

As this committee knows, some of the unregulated carriers purchased a truck or two on a small downpayment and had to earn a dollar wherever and however they could to meet the future payments. While some well-financed businesses do transport their own property, of course, but they, too, need a backhaul and they do try to obtain one. Much of the time it requires a bit of finagling to do this. There are all sorts of variations in lining up backhauls for the unregulated—some legal and some illegal. It is estimated that unregulated trucks do two-thirds of the trucking business and that nearly 20 percent of it is illegal. The Under Secretary of Commerce is quoted as saying, "That portion of the Interstate Commerce Act pertaining to motor carriers is probably the most violated statute in the land."

Private and exempt carriers cannot compete with the common carriers without a backhaul. They cannot "mooch" traffic for that backhaul from the common carriers legally, yet they do "mooch" it. In some instances trip leasing is the modus operandi, or the buy-and-sell type, the phony co-op, the shady broker, and many other fraudulent devices.

Loopholes must be closed and lawbreakers punished. This is the time of the year, as Senator Morton can tell us, when we hear many wonderful quotes from Abraham Lincoln and I should like to offer a quote from that great statesman at this point.

This is what he said:

> Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution never to violate in the least particular the laws of the country and never to tolerate their violation by others.

As Abraham Lincoln observed, a democracy's greatest enemy is law violation. Lax, weak, ambiguous, and ill-considered provisions of our laws have invited invasion by the unregulated carriers. Loopholes have been discovered and successfully used by them. Chiselers have moved in also. Boldness in some cases has ripened into wholesale disregard for the intent of the law.

Due to widespread destructive competition it now appears that interstate trucking is reverting to the chaos and the confusion that prevailed prior to August 9, 1935. And due to their heavy capital in-

vestment in idle equipment, roadbeds, and tracks, the railroads are suffering greater losses than the motor common carriers, in some parts of our country, from this unfair and destructive competition.

With commendable patience, the common carriers have tried hard and have practiced coexistence with the unregulated, but it will not work. Without corrective and clarifying legislation by Congress, in my opinion, the situation will deteriorate rapidly henceforth.

I do not mean to leave the impression that the railroads and the regulated motor carriers are in no way themselves responsible for their present unfortunate plight. Many of us are aware of the indifference of the rails toward trucking in the early days.

A similar laissez-faire attitude prevailed among the regulated motor carriers toward private and exempt carrier operations. Now with their backs to the wall they are shedding their coats instead of their tears and that is good.

Former Chairman Hutchinson of the ICC is quoted as having observed in a public speech on April 10, 1961, as follows:

> What's wrong with transportation? The traffic of regulated carriage is being diverted to unregulated carriage. This is what's wrong with transportation—why is this so? Cost to the shipper.

I cannot speak from personal knowledge for other parts of the country, but I do know that costs to the shipper has driven many, many shippers to private carriage in the Southwest region since January 1, 1947. Outside of defense shipments for which the taxpayer paid the transportation, I do not know of one solitary large shipper in the Denver-southern California territory who does not operate his own interstate carriage.

These shippers are reluctant to do so, but exceedingly high rates plus slow and indifferent transportation service has compelled them to do it. And now the small shipper is joining pools and escaping from them also.

One shipper association in Los Angeles informed me last summer that it receives 30 railroad cars a day. He said 72 percent of their members formerly used motor common carrier transports. Freight forwarders are doing a land office business in that area also.

Here are a series of statistics, which I think are fairly accurate, which tell the story of cost of which Chairman Hutchinson spoke:

	Percent
Public highways improved by	37
Switch to diesel motors has lowered operating costs per ton mile at least	11
Increased in tonnage pulled by each truck	72
Wage increases	107
Costs of equipment increases	103
Increase in (transportation taxes but not including income taxes)	53
Freight revenue on each truckload hauled increased by	150

Freight rates have been raised since 1947 by these percentages, with each succeeding percentage pyramiding on the prior percentage.

	Percent		*Percent*
Jan. 1, 1947	20	Mar. 21, 1956	6
Nov. 25, 1947	10	Feb. 9, 1957	5
Feb. 27, 1948	10	Mar. 5, 1958	7
Mar. 30, 1949	4	Oct. 15, 1960	6
May 20, 1952	6	Pyramiding of percentage on percentage total	125
May 18, 1953	9		

Twenty-five years ago the railroads pooh-poohed the trucks. Today the trucks pooh-pooh the airlines. Ten years ago the total domestic airline cargo freight, not including air express and mail, was 188 million ton-miles. Today it is 600 million ton-miles. In 4 years it is expected to reach 1 billion ton-miles. This phenomenal growth is said to be due in large part to the oxcart slowness of the trucklines, and especially the express service of the trucklines.

The trucklines have two services. One is supposed to be an express service, which is supposed to be very rapid, and the other service is freight service, which is slower. But they have got them badly mixed.

Truly the trucks have been shortsighted and have depended on their position of common carrier monopoly rather than striving actively to meet the public need for more expeditious and more efficient transportation service at freight and express rates which are based on realistic competitive standards. Many of them became millionaires overnight and it has gone to their heads. It is not too late, however, for them to recover their lost ground and their eroded traffic, provided Congress protects them as it should against unlawful and unauthorized transportation, and provided further than they stop charging fast express rates for slow freight delivery. By these policies they themselves have spawned much of the trouble they are experiencing.

The economy of our country has been expanding at an unprecedented rate and I have no doubt it will continue. There is now and there will continue to be a need for many transportation innovations, and for alert, aggressive, and constructive competition in transportation, which occurs today in all other fields of dynamic and responsible endeavor. Experimentation in the interest of progress, and more competition is also needed. But—and here is the "yes, but" that goes with that pronouncement—that competition must be honest. That is the job for Congress and Congress must not duck it. Thanks to this alert committee, the enactment of the Transportation Act of 1958 and these new bills before you today portend good things for the common carriers of the future. I am very optimistic on this point.

Fortunately, the distress among the common carriers is not nationwide. There are some bright spots in the overall picture. Motor and railroad common carriers between Missouri River common points and the Pacific coast are doing very well in spite of the fantastic increase in unregulated transportation in this region.

Doubtless, this area's good showing is due primarily to the tremendous increase in its population. For instance, the population in that whole 1,000-by-1,200-mile area—Denver to southern California—has doubled since World War II, and no new motor common carriers have been certified for many years. The results measured in terms of common carrier prosperity is of interest. I am including at this point some statistics.

Revenue statistics of the 9 motor common carriers and the 5 railroads serving the Denver-southern California area

FOR THE CALENDAR YEAR 1960

Motor common carrier	Revenue	Costs of operation	Income after taxes	Operating ratio
Illinois California Express	$25,266,060	$23,529,713	$780,703	93.1
Denver-Chicago	40,587,907	36,766,403	1,741,825	90.6
P.I.E.	58,304,161	56,755,844	706,551	97.3
Milne Truck Lines	5,007,348	4,643,805	171,291	92.7
Navajo	27,887,403	26,609,113	747,229	95.4
Garrett	18,230,017	16,952,084	687,854	93.0
Interstate Motor Lines	20,415,070	18,654,388	875,747	91.4

FOR THE CALENDAR YEAR 1961

Ringsby	$18,517,878	$16,957,729	$399,792	93.1
Watson Bros	35,004,374	34,009,018	469,772	96.0
Rio Grande Motor Way [1]	4,177,155	4,057,234	98,130	97.0
Total	253,397,373	239,035,331	6,678,894	94.0

[1] Carbon Motor Way wholly owned subsidiary Rio Grande Motor Way.

Railroad carrier	Operating revenues	Operating expenses	Net revenues	Net income before taxes	Net income after taxes
Atchison, Topeka, & Santa Fe Ry	$614,017,338	$482,069,908	$78,049,281	$80,050,628	$51,596,697
Southern Pacific RR	535,774,107	425,642,955	110,131,152	60,799,385	48,276,692
Union Pacific RR	494,184,464	359,741,036	134,443,428	107,712,512	65,312,512
Western Pacific RR	52,236,533	41,609,597	10,626,936	4,178,374	4,041,374
Denver & Rio Grande Western RR	76,316,359	50,554,642	25,316,359	10,097,316	8,608,955
Total	1,772,528,801	1,359,618,138	358,567,156	262,838,215	177,835,230

Mr. Chairman, I shall read into the record resolutions adopted by the Denver Chamber of Commerce on February 3, 1962, and by the Colorado State Public Utilities Commission adopted by that body on February 1, 1962, which, without reservations of any kind, endorse the two bills which you have before you:

It is the stated position of the Denver Chamber of Commerce that U.S. Senate bill 2560 should be passed by the Senate and House of Representatives of the United States and enacted into law by the President as expeditiously as possible. The Denver Chamber is convinced that present illegal for-hire trucking operations are a serious threat to the foundation of our transportation system, the regulated common carrier. Also, even though it is apparent that additional legislative enactments subsequently will be necessary, it is the position of the Denver Chamber of Commerce that S. 2560, if enacted into law, will constitute an important step toward the final solution of this grave problem.

Colorado PUC:

The only provisions of the amended bill which will affect the State of Colorado are found on pages 9 and 10. At the present time, the State of Colorado requires all interstate carriers operating over the public highways of Colorado to register their certificates, to properly identify the vehicles, file policies of insurance, surety bonds, and file other securities and agreements as is provided in the committee bill.

We believe that such requirements are important for proper regulation to provide the regulatory authority with a constant check and supervision over carriers for hire, and which may provide some restraint over alleged "gray area" or outright illegal transportation.

The uniformity the committee bill seeks to effect is salutary as well as there is a continued recognition by the Federal Government that the several States should have a minimum of regulation as will assist in effective control and enforcement of intrastate commerce that may be carried on by these carriers.

It is our opinion that this bill is the proper step in the right direction toward the more effective control of interstate transportation. We do not believe that there should be an elimination of the transportation of exempt commodities since such type of transportation is absolutely vital to our agricultural industries. We do feel, however, that there could be some strengthening of regulation in this field and that, although what is provided in the committee bill is an improvement, it is our firm opinion that the recommendations of the ICC itself provides many more effective means of properly strengthening this control.

I am in hearty accord with both resolutions. For the past 5 years I have been a director of the Denver & Rio Grande Western Railroad. In my opinion that 2,000-mile line is the best managed railroad in the country. I claim no credit for that. The average operating ratio for all railroads in the United States for 1960 was 79.6—the Rio Grande 67.2. But today I am appearing as a lifelong student of transportation with some experience in the art, expressing my own reactions to the pending legislation. No one has reviewed, nor passed judgment, on what I am saying. It is my testimony, and mine alone.

I am supporting S. 2560, committee print, and S. 2764 wholeheartedly not because they solve the desperate problems facing this Nation's transportation enigma but rather because they recognize here are serious problems requiring legislative attention.

The enactment of S. 2560 and S. 2764 would not herald a tremendous victory for the common carrier concept, but the defeat of these bills—mark that well, the defeat of these bills—would be a transportation tragedy. It would give notice that Congress favors chaos, confusion, and crippled regulation of transportation. It would be an open invitation to chiselers, swindlers, and transportation anarchists to move in for the kill.

These bills must not be defeated.

Then here is my analysis of the two bills which I will insert in the record at this point unless there is objection.

Senator SMATHERS. No objection.

Mr. JOHNSON. I think they might be of some assistance to the staff or to the Senators when they write the report on this bill.

Anyway, they represent my views of just what the bills do and what provisions they have and how the whole matter is affected by this legislation.

Section 202(b) of the Interstate Commerce Act now provides that nothing in the act shall be construed to affect the powers of taxation of the several States, or to authorize a motor carrier to engage in intrastate business, or to interfere with the exclusive exercise by each State of the regulation of intrastate commerce by motor carriers on its highways. The committee print would direct the Interstate Commerce Commission to promulgate uniform standards as to its ICC authority and its operations. Every State is given 5 years to conform to the Uniform Standards promulgated by the Interstate Commerce Commission. After the 5-year period any State requirements which do not conform will be null and void.

These provisions are intended to relieve ICC authorized common and contract carriers from State requirements which might constitute a burden, financial, administrative, or otherwise, on their interstate operations.

Section 222(b) of the act now authorizes the Interstate Commerce Commission or its duly authorized agent to apply to the U.S. District Courts for writs of injunction or other process to stop unlawful interstate motor carrier operations. The committee print would authorize "any person injured" by unauthorized interstate operations of another person to apply to the U.S. District Courts for a writ of injunction or other process to stop such unauthorized operations. The unauthorized operations to which this new section relates are defined as those conducted by a person who does not hold an ICC certificate or permit and who "operates in clear and patent violation of sections 206, 207, 209, or 211" of the act.

At present only the Interstate Commerce Commission can apply to the U.S. District Courts for injunctions to stop unlawful interstate motor carrier operations. These new provisions would provide a private remedy in the Federal Courts for persons injured by unlawful motor carrier operations. Congress has refused to grant this private remedy in the past. It was stricken from the 1934 Rayburn bill which became the Motor Carrier Act. It failed in the 80th Congress, S. 1194, and again in the 85th Congress, S. 378. The Supreme Court under existing law has refused to permit injunctive relief by a private party (349 U.S. 905; 359 U.S. 1001).

The committee print would amend section 222(h) in three respects. First, it would subject persons who violate section 203(c) of the act to the forfeiture penalties. Second, it would increase the penalties to $200 and $100. Third, it would authorize the Interstate Commerce Commission to bring the civil suits for the forfeiture in place of the U.S District Attorneys.

Section 226 of the act now directs the Interstate Commerce Commission to investigate and report on the need for Federal regulation of sizes and weights of motor vehicles and of hours of service of employees of motor carriers. The committee print would add a new section 226(a) which would require all persons who transport exempt agricultural commodities or exempt fish, under section 203(b)(6), and who use motor vehicles of three or more axles in such transportation, to file with the Commission each year a statement showing name of such carrier, location or principal address, and number of such vehicles owned or operated.

The purpose is to require carriers operating under the exemption to register with the Commission and to make exempt operations unlawful unless registered.

Section 402(b) of the act now exempts from regulation persons who operate only as freight forwarders of used household goods. The committee print would remove this exemption. The reason for its removal apparently is intended to protect motor carriers from exempt freight forwarders.

Section 406 (a) to (f) of the act now confers upon the Commission broad powers over the rates and charges of freight forwarders. The committee print adds a new section 406(g) which would require the Commission, in exercising its power to regulate freight forwarders of used household goods, to give due consideration to the similarities of service provided by motor carriers of household goods and by such freight forwarders, and establish uniform regulations and practices insofar as practicable.

Apparently this change is intended to prevent unwarranted rate advantages by freight forwarders of used household goods and competition with motor carriers of household goods.

Section 410 of the act provided for "grandfather" rights for freight forwarders who were engaged in operation when part IV became law. The committee print would add a new section 410(a)(4) giving "grandfather" rights to persons operating as freight forwarders of used household goods.

Section 417(b) of the act now authorizes the Commission and the Attorney General to apply to the U.S. District Courts for writs of injunction or other process to compel compliance with the provisions of part IV of the act and the Commission requirements and orders thereunder. The committee print authorizes "any person injured" by unauthorized freight forwarder operations conducted by another person to apply to the U.S. District Courts for a writ of injunction or other process to stop such unauthorized operations and would provide a private remedy in Federal Courts for persons injured by unlawful freight forwarder operations.

S. 2764 is similar to section 3 of S. 2560 except that it requires any motor carrier, broker or lessor to comply also with section 206(a)(1), section 209(a)(1) and with any rule, regulation requirement or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a).

S. 2560 and S. 2764 are exceedingly moderate steps in the right direction which should help, however, to break the logjam of unconcerned congressional complacency. They give the people the right to anticipate that additional legislative remedies will follow. In such matters the first step is the important step.

Prior to August 9, 1935, the railroads had "the freedom to diversify into other modes of transportation" but they were not interested. The helter-skelter scramble of the trucks for business and a demonstration that under some conditions trucking had an inherent advantage caused no alarm. I am speaking of the period just prior to 1935. Positively diversification was not in their plans.

Perhaps railroad executives had too much faith in the "status quo" a very dangerous attitude in dynamic America. I have a friend who was a railroad general traffic agent in those days. He was ordered to either "stop advocating having trucks augment railroad service or resign from his position."

True enough railroad executives of that generation had their problems but many railroad executives of this generation are facing disaster. Unfortunately we the people are doomed to share disaster with them should it come.

Freight cars rolling on steel rails is the most efficient means of conveyance yet devised by transport technology. The railroads constitute the first line of our national defense and are basic to our industrial conomy. To permit them to deteriorate is unthinkable. Federal subsidies and Government ownership are not good answers. A much better one is for Congress to provide an economic climate in which they could earn their own revenues with a service that the people need.

Most respectfully, therefore, I should like to suggest a number of legislative steps which Congress might well take to give the railroads an opportunity to earn revenue to pay for the service to the public which they are capable of providing.

(1) Railroads generally have been compelled to abandon their branch and feeder lines due to oppressive ad valorem taxes and insufficient traffic to support the capital investment required. Nevertheless railroads must have feeder lines to develop traffic volume. Since they cannot afford to operate branch railroad lines for this purpose they should be authorized to operate feeder lines with motor vehicle service. These feeder lines should not extend more than 100 miles and their purpose should be confined to picking up and delivering freight which has moved or will move on the railroad.

(2) Congress should authorize each transportation mode to exploit its inherent advantages to the utmost in the adoption of nondestructive minimum rates. What constitutes destructive rates should be defined by law and not by men. It should be written into the law just what does constitute a destructive rate.

The ICC was created to protect the public from rate gouging, not to keep inefficient transportation modes in business at the expense of shippers and consumers.

(3) Worthy as the original concept and purpose of the agricultural exemption clause, section 3(b)(6), maybe it has opened the door to many difficulties incidental to the regulation of transportation. In it the Congress gave unregulated trucks a monopoly in the transportation of agricultural exempt produce. I am convinced that this monopoly is what has caused the trouble. In your hearings on S. 2560 it has been suggested this exemption be tightened. Should you do that the monopoly feature would be intensified rather than lessened. I urge that it be loosened instead of tightened.

Congress is not going to repeal in part or in whole the agricultural exemption clause. This committee knows that and I think most of the Members of Congress know it. Part II of the Interstate Commerce Act, would not have been enacted unless it was included. It has done too good a job of moving farm produce to market to be abandoned. The consumers and the farmers both must have it. Here we are dealing with the fresh fruit and vegetable food supply of the Nation.

Let's be realistic when we hear folks talking about repealing the agricultural exemption.

If the railroads and motor common carriers were given an equal opportunity to transport—on a basis similar to that now enjoyed by the exempt trucks—exempt agricultural commodities, the movement of empty railroad cars and partially loaded common carrier trucks would be reduced. The motor common carriers should be permitted to mingle agricultural exempt produce with other commodities at exempt rates but they should file with the ICC a report on every such service that they render.

(4) The 10-percent passenger travel tax should be repealed. It is both obnoxious and repugnant. It is imposed on the patrons of services that for the most part operate in the red or nearly so. Last year I appeared before the House Ways and Means Committee and urged in the public interest that it be dropped. The members did not defend this tax, they said simply "We need the money."

(5) A fair and equitable user tax should be charged to commercial users of the highways, waterways and airways. Railroads build and maintain their own roadways and, in addition, pay very high ad valorem taxes on them. The competitors of the railroads should pay to use what the taxpayers build for them.

(6) From year to year railroad earnings fluctuate. They experience favorable periods and periods that are not so good. When bad years come along, to survive, track betterments and equipment replacements are passed up. It would be in the public interest if railroads were encouraged and assisted taxwise to accumulate a substantial construction reserve to provide an even flow of employment and to avoid deterioration of the railroad plant in periods of depressed income. Speeded-up tax depreciation of railroad property, including structures and equipment, would add to railroad stability and also would be in public interest.

(7) If commuter train service were to cease the result in some of our larger cities would be catastrophic. Providing such a service is far more than a railroad transportation problem. Congress, the States and cities involved, should develop a mutual solution to this mutual problem. Certainly railroad freight earnings should not be used to subsidize city commuter service. The public beneficiaries should pay the bill.

Transportation, the barometer of the status of man, had buttressed his achievements and his forward march toward civilization from the dawn of history. He has crossed oceans, mountains, and deserts with its aid. Galley slaves, sailboats, oxcarts, steam locomotives, motor vehicles, jets and missiles, each mark a distinct epoch in man's progress.

Peoples, lacking the best transportation has to offer, have precious little security. Militarily we are strong because our transport is superior. This subcommittee is struggling to keep it so, and, God willing, it will get the job done, of that I am certain.

I want to close these observations by repeating the timely and bold plea for action, made by Commissioner Tucker, a few months ago:

> We all sense clearly and surely that the time for study is over and that the time for action is with us. Conclusions, remedies, new perspectives should be close at hand.

Mr. Chairman, so mote it be!

Senator SMATHERS. Thank you very much, Governor, for that very comprehensive, thoughtful, and provocative statement. I am certain that all of us agree it demonstrates your thorough understanding of this transportation problem. It demonstrates clearly your wisdom in connection with those problems, and certainly the committee and all who have listened are deeply in your debt for having made it.

Any questions on the part of the members of the subcommittee?

Chairman Magnuson, do you have any questions?

The CHAIRMAN. Mr. Chairman, I'm quite interested in your suggestion No. 3, where you suggest that we, instead of tightening the agricultural exemption matter, should loosen it instead. Do I understand there that you would allow common carriers—trucks, railroads, or inland waterway common carriers—to move exempt cargo under the Agricultural Exemption Act without filing rates, but just file with the ICC what they have done in a given period of time?

Mr. JOHNSON. That's my suggestion, Mr. Chairman. Railroads, of course, would not be allowed to mingle the exempt commodities with commodities that were not exempt, but that the motor common carrier would be permitted to mingle——

The CHAIRMAN. To mingle?

Mr. JOHNSON (continuing). With these other traffic.

The CHAIRMAN. To get it in practical terms, so I can understand it: Say a car goes West on the railroad first, hauling manufactured goods, equipment, machinery, or something, it will get out to an agricultural area, and instead of coming back empty they might pick up agriculturally exempt products in a car, for instance, and bring it back to the eastern market?

Mr. JOHNSON. That's my idea.

The CHAIRMAN. Whereas, a motortruck going out, we'll say with Middle West goods, use that as an example, let's take to the fruit area in the Pacific Northwest, they would come back with some other items that they should be able to bring back exempt, if they are not full?

Mr. JOHNSON. Yes, that's the point.

As I understand the law at the present time——

The CHAIRMAN. The same would apply to up and down the east coast. I just want to finish my thought here, I don't know whether this would work out this way, but then the farmer, whom the agricultural exemption was originally designed to help, would have the availability, at cheaper rates, of not only the exempt trucks that just work in that field, but also the common carrier on certain backhauls?

Mr. JOHNSON. That's right. That's what I had in mind. And the farmer and the producer of the exempt products would not be injured by it. He would have more services available to him.

As I understand the present law, however, a common carrier at the present time can haul exempt commodities by the truckload; that is, he can't mingle them.

The CHAIRMAN. He can't mingle those?

Mr. JOHNSON. He can't mingle them, but he has to haul them——

The CHAIRMAN. I just wanted to leave this with you: the inland waterways common carriers have recently been told by the ICC that they can't mingle on a single barge or a tow.

Mr. JOHNSON. That's right. It seems to me they ought to be permitted to mingle them provided that they make reports on it, and that by expanding their services in that way it would be helpful to everybody.

I haven't the statistics, but I happen to know that many, many motor common carriers now haul a load of 60, 75, or 80 percent of its capacity, and I think they ought to be allowed to fill out in times of great emergency, ought to be filled out to a full load by being permitted to mingle such exempt commodities with the nonexempt commodities.

Senator SMATHERS. On that point may I ask a question? I'm not really clear on this at the moment.

Is this the law presently? I should know but I don't. Under the present law the motor carrier can haul an exempt agricultural commodity but does not have to file a tariff? Is that right?

Mr. JOHNSON. That's right. They have to file a tariff and they have to follow that tariff exactly.

Senator SMATHERS. Right.

Mr. JOHNSON. And under this provision that I'm suggesting they wouldn't have a tariff; they could go out and bargain for hauling the exempt commodities on the same basis as the unregulated trucks.

Senator SMATHERS. And you would also extend that privilege to the railroads——

Senator MAGNUSON. And the trucks, and the inland waterways?

Senator SMATHERS (continuing). And all the rest of the common carriers, the right to carry agricultural exempt products without having to file a tariff, but, of course, they would make some showing that they did carry it and at what price they carried it.

What you are suggesting here is that they would not in the future have to file tariffs and that they could mix it?

Mr. JOHNSON. No. The filing of a tariff gives the unregulated a great advantage. The tariff states what the freight shall be, and they can cut it 10 percent and get the load.

I don't think that the railroads ought to be permitted to mingle such freight with other freight. I think that they ought to haul it in cars. They could cut down on the minimum weight, of course, and they would get away from moving a lot of empties; and that's something that's very much in the public interest.

The undercapacity motor carriers' trucks and the empty cars that railroads have to move—it's in the public interest to cut that down all we can.

The CHAIRMAN. I understand, too, that you endorse wholeheartedly—this is a specific matter in this field—S. 2764, the bill introduced by me, by request; and this is the ICC bill——

Mr. JOHNSON. Yes.

The CHAIRMAN (continuing). Which I introduced for them.

In your opinion, would that give them more authority to attack this obviously illegal gray area in a better way?

Mr. JOHNSON. Yes, S. 2764. There's a provision in S. 2560 that is almost identical. The 2764 has some language that I don't understand——

The CHAIRMAN. This is the way the Commission sent it up.

Mr. JOHNSON. Yes.

The CHAIRMAN. And they will be testifying, of course, so we will ask them just how they expect this to work.

Mr. JOHNSON. There's a little change in S. 2764 from the committee bill, and I don't know the importance of that change, and I hope that the ICC when they testify here will make it clear why they make that change.

The CHAIRMAN. Just one more question, Mr. Chairman. It's really not a question; it's probably an observation.

I think all of us, and I'm sure our distinguished witness has struggled over many, many years, and many, many hearings, and I have sat with him on most of them for a long time, on the problem of what is a destructive rate. And the chairman of this subcommittee wrestled with it for months and weeks in order to try and arrive at some equitable definition. There was a great deal of discussion, of course, on all sides as to what was a destructive rate or how it could be defined. But I am impressed with the fact that you do suggest, after your long experience in this, that it's the interpretation by men that causes a lot of trouble within the common carrier field——

Mr. JOHNSON. Exactly.

The CHAIRMAN (continuing). Rather than what Congress writes, or attempts to write.

I just don't know how we approach it, but this has caused a great deal of the whole common carrier problem. I have said on many occasions—and I'm sure the chairman has, too—that, to coin a phrase,

the common carriers have a common problem that maybe they ought to be devoting themselves to, and we, to do what we can to help the ICC and Government, rather than this constant controversy that goes on between them—the modes of transportation—as to what is a destructive rate. Since you were here the last time it has been deteriorating steadily, even though business and the economy is better. The deterioration is still there when you get through the figures.

This is one of the real problems.

I know that you probably haven't any actual working information, but I think we ought to set ourselves to this task again.

Mr. JOHNSON. Of course, there are two views that have been advanced—there are other views, too—on just what a destructive competitive rate may be. But the two views are—one view is that it ought to be tied to the cost.

The CHAIRMAN. Yes, compensatory to cost. But that has been out the window a long time.

Mr. JOHNSON. And the other view is that because of the national policy on transportation it should act as an umbrella over other modes that are not so efficient in a particular case.

But it does seem to me that an effort should be made to write that into the law. It's a terrific power that the ICC has now under the law of making the determination themselves in any particular case. I think that the Commission probably would be glad—I don't know that they would; I should think that they would be glad to have it defined by law rather than making the decision themselves. I don't know. I can't speak for the Interstate Commerce Commission because I don't know what their thinking is on this.

The CHAIRMAN. The ICC testified last year in the long hearings we had on S. 1197 that they could do anything that was suggested, any extreme one way or another, under the law, before the 1958 act and after the 1958 act; that it didn't make any difference what we put in the law.

Mr. JOHNSON. Well, I read their testimony when the 1958 act was under consideration.

The CHAIRMAN. They made us feel quite frustrated because it didn't make any difference what we did. They were going ahead the way they have been going ahead for years.

So I think we closed the hearings at that point.

Senator SMATHERS. Mr. Chairman, if you have some language that you could help us write sometime in a contemplative moment up in the mountains of Colorado when you are sitting there, looking out over those beautiful glaciers and it suddenly hits you, why, put it down real quickly and let us have it, because we have wrestled with that, just trying to do exactly what you say here, when you say the ICC was created to protect the public from rate gouging, not to keep inefficient transportation modes in business at the expense of shippers and consumers.

Some fellow says, "I'm not inefficient if you will give me enough business." So, when he doesn't get enough business, then he says, "What they are doing over there is destructive to my business." And it's very difficult, as you well know, it's a very difficult thing to put down in black and white, but we would like to do it.

Mr. JOHNSON. I should like to take a look at the mountains and see if an inspiration will come to me, and I will try to write some

language. However, I had a very small part, and I emphasize the "small part," because that's true, in writing the national policy of 1940, and I'm sure that the authors—it never occurred to them that they were creating an umbrella. I'm sure that they had no such idea. But it has been interpreted to be an umbrella, and, of course, we are governed by interpretations of our laws, not exactly by the laws themselves.

Senator SMATHERS. Well, any kind of language would be helpful, because as the chairman said, we struggled with this all last year, and we did in a hearing before, and it's really so complicated that anything you would suggest would certainly be appreciated by us on that point.

Mr. JOHNSON. I thank you for that very kind compliment, and I will do my best.

(The following letter concerning the rule of ratemaking was received subsequent to the hearing:)

HON. GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee, Washington, D.C.

DEAR SENATOR SMATHERS: When I had the honor of testifying before your Surface Transportation Subcommittee on February 7, 1962, I stated: "Congress should authorize each transportation mode to exploit its inherent advantages to the utmost in the adoption of nondestructive minimum rates. (What constitutes 'destructive rates' should be defined by law.) The ICC was created to protect the public from rate gouging, not to keep inefficient transportation modes in business at the expense of shippers and consumers." You asked me to suggest language to implement such an objective. I am pleased to give it an all-out try.

One cannot review without deep gratitude the voluminous hearings and the diligent search through the years by Senator Smathers and his Surface Transportation Committee for formulas which would permit the law of "inherent advantage" to operate smoothly and without undue restraint. I think they realize, however, that the difficulties in the field of competitive ratemaking stem from the failure of Congress to define precisely what constitutes "unfair or destructive competitive practices" when applied to ratemaking.

Senator Burton K. Wheeler, who was chairman of the Senate Commerce Committee when most of these statutes were enacted, in testimony before the Smathers committee in 1958, said:

"In 1935 some motor carriers expressed fear that the Commission, since it was railroad minded, might favor the railroads. Accordingly, we directed the Commission to preserve the inherent advantages of the motor carriers. In 1940 the water carriers expressed the same fear of ICC rate regulation. Therefore, we wrote safeguards to protect their inherent advantages into the 1940 act, governing rates of water carriers. To assure equality of treatment in the ratemaking field for all forms of transportation, we wrote the national transportation policy, making the 'inherent advantage' the policy of Congress (theretofore applicable only to motor carriers but now applicable to all modes of transportation). To make doubly certain that the inherent advantages of each form of transportation would be recognized and protected in the fixing of rates we made specific reference to it in our report. The House committee report was equally strong on this point.

"If Congress wants to continue the policy intended by Congress in the 1940 act, expressed in clear, unmistakable language in both the House and Senate reports then the only thing for Congress to do is to write clear and unmistakable language into the Interstate Commerce Act itself."

On May 21, 1958, Chairman Freas of the Commission in the 1958 ratemaking rule hearings, page 168, said:

"If, contrary to our recommendation, Congress determines to amend the rule of ratemaking in section 15a, we urge that the intended effect be made clear, rather than left to years of litigation, which would be bound to result from the bill's uncertainty."

Senator Wheeler and Chairman Freas offered sound advice. Nevertheless paragraph (3) which Congress added to 15a of the Interstate Act has resulted in much litigation and transportation uncertainty.

The Doyle report observed:

"The 1958 amendment 15a(3) is so worded that its meaning is uncertain. The manner in which this amendment is to be applied and its long-run implications are likewise uncertain. * * * the question of how much emphasis should be placed upon the upper part of 15a(3) in proportion to the last statement emphasizing that due regard be given to the national transportation policy, is recognized as a matter about which there is a difference of opinion. * * * Professor Robert Nelson [Duke Law Journal] concludes that the congressional intent is not clear. 'As the law is now written, there is danger normal and healthy price competition among competing modes may be interpreted as destructive competition.'

"In commenting on the decision handed down in the *Paint* case, Commissioner Webb stated that the vitally important question concerning the extent, if any, to which the rule of competitive ratemaking was changed by the Transportation Act of 1958 was left unanswered, and that carriers, shippers, and the courts were entitled to a much clearer expression of the Commission's views."

I agree heartily with Commissioner Webb's comments "concerning the extent, if any, to which the rule of competitive ratemaking was changed by the Transportation Act of 1958" but I think it is the business of Congress to clarify its own acts and that carriers, shippers, the courts, and the Commission are all "entitled to a much clearer expression" of the law.

During the ratemaking rule hearings in 1958 by the Surface Transportation Subcommittee, Senator after Senator asked for the definition of "fully distributed costs," "a compensatory rate," "a fully compensatory rate," "a minimum rate," "a just and reasonable minimum rate," and "a reasonable compensatory rate." Opinions as to what some of these terms constituted were expressed informally but no legal definition was cited for the very good reason that none exist. Some of these expressions cannot be reduced to a firm definition due to the variables inherent in them. Courts and the Commission at various times have made passing reference to such interpretations, but Congress has not spelled them out. Until it does so, the vacuum will continue to plague everyone.

In the Senate hearings Commissioner Arpaia was asked, "which is the broader term, 'a reasonable minimum rate' or 'a compensatory rate.' He replied, 'reasonable minimum' is the better term, the broader term." He didn't explain exactly why. Of course "a reasonable" minimum gives the Commission wide-open discretion.

It is practically impossible to define "reasonable minimum" without bending it to a specific set of conditions. Subject to adjustment to fit it to the various modes of common carriage, this very broad general term carries a fluctuating and uncertain construction. The shippers, the carriers, the Commission, and the courts are entitled to have statutes expressed in clear unmistakable language as suggested by Senator Wheeler and Commissioners Freas and Webb.

Accordingly, I most respectfully suggest that the commonly used term "operating ratio" be used officially to identify the economic status of a common carrier's operation in competitive ratemaking instead of such complicated, indefinite, uncertain and nebulous terms as "reasonable minimum." The "operating ratio" of a common carrier is the ratio its operating expenses holds to its operating revenues. The two factors—cost and revenue—when joined are vital to every business. An excellent definition thus would be: "Unfair or destructive competitive practices" when applied to a tariff providing for a reduced rate or the reduced rates of a carrier, group of carriers, or mode of carriers shall mean a rate or rates which tend to increase its, or their, operating ratio." In other words, it would describe a rate which if granted would lose money for the carrier seeking it. The objective back of taking such loss might well be to cause injury or malicious mischief to other modes of carriers and so should be found to be destructive.

If a carrier without increasing his volume reduces his freight rate to a point which will tend to increase his operating ratio it would be per se an unfair or destructive competitive practice. But if the reduction of a rate tends to decrease the operational ratio of the carrier seeking it, then, as a matter of fact, such reduced rate would be compensatory for the service to be performed. Common carrier management the country over keeps tab on competitors' operating ratios and its own with grave concern on a month-to-month basis.

If a private carrier had acquired a haulage monopoly on a certain commodity and the rate on that commodity should be reduced by a common carrier, then whatever new business the common carrier picked up under that new rate would give him a lower operational ratio and such new rate should not be ruled destructive.

It is argued that "return on investment" under certain conditions is a more equitable and practical yardstick than is "operational ratio." Under the "inherent advantage" philosophy and under the free enterprise system, freight rates should have no obligation to provide or guarantee a return on a carrier's capital investment. That is not the province of government. However, should the new rate tend to lower the "operating ratio" of a carrier his new earnings would give him a greater return on his investment than if such rate had not been made effective.

The Commission has used operating ratios to determine the justice of increased rates and finds it a satisfactory term. If it can be used satisfactorily for such a purpose, then it should be realistic also in determining the advisability of reducing rates but the Commission says it is not.

On February 21 I asked Hon. Rupert L. Murphy, Chairman of the Interstate Commerce Commission, what consideration is given by the Commission to operating ratio statistics. I quote in part from his reply:

"* * * The only proceedings in which operating ratios are given prominent consideration concern proposed general increases to be added to existing rates in order to meet increased expenses of the carriers. Typical of such cases is *Increases, Transcontinental-Intermountain Coast*, 304 I.C.C. 15, decided May 12, 1958. That case concerned proposed increased motor common carrier rates applying transcontinentally from, to, and between points in intermountain and Pacific coast territories. Some 696 respondent motor carriers were the proponents, and their chief reliance was upon data showing that additional revenue was needed by reason of additional costs recently incurred.

"The protestants contended that, instead of operating ratios, primary consideration should have been given to the rate of return on net investment. Division 2 found that, for the purpose of determining the need of increases in rates, the chief criterion should be the carriers' costs in relation to their revenues. The weighted-average operating ratio was shown to be substantially in excess of 93 percent, which was found to be too low to meet the increased costs and maintain the carriers in a healthy condition.

Other decisions of the Commission are to the same effect, notable *Increases, Calif., Ariz., Colo., N. Mex., and Tex., 1949*, 51 M.C.C. 747, 760, and *Middle West General Increases*, 48 M.C.C. 541, where at pages 552–553, appears this explanation:

"The important difference between the Department [of Agriculture] and respondents is whether return on investment or operating ratios is the criterion for determining the need for general increases in the rates. * * *, where the amount of the investment is relatively small in relation to total costs, investment is not the primary factor in determining revenue needs. For example, in the case of motor common carriers which are principally engaged in the transportation of automobiles by the driveaway method, the amount of the investment in operating property is relatively insignificant, and it is obvious that return on investment is not an appropriate criterion for a determination of their revenue needs. * * * But for the purpose of determining the need of increases in rates, the criterion must be the carrier's cost. This is at once apparent from the pattern of the rate structures of the motor carrier industry. It is elemental, of course, that lower rates are generally charged for the transportation of truckload lots than for less than truckloads of similar articles, because of the lesser expense per 100 pounds to the carrier in the transportation of the larger quantity. It is highly problematical that the differentials between less-than-truckload and truckload rates could be appropriately related in investment. They can be, and generally are, related to the relative costs or expenses incurred in the respective services. As seen, the level of rates or the need for additional revenues may appropriately be determined in relation to costs or expenses."

Operating ratios provide a simple and accurate measurement in determining necessity for increasing freight rates. Economic factors at times require increased transport freight rates, but it is a hazardous step for a common carrier to take. It may price him out of the market and in many cases it will serve as an open invitation to a private carrier to take over his business. If common carriers were required to prove that an increase in their rates today would improve their operating ratio, there would be practically no increase where the threat and reality of private carriage exists. Actually and realistically private carriage determines common carriage freight rates now. It is fallacy to think otherwise.

Prior to the enactment of the Transportation Act of 1958, it is generally agreed that competitive ratemaking was inconsistent and uncertain. Following the enactment of 15a(3) in 1958 even more uncertainties have appeared. As proof I should like to cite a few ICC decisions subsequent to the enactment of paragraph (3) of 15a.

In the *Friendship* case the Commission held that no ratemaking provision by itself controls competitive rate cases and the lawfulness of rates under study must run the whole gantlet of provisions of the act, including the national transportation policy (*Gasdene and Fuel Oil, Friendship, N.C., to Virginia and West Virginia*, 299 I.C.C. 673, 305 I.C.C. 673).

In the *Tobacco* case the Commission found that proposed reduced truckload and rail rates on cigarettes from North Carolina and Virginia points to central territory were not just and reasonable. Compensatory claims were set aside. The Commission's discussion of 15a(3) ought to be "must" reading for the Smathers committee. (*Tobacco, North Carolina to Central Territory*, 309 I.C.C. 347).

The Honorable Rupert L. Murphy, chairman of the Commission, by letter to me on March 2, 1962, stated very frankly what I understand to be the present official position of the Commission with respect to 15a(3). I am deeply grateful for the Chairman's clear-cut statement. Personally I have no fault to find with his interpretation of this poorly stated provision of law. However, I am certain his interpretation does not follow the intent of Congress. This is what the able Chairman said:

"The usual suspension proceeding before the Commission *today* is concerned with reduced rates proposed generally to meet carrier competition. The primary factors considered in such cases are whether the rates are compensatory for the service to be performed, whether they would result in unjust discrimination or undue prejudice, and whether they constitute a destructive competitive practice in contravention of the national transportation policy in that they are part of a rate war which, if allowed to continue, would unnecessarily dissipate much-needed carrier revenues. In such proceedings operating ratios are of little consequence." [Emphasis mine.]

This is precisely the official position the Commission held on 15a prior to the enactment of the 1958 amendment, when paragraph (3) was added. The next move is now strictly up to Congress.

The Doyle report, page 405, said:

"Statements made by the Interstate Commerce Commission since the passage of section 15a(3) have not dispelled confusion concerning the meaning of the amendment. Indeed, the Commission in its written decisions and in its statements to Congressional Committees provides the best documentation of the thesis that the meaning of minimum rate policy today is less certain and its application more confusing than before the addition of section 15a(3).

In November 1961 a three-judge Federal court in Connecticut striking down an ICC decision said:

"We think that Congress is adopting the 1958 amendment 15a(3), which its committees thought would encourage competition, did not intend the included prohibition of compulsory rate differentials to be nullified merely because of the adverse effect of rate competition of another mode of transportation even if carried to the point of rendering one mode of transportation obsolete and hence unable to survive.

"Instead we think the differential prohibition was intended to be qualified only when factors other than normal incidents of fair competition intervened such as a practice which would destroy a competing mode * * * by setting rates so low as to be hurtful to the proponents as well as his competitor or so low as to deprive the competitor of the 'inherent advantage' of being the low-cost carrier * * *."

Referring to an ICC argument that the national transportation policy compelled the result, the court declared:

"The evidence and findings do not support this argument. The first policy factor mentioned in the national transportation policy declaration is to recognize and preserve the inherent advantages of each [mode of transportation]. By the inherent advantages was meant the ability of a mode of transportation over the long run to provide a transportation service more acceptable to its

shippers by reason of quality or price, than that offered by a competing mode" (civil action No. 8679).

In 1958 Senator Wheeler said this:

"In its early decisions, after the passage of the act, the ICC stated that in considering the question of whether rates were unduly low, controlling weight should be given to the operating expenses, and not to the rates of competing modes of carriers. That reasoning was used in the *New England Motor Rate Bureau and Seatrain* cases." Apparently that policy has gone with the wind.

In April 1955 Secretary of Commerce Sinclair Weeks advised President Eisenhower—

"The inherent economic advantages, including cost and service advantages, of each mode of transportation should reflect its full competitive capabilities."

In March 1960 Secretary of Commerce Frederick A. Mueller advised President Eisenhower that he recommended Congress "set a floor for competitive pricing by amending the national transportation policy to define unfair and destructive competitive practices to include only rates below the longrun marginal costs of the carrier making the rates. * * * The Federal Government should encourage development of methods for comparing relative carrier efficiency.

"I should like, therefore, to suggest this amendment to section 15a(3). Amend section 15a(3) by adding the following provision after the word "Act" in the last line: "*Provided*, That, in giving such consideration to the objectives of the national transportation policy in such a proceeding involving competition between carriers of different modes of transportation, neither the Commission nor the courts in any case challenging the decision of the Commission, shall utilize the classification 'unfair or destructive competitive practices' to prohibit the establishment of a reduced rate or rates which will result in no increase in the operating ratio of the carrier or carriers seeking to establish such reduced rate or rates or which will result in no greater increase in such operating ratio than would occur without the establishment of such reduced rate or rates."

It has been suggested that the oeprating ratio yardstick opens up unlimited rate reductions. It does not. Its application is limited to competition among modes of carriers. It merely prohibits using the false, arbitrary classification of "unfair or destructive competitive practices" against lower rates which are profitable to the carrier applying for them.

In the hurly-burly of transport conflict with each mode at the throat of its adversary and amid cries of foul and carrier tears of impending disaster, the Congress and the Commission must not panic. Their one big job is to protect the consumer who pays the freight, not for a day alone but for the long pull. Their joint responsibility is positive and not negative.

Consumers live in a world of ferocious competition and must depend upon their copartner, the shipper, for the delivery of their needs. Consumers and shippers are not an aggravation, a pain in the neck, and a nuisance to be fed scraps from the table of the Commission to silence their whining. They are the purpose of this whole business. Without them and their good cause there would be no Commission.

Endless perfunctory hearings, indecisive statutes which create more problems than they solve, forgetting the shipper interest which 9 times out of 10 is the public interest, and boosting freight rates as the cure-all for every transportation ill has common carriage hanging on the ropes. Little wonder then that private carriage and shipper associations are taking over the control of transportation. The consumer is given no other recourse than to accept their better and less costly services.

Commissioner Hutchinson when he was chairman warned the carriers repeatedly of the relative importance of transportation cost to their business.

On March 7, 1962, Commissioner Webb, speaking to the American Trucking Associations' common carrier conference at Hollywood Beach, Fla., is reported to have said:

"You and your rail and water competitors will be litigating for many years to come such questions as the accuracy of the cost formula employed, the application of the formula to the movement of particular traffic, and the cost basis to be used in determining the low-cost mode. The cost of private carriage is becomming the chief determinant of the rate ceiling.

80130—62——3

"I believe that if all regulated modes of transportation were to accept in principle relative cost of service as the primary criterion for pricing their services, they would recapture a substantial volume of traffic now moving in private, illegal, and exempt carriage. * * *"

Most sincerely,

ED C. JOHNSON,
Official Consultant, Senate Commerce Committee.

Senator SMATHERS. Any other questions?

Senator MORTON. No.

The CHAIRMAN. I wanted to state one more thing.

The No. 4 recommendation on the passenger tax repeal: the Senator from Florida, who is also a member of the Finance Committee, with the help of this committee, a year ago managed to get the freight tax off, and I understand that—I won't let him speak for the Finance Committee because things change in that committee occasionally—but I understand there is a good possibility there will be some relief in that particular field.

Senator SMATHERS. I think we have reason to be encouraged in the light of the fact that the President in his message has now recommended it be taken off. The Senate took it off one time, and then in conference with the House, the House wouldn't accept the total bill unless we put it back on passengers. That was at the time we took it off the freight. But we left the passenger tax on.

Now the administration has recommended that the 10 percent come off, so it looks very encouraging this year.

Mr. JOHNSON. Yes. And the administration a year ago asked that it be not taken off.

Senator SMATHERS. That's right.

Mr. JOHNSON. And now since the administration has changed their position on it, I think the chances are very good. I think it's a very important matter, and I think that it ought to be emphasized and reemphasized, so that there may be no slip-up by the Ways and Means Committee and the Senate Finance Committee in not doing this.

Senator SMATHERS. If we can get some of our colleagues on the Finance Committee to not try to attach this to the telephone tax and two or three other taxes, we will be all right; we can take this off. But that's going to be our problem, as Senator Morton, who sits on the Finance Committee, also appreciates.

There are some people who say there are a lot more telephone users than anything else, and it makes it a little difficult.

The CHAIRMAN. This is a serious problem for the airline common carriers, too, because the airlines last year had a gross of over $2 billion, certified airlines, and I think the percentage of profit was around 1 percent. This is very discriminatory to airlines, particularly for us who live west of the Mississippi River.

Mr. JOHNSON. That is correct. And when I testified, I testified on behalf of the airlines as well as the railroads and bus lines and everybody.

The CHAIRMAN. One more thing, Mr. Chairman. I want you to correct me if this statement wouldn't be generally the consensus of opinion.

I think your No. 7 recommendation—I think most of us in Congress feel just what you say there, that this is a matter that is becoming so serious in the urban centers that it shouldn't be extended. The bill

shouldn't be extended to the whole line, let's say, railroad line, on commuter service, because it has become pretty much a local problem that we have to solve as a local problem.

Mr. JOHNSON. It's a local problem of tremendous importance to the cities.

The CHAIRMAN. I think that sentiment is pretty well jelled around here.

Thank you, Mr. Chairman.

Senator SMATHERS. Thank you, sir.

No further questions.

Again, Mr. Chairman, we are delighted to have you, and thank you very much.

Mr. JOHNSON. I thank the committee for letting me come in here and visiting with them.

Senator SMATHERS. Our next witness is Mr. James F. Pinkney, the chief counsel of public affairs of the American Trucking Associations.

At this point in the record we would like to, without objection, insert a resolution which has been provided to us by Senator McGee as an expression of the Wyoming Trucking Association's views with respect to this bill. We will also put at this same point in the record the resolution which was referred to by Chairman Johnson from the Public Utilities Commission of the State of Colorado in support of this bill, and then here is also a letter from the Denver Chamber of Commerce addressed to the Honorable Warren G. Magnuson which we will also make a part of the record at this point.

(The documents are as follows:)

WYOMING TRUCKING ASSOCIATION, INC.

RESOLUTION

Whereas under existing law and statutes only the Interstate Commerce Commission may bring a cause of action in a court of law to obtain a writ of injunction or other legal remedy to prevent violations of the Interstate Commerce Act and in particular violations of the certificate and permit requirements of said act by individuals, persons, partnerships, or corporations in the operation of motor vehicles in interstate or foreign commerce;

Whereas repeated and numerous violations of the Interstate Commerce Act occur each year involving the transportation of property in interstate or foreign commerce by persons who do not hold appropriate authority from the Interstate Commerce Commission authorizing such transportation: Now, therefore, be it

Resolved by Wyoming Trucking Association, Inc., That the public interest requires that appropriate and necessary legislation be passed by the Congress of the United States which would make it possible for injured and aggrieved persons to seek injunctions against operators of motor vehicles in interstate or foreign commerce which do not hold certificates or permits issued by the Interstate Commerce Commission; be it further

Resolved, That Wyoming Trucking Association, Inc., endorses in principle section 2 of S. 2560, introduced in the 87th Congress by Senator Smathers, of Florida; and be it further

Resolved, That this association take any and all other necessary steps which may be desirable, in bringing this resolution to the attention of members of the industry and Members of Congress.

HARROLD CRUMB, *President.*
L. E. MEREDITH, *Managing Director.*

Adopted by the board of directors of the Wyoming Trucking Association, Inc., on the 13th day of January 1962.

DENVER CHAMBER OF COMMERCE,
Denver, Colo., February 2, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR MAGNUSON: At a meeting of the board of directors of the Denver Chamber of Commerce regularly called Friday, February 2, 1962, the following statement was approved unanimously:

"It is the stated position of the Denver Chamber of Commerce that U.S. Senate bill 2560 should be passed by the Senate and House of Representatives of the United States and enacted into law by the President as expeditiously as possible. The Denver chamber is convinced that present illegal for-hire trucking operations are a serious threat to the foundation of our transportation system, the regulated common carrier. Also, even though it is apparent that additional legislative enactments subsequently will be necessary, it is the position of the Denver Chamber of Commerce that S. 2560, if enacted into law, will constitute an important step toward the final solution of this grave problem."

It was further the action of the board of directors that the Honorable Edwin C. Johnson be authorized to transmit the above statement in the name of the Denver Chamber of Commerce to the Committee on Commerce of the U.S. Senate.

Respectfully yours,

HARRY A. NOREN, *Secretary.*

STATE OF COLORADO,
PUBLIC UTILITIES COMMISSION,
Denver, Colo., February 1, 1962.

Hon. EDWIN C. JOHNSON,
Denver, Colo.

DEAR GOVERNOR: I hereby certify that the following is the position of the Public Utilities Commission of the State of Colorado, adopted by the commission at a meeting held in its offices in the State Services Building, Denver, Colo., on January 31, 1962, regarding S. 2560:

"The only provisions of the amended bill which will affect the State of Colorado are found on pages 9 and 10. At the present time, the State of Colorado requires all interstate carriers operating over the public highways of Colorado to register their certificates to properly identify the vehicles, file policies of insurance, surety bonds, and file other securities and agreements as is provided in the committee bill.

"We believe that such requirements are important for proper regulation to provide the regulatory authority with a constant check and supervision over carriers for hire, and which may provide some restrain over alleged 'gray area' or outright illegal transportation.

"The uniformity the committee bill seeks to effect is salutary as well as there is a continued recognition by the Federal Government that the several States should have a minimum of regulation as will assist in effective control and enforcement of intrastate commerce that may be carried on by these carriers.

"It is our opinion that this bill is the proper step in the right direction toward the more effective control of interstate transportation. We do not believe that there should be an elimination of the transportation of exempt commodities since such type of transportation is absolutely vital to our agricultural industries. We do feel, however, that there could be some strengthening of regulation in this field and that, although what is provided in the committee bill is an improvement, it is our firm opinion that the recommendations of the ICC itself provides many more effective means of properly strengthening this control."

Respectfully submitted.

J. J. MAHONEY, *Secretary.*

Senator SMATHERS. All right, Mr. Pinkney.

STATEMENT OF JAMES F. PINKNEY ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D.C., ACCOMPANIED BY JAMES FORT AND BARRY MEYER

Mr. PINKNEY. Mr. Chairman, gentlemen of the committee, my name is James F. Pinkney. I am appearing for the American Trucking Associations, Inc., which officially supports Committee Print No. 1, released January 24, 1962, of S. 2560.

I might say, Mr. Chairman, I have asked to sit up here with me this morning two of my associates, Mr. James Fort and Mr. Barry Meyer, who have worked with me and worked considerably on this problem over the past several years.

In hearings held in March of 1961 by this subcommittee, the problems of America's regulated common carriers were laid before you and many suggestions, including those contained in S. 2560, were made. Mr. James Fort, who is here with me this morning, as I said, made the American Trucking Associations' presentation and his testimony, together with that of the railroads and other interested parties, placed before you the facts calling for remedial action by the Congress in connection with the serious problems confronting America's regulated surface carriers. I will not attempt to repeat at this hearing those facts but if there are any questions we will be glad to attempt to answer them.

As the bill deals with somewhat unrelated proposals—although all have a common objective—I should like to discuss the bill section by section.

SECTION 1—UNIFORM STANDARDS

This section would provide that if any State requires regulated carriers to register their ICC certificates or permits, identify their vehicles, file policies of insurance or surety bonds or qualifications as a self-insurer, or file other securities or agreements, the State shall conform its registration law to standards to be promulgated by the Interstate Commerce Commission. A 5-year grace period would be established to give any State, which desired to require or which now requires such registration, sufficient time to meet the standards. In order to insure the proper development and to make it clear that the Federal Government is not dictating to the States, the ICC would be given authority by the bill to consult with the regulatory bodies of the States and with representatives of affected motor carriers in establishing the standards.

The history of the trucking industry's concern and attitude toward this section may be of interest.

Several years ago the Executive Committee of ATA took the position that the diverse State filing requirements constituted such an unreasonable burden on interstate commerce that the Federal Government should prohibit States from imposing them. In furtherance of this policy, ATA officially supported H.R. 5175 to accomplish that aim, which was introduced by Congressman Huddleston in March 1959.

Subsequently, it became more and more apparent that a major threat from the increase in unlawful carriage faced the regulated carriers, particularly rail and motor common carriers. The Inter-

state Commerce Commission, with its limited manpower and necessarily cumbersome enforcement procedures, was having difficulty in adequately coping with the situation.

The CHAIRMAN. May I interrupt you for just a moment? I have to go to a meeting but I will be back.

I'm getting a little bit—not "provoked," that isn't the term—but every time I pick up a speech from the Interstate Commerce Commission, or sometimes there are quotes from them or statements such as this, they always have a tendency to make the excuse that they have limited manpower. Now, I handle their appropriation in the Senate and if they will refer to the hearings for back years, we have always asked them if they needed more manpower to do certain things that this committee and Congress had directed them to do, and they have always said, "No, this is all right, this is all we need." It's the budget amount, of course, and I'm getting a little bit tired of the ICC and everybody talking about limited manpower down there doing things that we want to do in this field. If they have limited manpower they ought to say so and they never have.

Mr. PINKNEY. Senator, may I comment on that to this effect, the limited manpower? I think if they are limited in manpower it is in this sense, and I suspect this is what they are talking about. You have, for example, in the State of Florida, thousands and thousands of trucks on the highways at all times, a great many of them engaged in what we think are gray area or outright illegal operations. The same thing is true in many other States.

The CHAIRMAN. That's right.

Mr. PINKNEY. It would take a police force the size of the combined highway patrol forces of all of the States adequately to police that situation. The Interstate Commerce Commission, I don't believe—I don't think it would be wise to give them such a tremendous Federal police force of the size needed completely to police the situation.

Now, what I am dealing with in this section here is enlisting the aid of those State enforcement officers who are multitudinous and it's in that sense that I think the Interstate Commerce Commission does have necessarily limited manpower when we get into this area of illegal operations. Their manpower is adequate for policing the——

The CHAIRMAN. I understand what you are suggesting, but what they ought to say is they have never asked to go into this field at all and that their manpower has always been adequate according to their own definitions. You have been in some of these hearings. Some safety violation will happen and they will say, "Oh, well, Congress didn't give us enough money to do this job." They never have asked for an additional amount and any time they have, where it has been justified, we have given it to them. But I know what you mean by "limited manpower"—that instead of trying to give them all this manpower to go in and do this—we should give them authority and then they could go to the States. But I listen to this and read about this all the time. I think it's a reflection on Congress that passes a bill, says the ICC should do something, then they say, "Well, they didn't give us enough manpower or money to do it." I don't mean we should give them more than they need, there are other methods.

Senator SMATHERS. Mr. Chairman, may I make a comment right there, that I agree with you, and I think that what Mr. Pinkney is saying——

The CHAIRMAN. I know what he means, but I bet I could go back and get a hundred speeches of ICC Commissioners that say, "Well, we can't do a lot of things we would like to do because Congress didn't give us the money." You have read them, haven't you?

Mr. PINKNEY. Yes.

Senator SMATHERS. I think that when they were up here the last time they indicated that actually the ICC didn't want to become police agents, so to speak, so therefore they don't ask for the money; they probably don't think they could get it—maybe they could and maybe they couldn't. The ICC didn't want to ask for the money to set up what would amount to a large State highway patrol for each State, and they recognize, however, that they cannot enforce the laws if they don't have all those people, yet they don't want them. The ICC therefore, recommends, and they did recommend last year, that we give them the authority to work out some arrangement whereby they can work with the States in enforcing these regulations, and so I think what they were saying is that we don't have them. They don't go the next step and really say directly that they don't want the enforcement authority, or the police authority in this area.

The CHAIRMAN. I would be very happy if they would say, "We don't want to go into this field."

Senator SMATHERS. That's what they implied, I gather, from what they said. The ICC would like to have the States do the policing but the law ought to be a Federal law is the way they feel about it, and give the States the authority to enforce what amounts to a Federal regulation.

Anyway, I think what the chairman is saying is right and I think what you are saying is right.

Mr. PINKNEY. Right.

The CHAIRMAN. We are both right, I know that.

[Laughter.]

The CHAIRMAN. Of course, I made my speech to you for the benefit of the ICC.

Mr. PINKNEY. Well, it became apparent to us in ATA, or our people, at that time that the State enforcement machinery would have to be utilized to the greatest extent practicable.

The experience of some of the States, notably Florida and Arkansas, indicated that an effective enforcement device could be created by State requirements for the registration of ICC certificates and permits. By this method properly authorized interstate carriers can readily be identified, thus focusing a spotlight on those carriers not so identified who might be engaging in illegal interstate operations. Under such State requirements the State can arrest and fine such carriers for operating within the State without having on file a properly registered ICC certificate or permit.

Thus, the illegal operator can be punished for violation of a State law and this in turn, of course, reinforces the Interstate Commerce Act.

At the same time ATA continued to recognize that because of the lack of uniformity in State filing requirements a severe burden was being, and could increasingly be imposed upon the trucking industry, and ATA felt that this definitely should be prevented.

Considering what we believed to be the more urgent need for effective action in the enforcement field to deal with the paramount prob-

lem of illegal operations, ATA, after much consideration, withdrew its endorsement of H.R. 5175, and gave its support to the State registration of certificates and permits approach.

However, as I have just indicated, it believes that if the States are to continue to require interstate carriers to register or file, such registration and filing requirements must be made uniform.

In marshalling all of the forces available in an attempt to foster and protect the national transportation system it seems the better part of wisdom to encourage these efforts by our State officials. In order to insure use of this weapon to its fullest, without unduly burdening those lawfully engaged in interstate motor transportation, it is necessary to guard against the red tape of multiple filings of different information in a number of States. We must avoid methods which will treat the patient but at the same time disable him.

Accordingly, section 1 of S. 2560, which we now advocate, constitutes a recognition by the Federal Government of the States' right to impose filing requirements on interstate carriers and then insures that they will be uniform if the States do impose them.

It also provides, as I have indicated before, that the interested carriers and the State regulatory bodies be consulted in connection with the promulgation of uniform standards.

State filing requirements which do not conform with ICC standards within 5 years will be null and void.

Our ATA decision in this regard was not a unanimous one within the trucking industry, although it was a decision of the ATA Executive Committee, but several of our groups for whom one of the subsequent witnesses will appear still believe that the better course would be to do away with all State filing requirements insofar as regulated carriers engaging in interstate or foreign commerce are concerned.

These groups are: National Tank Truck Carriers, Inc., Heavy-Specialized Carriers Conference, Local and Short Haul Carriers National Conference, and Movers Conference of America—four of our 12 conferences.

SECTION 2—PRIVATE SUITS AGAINST ILLEGAL CARRIERS

This section gives to private persons who may be injured the right to sue for an injunction in Federal courts to restrain illegal motor carrier operations and confers jurisdiction on such courts to issue such injunctions.

The Interstate Commerce Commission now has this injunctive power which it can exercise against carriers operating unlawfully or who may be violating any provision of the Interstate Commerce Act or its rules and regulations.

This power appears to be adequate insofar as carriers subject to the Commission's operating authority regulations and the operating authority provisions of the act are concerned.

The Commission knows who and where they are, obtains complete reports of all kinds from them and periodically inspects them. However, in the case of the illegal operation which is not covered by any type of ICC authority, the problem becomes much more complex.

We believe that the carriers themselves can greatly assist and enhance the enforcement efforts now being made by the ICC and the States if this section is enacted.

The third section deals with civil forfeitures. This civil forfeitures section would increase the power of the ICC to proceed against operations illegally conducted by either regulated or unregulated carriers. The forfeitures are substantial—$200 per offense and, in the case of continuing violations, $100 for each additional day. The Commission is authorized to institute the civil action in its own name.

We believe the change to include civil action against illegal operations will further add to the tools needed to control such operations.

The Commission also asks that it be authorized to proceed under this section in the case of safety violations—that is S. 2764 and that, of course, is the essential difference between section 3 of 2560 and the bill introduced by Senator Magnuson at the request of the ICC, S. 2764.

We cannot agree with this addition. Considering the substantially increased fines contemplated by this section and the possibility that a great many unintentional minor safety provision violations can daily occur in a large carrier fleet, we believe it to be basically bad law to place in the hands of any agency the potential power to move against a carrier in a civil action and possibly obtain fines running into thousands of dollars a day.

We know that the ICC is a reasonable body and would, of course, use judgment in seeking the imposition of such fines but we definitely believe it to be unwise, as a general principle, to give any agency and its agents in the field a virtual power of life and death over carriers which could be exercised as a result of unintentional and sometimes unavoidable minor infractions of the very complex and comprehensive safety regulations of the Commission.

Those regulations are contained in a book of over 100 pages in small print and they deal with many things including the failure to have all lights on the vehicle lighted at any given time.

Under this proposal the carrier could be punished by a fine of $200 for the burning out of a light bulb.

We believe that the statute should remain as it is insofar as safety provisions are concerned. The Interstate Commerce Act now contains a criminal enforcement section and additionally the Commission immobilizes vehicles found to be unsafe.

The fourth section deals with the registration of carriers operating under section 203(b)(6)—(agricultural exemption).

Vehicles engaged in transportation made exempt by the language of section 203(b)(6) of the Interstate Commerce Act are known to be involved in a substantial part of the illegal operations problem.

Under this section we propose that these carriers be required to register with the Commission annually, disclosing (1) the name of the carrier, (2) his principal address, and (3) the number of vehicles owned or operated.

This registration is to be limited to trucks of the three-axle size or larger so as to reach the vehicles and fleets which are engaged in longer haul type of operations. The requirement would not extend to practically all of the straight truck of which there are perhaps several million engaged in local farm to nearby initial market type of operation.

I might say at this point, sir, that the three-axle test may not be technically correct in the bill because we were thinking in terms of

combination vehicles and if I may I should like to submit a slight suggested amendment to that to create what is a technical defect in the draft which we submitted to you previously, sir.

One of the major problems in the "enforcement area" is lack of firm information. The registration of 203(b)(6) operators and their vehicles would be a substantial aid to the gathering of such information by the Interstate Commerce Commission and other agencies concerned with insuring the healthy development of our national transportation system.

At present the Commission has no way of knowing, with any degree of certainty, who these carriers are or where they are located.

The Commission is also greatly handicapped in informing these carriers of its safety regulations and in its attempts to obtain compliance with safety regulations by them.

If this proposal is adopted the Commission, in carrying out its safety enforcement responsibilities with respect to these exempt vehicles, can more effectively determine whether they are conducting themselves within the limits of exemption and are not straying over the line into the area of for-hire transportation which Congress has marked for economic regulation.

We favor the adoption of this section.

Section 5—Freight Forwarder Provisions—deals with two matters:

(a) Removal from part IV of the act of the exemption of "used household goods."

(b) Private suits against illegal forwarders similar to those referred to in section 2 of S. 2560, mentioned by me a moment ago.

It is proposed to eliminate from section 402(b) the words "or used household goods" which will then subject the handling of such goods by freight forwarders to regulation under part IV and to provide for the granting of "grandfather" rights to persons now engaged in that business as an exempt activity.

The ATA executive committee voted to endorse this section, on the first part of which Mr. Fort, and Mr. Clawson, counsel for one of the large national van lines, testified before you last March in your hearings on "Decline of Regulated Common Carriage."

We have no position on the freight forwarder's proposal in the second part of this section to permit private suits against illegal forwarders, but I do not personally see any objection to it.

As Mr. Fort pointed out to you at the conclusion of his testimony last March, may we state that ATA recognizes that these proposals are only a step in the direction of better enforcement of the act under which we are regulated. We know that enactment of these proposals will be no panacea, but we also know that there is a pressing need for some action now and I agree with Senator Johnston's statement of a while ago that there must be a first step sometime, and we think that the passage of this bill would be such a first step.

We respectfully urge adoption of these proposals.

Senator SMATHERS. All right, sir. Thank you very much, Mr. Pinkney.

Do you have any questions, Mr. Chairman?

The CHAIRMAN. Mr. Pinkney, would you incorporate S. 2764 into S. 2560 or would you keep them separate?

Mr. PINKNEY. We are opposing, Senator Magnuson, the addition in S. 2764, which makes it different from S. 2560. We favor S. 2560, but, as I stated a moment ago, I think while you were possibly out of the room, we are opposing the inclusion of the safety provisions which is the only difference between the committee print section in S. 2560 and S. 2764.

The CHAIRMAN. What I was thinking about is that Senator Smathers could consider both of them together here.

Mr. PINKNEY. They are identical except for that one provision; yes, sir.

The CHAIRMAN. All right.

Senator SMATHERS. The staff?

Mr. GRINSTEIN. The State of Virginia has expressed concern to the committee as to whether section 1 of this bill would in any way interfere with their right to tax transportation on the highways.

In your opinion, Mr. Pinkney, would section 1 of this bill interfere with the right of the States to collect taxes?

Mr. PINKNEY. It would not. This particularly protects the right of the States to tax, which is unchanged.

Senator SMATHERS. All right, sir.

If there are no further questions, we will thank you, Mr. Pinkney and Mr. Fort, and your other associate, Mr. Meyer. Our next witness is Matt Triggs, the assistant legislative director of the American Farm Bureau Federation.

Mr. Triggs?

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. First, we would like to express our appreciation for the opportunity of sitting in on prehearing discussions of the provisions of S. 2560. The revised Committee Print No. 1, which has been developed as a result of such discussions is, in our opinion, a substantial improvement of the original bill.

We have no objection to the provisions of sections 1, 2, 3, and 5 of the committee print of S. 2560.

By resolution of our delegate body, reaffirmed annually for a number of years, we are on record as opposing Federal registration of private and exempt truck carriers as provided in section 4 or S. 2560.

Section 4 of S. 2560, as revised, has, it is true, been narrowed down substantially so that registration is required only by the operator of exempt vehicles of three or more axles which are used for other than casual, occasional, or reciprocal transporation. This is a substantial improvement of the original bill.

However, we do not see what real purpose is accomplished by requiring operators of vehicles operating under section 203(b)(6)—whether common, contract, private, cooperative, or exempt carriers—to register annually with the Commission.

We do not see any connection between this proposal and the asserted objective of the bill, to aid in the prevention of illegal carriage.

A carrier who intends to operate illegally is not, in fact, prevented from or discouraged from doing so by this requirement.

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It seems probable that many exempt and private carriers would fail to register annually for a variety of understandable reasons such as:

1. Never heard of the requirement.
2. Thought that once registered annual reregistration was unnecessary.
3. Forgot about it.

I don't need to point out to this committee that most exempt carriers are single truck operators. This is one of the remaining strongholds of small business. They just don't have the attorneys and the bookkeepers to remind them of the things they are supposed to do.

Now, what is the penalty for failing to register? As we read the proposal, a carrier who failed to register would be subject to penalty under authority of section 222(h) of the act. Would the Commission delegate personnel needed for more important compliance work to checking on the submittal of annual registrations? Is it conceivable that the Commission would prosecute persons who failed to register? Is it not probable that this section 4 would merely add another unenforceable and unenforced provision to the Interstate Commerce Act?

We recall with apprehension the statement of the junior Senator from Florida to the U.S. Senate on March 28, 1956, when he said during debate on a transportation bill:

> The Commission recommended that agricultural haulers and private carriers as well as other carriers who are subject to safety regulations but not subject to economic regulation, be required to register with the Commission. Of course, we all know that registration is a customary first step toward eventual full economic regulation.

We suspect the Senator was right in 1956, and that what he said then is still true.

Senator SMATHERS. You must admit, Mr. Triggs, that even a Senator is entitled to learn and grow. [Laughter.]

Mr. TRIGGS. We cannot help but believe that the real objective of many of those who favor the enactment of section 4 of S. 2560 is that they too conceive of registration as the first step toward full economic regulation.

The asserted sole purpose of section 4 of the bill is to permit the Commission to build a mailing list so that exempt carriers may be mailed information relative to safety regulations.

This purpose can be accomplished much more simply. Such a mailing list could be readily compiled from highway use tax returns, Form 2290, filed with the Internal Revenue Service.

These returns cover the operation of all single unit trucks with net weight of 13,000 pounds or more and combinations with net weight of 5,500 pounds or more.

There is in our view no reason why such records could not be used as a basis for preparing a mailing list. What difference would it make if some private carriers are included in the list? Many private carriers would also be included in any list prepared pursuant to section 4 of S. 2560.

We have advanced this suggestion before. It has been suggested to us that this isn't really a very practical proposal. We would assert to the contrary, that this is an exceedingly practical alternative.

The only thing "impractical" about it is that it would not open the door to economic regulation of exempt carriers.

When a similar proposal was under consideration by the committee in 1957, Senators Thurmond, Yarborough, Lausche, Potter, Schoeppel and Monroney offered an amendment in the nature of a substitute as follows:

> In order to assist the Commission in carrying out its powers and duties under section 204 with respect to motor carriers which are subject only to the rules and regulations of the Commission relating to qualifications and maximum hours of service of employees and safety of operation and equipment, the Secretary of the Treasury is authorized to furnish the Commission, at such times as it may request, a list of the names and addresses of taxpayers who have filed returns with respect to the tax imposed by section 4481 of the Internal Revenue Code of 1954 on the use of certain highway motor vehicles. The Commission shall reimburse the Secretary of the Treasury for the costs of preparing such list.

We supported this amendment in 1957. If anyone still believes that a mailing list will make any contribution to highway safety, we will support the substitution of this language for section 4 of S. 2560.

This, we submit, is the simple, efficient and economic way to do the job. It will save hundreds of thousands of operators from having to fill out duplicatory sets of hundreds of thousands of forms annually, to be received, audited and processed by the Interstate Commerce Commission and filed in hundreds of filing cases.

We, therefore, recommend either that section 4 of S. 2560 be stricken or that language similar to that quoted above be substituted.

S. 2764 is comparable to section 3 of S. 2560, except that the former would apply the civil forfeiture provisions of the act to safety violations by motor carriers. It would appear to us that if civil forfeiture provisions are to be applied to safety violations, it should be necessary to demonstrate either intent or negligence. The safety requirements of the Interstate Commerce Commission are complex. An operator seeking to comply with such regulations in all good faith will sometimes—we might make it much stronger than that—will almost always find himself in violation. It would, therefore, appear to us that something more than the fact of violation should be required before a penalty is imposed.

We certainly appreciate this opportunity.

Senator SMATHERS. Mr. Triggs, how much do you think it would hurt the farm community of the State of Kansas, for example, if section 4 as proposed in the committee print were adopted? How much are the farmers really concerned about that?

Mr. TRIGGS. In the State of Kansas there would be, I think, a fair number of farmers who would have vehicles of the type required to be registered. They might find out about the registration requirements, they might not. They would commonly forget it, they have many things to remember. Many of them, I expect, would be in violation and I don't know whether anybody would ever find out——

Senator SMATHERS. If we don't get them on record, if we don't know who they are, how do you ever advise them of what the regulations are?

Mr. TRIGGS. We suggest a means by which they can be made a matter of record.

Senator SMATHERS. Do you think most of the farmers in farm operations have three-axle trucks?

Mr. TRIGGS. No, most of them do not.

Senator SMATHERS. Actually, the farmer as such is not really very much concerned about this, is he? In other words, it is not the farmer's concern; is it?

Mr. TRIGGS. Those farmers who do have this type of equipment are concerned; yes, sir.

Senator SMATHERS. What percentage of the farmers that you know have three-axle trucks?

Mr. TRIGGS. I wouldn't be able to answer that question. It is some percentage.

Senator SMATHERS. But it is a small percentage?

Mr. TRIGGS. Yes, but what we are suggesting is that there is a simpler and better way to do this.

Senator SMATHERS. I am trying to get at who is really interested in it, if it is the farmer who is really concerned about it, or are others concerned about it. I talked to some of my farmers, they don't have three-axle trucks. They don't know too much about it, of course, because their goods are shipped. But it doesn't bother them too much because they give the farmer the price at the time he sells it, then it goes on. So the person that is concerned about it is actually the man who is in the business of hauling exempt farm products rather than the farmer.

Mr. TRIGGS. About all we know about the ownership of trucks by farmers is that they do own some 3,110,000 trucks, according to the Census Bureau.

Senator SMATHERS. And of that 3,010,000, how many of those are three axle?

Mr. TRIGGS. This is not disclosed by the census reports and I don't think I would possibly even guess at what percentage is involved.

We are, however, needless to say, interested in the welfare of the exempt carrier; we do think he performs a real service for farm people and would hesitate to see regulations imposed on him which really don't accomplish any objective that can be accomplished just as well by other means.

Senator SMATHERS. How does it hurt the farmer when the farmer is usually paid for his product at the time that he sells it, and it is first put into the truck to be moved. Farmers, as you know, very rarely today, actually any longer transport their own goods from their farms to their markets. We are not talking about those people, they are almost nonexistent except for little fresh fruit and vegetable farmers. Nobody wants to talk about them. So the average farmer today, my observation is, isn't particularly affected. This affects motor carriers who are in the business of carrying exempt products and not the farmer.

Mr. TRIGGS. Farmers are in the business of transporting their own products to a growing percentage through the mechanism of cooperative marketing organizations to which they belong, and in that sense have a direct and substantial interest in this measure.

Senator SMATHERS. All right. I have no further questions.

The CHAIRMAN. I was going to ask the same question. Could you get those figures for us of how many farmers have three-axle trucks?

Mr. TRIGGS. I wouldn't know where to go, Senator; I have looked. I have called up the Bureau of the Census to find out if they had this broken down and apparently nobody has.

The CHAIRMAN. I am like the Senator from Florida; by golly, I don't know of any in my State that I can think of. There might be some in the fruitgrowers, just a small amount, you know, in the apple and pear, hauling across the mountains, but I don't know——

Mr. TRIGGS. Well, a great many livestock operators would have trucks of this kind. Now, they would use them to haul——

The CHAIRMAN. Feeder lots, wouldn't it be?

Mr. TRIGGS. Well, both. They haul the livestock of their neighbors, too.

The CHAIRMAN. He brings them in in small groups and then the feeder brings them to the packing plant?

Mr. TRIGGS. There are all sorts of combinations.

The CHAIRMAN. It would be interesting to know just how many might be affected, because the more we go into this agricultural exemption the more we find that it doesn't involve the farmer as much as it involves a bunch of people hauling for them, who are truckers.

Mr. TRIGGS. Of course, we do believe that the efficiencies of operation incident to the agricultural exemption are reflected back to farm people.

The CHAIRMAN. In the rate?

Mr. TRIGGS. In the price they pay——

The CHAIRMAN. That is true.

Mr. TRIGGS. And in the efficient and widespread distribution of their products that is made possible through such operations.

The CHAIRMAN. Well, in some cases it is efficient and in some it is not.

Senator SMATHERS. What we are trying to do is make it efficient and set it so that the farmer knows he has it there, and it is going to be at a certain price and so on.

Let me ask you this, Mr. Triggs. Do you approve of the suggestion made by Senator Johnson with respect to the loosening of the agricultural exemption so that certificated motor carriers can carry exempt products?

Mr. TRIGGS. Let me say that we think that a much more flexible rate procedure is needed and I think a start was made in the Transportation Act of 1958 toward a more flexible rate procedure. I am still appalled by the length of time it takes for a common carrier, particularly a railroad, to change a rate that is apparently fully justified by costs of operation and desired by the carrier to meet a competitive situation. It actually takes a year or better to change such a rate, if it is suspended, of course.

Senator SMATHERS. We agree with all that, but what about his recommendation?

Mr. TRIGGS. I think this was in response to that comment. We haven't, so far at least, favored complete elimination of rate regulation by railroads for the hauling of farm products. We think there is some value to the railroads and to shippers in a rate structure that doesn't change from day to day. But we do feel that common carrier rates should be permitted to change far faster than they are permitted to change under the present procedures.

Senator SMATHERS. You haven't quite answered the question as I tried to propound it. Would it not provide for the farmer an additional method of transportation which is not now available to him if you accepted the recommendation of Senator Johnson?

Mr. TRIGGS. Well, I think so. I was a little puzzled by the discussion of this point because as I understand the law now a truck common or contract carrier can engage in hauling farm products without regulation of any kind, except the intermingling of cargo.

Senator SMATHERS. That is what his point was; he wanted to intermingle because they traveled 80 percent full rather than 100 percent full.

Mr. TRIGGS. I would agree that the prohibition against the intermingling of cargo is something that serves very little purpose.

Senator SMATHERS. Thank you very much, Mr. Triggs.

The committee will stand in recess until 2:30 this afternoon at which time we will hear Mr. Breithaupt.

(Whereupon, at 12:35, the subcommittee recessed, to reconvene at 2:30 p.m., this same day.)

AFTERNOON SESSION

Senator SMATHERS. The committee will come to order.

Mr. Breithaupt is our next witness.

You go right ahead, Mr. Breithaupt.

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

Mr. BREITHAUPT. Let me say for the record, Mr. Chairman, my name is Harry J. Breithaupt, and I am general attorney for the Association of American Railroads.

I may save some time if I may have the first part of this statement appear in the record as if read, and start on page 4.

Senator SMATHERS. Very well, we will have it placed in the record just as though he read the first four pages.

Mr. BREITHAUPT. I appear before you today by authority, and by direction, of the board of directors of the Association of American Railroads. The Association of American Railroads encompasses those railroads of this country having 99.5 percent of total class I railroad operating revenue and our members have 99.2 percent of the total class I operating railroad mileage in the United States. Class I railroads represent 96 percent of total mileage and revenue.

You are now considering S. 2560, a bill introduced on September 15, 1961, by Senator Smathers "to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes." This measure has been described by the chairman of this subcommittee as "an initial step in a program to lift this country's transportation resources out of the current economic crisis." The bill, "designed," to quote the chairman again, "to assist the States and the Federal agencies in their joint efforts to control illegal interstate transportation on the highways," is an outgrowth of an intensive study of the problems of comon carriers held during the first session of the present Congress.

I appear, first, to express the Association of American Railroads' support, in principle, of the aims and objectives of S. 2560 and, second, to urge the adoption by the subcommittee of a number of amendments to the bill that would reinforce it and strengthen it in substantial degree.

I should like to get to the heart of these matters at once, with very little preliminary statement and with a minimum of window dressing, because I must assume that each member of the subcommittee would agree today, without extensive documentation, that the railroads in this country are perilously situated. This is fairly common knowledge. I must assume further that each of you would agree, without extensive argument, that it is in the public interest that they be afforded an appropriate measure of relief from their perilous situation.

Let me also say at the outset, in further explanation of what might at first blush appear to be unusual brevity of presentation on a subject of such vital and pressing concern to the railroad industry and, indeed, to all common carriers, that spokesmen for the railroads and many others as well presented comprehensive statements to your subcommittee less than a year ago. These statements were on the subject of the relative decline of the common carriers, the accelerated growth of unregulated and private carriage and the ultimate effect of these factors upon the adequacy of the national transportation system. They were made during the course of, and on the record of, this subcommittee's hearing and study out of which has come as one direct growth the bill now being considered. So the record out of which this bill has grown is replete with evidence, if evidence of record be needed, demonstrating not only clearly but eloquently that the railroad segment of the common carrier industry, at least, is perilously situated; and, it is fair to say, the railroads' situation has not improved materially since that record was made.

The spokesmen for the railroad industry at the time of which I speak were Dr. Burton N. Behling, economist for the Association of American Railroads, and Mr. William M. Moloney, the association's general solicitor.

Now, the hearings and study conducted last year by this subcommittee not only served to establish as a matter of record that the railroad segment of our national transportation system is in unhappy circumstances. They also afforded opportunity for searching out and analyzing, in objective fashion, at least some of the causes for the relative decline of the railroads and other parts of the common carrier industry. They began, in addition, to point the way to at least some of the appropriate remedial measures that will be needed if we are to halt the decline of the common carriers, reverse the trend and thus take steps to provide in future for a strong and healthy, efficient and adequate national transportation system.

When Senator Smathers introduced S. 2560 toward the end of last year's session of the Congress he made the statement that: "Hearings conducted this session before the Subcommittee on Surface Transportation indicate that present law is not adequate." Citing the fact that "there has been a tremendous recent growth in 'gray' area and 'black' area truck operations—those operations without State or Federal authority," he pointed out that "illegal transportation con-

tinues to drain an ever-increasing amount of traffic from the legitimate rail, truck, and water carriers;" and then he went on to add that:

> * * * illegal operators represent more than a diversion of income from the carrier who obeys the law. That alone would be serious enough in view of the economic crisis in which all our regulated modes of transportation find themselves. But the shipper, too, who obeys the law and uses a legitimate carrier finds himself at a disadvantage in relation to his competitor who uses illicit truckers.
>
> A continuation of this situation is leading to economic jungle warfare, and it undermines respect for the law and further discourages our regulated, legal transportation system.

Thus it was thought, and properly so, that an important facet of the common carriers' problems and difficulties is the accelerated and alarming erosion of their traffic and revenues at the hands of private and otherwise unregulated motor carriers, and that certain aspects of that particular facet of the common carriers' problems and difficulties are directly related to what have come to be known as "gray" area and "black" area truck operations.

In that context, then, S. 2560 was introduced "to serve as a first step in improving present conditions and the law in the field of transportation."

Upon introduction of the bill, Mr. Chairman, you called on representatives of the trucking and railroad industries, among others, to meet with the staff of the subcommittee during the recess of Congress "to make suggestions and offer amendments to this proposed legislation, and if need be to assist in drafting additional legislation for introduction early next year—1962." The chairman pointed out that all legitimate operators have a common interest in this problem, and said that their interest in it "supersedes intermodal squabbles in the transportation industry." Thus encouraged and admonished, representatives of the Association of American Railroads and of the Regular Common Carrier Conference of the American Trucking Associations, Inc., met together during the recess of Congress, discussed this bill and other related problems, and happily found themselves able to reach full agreement on a number of matters.

Senator SMATHERS. It's too bad they couldn't stop themselves right there: "And find themselves able to reach full agreement." You fellows always have to add on a couple of items.

Mr. BREITHAUPT. In some respects I'm in agreement with you, sir.

Senator SMATHERS. Excuse me for interrupting.

Mr. BREITHAUPT. We were able to agree fully that we have a strong common interest in the objectives of S. 2560 and a strong common interest in other measures and prosposals, as well, that are designed to strengthen and preserve common carriage. We agreed that our differences as to certain other questions of national transportation policy should not interfere with our maintenance of a common front and our mounting of a common effort in this instance. As a result, the common carriers by motor vehicle, as represented by the Regular Common Carrier Conference of ATA, and the railroads, through the AAR, agreed to make certain joint representations to the staff of this subcommittee. Those representations were jointly made.

We hope, sir, you will find significance in this. We consider it significant, for we believe it demonstrates in striking fashion the mutual concern of the common carriers by rail and by highway as to their

common problems and difficulties, and is proof of their joint recognition of the urgent need for prompt and vigorous legislative action to assist in halting the decline of the regulated common carriers of both modes.

I shall not at this particular point in my statement undertake to spell out the matters as to which the railroads and the common carriers by motor vehicle are agreed in respect of this bill and this hearing. This will be done, with your permission, as the testimony proceeds—my testimony and that of the spokesman for the Regular Common Carrier Conference. I believe you will find us in almost total agreement.

I have already stated that the AAR supports, in principle, the aims and objectives of S. 2560. I shall refrain from detailed discussion of it, for other witnesses will, I am certain, discuss its several provisions with particularity and specificity. I do wish, however, to offer a few comments and suggestions as to certain of the provisions of the bill. I address myself, as requested, to "Committee Print No. 1" of the bill dated January 24, 1962, instead of to the bill as originally introduced on September 15, 1961.

SECTION 2 OF THE BILL

Beginning at line 10 on page 11 of Committee Print No. 1 of S. 2560, the bill would add to section 222(b) of the Interstate Commerce Act a new paragraph "(2)" under the terms of which any person injured by certain violations of the act would be enabled, under stated circumstances, to sue in the Federal courts for injunctive relief against the violator. The violations involved are those related to the requirements of the act in respect of motor carrier operating authority—certificates of public convenience and necessity, permits and brokerage licenses.

Such suits for injunctive relief could not, under the terms of the proposed new paragraph "(2)" be brought against any motor carrier holding a certificate or permit issued by the Commission, but only against persons not holding such a certificate or permit. The bill does not purport, however, to make any change in the preexisting language of section 222(b), now to be designated paragraph "(1)" of that section, the terms of which allow the Interstate Commerce Commission to apply in the Federal courts for injunctive relief against any motor carrier or broker operating in violation of certain provisions of the act including those provisions the violation of which would furnish the basis for relief under the proposed new paragraph "(2)".

The addition of this proposed new remedy would aid greatly in curbing illegal highway operations, and we favor its enactment. We urge, however, that the language be amended in one respect before enactment. In line 13 on page 11 of the committee print it is provided that the operation to be enjoined must be "inclear and patent violation" of the provisions of one or more of the specified sections of the act. This language, we apprehend, could be construed as requiring a greater quantum of proof from the plaintiff in a suit under proposed section 222(b)(2) against one not holding a certificate or permit than is required in the case of a suit under the preceding paragraph against an authorized motor carrier.

An injunction suit is civil in character, of course, and the proof required is not generally understood to be, as it is in a criminal case, "beyond a reasonable doubt." Yet the language "in clear and patent violation" might be thought to approach a requirement for proof beyond a reasonable doubt. Almost certainly its use would be construed as requiring a higher degree of proof than that required for obtaining an injunction under the preceding paragraph which is applicable in the case of suits by the Interstate Commerce Commission against motor carriers holding certificates or permits; and there would appear to be no need or justification for such a distinction.

We urge that the words "clear and patent" in line 13 on page 11 of the committee print be stricken.

SECTION 3 OF THE BILL

Section 3 of S. 2560 would amend section 222(h) of the Interstate Commerce Act so as to (1) extend the civil forfeiture provisions therein to certain unlawful motor vehicle operations, (2) increase the amount of forfeiture prescribed, and (3) permit the Interstate Commerce Commission to institute forfeiture actions directly in the courts (instead of proceeding through the Department of Justice as it is now required to do).

This proposed amendment would implement, in part, a legislative recommendation contained in the most recent Annual Report of the Interstate Commerce Commission (75th annual report, p. 186). The Commission, in making its recommendation, said that "present procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective." After outlining why this is so, and explaining the greater flexibility and effectiveness of civil forfeiture proceedings as distinguished from criminal prosecutions, the Commission recommended amendment of section 222(h) of the Interstate Commerce Act in fashion similar to, but broader than, the amendment that would be effected by section 2 of the committee print. The Commission stated that the amendments it recommended would provide it with a "more effective means of combating the spread of illegal and so-called gray area operations and at the same time serve as a deterrent to those who would violate our safety regulations."

I am given to understand that the Commission's full recommendation for appropriate amendment of section 222(h) of the Act is reflected in S. 2764, a bill introduced on January 30, 1962, by Senator Magnuson, by request, and designated for hearing along with S. 2560. The differences between S. 2764 and section 3 of the committee print of S. 2560 are that under the former, that is, S. 2764, the civil forfeiture provisions would be made applicable to safety violations by motor carriers whereas under section 3 of the committee print of S. 2560 safety violations would not be covered, and that under S. 2764 the civil forfeiture provisions would be extended to certain unlawful motor carrier operations not included within the amendment contemplated by the committee print of S. 2560.

We are of the view that the Commission's broader recommendation on civil forfeitures, as reflected in S. 2764, to give it "a more effective means of combating the spread of illegal and so-called gray area operations and at the same time serve as a deterrent to those who would

violate * * * safety regulations," should be accepted. We support it and therefore favor S. 2764 over section 3 of the Committee Print No. 1 of S. 2560.

SECTION 4 OF THE BILL

Section 4 of Committee Print No. 1 would add to the Interstate Commerce Act a new section 226(a) requiring motor carriers operating vehicles of three or more axles in transportation exempt from economic regulation under the terms of the so-called agricultural commodities exemption, with certain exceptions, to file a brief informational statement annually with the Interstate Commerce Commission. The purpose of such a requirement, as recited in the proposed new section, is—

> to insure that [such] motor carriers * * * have adequate knowledge of the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and in order to promote compliance therewith.

The Commission has on several occasions noted that an important part of its statutory responsibility for motor carrier safety relates to exempt and private motor carriers, but that it is unable to administer its safety and hours of service regulations effectively with respect to such carriers because it does not know who they are or where they are located. In its 71st annual report—1957—for example, the Commission said that—

> Recent road checks have confirmed our belief that many such carriers do not even know they are required to comply with our regulations.

It then pointed out—

> Considering that private and exempt carriers operate about three times as many vehicles as carriers holding operating authority from the Commission, whose identity we already know, the importance of their being advised of and complying with those regulations is readily apparent. (P. 139.)

It is noted that section 4 of S. 2560 as first introduced would have provided for the filing of statements by all motor carriers operating vehicles under the agricultural commodities exemption and would have provided that such statements show the total number of vehicles owned or operated by the filing carrier, whereas Committee Print No. 1 of S. 2560 would provide for the filing of statements only by "motor carriers operating vehicles of three or more axles" under the exemption and would except from the requirement, in addition, "carriers who engage in casual, occasional, or reciprocal transportation of commodities" under the exemption. Furthermore, it would appear that under the revised language of the committee print those filing would be required to make disclosure only of vehicles of three or more axles.

I am not informed as to the views of the Interstate Commerce Commission on these revisions of the original draft of S. 2560, but it would seem to me that if the filing of statements is to serve its intended purpose no arbitrary distinction should be drawn along the line of the number of axles a vehicle has or with respect to whether the vehicle is used for "casual, occasional, or reciprocal" transportation of exempt agricultural commodities as opposed to more general use for that purpose. Safety on the highways is as important in one case as in the other; and, by the same token, the effective discharge by the Com-

mission of its statutory responsibility with regard to safety and related matters is as important in one case as in the other.

The greater deficiency in the proposal, however, is its failure to take account of the vast number of trucks other than those that come within the purview of the agricultural commodities exemption with respect to which the problem of administration by the Commission of its safety and hours of service regulations is exactly the same as in the case of the agriculturally exempt trucks. It may be that it is necessary to draw the line somewhere, but at the least the requirement for filing informational statements should be made applicable not only to carriers operating motor vehicles pursuant to the agricultural commodities exemption but also to carriers operating motor vehicles pursuant to the so-called agricultural cooperatives exemption—section 203(b)(5) of the act—and private carriers of property by motor vehicle as well.

The number of trucks coming within these two groups is literally unknown, but it is immense, and the situation as to their regulation by the Commission in matters of safety and hours of service differs in no discernible respect from the situation as to the agriculturally exempt vehicles singled out in section 4 of the committee print of S. 2560.

The railroads believe that the requirement for the filing of such statements as are contemplated by section 4 of the bill should apply to motor carriers operating vehicles pursuant to the agricultural cooperatives exemption and to private carriers of property by motor vehicle as well as to motor carriers operating vehicles pursuant to the agricultural commodities exemption.

This could be accomplished by substituting the following proposed new section 226(a) of the Interstate Commerce Act for that shown in the committee print of S. 2560.

SEC. 226. (a) In order to insure that private carriers of property by motor vehicle and motor carriers operating vehicles pursuant to the provisions of section 203(b) (5) and (6) have adequate knowledge of the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and in order to promote compliance therewith, each such carrier shall, before commencing operations and on or before September 1 of each year thereafter, file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the the number of vehicles owned or operated.

I referred earlier in my statement to the fact that the railroads (through the Association of American Railroads) and the common carrier segment of the motor carrier industry (represented by the Regular Common Carrier Conference of American Trucking Associations, Inc.) had reached full agreement as to most features of S. 2560 and had agreed upon certain proposals for amendment that ought jointly to be advanced.

This is such an instance. We have agreed between us to urge that the bill be strengthened by amending section 4 thereof in such a way as to make the provisions of that section of the bill applicable not only in the case of vehicles operated pursuant to section 203(b)(6) of the Interstate Commerce Act, but also in the case of vehicles exempt under section 203(b)(5) (agricultural cooperatives), and to private carriers of property by motor vehicle as well.

Together then we urge that S. 2560 be so amended.

Mr. Chairman, up to this point the amendments I have urged may be described as ones designed to perfect and strengthen the existing provisions of S. 2560. With them the bill could be made to become a more useful and effective weapon in the continuing effort to curb unlawful highway operations, and we urge their acceptance.

I come now, Mr. Chairman, to three additional proposed amendments that would add new provisions to the bill and thus reinforce it and make it a much more effective weapon for protecting common carriers and restoring them to a healthy and a vigorous state.

These amendments have to do with (1) the role of private carriage, (2) the agricultural commodities exemption, and (3) the agricultural cooperatives and shipper associations exemptions.

First, The Role of Private Carriage: Private carriage in this country has grown, and continues to grow, by leaps and bounds, to the detriment of the common carriers. Some private carriage, of course, exists because it is more economical, cost and service considered. Much, however, depends for its existence upon revenue obtained by the private carrier from the performance of transportation for others for compensation in order to help sustain an operation that simply could not be justified on the basis of purely proprietary operations.

Since a private carrier may not lawfully perform public for-hire transportation generally, the contribution to operating expense that is needed to sustain an otherwise uneconomical venture must ordinarily be sought, if it is to be sought lawfully, through compensation derived from transportation that is exempt from economic regulation.

Thus the agricultural commodities exemption, for example, offering as it does a vast and fertile source of unregulated traffic, contributes in large measure to the growth of private carriage.

A manufacturing concern operating its own fleet of trucks can haul its own property in one direction and transport agriculturally exempt commodities for-hire in the reverse direction.

In this way the true economics of private carriage are concealed and the transportation industry is deprived of the traffic. If the private company obtains a load of exempt commodities at a rate sufficient only to pay for the gas and oil on that leg of the movement, it is that much ahead of the game. Thus, the so-called private carrier seizes upon the agricultural exemption to make economically feasible the transportation of its own property.

Private motor carriers may haul agricultural commodities for compensation in competition with all forms of common carriers; and this has led inevitably to the growth of private trucking far beyond that which would otherwise be economically justified.

The performance of exempt transportation by private carriers puts them in direct competition, of course, with the regulated common carriers and diverts revenue traffic from them contrary to the acknowledged public interest in a healthy for-hire transportation system. It not only diverts the exempt traffic from the public carriers but also operates to deprive them of the other and perhaps even more important volume of traffic that would come their way if the private operation had to stand or fall on its own economics.

But even this does not tell the whole story. There is yet another aspect of the matter to be considered.

The anomalous regulatory scheme that is now provided, permitting a private carrier to engage lawfully in certain types of for-hire transportation, frequently serves in and of itself, sooner or later, to encourage the private carrier to engage unlawfully in other types of for-hire transportation.

Thus while it is admittedly lawful, under the present regulatory scheme, for one who owns and uses trucks in proprietary transportation to use them also for transporting for others and for compensation so-called exempt commodities there may easily, and perhaps understandably, come a time when he will be tempted to perform for others and for compensation the unlawful transportation of non-exempt commodities.

The very ability of the private carrier to engage lawfully in exempt for-hire carriage serves as an inducement and a lure for one to venture into a private carrier enterprise, and makes for the creation and growth of private fleets of trucks on the premise, and in the hope, that their operation may be made successful and economical through their utilization from time to time (for example, on the backhaul) in exempt for-hire transportation. The balanced movement, the avoidance of the empty backhaul, is the bait.

Then it may well be that the expected exempt transportation does not, for one reason or another, develop or does not develop to the extent or along the lines anticipated or hoped for. Perhaps traffic patterns shift. Whatever the reason, the pressures are great; and in looking around for some means of justifying ownership of, and investment in, the trucks; and for ways and means of making their operation and their use economical, the owner may become persuaded to resort to unlawful for-hire transportation of one kind or another.

I have assumed a situation where the initial intent may be presumed to have been to conduct only bona fide and lawful private carrier operations. In some cases, unfortunately, there are those apparently so unscrupulous as to plan unlawful operations from the start.

In either event, such violations would be much less likely to occur, and therefore much less prevalent, if private carriage were to be confined to precisely what the term implies and private carriers were not permitted to perform for-hire transportation.

The railroads believe that private carriage should be restricted to the performance of its proper role and excluded from the for-hire domain of the public carriers. To this end private carriers should be prohibited from engaging in for-hire transportation of any kind. One means of accomplishing this with respect to the for-hire transportation of so-called exempt agricultural commodities by private carriers would be to amend section 203 of the Interstate Commerce Act so as to add thereto a new subsection reading as follows:

(d) The motor vehicles referred to in section 203(b)(6) shall not include any motor vehicle used in performing for compensation any of the carriage thereby conditionally exempted from regulation if such motor vehicle is owned, leased, operated or used by a private carrier of property by motor vehicle.

We urge that S. 2560 be so amended as to include such an amendment of the Interstate Commerce Act.

Before leaving this subject, allow me to invite your attention to the somewhat more comprehensive treatment given it in the statement made before this subcommittee last year by Mr. W. M. Moloney,

General Solicitor, AAR, during the hearings on the decline of the common carrier industry to which I have earlier alluded. I refer, of course, to the hearings out of which grew the bill now under consideration.

As a part of his presentation at that time, Mr. Moloney furnished to the subcommittee a list of actual illustrations of private carriers in various States utilizing the agricultural commodities exemption to engage in for-hire carriage. That list was furnished to you for the purpose of emphasizing that the matter of private trucks engaging in for-hire transportation is not a happenstance.

It is, rather, a cold and calculated entry into the field of for-hire transportation, often with types of equipment entirely unneeded for the shippers' own needs but designed to engage in for-hire transportation in order to make economical that which otherwise would be uneconomical, to wit: private transportation of one's own goods.

Finally, before moving on to a discussion of the next proposed amendment of S. 2560, I should like to point out that the proposal just discussed is one as to which there is complete agreement in principle between the railroads and the common carrier trucks (as represented by the Regular Common Carrier Conference of American Trucking Associations, Inc.).

We urge together that S. 2560 be strengthened and reinforced by the addition of provisions prohibiting private carriers from performing or engaging in the for-hire transportation of property, or, to put it another way, provisions restricting private carriage to the transportation of only proprietary freight.

The Agricultural Commodities Exemption: At the very core of the common carrier problem lies the regulatory exemptions, for after all the common carrier problem is in principal essence the problem of regulated carriers in unequal competition with unregulated carriers. The regulated carriers are the common carries; the unregulated carriers are the exempt carriers and the private carriers. The regulatory exemptions are directly responsible, of course, for exempt carriage and they tend, as we have just seen, to spawn private carriage and accelerate its growth.

One of the most insidious of the regulatory exemptions is the so-called agricultural commodities exemption (section 203(b)(6) of the Interstate Commerce Act). The views of the railroads on this exemption are, I should judge, not unknown to most members of this subcommittee. Various spokesmen for the railroad industry have appeared before you and other committees of the Congress, over a long course of years, to urge that some step be taken to ameliorate the grossly unfair discrimination to which the railroads under present law are subjected in their effort to compete for the immense traffic-tonnage in agricultural commodities.

It would be presumptuous of me, I expect, to repeat on the occasion of this hearing the arguments we have so often advanced before you in the past. It will suffice to say that railroads are severely handicapped in their day-to-day competition with exempt for-hire carriers of agricultural commodities.

Under the agricultural exemption numerous agricultural, horticultural and seafood commodities, aggregating vast tonnages, are exempt from economic regulation when they move by those trucks desiring to

avail themselves, and in a position to avail themselves, of the exemption, but are not so exempt when they move by rail.

This presents the gravest kind of competitive difficulties for the railroads. Specifically, for example, the railroads are required on this traffic, as on all traffic, as you know, Mr. Chairman, to publish their charges, strictly to observe them without change except on statutory notice to the public, and to meet all of the ratemaking standards and criteria contained in applicable provisions of the Interstate Commerce Act.

Meeting these requirements and at the same time meeting competition that is free of such requirements places the railroads in an almost impossible, and altogether unfair, competitive position.

The railroads' position with respect to the agricultural commodities exemption is clear and simple and, we believe, just: either repeal the exemption or extend it to the railroads. But a comprehensive presentation on this subject was made in behalf of the railroad industry before this subcommittee last year during the hearing, already mentioned, on the decline of the common carrier industry and I shall not at this stage further labor the point.

I do wish, however, to invite the attention of the chairman and the other members of the subcommittee to a legislative recommendation appropos the agricultural commodities exemption very recently advanced by the Interstate Commerce Commission. I ask your indulgence in this regard because the railroads, along with the regulated common carriers by motor vehicle represented by the Regular Common Carrier Conference of ATA, are prepared to urge that a proposal such as that now advanced by the Commission be incorporated in S. 2560 as an amendment to that bill.

The Commission's recommendation is to be found in its 75th annual report (1961) as one of a number of new recommendations which, to use the Commission's own prefatory words, are—

aimed at various exemptions in the act which, by fostering the growth of private and exempt carriage and the spread of illegal for-hire operations, have contributed in no small way to the decline of the Nation's regulated common carrier system.

The recommendation is as follows:

2. We recommend that section 203(b)(6) be amended so as to limit the application of the agricultural and other commodity exemptions to providing direct assistance to farmers, ranchers, and fishermen in the transportation of their products to local markets.

In explanation of just what it has in mind, the Commission stated:

While we recognize that grounds exist for exempting the movement from point of production to local markets, there is little justification for exempting the subsequent movements of these commodities.

Two principal reasons for its advocacy of this proposal have been advanced by the Commission:

(1) The exemption serves—

as a vehicle by which large volumes of traffic are being diverted from authorized carriers, including the railroads, to private and exempt haulers.

(2) The exemption is—

a breeding ground for schemes and devices to engage in unlawful for-hire transportation under the cloak of legitimate private carriage.

As to the first of these two reasons, the Commission points out that—

* * * not only are the authorized carriers losing substantial amounts of exempt commodity traffic, but even more serious is the loss of such high-grade traffic as manufactured goods to the many private carriers who must depend upon revenue backhauls to defray the cost of their operations. Without such backhauls, available largely because of the exemptions and often at amounts barely sufficient to cover the costs of the return trip—

the Commission continued—

private carriage would not, in many instances, be financially feasible. Authorized carriers, of course, find it difficult, if not impossible, to compete with such marginal operations.

As to the second reason, the Commission makes it clear that—

Faced with cutthroat competition and the prospect of empty backhauls, the exempt commodity hauler, and frequently the private carrier, will in order to squeeze out a small profit or to cover return-trip expenses, resort to such subterfuges as "buy-and-sell" or "equipment lease-driver service" arrangements in an attempt to circumvent regulation. * * * Such practices—

the Commission concluded—

spawned or nurtured by these exemptions, promote discrimination between shippers, threaten existing rate structures, and serve to thwart the express purpose of the Congress to maintain a sound transportation system in the national interest.

We strongly urge that S. 2560 be so amended as to include restriction or curtailment of the agricultural commodities exemption in the way now recommended by Interstate Commerce Commission.

In this request we are joined, again, by the Regular Common Carrier Conference of American Trucking Associations, Inc.

Senator SMATHERS. Let me ask you a question right there.

I do not know how much you have had to do with farmers or ranchers or fishermen and the transportation of products to local markets, but do you know any way that the ranchers or the farmers or the fishermen directly benefit by these so-called gray area or illegal buy-and-sell arrangements that are going on today?

Mr. BREITHAUPT. My understanding of it is this, sir, that in many instances where these illegal operations go on they do so at greatly reduced charges for transportation because frequently the purpose of the gray area or illegal operations is to enable the transporter to obtain whatever he can, no matter how little, in order to avoid, let us say, an empty backhaul or something of the sort, in which event, I suppose, speaking in a selfish sort of way from the standpoint of the producer of the commodities, he is obtaining transportation at a lesser cost by the utilization of illegal means.

Senator SMATHERS. Do you know whether these people go directly to the farmer and make these arrangements with the farmer or do they go to a broker or do they go to some other person who already has title to the goods?

I may be naive, but the farmers that I know and the fishermen that I know—I don't see where they themselves directly benefit from this kind of an operation, because it seems to me by the time this operation comes into play they have already lost title; they already have been paid for their goods.

Mr. BREITHAUPT. I think that is perhaps a point that the Commission has tried to make in its explanation of its recommendations that any benefit that may accrue to the rancher, the farmer, or the fisher-

man is gone by the time the market is reached. He no longer has any interest in the cost of transportation. That would be my understanding, Senator.

Senator SMATHERS. In this committee we would be glad to hear, and I will say this for the record, I would be glad to hear from farmers directly. We hear from farm representatives and I have great respect for these fellows and they are doing a good job—what they are hired to do in some ways as all of us are—but I don't ever see any farmers who first raise their goods and then sell them, whether it is citrus, wheat, or whatever it is—I don't see where they particularly benefit by this illegal transportation that we have going on.

And yet the farm organizations, while they do not say that they are for illegal transportation, they do not want to let us do anything to eliminate it.

Mr. BREITHAUPT. I heard the colloquy this morning before lunch, Mr. Chairman, between members of the subcommittee and the representatives of the farm organizations and I must confess that I was not very much enlightened as a result of that colloquy along this line.

Senator SMATHERS. I like these fellows very much—it is not anything personal. I have wonderful relationships with them, but I don't understand how the position that they take directly benefits the farmer. Everybody knows that it was originally the intention of the agricultural exemption to help the farmer, not to help a group of private carriers who are in some unrelated business from the farmer and not to help some broker or some middleman—it was to help the farmer. And I have yet to be shown to my satisfaction—I don't think I am unreasonable—how this helps the farmer particularly.

Mr. BREITHAUPT. I could not agree with you more, Mr. Chairman.

Senator SMATHERS. All right, you go ahead. Maybe we can finish this before I have to go.

Mr. BREITHAUPT. All right.

The Agricultural Cooperatives and Shipper Associations Exemptions: One other new legislative recommendation of the Interstate Commerce Commission, also aimed at regulatory exemptions which—

> by fostering the growth of private and exempt carriage and the spread of illegal for-hire operations, have contributed in no small way to the decline of the Nation's regulated common carrier system—

is:

(1) We recommend (*a*) that sections 203(b)(5) and 402(c) be amended to provide that agricultural cooperatives and shipper associations, respectively, shall be entitled to exempt status thereunder only upon application and proof of eligibility; and (*b*) that sections 220 and 412 be amended to permit the Commission or its duly authorized agents to inspect the books, records, and other documents kept or maintained by such cooperatives and associations.

The Commission points out that substantial amounts of important traffic are being diverted from authorized carriers by various groups and organizations performing general transportation services under the guise of exempt agricultural cooperatives and shipper associations.

The Commission is of the view that implementation of its recommendation would enable it to cope more effectively with this situation.

While those principally affected adversely by abuses of the two cited exemptions are probably common carriers by motor vehicle and freight

forwarders, and while the railroads' interests may perhaps be secondary, we nevertheless support this proposal and (once more along with the Regular Common Carrier Conference of ATA) suggest that amendment of S. 2560 by the inclusion of provisions as to agricultural cooperatives and shipper associations along the lines recommended by the Commission would reinforce the bill as a useful weapon against illegal for-hire transportation and thus tend to strengthen the overall position of the entire family of common carriers.

With this reflection of our interest in a matter that is perhaps of only secondary importance to us, on that note of sweetness and light, I will conclude my statement, Mr. Chairman.

Senator SMATHERS. Thank you, sir.

I am going to have to go and answer a rollcall. I am just thinking that we are probably going to have another vote on the final passage of the bill which is over on the floor. It will mean another rollcall which would put us to about 4 o'clock.

We have Mr. Rosenbaum here and Mr. Yeary and Mr. Kingsley, representing Mr. Garrett. They are all Washingtonians. What we are going to try to do is have a meeting tomorrow morning in another room at 10 o'clock, somewhere around here. If you will come here they will tell you where the other room will be, and this meeting will therefore stand in recess until tomorrow morning at 10 o'clock.

Thank you very much.

(Whereupon, at 3:25 p.m., the committee was adjourned, to reconvene at 10 a.m., Thursday, February 8, 1962.)

CONTROL OF ILLEGAL INTERSTATE MOTOR CARRIER TRANSPORTATION

(Amendments to Interstate Commerce Act)

THURSDAY, FEBRUARY 8, 1962

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TRANSPORTATION,
Washington, D.C.

The subcommittee was called to order, pursuant to adjournment, at 10:20 a.m., in room 1318, New Senate Office Building, by Hon. George A. Smathers (chairman of the subcommittee).

Senator SMATHERS. The meeting will come to order.

Counsel wants to ask Mr. Breithaupt of the Association of American Railroads a question or two before we go on to our next witness.

Mr. Breithaupt, will you take a seat and submit yourself to questions?

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

Mr. BREITHAUPT. I will be glad to, Mr. Chairman.

Mr. GRINSTEIN. Mr. Breithaupt, what percentage of the railroads' carriage at the present time would consist of agricultural commodities?

Mr. BREITHAUPT. We can't break it down exactly, Mr. Grinstein, but as between the bulk exemptions and agricultural exemption, approximately 70 percent of our total tonnage at the moment would come within the purview of those two exemptions combined.

Mr. GRINSTEIN. Has the Association of American Railroads made any estimate of how much the agricultural commodity would account for in their total traffic if the exemption were extended to the railroads?

Mr. BREITHAUPT. That's almost an imponderable, Mr. Grinstein, because in final analysis the choice of shipment would lie with the shipper.

We feel, however, that if we had equal opportunity to compete with those who now have absolute liberty in the making of rates we would have a good chance of securing a lot of traffic.

I must say this, that about 2 years ago the ICC released a statement which indicated 1957 figures against 1947 figures, to show what the loss to the railroads had been in terms of potential railroad tons. Those figures were inserted in the record of your hearings last year by Dr. Behling, in statistical form. Unfortunately, this is a study that

the Commission publishes only intermittently, or periodically, and the 1947 and 1957 comparison is the most recent one.

The drop in the potential—I mean the actual from the potential—during that decade was really striking, and I can supply those figures again for the record if you like. I do not have them with me.

Mr. GRINSTEIN. Yesterday the witness for the American Farm Bureau indicated that he would support extension of the agricultural commodity exemption to trucks for intermingling, but that he would probably oppose the extension to the railroads.

Do you have any idea why they would oppose the extension to the railroads of the agricultural commodities exemption?

Mr. BREITHAUPT. No, sir, I have never been able to understand that position on the part of the so-called farm organizations, although I understand that it is a position which they have taken ever since we have advocated our alternative position of either repeal or extension.

We, of course, would have to oppose any further liberalization of the agricultural commodities exemption for trucks. It would only work to our detriment.

Mr. GRINSTEIN. You mentioned the bulk commodity exemption. The position taken last year was either repeal or extend the bulk commodity exemption.

Is your position the same on that?

Mr. BREITHAUPT. The board of directors of the Association of American Railroads has not altered that position, Mr. Grinstein. Our position in respect of the bulk commodities exemptions is the same as in the case of the agricultural exemption; give us competitive equality, either repeal or extend.

Senator LAUSCHE. Has there, in any of the hearings, been any discussion of the reason of the Farm Bureau for opposing the law being amended so that the railroads would have the right to carry, without regulation, farm products?

Mr. BREITHAUPT. Not to my knowledge, Senator Lausche.

The question that Mr. Grinstein asked was based upon a statement made just yesterday morning by a representative of the American Farm Bureau Federation in which, without any amplification or argument, he simply said that he would oppose extension of the exemption to the railroads.

He did say this: that he thought that it was a good thing for the people that he represents to have some stability of railroad rates; although he doesn't seem to be concerned about stability of motor carrier rates.

Senator LAUSCHE. Have you, in your own analysis of the proposal, figured out what might be the reason supporting that position?

Mr. BREITHAUPT. I expect—and I can only speculate about this, Senator; I think their position is this, that they like to have a backbone of rail transportation with a stable rate structure so that they know where they stand with respect to those rates. They also like to be able to play that stability of railroad rates off against motor carrier transportation in such a way as to accomplish what in their view is a more advantageous result for themselves.

Senator LAUSCHE. Your position, however, is that if this privilege is granted to your competitors it will put you in a still further disadvantageous position in your business?

Mr. BREITHAUPT. Yes, sir; I take that position.

The way the matter stands now, a truck that is loaded with nothing except these so-called exempt agricultural commodities has absolute economic rate freedom. The proposition that was advanced yesterday was that rate freedom be made standard in the case of agricultural commodities, even though they are mixed with partial nonexempt loads in common carrier trucks. This would simply mean more motor vehicles with which the railroads would have to compete for this traffic, and presumably a fiercer competitive situation for us against the same kind of competition that has created so much difficulty for us up to this point.

Senator LAUSCHE. If I may ask you, is the trucking industry's position on the subject of exemption in accord with yours?

Mr. BREITHAUPT. My understanding, Senator Lausche, is that the trucking industry would favor some curtailment or restriction of the present exemption. But it's also my understanding that their policy would be to oppose extension of a similar exemption to the railroads.

Now, what their position is with respect to permitting commingling within a common carrier truck, I am unable to say, sir.

Mr. GRINSTEIN. To the extent that a farmer would have an interest in the transportation of his production, it would probably be reflected in the price he was being paid for his commodity. In other words, if the transportation costs were high, he would in turn be paid less?

Mr. BREITHAUPT. I think the theory of the actual producers of farm products and related commodities is that they pay the freight on the commodities from the time they leave the point of production until they reach their destination. That's the theory.

I frankly don't know whether that's so or not; but that certainly is the theory by which they rationalize their position in these matters that we have been discussing.

Mr. GRINSTEIN. But you don't know whether they do, in fact, pay the freight?

Mr. BREITHAUPT. No, sir, I do not.

Mr. GRINSTEIN. But, in any event, if the agricultural commodity exemption and the bulk commodity exemption were extended to the railroads, then 70 percent of the railroads' traffic would be exempt.

Mr. BREITHAUPT. That's an approximation, as close as we can come to it.

Mr. GRINSTEIN. Thank you.

No further questions.

Senator SMATHERS. All right, sir.

The next witness is Mr. Albert B. Rosenbaum, executive director of the Regular Common Carrier Conference.

Mr. Rosenbaum?

STATEMENT OF ALBERT B. ROSENBAUM, EXECUTIVE DIRECTOR, REGULAR COMMON CARRIER CONFERENCE; ACCOMPANIED BY R. EDWIN BRADY, ASSISTANT EXECUTIVE DIRECTOR

Mr. ROSENBAUM. Mr. Chairman and members of the committee, my name is Albert B. Rosenbaum. I am executive director of the Regular Common Carrier Conference of the American Trucking Associations, Inc., with offices at 1616 P Street NW., Washington, D.C.

I might say at this point, Mr. Chairman, that for a matter of information my working life has consisted of 23 years with the ICC and 15 years with the conference.

I have with me here this morning Mr. R. Edwin Brady, the assistant executive director of the conference. He has spent 23 years with the ICC and has been with the conference 3 years.

We don't say that to pose as experts, but just to let you know that we have been around a long time and we recognize the problem that faces regulated transportation and we also recognize the problem that this committee and the Congress has in trying to determine what is best for the general public.

The conference membership is made up of almost two thousand general commodity common carriers by motor vehicle, operating for the most part over regular routes. Though affiliated with the American Trucking Associations, Inc., which constitutes the national trade association of the overall trucking industry, the conference is basically autonomous and is concerned with the interests and welfare of those certificated motor carriers which make up the regular-route system of motor common carriers of general freight.

I have been authorized to say that the following conferences of the American Trucking Associations which have the same autonomy as the Regular Common Carrier Conference concur in this presentation. They are Common Carrier Conference, Irregular Route, Contract Carrier Conference, Heavy and Specialized Carriers Conference, Local and Short Haul Carrier Conference, Munitions Carriers Conference, National Tank Truck Carriers, Inc.

These conferences feel that certain legislation not now proposed in S. 2560 is essential for the health and preservation of the regulated for-hire carriers. Legislation is especially needed with respect to the widespread for-hire transportation activities in which many private carriers by motor vehicle have seen fit to engage.

Let me emphasize at this point that we are not here seeking to prohibit "do it yourself" trucking by bona fide private carriers in the transportation of their proprietary freight.

We are, however, extremely concerned over the rapid increase of their ventures into the transportation of for-hire freight, public freight, if you will, not connected in any way with their primary business enterprise, but transported supplementally for the purpose of making their private transpotration business economically feasible.

In the hearings conducted by this subcommittee last summer, Mr. William M. Moloney, general solicitor of the Association of American Railroads, devoted considerable attention to the accelerated growth of private carriage and pointed out many examples of the far-reaching effect of this for-hire revenue supplement to the economics of private carrier transportation. He pointed to the fact that the Interstate Commerce Act had never contemplated that private carriers should be permitted to supplement their income by the outbound or backhaul transportation of exempt agricultural commodities or any other type of transportation for-hire.

At this point, Mr. Chairman, a lot of our private carrier representatives will say that if the for-hire trucking industry, or the for-hire industry get what they seek here a man will not be able to get his laundry returned to him from the laundry.

Here we are not talking about delivery from the laundry, we are talking about over-the-road transportation and not those things, and I believe that those can be taken care of by proper legislative language.

Senator SMATHERS. You do not know of any laundry trucks that bring back these anyway, do you?

Mr. ROSENBAUM. No, sir. In mid-September, when Senator Smathers introduced S. 2560, he called upon representatives of the trucking and railroad industries, among others, to meet with the staff of the Subcommittee on Surface Transportation during the recess of Congress to make suggestions and offer amendments to the proposed legislation.

He indicated further that all legitimate operators have a common interest in this problem which supersedes intermodal differences.

Pursuant to this invitation, representatives of the Regular Common Carrier Conference and the Association of American Railroads sat down together, made a joint preparation, and made a joint visit to the subcommittee staff, where it was presented and discussed.

Mr. Harry J. Breithaupt, Jr., representing the AAR, who made another effective statement yesterday, has just preceded me here today with another effective statement bearing upon the deep and serious inroads which the for-hire transportation performed by private carriers has made into the economic health of the regulated for-hire carrier system. He has also proposed certain corrective measures.

On behalf of the motor common carriers of general freight and the carriers represented by the named conferences, I wish to vigorously join with and support the position of the railroads as presented by Messrs. Moloney and Breithaupt concerning the field of private carriage as well as their endorsement of Recommendations Nos. 1 and 2 as contained in the latest Annual Report of the Interstate Commerce Commission.

I might say for the record at this point, Mr. Chairman, that with respect to the civil forfeiture provisions of S. 2560 in Committee Print No. 1, we support those as Mr. Pinkney did here yesterday and not those that are in S. 2764.

This may be the first time that a large and important group of the motor carrier industry and representatives of the railroads have been able to sit down together and lay aside, for the moment, those matters upon which they might differ and agree to press forward on a common front with respect to certain important legislative objectives.

It has been said that "necessity is the mother of invention," but for the sake of emphasis, let me reach even beyond this quotation, "the will to survive represents one of the strongest motivations known to man" and believe me, the survival of the regulated for-hire carrier industry is the issue which is at stake before this subcommittee.

I need not repeat the wide variety of examples set forth by the railroads in their testimony concerning the many facets of for-hire transportation being performed under the guise of and within the framework of private carrier operations.

I would, however, like to indicate how the broad aims of the national transportation policy and the act to regulate commerce are being frustrated and the franchised carrier system destroyed by the widespread and rapidly expanding for-hire transportation activities

of those who purport to be beyond the reach of that act and neither have, nor accept any responsibilities for the transportation of the public freight.

The national transportation policy contemplates the promotion and the preservation of an adequate, economical, and safe transportation system by all modes so that this total regulated transportation system may be able to meet the needs of the commerce, the postal service, and the national defense of our country.

If this concept is to have meaning, it is elementary that, in the absence of overwhelming circumstances to the contrary, all of the basic for-hire competition in the transportation field must also be regulated. Certainly one type of exempt carriage should not be allowed to take advantage of other exemption provisions so as to produce for their private benefit a well-balanced carrier service—especially when this private benefit is at the expense of the system of transportation upon which the public must rely.

Since the advent of motor carrier regulation the Commission has generally denied private carriers the right to obtain certificated authority as a supplement to their private carrier operations. In the few instances where such dual operations have been authorized, conditions have been imposed requiring that they be accounted for and operated separately.

In recent years, however, despite certain legal deterrents, more and more of the traffic departments of the larger business enterprises in our country have seen fit to convince their top management that at least to some extent they should dabble into the field of private carriage.

This is especially true with respect to the transportation of their higher rated freight. Most have been willing to leave to the regulated carrier system their less-truckload and less-carload freight, their irregular movements, and their low-rated freight.

Once they have invested their money and have taken this long step; once they have added these additional problems to their working day, many have found that the pot of gold at the end of the rainbow is really only an illusion—that the grass was not really as green in the other pastures as it had appeared. The empty mileage, the added employees, the partial use of their transportation forces, the maintenance of equipment, and many other factors, have been found to pose extensive problems. Being already in the transportation business, however, most are determined to see it succeed.

Then comes the search for gimmicks, commodities to buy and sell, methods of trip leasing equipment and drivers, the hunt for backhaul transportation of agricultural or other exempt commodities, all behind a facade of the deep gray twilight which has so easily served to obscure their identity and their overall methods of operation.

Thus, many reputable companies which started into private carriage with the best of good faith have suddenly found themselves deep in the quagmire of the gray area, after a step-by-step advance in constant search of finding additional ways of making their private transportation business pay its own way.

Unfortunately, there have been many others who have charged into pseudoprivate carriage with full knowledge at the outset that they would take advantage of all of the loopholes.

They did not intend to put bona fide drivers on their payroll, or to own and be fully responsible for their equipment, or to limit themselves against the hauling of for-hire freight.

We have been passing through a decade which has witnessed the progressive growth of a stealthy and rather obscure force, which has been totally antagonistic to the health of the franchised carrier system. Its identity and scope has been concealed by a total lack of specific information, even by the agency that is charged with the responsibility of fostering a sound, regulated transportation industry.

About 3 years ago the problem became so menacing that it commanded the attention of the Congress and the Interstate Commerce Commission. The Congress sought to reinforce section 203(c) of the act so as to make it plain that for-hire transportation of the public freight was not to be used to subsidize the revenues of private motor carriers.

The Congress attempted to make it plain that business enterprises hauling their own freight may do so only so long as that transportation is in the furtherance of a primary business enterprise other than transportation.

Unfortunately, this very plain language did not seem to deter those who would buy, sell, and transport property unrelated to their primary business enterprise; it did not require that the vehicle driver be a bona fide full-time employee of the businessman; it did not prevent the trip leasing of equipment and drivers; it did not prevent the trip leasing of equipment and drivers; it did not prevent the payment of owner-drivers on a percentage of the transportation revenue basis; it did not require that the vehicle be operated solely and exclusively at the responsibility of the businessman indulging in private carriage.

Giving due credit to the Interstate Commerce Commission, it should be stated that it likewise launched an enforcement program seeking through its channels of due process to make it more difficult for private carriers to indulge in these gimmicks to the detriment of the regulated carrier system which the Commission is charged with preserving.

Over the past few years a series of sound legal precedents have been slowly formulated in an effort to solve this growing problem. Since, however, private carriers are not precluded by statute from doing the specific things just mentioned, and since they are not required to register or identify themselves with the Commission, the decisional process in individual cases has required the development of administrative criteria under which true private carriage could be tested, after the fact, and after they can be located.

When the Commission finds a private carrier activity to possess the attributes of for-hire carriage which the act requires to be authorized, it usually issues a cease-and-desist order.

Individual cases, however, often are susceptible to long reviews by the courts. And what is often worse, by making a small adjustment in the factual situation surrounding such an operation, or by shifting from a question of buy and sell to a question of lease, or by shifting any one of the criteria applying to either, the activity might no longer fall within the four corners of the cease-and-desist order.

In this circumstance the proceeding would require a brandnew investigation, a brandnew examination of criteria, and many months later, a brandnew cease-and-desist order.

There are many sources of unregulated equipment and drivers available for unregulated exploitation under the guise of pseudo-private carriage; much of it comes from leasing companies and much comes from those who originate loads of exempt commodities from distant agricultural areas.

In this latter respect, the Interstate Commerce Commission in its recommendation No. 2, as contained in its 75th annual report to the Congress, is attempting to solve legislatively a part of the problem by restricting the scope of the agricultural and other commodity exemptions.

It thereby seeks to maintain direct assistance to farmers, ranchers, and fishermen as the goal of the exemption. At the same time it would cut back the enormous inventory of drivers with empty equipment, many miles from their home base, which now supplies nourishment and vigor to pseudoprivate carriage and spells economic chaos to the regulated for-hire carrier upon which the public must depend for the transportation of its freight.

In connection with its recommendation No. 2, the Commission made the following comment:

> Thus, not only are the authorized carriers losing substantial amounts of exempt commodity traffic, but even more serious is the loss of such high-grade traffic as manufactured goods to the many private carriers who must depend upon revenue backhauls to defray the cost of their operations. Without such backhauls, available largely because of the exemptions, and often at amounts barely sufficient to cover the costs of the return trip, private carriage would not, in many instances, be financially feasible. Authorized carriers, of course, find it difficult, if not impossible, to compete with such marginal operations.
>
> In addition to fostering the growth of exempt and private carriage, the exemptions continue to be a breeding ground for schemes and devices to engage in unlawful for-hire transportation under the cloak of legitimate private carriage. Faced with cutthroat competition and the prospect of empty backhauls, the exempt commodity hauler, and frequently the private carrier, will, in order to squeeze out a small profit or to cover return-trip expenses, resort to such subterfuges as "buy and sell" or "equipment lease-driver service" arrangements in an attempt to circumvent regulation.

The Commission goes on at some length in a strong and well-supported statement to justify the agricultural restriction which it recommends. Its recommendation No. 1, proposing that agricultural cooperatives and shipper associations must prove their eligibility for exemption before commencing operations, is also a very sound proposal. We support these recommendations with all of our vigor.

In summarizing this phase of the regulated for-hire carrier problems and in proposing a legislative program for its correction, it is elementary that this carrier system cannot remain strong if the several modes are to be relegated to the role of standby carriers, with shipper after shipper transferring the profitable parts of their transportation business into private carriage and being allowed to subsidize that private carriage by the supplemental transportation of for-hire freight.

While true private carriage is certainly a privilege of private business—as I stated earlier, the businessmen who take that step neither have, nor accept any responsibility for the transportation of the public freight. They add nothing to the inventory of our available regulated carrier service. They are not an ascertainable transport stockpile, available for our national defense. They, thus, must be barred from subsidy awards or for-hire traffic at the expense of the

authorized carrier system and even at the expense of their business competitors who must look to the adequacy and permanence of that system for the transportation services which they need.

These are fundamental concepts, even without attempting to recognize that all of the Nation's business enterprises might be expected to accept some measure of responsibility for maintaining a sound system of public transportation.

We do not urge that the definition of "private carriage" be changed. We feel very strongly, however, that section 203(c) of the act, which contains the so-called primary business test, needs to be strengthened by precluding the transportation of exempt commodities; by requiring that the vehicles used shall be owned or controlled exclusively by those who would operate as private carriers; that such vehicles be operated solely and exclusively by the bona fide employees of such persons; and that neither the employment nor the compensation of such employees should be based upon the vehicle-miles or ton-miles operated.

Suggested statutory language giving effect to these thoughts was submitted to the subcommittee staff at the meeting previously mentioned.

In conclusion, there is one other very important recommendation dealing with this subject which I would like to leave with this committee. If any regulatory statute of a remedial nature is to have force, those who would escape its impact, but who are privileged to conduct competing operations, must be identified. If those with shady operations are to be driven from under the mantle of the gray area where many of their activities have been obscured, private carriers must be required to identify themselves by a simple registration procedure with the Interstate Commerce Commission.

Those who are conducting bona fide private carrier operations should have nothing to fear or hide. Those who are not bona fide—those whose operations are tinged with gray—represent a very large part of the scope and cause of this inquiry.

I would like to say in closing, and speaking only for the Regular and the Irregular Route Common Carrier Conferences, we concur in the ATA statement presented earlier by Mr. James F. Pinkney, which was in general support of S. 2560.

We feel, however, that the additional matters which I have stressed are urgently in need of legislative attention.

Mr. Chairman, if I may depart from the written thing, at yesterday's hearing the witness for the Farm Bureau, Mr. Matt Triggs, I believe, opposed the registration of for-hire carriers of exempt commodities, and I think his reasons were that he did not think it would serve any useful purpose, that we could get this same information or the Commission could get it from the Treasury Department.

Well, the people that are causing the trouble, the trucks that are causing the trouble are not even paying taxes and it may be if we had this registration it might even increase the revenue a little bit.

I am thinking about the highway tax fund, the user taxes, and so forth.

I want to express our appreciation for being here, Mr. Chairman.

Senator SMATHERS. Mr. Rosenbaum, are you familiar with a recent case where the ICC brought action against a shipper for having

shipped goods knowingly and illegally with a carrier contrary to the law? Are you familiar with that?

Mr. ROSENBAUM. I don't know the exact case you refer to but the Commission here in the last few years has been very active in going after shippers very actively but for aiding and abetting in these things.

Senator SMATHERS. Do you know what the maximum penalty is that can be levied against a shipper if he is found guilty of having shipped knowingly and illegally?

Mr. ROSENBAUM. May I ask Mr. Brady?

Mr. BRADY. I believe it is $1,000 for an offense. There was one over in Baltimore just recently where the shipper was taken into court and fined. Usually the Commission issues a cease-and-desist order against them. There has only been one or two cases where they have actually taken the shippers into court recently and have been fined, and the fine, while it is a deterrent, is not a sufficient deterrent at this time and the amount that the law provides—let me check that for you, Senator.

Senator SMATHERS. Why wouldn't it be a good idea to make that penalty such that they could not charge it off as just a mere expense of doing business? As you talked there we talked here and it seemed to me that if we put some greater responsibility on the shipper himself to determine who properly can carry and who properly cannot carry that we would have at least taken some step in the direction of eliminating these illegal carriers.

I just wondered if you had any comments about that?

Mr. ROSENBAUM. I think it is definitely needed. I think if we are sincere in saying that the country needs a sound transportation system I think it is everybody's responsibility to see that one is maintained.

You hear speech after speech of top executives of these companies saying that everything must be done to keep transportation in the hands of private enterprise.

Well, we are going to have to get some support from that side, too, if it is going to stay in the hands of private enterprise.

They certainly can't exist in private enterprise if they exist as standby carriers. I mean motor carriers, all of them.

Senator SMATHERS. It occurs to me that sometimes an innocent person who wants to get some goods shipped goes to the carrier and is not at all familiar with the rules and regulations. He doesn't know the difference between private carriers and regular carriers, this is sort of a specialized field. You can get out of this field as I have done and you can find people who don't know. You talk about an irregular carrier and a regular carrier, but they have no idea what you are talking about. They are very fine business people. They go to men to get their goods shipped and he might lease, buy or sell; he can do any one of these things so long as he gets it there.

He is actually the man who contributes to and is a part of the fact. He is sort of the master mind in some fashion. It would seem to me that we ought to direct some attention toward shippers who permit this sort of thing to go on; who engage in this sort of operation.

Mr. ROSENBAUM. That truck wouldn't be on the highway if it wasn't for the shipper giving him the load.

Senator SMATHERS. He is the source of much of the trouble, it would appear to me, and I don't know too much about this business. What is the penalty there?

Mr. BRADY. The penalty is under section 222(c), the worst penalty they can apply against the shipper is $200, a minimum of $200, not more than $500 for the first offense, not less than $200 nor more than $2,000 for subsequent offenses.

Senator SMATHERS. Not less than $200 or more than $2,000 for subsequent offenses?

Mr. BRADY. Yes.

Senator SMATHERS. Can the ICC do that on its own without going into the courts to prove it?

Mr. BRADY. No, it has to go into court. They also have the injunctive relief avenue that they have utilized more because it is much more difficult to prove the willful and knowing——

Senator SMATHERS. In other words, if I am a shipper, the Commission would have to establish the fact and then go to the U.S. attorney?

Mr. BRADY. That is correct.

Senator SMATHERS. And take me before the U.S. District Court where I would then be tried, which takes 2 or 3 years?

Mr. BRADY. That is correct, there have been very few instances where the Commission has successfully prosecuted shippers, although they have in the instance that you mentioned and there was one over here in Baltimore not long ago.

Senator SMATHERS. I think that most shippers, like most everybody else, want to do business legitimately but the trouble is that there are some few who spoil it for everybody. I think that the legitimate shippers wouldn't mind a really stiff penalty. The legitimate shippers don't like the illegitimate shippers because they cut in on the legitimate shippers. I think if we could devise some method to put the spotlight on those fellows we would probably be getting at the source of the problem better than we would be by picking up some poor truckdriver or something like that who really may be a one-truck or two-truck man who is in some instances pretty ignorant of the laws.

Of course, those are the fellows that don't get hurt too badly anyway.

The main point I wanted was that the maximum was $2,000 for the second offense.

Mr. BRADY. That is right, the first offense the maximum is $500.

Senator SMATHERS. There is no such thing as revoking and throwing him out of the league, so to speak.

Mr. BRADY. He is not in any league, he just kind of floats around.

Senator SMATHERS. All right, sir. Thank you very much.

Mr. Grinstein wants to ask you a couple of questions.

Mr. GRINSTEIN. When you referred to subterfuges such as "buy and sell" or "equipment lease driver service," are those things that are legal now even though they are subterfuges, or or they things that an owner of equipment can engage in legally?

Mr. ROSENBAUM. No. When the Commission in the past few years has been finding that buy and sell, and fictitious leasing and so forth, are illegal.

Mr. GRINSTEIN. So that the Commission can now find that they are illegal. Does the Commission have at the present time adequate tools to handle these cases that turn on buy and sell or other subterfuges?

Mr. ROSENBAUM. Are you asking me if they have the manpower?

Mr. GRINSTEIN. No, I was thinking, do they have the legal authority?

Mr. ROSENBAUM. No, that is the reason we are suggesting some of these things here.

Mr. GRINSTEIN. This would completely cut them off, I take it?

Mr. ROSENBAUM. Yes, sir.

Mr. GRINSTEIN. But if they are already illegal the question would be is the existing legal authority adequate to deal with them now?

Mr. ROSENBAUM. We don't think it is adequate and that this here would be a big help.

Mr. BRADY. They are encouraged now by believing that they can always reinforce their private carrier operations with something else if they need to, they don't like to dip that deep but they will if they need to before they show a deficit on their so-called transportation balance sheet.

Mr. GRINSTEIN. I was wondering if there was an alternative way of going at the same problem perhaps by increasing or stiffening the penalty.

Mr. ROSENBAUM. I think increased penalties always help, but I think this here would give the Commission a better yardstick so that we wouldn't have these long, drawn-out proceedings and be tied up in litigation.

Senator SMATHERS. Let me ask you a question right there as a lawyer, who was with the Commission all these years, is the Commission in a position to place this fine we are talking about on its own motion without an appeal to the District Court? Of course, I don't know that you could ever do this. But on its own initiative can it levy a fine of $500 and collect it or does it have to go into the courts?

Mr. ROSENBAUM. It has to go through the courts and through the Department of Justice in most cases.

Mr. BRADY. You have to convince the U.S. attorney to prosecute for you.

Senator SMATHERS. That is where we have a delay and device by which these people can avoid any action actually taken against them. I used to be an attorney, I know you are always running 3 and 4 years behind in your cases. It has been pretty well established legally, has it not, that the Commission can revoke licenses?

Mr. ROSENBAUM. Operating authority.

Mr. BRADY. The people we are talking about here don't have operating authority.

Mr. ROSENBAUM. This only goes to the authorized carriers.

Senator SMATHERS. What is it that the Commission might do with these people short of having to go into court?

Mr. BRADY. They start on what they call an investigation, and they would have a hearing and they would go through 2 or 3 years and there would be an examiner's report, maybe recommending a cease and desist order, then it would go on up through the Commission, maybe still finding that a cease and desist order against the person should be entered by the Commission.

Senator SMATHERS. That is what they do now.

Mr. BRADY. That is right. That might be assaulted in court, and if it is ultimately sustained, the Commission to give effect to their cease and desist order would still have to go into court.

Senator SMATHERS. Would it not be possible to authorize the Commission to impound a truck?

Mr. BRADY. Certainly they could be vested with that authority.

Senator SMATHERS. And then put the responsibility and the initiative then on the fellow whose truck was impounded. They can do it for safety, why don't we extend that authority to this kind of a violation where they find that there has been illegal operation. In the gray area, we could give them the authority to take the truck, because if we have all this business in the gray area where people don't file income taxes, they don't do anything, they just operate as somebody described it, as a fly-by-night operation. We will never stop them just letting the Commission put a fine on them which may or may not be levied until after it has gone into the court and be argued back and forth for 2 or 3 years, and then at the maximum there is only $2,000.

If the fellow can make $40,000 in 2 years, he will gradually pay the fine of $2,000. Now, that is no particular problem. He will keep operating during that time. But if you take his instrument with which he commits this illegal act you might be able to put a stop to it.

How would that occur to you? I am just thinking out loud.

Mr. ROSENBAUM. I hadn't given that thought. I think with the situation today the Commission is going to have a very big parking lot if they are going to impound these.

Senator SMATHERS. I am convinced once they really took them that they would start cleaning the thing up pretty rapidly because nobody is going to want their truck to get impounded.

Mr. ROSENBAUM. It has to be something other than this minimum fine thing because that is just a license to do business. They are just encouraging that.

Mr. BRADY. Of course, you still have to discourage these people from buying the truck and getting out on the highway in the first instance; in other words, that is how they buy their trucks to start with.

Many of them intend originally to be legal and they get up to New York from Florida or Texas——

Senator SMATHERS. As a practical matter, we know that the farmers have such influence in this august body that you are not going to do much about decreasing and lessening the farm exemption as a matter of fact. We can get Matt Triggs in here and sort of work him over, but when Matt Triggs goes home and gets that Farm Bureau writing every Senator and every Congressman, it is an entirely different matter.

When you get in the committee and they start voting it doesn't go against the farmers. So, we have to figure out another way if you are going to accomplish anything, you just don't beat these farmers because everybody deals with the farmer, rightfully or wrongfully. The fact that the farmer doesn't directly get involved in this seems to be beside the point. The poor folks up here have the farmer believing that if this is all brought about somehow, he is going to get less for his products. It is practically impossible for him to get less for his products but it is hard for him to believe it because it has Farm Bureau on the letterhead.

Mr. ROSENBAUM. I think that was the reason for Mr. Pinkney's suggestion about limiting this to the three-axle.

Senator SMATHERS. We can do it here in the record but how many of these farmers are going to read this thing when it gets out there? I don't know of any in north Florida who are going to read that. They don't really understand it, but they say our organization is against it, therefore we have to be against it. We write you letters and so on. And it is pretty potent.

Mr. ROSENBAUM. It sure is.

Senator SMATHERS. So, it seems to me that we are not going to decrease greatly the exemption with respect to the farmer but the way to do it is the way—the people to get at is the people who are hauling those exemptions and doing it illegally, because the farmers don't own the trucks. So, we start bearing down on those people and I think you have some opportunity to maybe stop this.

Mr. GRINSTEIN. Yesterday the former chairman of the committee suggested that the agricultural exemption should be extended to the regular common carriers so that they could mingle general commodities and exempt commodities with the exempt retaining that status. Would you have any comment on that?

Mr. ROSENBAUM. The policy of our organization is that the exemptions are not in the best interest of sound regulation. We would love to see the exemption repealed but that is utopia, but we do want to see it curtailed and not extended any further to anybody.

Mr. GRINSTEIN. Even to the carriers in your conference?

Mr. ROSENBAUM. That is right.

Mr. GRINSTEIN. That is all.

Mr. ROSENBAUM. I am going to a meeting next week of my board of governors and I will be glad to discuss it further there and will report to you later on it.

Senator SMATHERS. You discuss it with them and tell them it is a little difficult for some of the people in the committee to understand. This always is a matter where we begin to get intermodal competition into it, but it is a little difficult for the committee to understand why it wouldn't be advantageous not only to the farmer but to the common carrier if he could carry 80 percent of his truck filled with what he is certificated to carry and then he could fill the 20 percent with exempt goods. It would not only be more economical for him, it would not only provide more transportation for the farmer, it would probably make a better utilization of all our equipment as well as our roads.

We know, of course, there are some angles that you people are worried about, maybe the railroads would do something, and so on, and so on, and so on. But it is tough for the committee which is trying to get at the point of transporting farm products and improve our total regulated carrier system.

I understand how you people in logic oppose it. You might just express that to them, at least the opinion of one member of the committee.

Any other questions?

Mr. GRINSTEIN. No, sir.

Senator SMATHERS. Thank you very much, gentlemen.

Mr. ROSENBAUM. Thank you, sir.

Senator SMATHERS. Now, Mr. Yeary, president of the Motor Commerce Association.

Mr. YEARY. Mr. Chairman, I would like permission to have my counsel, Mr. Hayes, sit with me.

Senator SMATHERS. Yes, sir.

Mr. YEARY. Mr. Chairman, before I start I would like to say that we were directed to talk only on S. 2560 and we didn't get into the ramifications of the exemptions and things of that sort.

Senator SMATHERS. Go ahead and say what you like.

STATEMENT OF EDWIN N. YEARY, PRESIDENT, YEARY TRANSFER CO., INC., LEXINGTON, KY., AND PRESIDENT OF MOTOR COMMERCE ASSOCIATION, INC.

Mr. YEARY. Mr. Chairman and members of the subcommittee, my name is Edwin N. Yeary. I am president of the Yeary Transfer Co., Inc., of Lexington, Ky. I am also president of the Motor Commerce Association, Inc.

The Motor Commerce Association is a nonprofit organization with offices in the Warner Building, Washington, D.C. It is dedicated to preserving and fostering the interests of those persons, including private carriers, who operate pursuant to exemption provisions of the Interstate Commerce Act and of persons who utilize the services of those operating under such provisions.

The Yeary Transfer Co. is a motor carrier engaged in the interstate transportation of fertilizer and many different agricultural commodities and products. A portion of our operations are conducted pursuant to certificates of pulic convenience and necessity issued by the Interstate Commerce Commission, but the bulk of our revenue is derived from operations conducted pursuant to the exemption provided by section 203(b)(6) of the Interstate Commerce Act.

The proposed legislation, S. 2560, as introduced, would seriously hamper lawful operations of exempt and private carriers because it would provide the means by which these carriers could be harassed by competitors, including certificated motor carriers, and by the Interstate Commerce Commission. It would also serve to impose additional unnecessary costs upon the exempt and private carriers. For these reasons, we are unalterably opposed to enactment of S. 2560 as it was introduced.

I will not detail our objections to S. 2560, as introduced, since the release of January 24, 1962, quotes Senator Smathers as hoping that all witnesses "will direct their testimony to the committee print, and not to S. 2560, as introduced." In view of this fact, we desire to be heard further if the committee intends to give consideration to S. 2560, as introduced.

The committee print of the bill removes a number of the objectionable features of the original bill. However, it also contains objectionable features. For the sake of clarity I will briefly discuss each section of the proposed legislation and state particular provisions which we oppose.

Section 1 of the bill, as introduced, would result in extension of the Interstate Commerce Commission's jurisdiction with respect to exempt and private carriers. Any action that would have this effect

constitutes a threat to the well-being of such carriers. Therefore, we are gratified to note that the amendments made by the committee print would restrict the application of this section to carriers holding a certificate or permit issued by the Interstate Commerce Commission.

Senator SMATHERS. Mr. Yeary, I want you to be perfectly frank and candid because we are trying to learn a lot about your business. I don't know, and you might help me get some education and elucidation. You say here that any action that would have the effect of extending the Interstate Commerce Commission's jurisdiction would be a threat to the well-being of such carriers. Now, how do you justify that kind of a statement?

Mr. YEARY. I think as we proceed our statement will clear some of those things for us.

Senator SMATHERS. All right. You go ahead.

Mr. YEARY. However, the language of the committee print raises a question as to the effect upon a person who engages in exempt transportation in or through some States but who engages in transportation pursuant to a certificate or permit in or through other States. This section should have no application to exempt operation within or through particular States even though the same carrier operates under Commission authorization in other areas. This result could be assured by striking the language which appears on page 9, lines 6 through 12, of the committee print and substituting the following language:

* * * and the following: "but if any State requires any motor carrier operating in interstate or foreign commerce within the borders of that State pursuant to a certificate of public convenience and necessity or a permit issued by the Interstate Commerce Commission."

Section 2 of S. 2560, as introduced, would confer the "right to sue" for violations of part II of the Interstate Commerce Act and any regulation issued under that part upon private persons, including rail and certificated motor carriers. Curiously, the provision specifically provides that common and contract carriers may not be made defendants in any such suit. The committee print would alter this section, as introduced, by providing that the "right to sue" shall be restricted to those persons who are injured by alleged violations. It would further restrict the "right to sue" to those situations where there is a "clear and patent" violation of one of the operating rights provisions of part II or a rule issued under such provisions.

Clearly, the changes proposed by the committee print represent an improvement but they do not go far enough. There still would be nothing to prevent or even deter the institution of harassment-type suits against exempt and private carriers. It is true that the changes suggested by the committee print would make it more difficult for plaintiffs to secure relief because they would first have to prove that they were injured by the alleged violation and then that the violation was "clear and patent." However, such issues could only be decided, in the usual case, after trial upon the merits. Therefore, exempt and private carriers could be subjected to harrassment-type litigation with resultant expense, inconvenience and loss even though they might ultimately prevail.

Mr. M. T. Richmond, president of the Common Carrier Conference, testifying before this subcommittee on June 28, 1961, stated that if certificated motor carriers—

> should be subjected to injunctive proceedings in the Federal courts by persons other than the Interstate Commerce Commission, or its duly authorized agents, that Pandora's box will be opened as far as the interest of the motor carrier industry is concerned. Such a right would place a substantial weapon in the hands of a competitor so as to harass the operations of a motor carrier and would result in endless litigation before the Federal courts.

We wholeheartedly subscribe to this statement of Mr. Richmond. It is equally applicable to the situation that exempt and private carriers will find themselves in if the right to bring injunctive proceedings for violation of any section of the Interstate Commerce Act or any rule or regulation issued under it is conferred upon such persons as common and contract motor carriers or rail carriers. Moreover, the adverse effect upon the exempt carrier industry of this "endless litigation" will be much greater than it would be upon the certificated carrier industry which would be specifically exempted. Many exempt carriers, unlike most certificated carriers, are not endowed with sufficient financial resources to combat such suits even where there is absolutely no question but what they would ultimately prevail.

Therefore, we remain unalterably opposed to the enactment of any legislation which would confer upon private persons the right to bring judicial actions seeking enforcement of the provisions of the Interstate Commerce Act or rules and regulations issued under that act. However, we would not be opposed to such legislation if there were included provisions to assure that defendants would be indemnified for all expense, cost (including attorney's fees), damage and losses suffered as a result of a wrongfully instituted suit. One way in which such indemnification could be assured would be to require persons bringing suits under this section to file with their application for an injunction, whether temporary or otherwise, a surety bond to secure defendants against any loss, damage, expense, or cost (including attorneys' fees) which they might suffer as a result of plaintiff's having wrongfully or inequitably brought the action. The court should be specifically empowered to determine the amount of any such loss, damage, or cost and to enter judgment for that amount in favor of defendants and against plaintiffs whenever any application for an injunction shall have been denied.

Section 3 of S. 2560, as introduced, would extend the forfeiture provisions found in section 222(h) of the Interstate Commerce Act so as to cover situations involving "failure or refusal" to comply with the Commission's safety regulations or with the operating rights provisions of the act. The committee print would delete the proposed extension of the forfeiture provisions insofar as the Commission's safety regulations are concerned.

The change suggested by the committee print is commendable but is not sufficient to prevent the proposed legislation from adversely affecting those who may be engaged in lawful operation under the exemption provisions of the Interstate Commerce Act.

We have no objection to the proposal relating to the increase in the amount of forfeiture for failure or refusal to comply with orders of the Commission, to keep records required by the Commission, or to answer questions propounded by it. However, we earnestly oppose

that portion of section 3 which would extend the application of forfeiture provisions to a "failure or refusal" to comply with the provisions of section 203(c) of the act. In many situations it is virtually impossible for a person to know in advance of litigation whether the operations he is engaging in are lawful, as private carriage, or whether they are unlawful as for-hire transportation without appropriate authority. For example, in the recently decided case of *United States, et al.* v. *Drum, et al.* the Supreme Court found the defendants to have been engaged in unlawful contract carriage. However, a three-judge district court had unanimously found the transportation to be lawful private carriage. Even two members of the Supreme Court who concurred in the majority opinion specifically said that the case was a marginal one. In this situation it is unfair to impose a forfeiture upon a mere showing that a person has failed to comply with the provisions of section 203(c) and with no showing of any intent or willfulness. Yet, this is exactly the result that would flow from enactment of the third section S. 2560, even as changed by the committee print.

We are opposed to the enactment of section 3 either as originally introduced or as set forth in the committee print. We would not oppose the enactment of this section if the words "willful and knowingly" were substituted for the words "fail or refuse" on lines 19 and 20 of page 12 of the committee print. Our objections to the enactment of this section would likewise be met by deletion of the words "or who shall fail or refuse to comply with the provisions of section 203(c)," appearing on lines 19 and 20 of page 12 of the committee print.

In my opinion, the insertion of the words "not to exceed" immediately before the term "$200" on line 21 and before the term "$100" on line 23 of page 12 would be of benefit because the court would thereby be given some discretion to vary the penalty to fit the deed.

Section 4 of the bill, as introduced, would require registration with the Commission by those persons who operate under the exemption provided by section 203(b)(6) of the Interstate Commerce Act. The committee print would amend this proposed requirement by making the registration provision apply only to those 203(b)(6) carriers that operate vehicles of three or more axles. It would also exempt from the registration provisions those persons who operate vehicles of three or more axles but who engage only in casual, occasional, or reciprocal transportation.

The required registration would encompass the name, address, and number of vehicles operated. The avowed purpose is to insure that exempt carriers have adequate knowledge of the rules and regulations of the Interstate Commerce Commission respecting safety of operation and equipment and qualification and maximum hours of service of employees.

We subscribe to the sentiments expressed by Mr. Maxwell W. Wells, speaking for the Growers & Shippers League of Florida and the Florida Fruit & Vegetable Association, in testimony before this subcommittee on March 23, 1961. At that time Mr. Wells stated with

respect to the suggestion that motor vehicles engaged in interstate movements be registered with the Interstate Commerce Commission:

> We oppose any such requirement as being useless and unnecessary, imposing unreasonable additional requirements and expenses, and constituting as we see it the first step toward complete governmental regulation of what has never in history been subject to such imposition on our private and exempt transportation.

Therefore, we oppose enactment of section 4 either as originally introduced or as set forth in the committee print.

Section 5 of S. 2560 pertains only to freight forwarders. The committee print undertakes to extend the scope of S. 2560, as introduced, by conferring the right to sue for enforcement of section 210, the operating right provision of part IV, upon private persons. Enactment of such a provision is objectionable for the reasons stated during my discussion of section 2. Therefore, we oppose the enactment of the provision proposed by section 5(d) of the committee print.

We respectfully urge that your committee reject the amendments of the Interstate Commerce Act as proposed by sections 2, 3, 4, and 5(d) of the committee print of S. 2560. We further urge that no consideration be given S. 2560, as introduced, unless all interested parties are afforded the opportunity to appear and testify with respect thereto.

Thank you.

Senator SMATHERS. All right, Mr. Yeary. Thank you very much.

Let me ask you just a couple of very brief questions.

How long have you been in the trucking business?

Mr. YEARY. All my life. Ever since I have been able to work, big enough to work.

Senator SMATHERS. And all that time you have been in what amounts to the hauling of exempt commodities?

Mr. YEARY. Exempt and regulated, yes.

Senator SMATHERS. Exempt and regulated.

Mr. YEARY. I have been in most fields.

Senator SMATHERS. But are you primarily now in the unregulated or the regulated field?

Mr. YEARY. We are a class I carrier, making all reports to the Commission, and have been for several years. Primarily our business is exempt commodities of dried tobacco.

Senator SMATHERS. Are you a farmer?

Mr. YEARY. Yes, sir.

Senator SMATHERS. Do you haul your own product? Is that where you make your money in the unregulated field?

Mr. YEARY. To the market, yes.

Senator SMATHERS. But is that why you want to be in the unregulated business, because you want to haul your own product?

Mr. YEARY. No, sir; because that has been a historical setup for the truckers of Kentucky over the years and over the United States, and I would like, as you have asked me this, to tell you that there are many people in our area that have three-axle pieces of equipment that haul primarily their own stuff, their own products, grain and feed and things like that—livestock.

Senator SMATHERS. I understand that, and I'm sure that's the case, and we want to protect those people. Now, historically, you understand, though, that there have been other areas where the people

have to carry goods that are not necessarily exempt goods and that has been regulated historically.

Mr. YEARY. That's correct.

Senator SMATHERS. However, you understand the theory that if you let the people who are unregulated get out of their business in effect and get into the carriage of the regulated, nonfarm products, then they are taking business under an exempt status for which the Congress never intended them to take; isn't that right?

Mr. YEARY. I agree with you 100 percent, Senator.

Senator SMATHERS. In your experience you have known that people have done some of that, haven't you?

Mr. YEARY. Certainly.

Senator SMATHERS. You don't say we are just talking about something that really doesn't exist?

Mr. YEARY. No, sir; and I would like to say this, that I have heard the testimony here in the last few days. We certainly are one operator that history will show is not a violator.

Senator SMATHERS. I am satisfied——

Mr. YEARY. Wait until I go on a little further.

Under the setup that the Interstate Commerce Commission has today, with their roadblocks and with their setup, I say that I wouldn't dare, if I was even so minded to do so, to take out with an illegal load anywhere because——

Senator SMATHERS. That is why we are here and that's why your testimony carriers weight, because we know you are a man of substance and wouldn't do it, but you do know those things occur.

Mr. YEARY. Certainly it happens; yes, sir.

Senator SMATHERS. And you would admit, would you not, that they happen to some pretty substantial degree in some areas?

Mr. YEARY. Yes, sir.

Senator SMATHERS. And actually, as a matter of fact, as a legitimate exempt carirer your business would even be better if somehow we could stop the illegitimate carriers in your phase of the legitimate business?

Mr. YEARY. Yes, sir.

Senator SMATHERS. Actually you would have a good deal to gain if we could somehow figure out a remedy whereby we could eliminate from that transportation business the illegal carriers?

Mr. YEARY. Yes, sir.

Senator SMATHERS. And you would have no objection to that?

Mr. YEARY. No, sir.

Senator SMATHERS. The thing that you are concerned about here is that there may be some area for harassment?

Mr. YEARY. I have had it before.

Senator SMATHERS. That's the only thing you are worried about?

Mr. YEARY. That's right. I have had it before and I want to be sure to protect our group.

Senator SMATHERS. If we can satisfy you that you are not going to be harassed or draft this bill in such a fashion that it would eliminate—you can't eliminate it 100 percent—99 percent the possibility of harassment, you would be for this bill because you are against illegal operation?

Mr. YEARY. I'm against illegal operation.

Senator SMATHERS. I thought that's what you wanted to do and we are glad to have your testimony.

Mr. YEARY. Could I give you a reading on this S. 2764?

Senator SMATHERS. Go right ahead.

Mr. YEARY. On January 30, 1962, it was announced that today's hearings would encompass the provisions of S. 2764, introduced by Senator Magnuson at the request of the Interstate Commerce Commission, as well as the provisions of S. 2560. Accordingly, I would now like to state our reasons for opposing S. 2764.

The provisions of this bill are identical, in effect, with those contained in section 3 of S. 2560, as introduced. These provisions would amend section 222(h) of the Interstate Commerce Act so as to—

(1) double the amount of forfeiture provided by the present provisions;

(2) extend the application of forfeiture provisions to "failure or refusal" to comply with the operating rights provisions of the Interstate Commerce Act; and

(3) extend the application of forfeiture provisions to "failure or refusal" to comply with Commission's motor carrier safety regulations.

The forfeitures provided by this bill would be imposed not for negligence or intentional violation but for "failure or refusal" to comply.

Section 222(h) presently provides for forfeitures of $100 for each offense and $50 per day of continued "failure or refusal" to: keep records in accordance with Commission rules; to render reports required by the Commission; or to truthfully answer questions asked by the Commission. Thus, the present provisions provide a civil penalty for a limited number of specified transgressions. Examination of the specified actions which would result in forfeitures without proof of negligence or intent under the present statutory provisions shows that in each instance some degree of negligence or intent may be fairly implied. Therefore, there may be some justification for the "liability without fault" theory inherent in the present provisions of section 222(h).

The provisions of S. 2764 seek to extend this infamous idea of "liability without fault" to cases where neither negligence nor intent may be fairly implied.

Turning first to a consideration of the proposal to extend the civil forfeiture provision to cases where the Commission's motor carrier safety regulations are violated; no motor carrier can truthfully state that its vehicles are at all times in complete compliance with all of the Commission's safety regulations. If so, there would be no such thing as equipment failure while on the highways. Equipment failures, however, can and do happen to all carriers despite their most diligent efforts to avoid such occurrences. I would like to use the experience of my company, the Yeary Transfer Co., Inc., for purposes of illustration. Each and every one of our vehicles is thoroughly inspected every time it is dispatched from our terminal. If any item of equipment is found to be defective or in any way "out of compliance" with the Commission's safety regulations, it is repaired or replaced before that vehicle is allowed to leave the terminal. Despite this sincere and continuing effort to achieve and maintain full compliance with the Commission's regulations, we still experience equipment failures from time to time. If S. 2764 is enacted, we could be subjected to a for-

feiture every time such an equipment failure occurs, even though there is obviously no negligence or intent to violate. In fact, we could even be subjected to the prescribed forfeitures in instances where we could prove that the violation was caused by strangers tampering with our vehicles after they had departed our terminal. Proposed legislation which could, if enacted, have this inequitable result is unworthy of your consideration.

It is my understanding that the argument being advanced in support of S. 2764 is that its enactment will make enforcement of the motor carrier safety regulations less difficult. If so, the end does not justify the means. Persons who find themselves in violation of an agency rule through no fault of their own should not be subjected to a penalty or forfeiture just to make the job of that agency easier.

Application of the forfeiture provisions to situations involving unauthorized operation is equally objectionable. In some instances persons have engaged in particular operations in reliance upon the advice of competent counsel only to find that such operations were ultimately determined to be unlawful common or contract carriage. Certainly, any assertion that such persons are guilty of negligence or intent to violate the operating rights provisions of the Interstate Commerce Act is ridiculous. Nevertheless, the provisions of S. 2764, if enacted, would subject such persons to the forfeiture provided by section 222(h) of the Interstate Commerce Act.

The effort of the Interstate Commerce Commission to persuade Congress to extend the forfeiture provisions so as to apply to cases of "failure or refusal" to comply with the Commission motor carrier safety regulations and/or the operating rights provisions constitute nothing more than a bid to force all types of motor carriers to accept statutory and rule interpretations rendered by the Commission's Bureau of Motor Carriers. This would result from enactment of S. 2764 because the ability to dispense immunity or initiate penalty proceedings will be placed within the hands of employees of the Bureau of Motor Carriers such as district supervisors.

Certainly no one can seriously believe that a forfeiture proceeding will be brought in every instance where a vehicle is found to be "out of compliance" with the Commission's motor carrier safety regulations. Rather, such action will, no doubt, be brought only in those instances where safety inspectors or district supervisors of the Bureau of Motor Carriers so recommend. This situation will place carriers in the position of necessarily seeking to curry favor with these employees. This would not be a healthy situation.

Furthermore, many such employees have been indoctrinated with the idea that exempt and private carriers should be eliminated. The result will necessarily be that forfeiture proceeding will be brought against exempt carriers even though identical violations under virtually the same conditions will be "forgiven" where a common or contract carrier is involved. Thus, enactment of S. 2764 will accelerate the tendency toward a government of men rather than a government of laws.

We earnestly oppose enactment of S. 2764 but wish to stress that we have no opposition to an increase in penalties that apply where violations of the Interstate Commerce Act or the Commission's rules can be shown to be willful. If the intent of S. 2764 is to aid in com-

bating willfully illegal operations, the simple and straightforward manner in which to accomplish this is to amend section 222(a) so as to provide increased criminal penalties for such willful actions. This would avoid the objectionable features of S. 2764 and be just as effective in deterring illegal operations, in my opinion.

Mr. GRINSTEIN. You stated you were a farmer, Mr. Yeary, or at least in part a farmer. Would you support an extension of the agricultural commodities exemption to the railroads?

Mr. YEARY. I dont see where it would help me in any way.

Mr. GRINSTEIN. It wouldn't help you in any way?

Mr. YEARY. No, sir.

Mr. GRINSTEIN. Would it hurt you in any way?

Mr. YEARY. I don't know that it would. It would come nearer hurting my other business than it does my farm business. It certainly would hurt the common carrier, too.

Senator SMATHERS. You are here and you made a good witness and we appreciate your coming, sir.

Mr. YEARY. Thank you, Senator.

Senator SMATHERS. Thank you very much.

Now, Mr. Kingsley, the general manager of the Movers Conference of America.

All right, you may proceed any way you like, Mr. Kingsley.

STATEMENT OF THOMAS R. KINGSLEY, GENERAL MANAGER, MOVERS CONFERENCE OF AMERICA, WASHINGTON, D.C.; ACCOMPANIED BY ROBERT N. KHARASCH, GALLAND, KHARASCH, CALKINS & LIPPMAN, ATTORNEYS, WASHINGTON, D.C.

Mr. KINGSLEY. Mr. Chairman, my name is Thomas R. Kingsley, and I am general manager of the Movers Conference of America. I have with me Mr. Robert N. Kharasch, an attorney in private practice here in Washington whom we have engaged as our counsel and have asked him to sit at the witness table with me.

While my statement is made on behalf of our conference, the National Tank Truck Carriers Conference, the Local and Short Haul Carriers Conference and the Heavy-Specialized Carriers Conference all have authorized me to say they join in our views.

We have attached letters of concurrence and agreement to the back of the statement.

We greatly appreciate the opportunity of appearing before your committee. Interstate movers of household goods, to a greater extent than almost any other group of regulated carriers, feel the impact of the literally hundreds of varying requirements of licenses, permits, identifications, cards, decals, stickers, and the like. In the nature of our business, we do not operate on specified routes between named points. A household goods carrier must be prepared to meet any demand for service, from any point in the United States to any other place where the restless American citizen wants to move his home.

In order to provide service in many States—in some instances any State—the interstate mover is constantly immersed in a flood of paperwork, filing literally hundreds of forms, and continuously checking and rechecking to be sure that his company, and the vehicles he

operates, are in compliance with each and every law, regulation and requirement imposed either by the Federal Government or by the 50 States.

Mr. Chairman, if we might take just one moment to spread out a few exhibits here to more graphically illustrate what the situation is we would appreciate it very much.

These are permits that have to be obtained for one tractor trailer based in Indiana. These are all still permits that have to be obtained for a tractor trailer based in Indiana.

Senator SMATHERS. Just for the record I think we ought to say that they extend over the entire length of the tables at which the witnesses are testifying; it's obviously about 22 feet.

Mr. KINGSLEY. Thank you, Mr. Chairman. That's quite correct.

Now, every one of these apply to one tractor trailer based in Indiana. Indiana has more reciprocity with every other State in the Union than any other State, relieving it of a lot of requirements.

Senator SMATHERS. Let me ask you a question. These are certificates and things that you have to obtain operating out of Indiana, but are these certificates that permit you to operate in other States? Do they——

Mr. KINGSLEY. Not intrastate, these are for interstate operations.

Senator SMATHERS. These are all interstate?

Mr. KINGSLEY. That's right. These are the license plates. I haven't counted them.

Senator SMATHERS. Do these all go on the same truck?

Mr. KINGSLEY. On the same tractor trailer.

Senator SMATHERS. You have to have another axle for those, don't you? [Laughter.]

Mr. KINGSLEY. We are going to have to get longer length laws.

Thank you, Mr. Chairman.

Senator SMATHERS. You need your counsel for other things than to advise you.

Mr. KHARASCH. It's mainly a heavy carrier job.

Senator SMATHERS. Can I ask you a couple of questions about that? You may explain it in your statement, I don't know.

Mr. KINGSLEY. Yes, sir.

Senator SMATHERS. I'm not in the carrier business and don't know too much about them. These certificates and these licenses which you have exhibited here permit you to travel into how many States of the Union?

Mr. KINGSLEY. This is for a carrier operating out of Indiana, I think, that has 42- or 44-State operating authority.

Senator SMATHERS. So they just permit you to travel this truck all over the highways in practically every State in the Union?

Mr. KINGSLEY. Yes; that's quite true.

Senator SMATHERS. How many thousands of miles does that permit you to travel? Do you have any idea of that? In other words, it's unlimited, that truck could travel a million miles on those certificates?

Mr. KINGSLEY. No, this van might do, if it were kept busy throughout the year, 100,000 miles.

Senator SMATHERS. Do what?

Mr. KINGSLEY. 100,000 miles perhaps through the course of a year, but that would be rather high.

Senator SMATHERS. In the course of a year?

Mr. KINGSLEY. Yes.

Senator SMATHERS. But there's no limit. Conceivably if he could travel faster and further there's no limit as to how many miles he could travel now that he has this. He has carte blanche practically when he has these licenses to go anywhere, then the limitation is one of physical use of the equipment?

Mr. KINGSLEY. And the number of shipments available, the volume of business. Now, many of these States he may never get into during the course of a year.

Senator SMATHERS. But the point is, this which is itself impressive in the fact that there is a lot of paperwork, nonetheless on the other side of the coin it authorizes him to go anywhere that he can get a shipment at any time or do anything?

Mr. KHARASCH. Mr. Chairman, I think it might be interesting to note for the record that there are far more forms than this that must be filed. These are merely the registration and trip permits and license plates that you see. There are monthly forms, there are quarterly forms, there are annual forms, there are all sorts of layer upon layer of tax forms, fuel taxes and all the rest. This is just the basic operating authority, so to speak.

Senator SMATHERS. Well, that's rather impressive, and let me ask you this now. Is this typical of only the carrier of the type that you are, the household goods movers group, or is this typical of all regulated carriers?

Mr. KINGSLEY. No, you would find that movers have generally a much broader operating authority than other types of carriers certificated or permitted by the Interstate Commerce Commission.

Senator SMATHERS. All right. Let me ask you this. This is not so unprofitable and burdensome to you that you want to give up the business?

Mr. KINGSLEY. Senator, I think perhaps that we have seen an attrition in the number of movers because of this over the past years.

Senator SMATHERS. Have you?

Mr. KINGSLEY. Yes.

Senator SMATHERS. You think there are less household movers today and doing less household moving by trucks than there were 10 years ago?

Mr. KINGSLEY. When I joined with the movers in 1949 there were approximately 4,600 certificated by the Interstate Commerce Commission; today the number is considerably less than that, and the movers have had to concentrate in administrative units really to handle problems of this kind.

Senator SMATHERS. Do you attribute that to the fact that it is all because of the licenses they have had to get? Is that the reason there are less railroads than there were 20 years ago and the reasons we have less airlines than we had 20 years ago—because of the paperwork we have to do?

Mr. KINGSLEY. Senator, it's a very good factor.

Senator SMATHERS. You think if we can eliminate some of the paperwork that we will have more household movers and more airlines and more railroads?

Mr. KINGSLEY. In order to handle this type of activity you have to have a fairly large unit to do it.

Senator SMATHERS. In other words, this is burdensome and irksome, with that I will agree, but you and I can debate that this is what puts people out of business. I don't necessarily agree to that, I think it irks them terribly but I imagine you will be in business for quite a little while.

Mr. KINGSLEY. It puts the smaller units out of business, Senator; it leaves them so alternative but to join up with larger units or to get out.

Senator SMATHERS. You know, we have less daily newspapers. Ten years ago we had 50 percent more daily newspapers than we have today.

Mr. KINGSLEY. That is true.

Senator SMATHERS. And it's a regrettable fact, but they are not going out of business because of the forms they have to fill out, necessarily; it is because of the general competitive situation. I'm on the Small Business Committee and we don't like the fact that small businesses and the small businessman are disappearing in America. But the fact of the matter is that it's not totally because of the forms he has to fill out. Because of the little capital he has, he's not able to make the additions and improvements and do the things the big businessman is able to do. In fact, the tax laws are against him in a great many respects.

You go ahead. This is a very impressive thing, but as impressive as it is I think it ought to be pointed out that this gives you open sesame to practically any place you want to go throughout the United States.

Mr. KINGSLEY. Thank you, Mr. Chairman.

The resulting burden, in relation to the volume of business done, is comparatively greater for movers than for most other motor carriers; the financial and administrative costs of compliance are rapidly approaching the point where the moving business economically cannot support the superstructure of multiple regulation. Hence, we have, and have had for years, a lively and continuing interest in simple, rational standards of regulation.

With this explanation of our interest, we would like to discuss section 1 of S. 2560. We begin with the assumption that all of us interested in transportation, whether regulating or regulated, agree on some basic principles:

Our first principle is that our country's best interest, and our own best interest, lies in the maintenance of a strong, efficient national transportation system, with no unnecessary impediments to the free flow of commerce. This is one country, one common market, and we want to keep it that way.

Second, we believe in proper regulation, and proper regulation includes the protection of the legitimate, certificated, and regulated carriers from unfair and unregulated competition.

Third, we believe the aim of all regulation should be to promote our common goals. Regulation is never good in itself, but is good because of what it can achieve.

The provisions in section 1 of S. 2560 looking toward uniformity in State requirements reflect a goal familiar to us through long experience. We have worked hard for many years in many fields to achieve uniformity among the States. The present burden of mul-

tiple forms and permits have converted each truck cab into a filing cabinet and made each driver into a bookkeeper and filing clerk. In this connection it is making it hard to keep drivers because of this.

We know well what S. 2560 calls burdens "financial, administrative, or otherwise," and we think the goal of lessening these burdens is unquestionably good. Also, the proposed procedure for consultation among the ICC, State regulatory bodies, and carriers, whereby each interest can consider the needs and problems of all, offers a bright hope for fostering a new spirit of cooperation. Thus, our comments on section 1 are directed not to the end, but to the means. Based on our careful consideration of the section, we believe some modifications in the means will better serve the end of the legislation.

Consider first the reference to State requirements that interstate carriers register their ICC certificates and identify their vehicles. Obviously, it is desirable to identify the legitimate, certificated, interstate carrier, whose service has been found by the ICC to be in the national interest.

The fact is that this identification is made, and proper notice is now given, to all States. Under present Federal law, section 205(e) of the Interstate Commerce Act, every interested State is notified by the ICC when an application for a certificate is filed. Moreover, every interested State is given a copy of every certificate granted. In addition, the ICC requires that every truck of every certificated carrier display the so-called MC number identifying that truck as being operated by the carrier holding that particular certificate. Thus, all States know what interstate authority has been granted, and every truck is a rolling advertisement of the fact that it is operating under proper authority.

In spite of this, in many States, but by no means all, the practice has grown up of requiring authorized interstate carriers to repeat the identical information, over and over. Thus, many States require carriers to register certificates and these are certificates which States already possess. This registration is accompained by the usual forms, in mixed sizes and shapes, and, of course, fees in varying amounts, renewal fees, and reports are required.

It is important to note here that there never is, and there never can be, a question of a State not accepting or honoring an ICC certificate. As is universally recognized, under our Federal system, the authority granted by Congress through the ICC cannot be restricted. Thus, there is no question here of any State regulation; under our Constitution there can be no other regulation of operating authority after the ICC has acted.

This registration of an ICC certificate usually results in an assignment of a new State number, different in every State, to the interstate carrier. In addition to registration, some States then require, with elaborate directions, that the State number be lettered on every truck which the interstate carrier operates in the State. The Federal MC number, already painted on the cab, must be followed by a string of individual State numbers. Again, however, all the numbers signify the identical thing—that the ICC has issued certain interstate operating authority.

Aside from the substantial costs of filling out forms, filing, renewing, payment of fees, and the costs of painting numbers, say $30 a truck for painting each new identification, the practice of multiple

identification has a more serious result. As an illustration, suppose that in the course of a cross-country run one of the dozen or so State numbers become illegible. This can happen when a van scrapes against low-hanging branches in residential areas where people have to drive. The driver may be a thousand miles from his shop; he has some family's furniture on board; he has a schedule to meet and he drives on. When he reaches the State whose own number has been defaced, a trooper notices the violation. There follows an arrest, a fine, and delay. In a sense, this example can be thought of as State regulation, by enforcement of the State's identification requirements. But in a real sense, this is not true regulation, because it is unrelated to any goal. It is sterile, not fruitful, because painting numbers on trucks is not in itself a worthwhile activity. When the basic need for information has long been satisfied, requirements for refiling what was already filed and reidentifying what was already identified, no matter how often repeated, can never yield any additional public benefit. But they can, and do, produce harm.

It is also evident that the evils of unfair competition suffered by legitimate, certificated carriers cannot be cured by placing on the legitimate, already regulated interstate carrier the burdens of refiling and reidentification. Repeating the basic notice that this is a truck of a certificated interstate carrier 50 times, or 500 times, will not advance us toward the goal of controlling the unfair competitor.

Senator SMATHERS. Let me ask a question. How often do you have to refile?

Mr. KINGSLEY. In some States, yes, Mr. Chairman. It depends on whether you are talking about registration, annual reports. I have, incidentally, a complete list of all the States.

Senator SMATHERS. What would be the majority of the States? Do they require that you reidentify, refile every year, and repaint?

Mr. KINGSLEY. I believe it's eight States require annual reports. That's the basic registration of the operating authority. It's something like 32 States that require the identification of the vehicle and most, almost all, of these States require that there be a new application each year.

Senator SMATHERS. All right.

Mr. KINGSLEY. That is, you have to file an identification sheet listing the make, model, serial number, etc., on every piece of equipment that you own.

The legitimate carrier is already handicapped because he plays by the rules. Burdening the certificated carrier by multiplying costs of filings, fees and fines, adds an economic handicap. Yet, the problem simply does not lie in what the certificated carrier is legally doing.

After mentioning registration and identification, section 1 of S. 2560 next lists insurance filings. Here again, the problem is the same. The certificated interstate carrier is required by the ICC to carry insurance. Some States repeat an insurance requirement, again with a batch of forms to be filed. Once again, however, no State requires more insurance than the ICC requires. Once again, the interstate carrier repeats, State by State, the same act of compliance, with no public benefit. And once again the problem of the uninsured fly-by-night operator cannot be solved by repetitious demands on the legitimate, certificated carrier.

Finally, section 1 mentions State requirements for filing "other securities or agreements." While the phrasing is broad, the reference may be to filing of leases. Here there is an area of some danger, beyond the danger of mere expensive repetitions already discussed. Plainly, if Congress and the ICC have laid down nationwide leasing rules for interstate carriers, this is the final word, and these are the rules that all must respect. But leases involve complex legal problems. So also, an interstate carrier's ICC authority is often stated in a complex, technical document.

Yet when such complex documents are filed in the States, and a seeming authority to interpret them is thus admitted, the danger is always present that a local officer or magistrate, who is not skilled in the art will raise a question as to interpretation of the federally approved lease, or the Federal authority granted. An actual example is the authority of a household goods carrier to carry art works requiring special handling. Such questions tend to lead to arrests and fines, all handled locally, never coming to a Federal court or the ICC for an authoritative, uniform, interpretation. There is thus the constant problem that instead of one rule for the interstate carrier, laid down by the one Federal agency established to administer one set of nationwide rules, there are growing up 50, or many more than 50 sets of rules, differing, in each State, or in each justice of the peace or magistrate's court within each State. Uniformity and certainty are lost; it is impossible to conduct a business according to the rules, because the rules are constantly changing.

Whenever there is any real question of a certificated interstate carrier exceeding its authority or violating a Federal regulation, the remedy is clear. The certificated carrier is subject to ICC jurisdiction; the ICC and its local offices are ready to receive any complaint and to enforce Federal law and regulations. This is the ICC's purpose, and its duty.

We realize, of course, that it cannot be said that the ICC's rules are perfect, and we are sure that both State regulatory bodies and carriers will want and seek changes. Because change is inevitable, the machinery for three-way consultation provided in section 1 seems to us to offer great advantages. By providing one forum, and one rule, thousands of petty, daily disputes can be avoided. In the light of the principles set forth in section 1, the needs of States and the needs of carriers can be considered, not as adversaries, but as workers toward common goals.

Accordingly, our recommendation is that the purposes of section 1 of S. 2560 be preserved, but in order to achieve these purposes, the section should be revised to say:

(1) That interstate carriers operating under ICC-granted authority shall not be required by any State to register certificates or permits, identify vehicles, file policies of insurance, or file other securities or agreements.

(2) That the ICC, giving due regard both to the needs of the States for information, and to the carriers' needs for protection from financial or administrative burdens, shall continue to prescribe rules concerning dissemination of information as to certificates, identification of vehicles, and so on.

(3) That in adopting rules on such subjects, the ICC shall consult with State regulatory bodies and with carriers, and shall review and change its rules whenever necessary.

Such a law will, we believe, recognize our common goals, recognize the need for uniformity, attend to the needs of States and the problems of the legitimate certificated interstate carriers, and be a substantial step forward in achieving a sound national transportation system.

Thank you.

Senator SMATHERS. All right, Mr. Kingsley. Thank you very much. You have been very helpful.

Let me ask you just one question. In your business do you know of instances where carriers that are not certified to carry household goods, however on backhauls, do get into your business and carry household goods and things of that nature, thereby taking your business?

Mr. KINGSLEY. Yes, we have that problem, Senator, very much. I don't know how much of it there is, but there again, once a vehicle has been acquired and perhaps the owner of that vehicle wants a backhaul or something of that kind, he is going to move like household goods. We have that problem, yes, sir; we do. We are just as anxious to have the situation tightened up as——

Senator SMATHERS. You would be, then, generally for the other sections of the bill. You have directed your remarks here primarily to section 1 of this proposed bill.

Mr. KINGSLEY. Yes.

Senator SMATHERS. You generally support the provisions in the other sections of the bill?

Mr. KINGSLEY. Yes, that's true. We are certainly in favor of tighter enforcement, and whatever is needed to accomplish it. We are in favor of tightening up a lot of these exemptions. Our only problem is the means, and we want to see that it's done in one forum; that is, the Congress of the United States.

Senator SMATHERS. Of course, the purpose of our section 1 is to encourage uniformity; how far we can go and how far as a practical matter we can go in getting it passed is something else, because there is a strong feeling of States rights and States advocacy and States privileges, although we all agree that the Constitution says that the Federal Government regulates interstate commerce. It is very difficult for us to say to the State of Virginia, for example, that you can't issue your own certificate, and so on. We have a problem there. We would like to achieve exactly what you would like to achieve, and we hope the day will come, but we have a big practical problem in that area. I'm curious about your household moving business. You find that these illegal carriers do cut into our business substantially.

Mr. KINGSLEY. Yes, we know of instances where "moonlighting" occurs——

Senator SMATHERS. Well, "moonlighting"—that's a technical term. What do you mean by "moonlighting"?

Mr. KINGSLEY. A driver owning a vehicle will pick up a shipment of household goods without any authority and transport it for some shipper, and we run into that problem.

Senator SMATHERS. He usually does it for some shipper, in your case?

Mr. KINGSLEY. Yes.

Senator SMATHERS. So, if we directed some of our efforts toward trying to bring the shipper into line, even as much as we would direct it against the carrier, then in your judgment in your particular area it might be more effective in stopping "moonlighting" or illegal carriage?

Mr. KINGSLEY. Yes, Mr. Chairman, very definitely. It's a matter of getting at the source really rather than trying to correct some of these symptoms and effects.

Senator SMATHERS. All right. You are our last witness. Do you have any questions?

Mr. GRINSTEIN. Yes.

Senator SMATHERS. Mr. Grinstein has a question.

Mr. GRINSTEIN. Do you consider the language in 2560, the Committee Print No. 1, as an improvement over the existing law or are you opposed to section 1 in any event?

Mr. KINGSLEY. Well, insofar as the purpose would be to clear up some of the administrative, financial burdens and that type of thing, we are certainly in favor of it, but it goes further than that.

Senator SMATHERS. You would be in favor of it over present law?

Mr. KINGSLEY. Well, it would certainly be an improvement in this section. However, it would pertain only to the regulated carrier, the authorized carrier, and it does nothing about the people that everybody is concerned about. It only adds to the things that the authorized carrier, the certificated carrier, who is already identified, must do.

Mr. GRINSTEIN. I take it that the point of your display here is to indicate that these State registrations must be given as a matter of right. Once you have registered and been granted authority from the Interstate Commerce Commission, all this material must be given as a matter of right by the State?

Mr. KINGSLEY. That's correct, there's no question about whether or not after the Interstate Commerce Commision has made its determination as to the need for this service by this carrier the State cannot then say that you may not operate through the State in this service. See, this is merely a formality, really. It costs the carrier a lot of money and it takes up a lot of space in the State's offices, the State commission offices.

Mr. GRINSTEIN. Why in your judgment, then, do the States require all of this?

Mr. KINGSLEY. There seems to be some feeling that if the States can require the registration of ICC operating authority this gives to the State jurisdiction over which to try the interstate carrier for any violation of its State laws. I think this is really the basic objective and this is our basic objection because we want, we would prefer to have one form in which you have your rules, your interpretation, and your complaints filed, and your determinations as to whether it is a legitimate complaint, rather than having 50 forms for the legislation, the regulation, and 125,000 forms, I think there are that many counties and municipalities throughout this country in which you have justices of the peace and magistrates interpreting these certificates of the Interstate Commerce Commission, and these leasing agreements and all the rest of it.

Mr. GRINSTEIN. There's a rather skeptical view that perhaps some of the States require this in order to raise money to support their motor vehicle commissions. Do you think that's a possibility?

Mr. KINGSLEY. Well, a lot of these things the industry has gone along with over the past years recognizing that that is possibly one of the purposes of it.

Mr. GRINSTEIN. And then the motor vehicle commission in the particular State utilizes this money in order to extend their operations against unauthorized or illegal transportation within the States. This would be a valid purpose—in other words, the regulated industry supports a motor vehicle commission that, in turn, uses its energies to combat illegal transportation.

Mr. KINGSLEY. May I say there this bears on a very important practical situation. Whereas these things may have been required in the past by 35 States and it may serve some revenue purpose incidentally or something like that, this would not be the major effort if section 1 were enacted. It would then fairly clearly establish, at least it would seem to be an admission of jurisdiction on the part of the State, to require the observance by an interstate carrier of its State laws.

Mr. GRINSTEIN. Don't they already have that, though?

Mr. KINGSLEY. You may find in three States, it depends on the personnel in the State commission.

Now, I think it is important to remember that these State utility commissioners are concerned with a great variety of activity; that is, all kinds of utility regulation, gas, water, electricity, and so forth. Occasionally you find in the State some commission people who are interested in this particular activity. You have that in Florida, you have it in Arkansas, you did have it in Illinois. It happens, I guess, occasionally in Oregon. But by and large most of the States are not particularly interested in this. You have perhaps Georgia. In Kentucky they have had some outstanding commission people in the State.

Mr. GRINSTEIN. Well, it could happen on occasion a certificated carrier, certificated by the Interstate Commerce Commission, might go off its regular route. It would be difficult for the State authorities to police that by, in each case, stopping the vehicle and seeing if it had the proper authority from the ICC. Don't these plates and these various decals provide a ready means of identifying the vehicle so that they can apprehend without stopping each vehicle, those that may not have authority to go into the State?

Mr. KINGSLEY. The State commissions have all the certificates and there's the ICC identification number on the vehicle. Now, the matter of interpreting authority is very much of an art and if there's any complaint against this certificated carrier the complaint should be filed with the ICC where proper determination can be made as to whether or not there's a violation of operating authority.

Now, if this gets before a justice of the peace or a magistrate where there are other interests and all, this may never have been properly decided by the body that has made the rules.

Mr. GRINSTEIN. I detected you are opposed to this because you consider it a harassment, a burden on the interstate carriers; on the other hand, I imagine that the States would support this as a valid utiliza-

tion of their police powers. Has this ever been tried in the courts, tested?

Mr. KINGSLEY. Not really. As I say, in the past this has been in our opinion pretty much of a revenue measure on the part of the States.

Now, we have had difficulties in Florida where the Florida commission, for example, defines the household goods definition in one way, doesn't agree with the ICC, and our carriers have been hauled before justices of the peace in the State of Florida. They have fined—we can never get it into a Federal court because of the technicalities of jurisdiction, whether because the carrier had registered in the State of Florida, the Florida commission then has acquired a jurisdiction and its own courts can determine these cases. We have always had technical difficulties in trying to get one of these cases into a Federal court.

Now, it is our view that this ought to be done through the Interstate Commerce Commission.

Mr. GRINSTEIN. One final question. The Heavy and Specialized Carriers Conference, the Local and Short Haul Carrier Conference, and the National Tank Truck Carriers, Inc., joined the testimony of the Regular Common Carrier Conference which was generally in favor of S. 2560. They also joined you in your comments on section 1. Are they on your side or the other side?

Mr. KINGSLEY. I believe their letters will demonstrate that they take the same view of section 1 that we do.

Mr. GRINSTEIN. Thank you.

Senator SMATHERS. All right, sir. Thank you very much, Mr. Kingsley.

I think we are making some progress.

The committee will stand in recess until further notice.

(Thereupon, at 12:15 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.)

(The following statements were submitted for the record:)

STATEMENT OF ANGUS MCDONALD, ASSISTANT DIRECTOR, LEGISLATIVE SERVICES DIVISION OF THE NATIONAL FARMERS UNION, IN REGARD TO S. 2560

Mr. Chairman and members of the committee, the National Farmers Union is opposed to any legislation which might result in an increase in farm costs. The agricultural exemption 206(b)(6) of the Interstate Commerce Act, insures the most flexible and economical transportation of farm commodities. Its removal or weakening would inevitably result in a decrease of farm income since farmers directly or indirectly pay for the transportation of farm commodities from the farm to the ultimate consumer. We must therefore, perforce, oppose any legislation which weakens or makes the administration of the exemption more cumbersome and burdensome to the exempt trucker.

Under section 2 of S. 2560, harassment suits might be instituted by the large carriers. Since the financial resources of the exempt carriers are much less, it is conceivable that small exempt haulers might be unfairly forced out of business. We oppose, therefore, any proposal that would permit private parties to bring suits, the purpose of which was alleged to be enforcement of the Interstate Commerce Act.

Registration of all three or more axled trucks is designed to harass exempt haulers, who are presumably utilizing the most efficient form of transportation available.

It is perhaps proper to point out that common carriers may qualify as exempt haulers if the opportunity is afforded them, and if they so desire. According to our information, many of them do take advantage of the exemption.

The revised version of S. 2560 is considerably improved, but we see no reason for supporting legislation which we consider unnecessary, and perhaps an initial attempt to weaken the agricultural exemption.

STATEMENT OF JOHN H. WALKER, EXECUTIVE DIRECTOR, SOCIETY OF AMERICAN FLORISTS AND ORNAMENTAL HORTICULTURISTS, WASHINGTON, D.C.

My name is John H. Walker, executive director of the Society of American Florists and Ornamental Horticulturists, Washington, D.C.

The Society of American Florists was organized in 1884 and was incorporated by act of Congress on March 4, 1901, as a nonprofit organization. As the national trade association of floriculture and ornamental horticulture, the society represents retailers, growers, wholesalers, and allied tradesmen. The society has in its membership, 152 affiliated organizations which are national, regional, State, and local in character.

During 1960 a special census of horticultural specialties was completed by the Bureau of the Census of the U.S. Department of Commerce. It was established that there were 11,780 flower-growing establishments in the United States engaged in commercial flower growing. This is the approximate number of establishments growing flowers commercially that were enumerated during the last special census of horticultural specialties in 1949. However, during this 10-year period the wholesale value of the product which was sold increased from $200 million to $300 million.

The floral industry is a billion-dollar industry and is the largest handicraft industry in the world. Our industry is confronted with numerous agriculture problems but probably none as important as transportation and distribution of our product. Many of our growers are equipped with trucks and haul our highly perishable products either to market or to a rail or air terminal. Many of our exempt trucks are called upon to travel hundreds of miles to market, some more than 1,500 miles to market. The exemption allows flexibility which makes the trucks readily available to pick up and deliver perishable cut flowers. This is a real necessity to the flowergrower and distributor. These service benefits are one of the principal advantages of the agricultural exemption.

Individual exempt truck-user records in our industry reveal that exempt truckers perform a faster service, serve off-line points and perform multiple stopoffs in transit. Since our floral products must be distributed to widely scattered geographical points, it is mandatory that off-line points be served.

Our industry has launched a very successful national product promotion program. Participation is voluntary. It is our belief that agricultural exemption from economic regulation of truck transportation is absolutely essential for efficient and economical marketing and for our all-industry effort to expand our markets.

As the national trade association of floriculture, we strongly oppose the elimination of the exemption for unmanufactured products of agriculture from economic regulation provided by Congress in the Motor Carrier Act of 1935.

In keeping with our feeling that there should be only such minimum regulation as is necessary to guard the public health and safety, we wish to set forth our views concerning the amended version of S. 2560. We oppose the registration of motor vehicles operating under the exemption provisions of section 203(b)(6) on the grounds that it could be a first step to complete ICC regulation. It is our contention that this information can be obtained by the ICC from other State and Federal sources at a much lower cost.

We do not object to the provision that the States adopt within 5 years uniform standards for registering, identifying, insuring, and posting facilities for motor carriers. We also would not object to the provision that the uniform standard be prescribed by the ICC. We further see no reason at this time why the Commission should not be given authority to apply in the Federal district courts for authority to enforce its provisions and to obtain injunctions against unlawful operations.

We believe that present regulations of the Motor Carrier Act have penalty provisions that are more than adequate and we strongly oppose the proposed requirements that exempt carriers file periodic financial reports or keep burdensome records.

We appreciate this opportunity to express our views concerning S. 2560.

(The following communication was submitted for the record:)

NATIONAL GRANGE,
Washington, D.C., February 5, 1962.

Hon. GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We have given much consideration to S. 2560 introduced by yourself last September. In examining your proposed legislation we failed to discover any benefit whatsoever to be derived either by the farmer or by our consumers of farm products, even though conceivably there would be benefit to certain licensed carriers and their workmen. Conversely we do find, however, that these benefits to those mentioned above tend to create a basis for real apprehension on our part as to the ultimate effect on our cost of marketing the products of agriculture and, to some extent, on the cost of living in which all of us have a very substantial interest, not alone from a selfish point of view, but from the standpoint of the welfare of our total American economy.

According to your statement in the Congressional Record, the indicated intent of S. 2560 was designed principally to remove from the highways illegal and unsafe operators of motor trucks. It is suggested that the success of such an undertaking would benefit common carriers, both rail and truck. We do not oppose such efforts but we believe that in your zeal to be constructive, the Interstate Commerce Act might be amended in a manner that would be adverse to the exempt truckers interest. Anything detrimental to the exempt trucker will increase farm costs and will, in all probability, raise food prices. We hope your committee will consider these facts carefully when recommending this legislation.

The transportation consultant of the Grange has met numerous times with representatives of other agricultural and trade groups affected by this legislation. We are informed that all of these conferees took a position of opposition to certain details contained in your bill.

We have participated also in conferences leading to the redrafting of S. 2560 and, while we admit the redrafted bill is more acceptable by far to the farming community, we are not wholly satisfied with all its provisions. The above-indicated steps were taken in compliance and, we believe, in harmony with suggestions you made when introducing this legislation.

It is not our desire here to dissect each section or item and offer either endorsement or criticism. We know that others contemplate making this type of approach and what we could say would be largely repetitious.

In deference to the fact that the Grange represents the farmer and is, likewise, much interested in total American well-being, it is our purpose to include herein a few pertinent references describing what we believe will be the effect of this legislation.

In section 2 a definite hazard exists for exempt and private carriers. Under present provisions of your bill there is nothing to prevent harrassment suits against such carriers being instituted by competitors. As you know, many exempt carriers are not in financial position to oppose such suits and, in consequence thereof they would simply go out of business and such would be to the disadvantage of the farmer.

We are opposed, therefore, to the enactment of a statute which would provide the right to file judicial actions by any person seeking enforcement of the provisions of the Interstate Commerce Act unless safeguarding provisions are included to guarantee the defendants reimbursement of all expenses attached to such litigation, should the plaintiffs bringing suits be declared in error. A surety bond to secure defendants against any loss should be one of the provisions of this legislation.

The new draft of section 4 of this legislation, if adopted without change, would perhaps appear of no great consequence, one way or another, to the farmer. Expressed differently the farmers position, generally speaking, would remain the same insofar as the transporting of unmanufactured products of agriculture being exempt from economic regulation is concerned, but there is at least one very important exception. I have specific reference to the requirement of registration before September 1 each year, of all trucks equipped with three or more axles. We respectfully request, therefore, that vehicles hauling only exempt commodities should be exempt from this provision.

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Most farm commodities are moved from farms in two-axle trucks. There are many instances, however, whereby larger trucks are employed. Frequently, tonnage from several farms, orchards, or groves are combined for shipment at the packing shed when the commodities are en route to the ultimate market. When such situations occur, even though only "exempt" commodities are involved, it would, under the present provisions of S. 2560, be compulsory in most instances to obtain the services of either a "registered" or "certified" truck with the definite prospect of higher charges as a result. This would remove a certain measure of flexibility of operation which is presently available. Certainly no agriculturist or shipper of agricultural products would obtain any benefit from this change, if adopted. Advocates of restrictions to be placed upon three-axle trucks, in our opinion, have only one reason for this inclusion; namely, the substituted use of common carrier trucks with higher charges than are now required.

No valid reason has been shown why there should be any difference in the treatment between two- and three-axle trucks. The same function and principle is involved. The three-axle truck lends itself to heavier loading and a better opportunity of the farmer to obtain a lesser transportation charge. Why should the farmer be called upon to give up this constructive possibility presently available? Part loads and complete loads of livestock often move directly from farms to stockyards via three-axle trucks. In fact, we suspect that the majority of all truckloads of livestock move via three-axle trucks. We know of no logical reason for the registration of three-axle trucks carrying exempt commodities only.

Many certificated motor carriers operate trucks equipped with three or more axles. Some of these trucks are regular haulers of exempt commodities. All certificated carriers enjoy the privilege of hauling exempt commodities.

Those who seek to eliminate all agricultural exemptions doubtless hope that if exempt carriers are required by Federal statute to submit to any set of rules or regulations that may be adopted and enforced by a regulatory agency, irrespective of how minor they may be, they will be discouraged from operating as casual, occasional, or reciprocal carriers. In the aggregate, they do haul considerable exempt tonnage and the preservation of their right to operate in this manner is highly important, not alone from the standpoint of holding down farmers' cost of production and marketing, but from the standpoint of maintaining the tremendous bargain for American consumers available from American agriculture.

Incidentally, the phrases included in the bill, such as "uniform standards" and "as the Commission may deem necessary" would permit carte blanche authority to a regulatory agency. We would very much prefer having the standards and rules spelled out rather than the unlimited and unknown extent to which such authority may extend.

It is respectfully requested, Mr. Chairman, that this letter form a part of the record in S. 2560 and that it be produced in your committee's printed report as evidence of our concern lest farm costs be further increased, and of our similar concern that we avoid the possibility of unwittingly or unnecessarily lessening the prospect of holding the line in our total American price level at a very critical point in U.S. history when our relationships with the rest of the world depend so clearly on our keeping American industry, as well as American agriculture, in as high a competitive position as it is possible for us to do.

Respectfully yours,

HERSCHEL D. NEWSOM, *Master.*

CONTROL OF ILLEGAL INTERSTATE MOTOR CARRIER TRANSPORTATION

(Amendments to Interstate Commerce Act)

TUESDAY, APRIL 24, 1962

U.S. SENATE,
COMMITTEE ON COMMERCE,
SURFACE TRANSPORTATION SUBCOMMITTEE,
Washington, D.C.

The subcommittee was called to order, pursuant to notice, at 10:20 a.m., in room 5110, New Senate Office Building, Hon. George A. Smathers presiding.

Senator SMATHERS. Ladies and gentlemen, the meeting will come to order.

I have called the hearings on S. 2560 and S. 2764 for today and tomorrow to see if we can achieve some measure of agreement among the parties involved. These proposals have been pending for a long time—they have been studied, discussed, revised and restudied—and we are anxious to get some adequate revisions of the Interstate Commerce Act to better control unlawful transportation.

The President of the United States in his transportation message transmitted on April 5 recommended cooperative enforcement agreements between Federal and State agencies, more uniform State laws affecting interstate highway commerce, and civil forfeiture provisions for violations of the act. These three recommendations are either in the bill, as in the case of civil forfeiture and uniformity of State laws, or can be included with minor amendment, as in the case of cooperative Federal-State enforcement activities.

It is my judgment, therefore, that we should get moving as soon as possible.

In addition, I have had printed Committee Print No. 2 of S. 2560, which embodies mainly a revision of section 5 of this measure. Section 5 relates to regulation of forwarders of household goods. In the original version, forwarders were brought under the jurisdiction of the act but the industry was limited in its size by entry controls, including a "grandfather" provision. The revised version in Committee Print No. 2 has no entry control, but it does bring forwarders under the act through economic regulation as well as a licensing provision calling for a renewable annual permit.

With respect to this section 5, we hope to get both approaches on the table and through testimony find out which one better protects the public interest.

We are honored this morning to have as our first witness the Honorable Rupert L. Murphy, Chairman of the Interstate Commerce Commission.

Bring up whomever you like to the table.

I would like to make as a part of the record at this point the letter written by the Interstate Commerce Commission in response to a request from the committee for comments on S. 2560.

(The letter referred to follows:)

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

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: Your letter of January 25, 1962, addressed to the Chairman of the Commission and requesting comments on a bill, S. 2560 (Committee Print No. 1, dated Jan. 24, 1962), introduced by Senator Smathers, to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes, has been considered by the Commission and I am authorized to submit the following comments:

Section 1 of the revised bill would amend section 202(b) of the Interstate Commerce Act to require the Interstate Commerce Commission to establish uniform standards respecting State requirements for the registration, identification, and insurance filings of motor common and contract carriers holding operating authority from the Commission. In establishing such standards the Commission would be required to give due regard to the needs of the States for information concerning the authority and operation of such carriers, and, at the same time, consider the necessity of protecting the carriers from burdensome State requirements. The Commission would also be required to review such standards from time to time for the purpose of making such changes as it may deem necessary. Any such State requirements not conforming to the provisions of the paragraph, as amended, would be declared null and void.

Most State requirements of the nature set forth in the bill are designed to provide the States with information for use in connection with the collection of State taxes applicable to motor carriers and for the purpose of policing unlawful operations and enforcing State safety regulations. Such requirements often differ widely among the various States, and may thus be unduly burdensome on the carriers. It seems clear, therefore, that relief from a multiplicity of different State requirements through the prescription of uniform standards would be desirable. We therefore favor the general objectives of, and the approach taken in, the bill. There are, however, several changes that we wish to suggest, which, for the most part, are of a perfecting nature.

Since the imposition of any requirement may, in the broad sense, be considered to be burdensome, we suggest that the words "an undue" be substituted for the word "a" in line 4, page 10, of the bill. We are also of the view that the language in lines 17 through 19 on page 9 (items (3) and (4)) is in need of clarification. It appears that these items are intended to cover the same subject matter referred to in section 215 of the act, i.e., security for the protection of the public. While the language employed is somewhat similar to that used in section 215, no provision is made respecting requirements for approval of insurance policies or for the filing of evidence of insurance in lieu of the policies themselves. This Commission, for example, requires only the filing of evidence of insurance, not the actual policy, and some States undoubtedly do the same. We therefore recommend that item (4) be eliminated and item (3) be amended to read as follows:

"(3) to file or obtain approval of policies of insurance, surety bonds, qualifications as a self-insurer, or other securities or agreements for the protection of the public, or evidence thereof."

It is our further view that the last sentence in section 1 could be more clearly stated. We, therefore, suggest that it be amended to read along the following lines:

"Any such State requirements which do not conform to the standards established by the Commission pursuant to this paragraph shall be null and void."

While it appears that private carriers and carriers operating under the

exemptions contained in section 203(b) are intended to be excluded from the application of section 1 of the bill, there is some questions as to whether the language employed would exclude private carriers. The exception, as stated, would exclude motor carriers regulated by the Commission "solely pursuant to the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment." Since under section 204(a)(3), private carriers are also made subject to other provisions of the act, such as section 220, relative to the filing of reports and records, and section 224, relative to the identification of vehicles, it could be argued that such carriers, under a strict construction of the proposed language, would not be excluded. It is suggested, therefore, if our assumption is correct, that these provisions are not intended to cover private carriers, that the language in the exception be changed to spell out more specifically what carriers are to be excluded. This could be accomplished by changing the language in the parentheses in lines 8 through 11 on page 9 to read somewhat as follows: "(other than private carriers of property and persons conducting operations under the exemptions in section 203(b) of this part)."

We see no reason, however, for excluding private carriers of property and exempt operators from the benefits that would flow from this proposed provision. We, therefore, suggest that such carriers and operators be included. If this is done, we suggest further that the Commission be authorized to prescribe such different standards for these carriers than those prescribed for common and contract carriers as the differences in their operations may warrant. This could be accomplished by adding the following after the semicolon in line 15, page 9, of the bill: "or (in the case of any other type of motor carrier operating in interstate or foreign commerce) to register and disclose its status;" and by inserting after the period in line 6 on page 10 the following new sentence:

"In establishing such standards the Commission shall give recognition also to the differences which exist in the operations of such carriers as common carriers, contract carriers, private carriers, and carriers operating under exemptions provided for in section 203(b) of this part by promulgating such different standards for each of the classes of carriers as the differences in their operations may warrant."

Section 2 of this proposed measure would reenact section 222(b) of the act as section 222(b)(1). It would also add a new paragraph (section 222(b)(2)) providing that any person who is injured as a result of an operation by another person (except a motor carrier holding a certificate or permit under sections 206, 207, 208, 209, and 210a of pt. II) in clear and patent violation of the operating authority provisions of sections 206, 207, 209, or 211, or any rule, regulation, requirement, or order thereunder, may apply directly to a U.S. district court for an injunction to restrain such violations. At present, only the Commission or its duly authorized agent may seek injunctive relief for violations of these provisions.

Presumably, the purpose of excepting authorized carriers from the application of the proposed new paragraph is to preclude actions based on interpretations of operating authorities which, if permitted without preliminary resort to the Commission, could result in different and contrary interpretations of the same certificate. Such a result would obviously be undesirable. The exception would, of course, also have the effect of protecting authorized carriers from possible harassment by competitors.

The use of the words "clear and patent" in this proposed new paragraph would, in our opinion, create confusion and uncertainty in the law. An act which is in violation of the statute need only be characterized as a "violation." The addition of the descriptive words "clear and patent," while seemingly a refinement, would, we feel, actually produce a less definite test and would merely raise a question in the mind of the court as to what the degree of unlawfulness must be before an act could qualify as a "clear and patent" violation. Also, doubts would be created by the use of these words in one paragraph and their omission from another of the same section of the act.

While some violations of the operating authority requirements could be characterized as "clear and patent," the real problem is created by "buy and sell" devices and "leasing" arrangements entered into by some of the carriers with shippers. Seldom do such arrangements present clear and patent violations. Surrounded as they usually are by paper indicia of private carriage, such as bills of sale claimed merchandising endeavors, and signed equipment leases, it is often a formidable task to show that these trappings of private carriage are actually a disguise for unauthorized for-hire transportation. The naive or the

foolhardy may attempt clear and patent violations. The experienced violator shrouds his continuing operations in uncertainty. If, upon evidence presented, a court is convinced that unlawful for-hire operations are being conducted an injunction should issue, whether the violation is clear and patent or is of such a nature that analysis and considerable judgment must be exercised in the determination.

In our view, the use of the words "clear and patent" in this proposed paragraph reduces its value as an "auxiliary" enforcement measure to such an extent as to render it almost a nullity. We, therefore, recommend that these words be eliminated. Their elimination, however, would, we feel, give rise to other problems which could have a serious adverse effect on the Commission's own enforcement efforts. Thus, we are constrained to opposed the enactment of this new paragraph whether the "clear and patent" test is included or excluded.

With respect to the effect of the proposal on the Commission's enforcement efforts, it should be borne in mind that a private complainant normally has a very limited means of securing admissible evidence of unlawful acts of a competing carrier, or other prospective defendant, to support a legal action sufficiently to justify the court to exercise its discretion to enjoin the defendant. The inspection and visitorial powers available to the Government, under such statutory provisions as section 220(d) of the act, are not available to a private party. Although the private party might be convinced that unlawful acts are being performed, his ability to prove his contention in a court of law would be open to serious question in the absence of such investigatory authority. However, with its revenues being adversely affected, there is a strong temptation for such private party to institute a civil action regardless of the fact that it may be premature or inadequately prepared. The Commission has had similar experience with complaints which have been filed with it by aggrieved parties.

The institution of a civil action which is not satisfactorily supported and which results in a refusal to grant an injunction, or a finding by the court that the acts of the defendant are not unlawful, would make substantiallly more difficult the presentation of a case by the Commission at a subsequent date attacking the same or similar acts of the same defendant. Even though the court's previous disposition would not technically be construed as res judicata, nevertheless, a greater quantum of proof would undoubtedly be demanded by the court before it would be inclined to grant the injunction sought by the Commission. Moreover, it would be highly unlikely that the Commission could establish that the acts were knowingly and willfully committed so as to support a criminal prosecution of the defendant.

Many of the questionable leasing and "buy and sell" arrangements with which the Commission is confronted are extremely complicated and difficult of proof. A very careful investigation and analysis must be made and an informed judgment reached as to the type of enforcement remedy called for and the theory of law that should be advanced. A hasty presentation of a civil compaint by a private complaint, cast according to an incorrect concept or naming the wrong party as defendant, could very well jeopardize an enforcement action simultaneously being considered for presentation to the court by the Commission or before the Commission by its Bureau of Inquiry and Compliance.

While, at first blush, the proposed amendment would appear to be desirable as an aid to the Commission's enforcement program and in combating unlawful operations, in view of the misgivings expressed above, we are unable, on balance to recommend enactment of section 2 of S. 2560. If nevertheless, these proposed amendments to section 222(b) are favorably considered, we recommend that they be changed in several respects.

The language used in the parenthetical phrase beginning in line 10 and ending in line 13 on page 11 would exclude "a motor carrier holding a certificate or permit issued by the Commission * * *" under the provisions of certain specified sections of the act. Since temporary authorities (sec. 210a) are not considered to be certificates or permits, we recommend that this language be changed so as to specifically include this type of operating authority. As so changed the parenthetical phrase could read as follows: "(not including a motor carrier holding a certificate, permit, or grant of temporary authority issued by the Commission under the provisions of sections 206, 207, 208, 209, and 210a of this part)."

In order to cover all operating authority violations we recommend that the section and paragraph designation "203(c)," be inserted between the word "section" and "206" in line 14 on page 11. Section 203(c) is a catch-all provi-

sion. The reference to section 207 in line 14 could be omitted since this provision would not give rise to violations.

Since some of the actions brought under the proposed new paragraph may present novel questions with respect to leasing and "buy-and-sell" arrangements, we favor the provision for notice to the Commission in the last sentence thereof. We are of the view, however, that it should go further and provide that the Commission shall have a right to intervene in any such proceeding, and that it should also include safeguards against undue harassment by competitors by allowing the defendant, if he prevails, to recover reasonable attorney's fees and other costs and damages. We therefore recommend that the following provisions be substituted for the last sentence of the proposed new paragraph, which begins in line 25 on page 11 and ends in line 2 on page 12:

"A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as a party on its own motion and as of right in any such action in support of the plaintiff or the defendant. The defendant in any such action shall, if he prevails, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, for the payment of such fees and costs as may be incurred by the defendant."

Editorially, and for purposes of clarification, we also suggest that the words "so violating" be inserted between the words "person" and "operates" in line 17, page 11, and that the word "or" be inserted between the words "section" and "of" in line 23 on the same page.

In addition, we recommend that instead of merely reenacting present section 222(b) as section 222(b)(1), that it be amended to enable the Commission to obtain service of process upon motor carriers and to join other necessary parties without regard to where the carrier or other party may be served. This would give effect to legislative recommendation No. 12 in the Commission's 75th annual report to the Congress (recommendation No. 6 in the 74th annual report). The amendatory language appears in bills S. 1043 and H.R. 5594, introduced at our request, during the first session of the present Congress.

Section 3 of S. 2560 would amend section 222(h) of the act so as to (*a*) extend the civil forfeiture provisions therein to unlawful operations by motor carriers in violation of section 203(c), (*b*) permit the Commission to institute forfeiture actions directly in the courts, and (*c*) increase substantially the amount of the forfeitures prescribed. This proposed amendment, as far as it goes, is consistent with legislative recommendation No. 4 in the Commission's 75th annual report, which was implemented in the Senate by the introduction of S. 2764. It does not, however, go far enough. Clearly, it would not apply, as the Commission's proposal would, to safety violations. There is also some question as to whether it would apply to violations by authorized carriers operating beyond the scope of their certificates or permits. When an authorized carrier undertakes to provide a service for which it has shown a need, it is entitled to protection not only against unlawful operations by those who hold no authority at all, but also against the loss of traffic to those who hold some authority but ignore its limitations. In order to make certain that the proposed amendment would apply to unlawful operations conducted by authorized carriers as well as by persons holding no authority, we strongly recommend that the words "or section 206(a)(1) or section 209(a)(1);" be inserted between the comma and the word "shall" in line 20 on page 12 of the bill.

We are also strongly of the view that the proposed extension of the civil forfeiture provisions should apply to violations of the Commission's safety regulations. Cutting corners on safety is one of the means by which unauthorized carriers realize a profit while hauling at lower rates. Such violations are covered in S. 2764, introduced at the Commission's request, and we recommend that they be similarly covered in section 3 of this bill. This could be accomplished by the addition of appropriate language following the insert recommended herein in the preceding paragraph. Considered together, these two changes as inserted between the comma and the word "shall" in line 20, page 12, would read as follows: "or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 203(a)(3), or 204(a)(3a),".

Enactment of section 3 of the bill, with the aforementioned changes, would greatly facilitate the Commission's efforts at more effective enforcement and administration of part II of the act.

Under existing law, procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective. Criminal prosecutions, for example, must be brought in the district in which the violations occurred. Thus, in the case of multiple violations by a carrier with extensive territorial operations it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. Civil forfeiture proceedings, on the other hand, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Moreover, less time is needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the operation an appearance of legality, but the principal enforcement advantage that would accrue would be when the operator, by means of an alleged vehicle lease or an alleged purchase of the commodity hauled, has attempted to give the operation an appearance of private carriage. More specifically, an owner of a vehicle may enter into a vehicle lease arrangement with a manufacturer under which the manufacturer allegedly uses the vehicle in private carrier operations. Such arrangements range all the way from a bona fide lease of a vehicle, at one extreme, to the most obvious sham at the other. No enforcement action is, of course, involved in the case of a bona fide lease. The obvious shams, however, are the subject of criminal prosecution.

While there are a number of vehicle arrangements which the Commission believes to be illegal for-hire carriage by the vehicle owner, it is doubtful that a criminal conviction could be secured because of the necessity of showing knowledge and willfulness and proving guilt beyond a reasonable doubt. Violations would, of course, still have to be established by a preponderance of the evidence. In addition, in a criminal proceeding there can be no appeal from an acquittal. Such cases are now handled in the civil courts, but an injunction against such operations in the future is all that can be secured. The possibility of a civil injunction action, where there is no pecuniary penalty or criminal stigma involved, has very little effect as a deterrent to would-be violators. A civil forfeiture action, carrying with it substantial monetary penalties should, on the other hand, have a strong deterrent effect against questionable leasing arrangements.

Operations sometimes referred to as "buy and sell" operations are very similar in effect. By allegedly purchasing merchandise the transporter represents the operation to be private carriage. As in the case of leasing arrangements these operations have many variations, some of which present close questions as to whether the operation constitutes for-hire carriage. Some are obviously illegal for-hire operations and are handled as criminal cases. Others, however, are not so clearly unlawful as to warrant criminal action for the reasons stated above in connection with questionable leasing arrangements, but which, in our view, are nevertheless unlawful. Such operations may be continued for substantial periods during the pendency of a civil injunction proceeding and before a cease-and-desist order is issued by the court. If this proposed amendment is enacted a number of these cases could be made the subject of a civil forfeiture action which, if successful, the operator would suffer a money judgment or forfeiture.

If amended as recommended above, enactment of the proposed legislation would also greatly facilitate the Commission's enforcement activities in the important area of motor carrier safety. Although a very high percentage of cases involving violations of the Commission's safety regulations are disposed of by pleas of guilty or nolo contendere, investigations looking toward such prosecutions are nevertheless extremely time consuming because of the necessity of proving to the court every element of the alleged criminal offense. Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number thereof under the recommended forfeiture procedure.

The Commission's efforts at more effective and expeditious enforcement would also be greatly enhanced if it were authorized, as proposed in the bill, to institute forfeiture proceedings directly in the courts instead of proceeding through the Department of Justice as it is now required to do. Delays would be avoided not only by eliminating the mechanics involved in taking the extra step, but also by the elimination of such delays as may be caused by the time consumed in convincing the U.S. attorney that an action should be filed. Moreover, since a civil rather than a criminal proceeding is involved, participation by the Justice Department would not seem to be particularly important.

These proposed amendments, broadened as herein recommended, coupled with a substantial increase in the amount of the forfeitures prescribed, would strengthen the Commission's hand considerably in dealing with some of the principal factors contributing to the decline of regulated common carriage. However, without the changes herein recommended, section 3 of the bill merely represents a weakened and watered-down version of the Commission's proposed amendments to section 222(h), and the enactment thereof, in its present form, would be of only limited value. We therefore recommend that either the recommended changes be adopted or that S. 2764 be enacted in its place.

It is also recommended that one further change, of technical nature, be made in section 3 of the bill. Since it proposes to rewrite section 222(h), the paragraph designation "(h)" should be inserted between the quotation marks and the word "Any" appearing in line 5 on page 12.

Section 4 of the proposed measure would add a new section to part II of the act, to be designated as section 226(a), which would require motor carriers operating vehicles of three or more axles under the so-called agricultural commodity exemption in section 203(b)(6) to file with the Commission, before commencing operations and on or before September 1 of each year thereafter, a statement showing their name, address, and the number of vehicles owned or operated. Excepted from such filing requirements would be those carriers which engage in casual, occasional, or reciprocal transportation of commodities coming within the purview of that section. Persons operating under the exemption, although not subject to economic regulation by the Commission, are subject to its rules and regulations respecting qualifications and maximum hours of service of employees and safety of operation and equipment.

It is estimated that, at present, there are about 37,500 persons now operating about 200,000 vehicles under the section 203(b)(6) exemption. The Commission, however, has no way of knowing with certainty who these carriers are, or where they are located. It is, therefore, greatly handicapped in its attempts to obtain compliance with its safety regulations. Since these regulations were first prescribed in 1939, copies have been served on all known carriers subject thereto. Under existing circumstances, copies are served upon such carriers as they become know to the Commission—either through observation on the highways by staff members or by chance. As of December 31, 1961, copies have been served on only 22,820 of those coming within the exemption, and this does not take into consideration that a number of those previously served are no longer in operation. This means that approximately 14,700 exempt operators have not been served, nor received notice, other than through general notice to the public, that they are required by law to comply with these regulations.

Our most recent nationwide road check, made last October, disclosed that 58.8 percent of the exempt carriers had four or more vehicle defects, as compared with 28.7 percent of the authorized carriers. As a result of the same road check, 15 percent of vehicles of exempt operators were removed from service because of serious defects, as compared with 10.1 percent of the vehicles of authorized carriers. These figures reveal nothing new, but are consistent with the pattern that began to develop with our first comprehensive road check back in 1956. The compliance record of the exempt carriers has always been considerably worse than that of the authorized carriers.

It has been the Commission's policy to obtain, insofar as possible, voluntary compliance with its motor carrier safety regulations. This has been done through dissemination of educational material, inspection of carrier operations and equipment, and other methods of keeping the carriers currently informed of applicable regulations. The Commission cannot, however, carry out its safety program effectively and advise these carriers of their obligations unless it knows who they are and where they are based. A statutory provision under which section 203(b)(6) operators would be required to file a brief annual statement showing their name, address, and number of vehicles operated would help to overcome this difficulty. It would have the added advantage of enabling the

Commission to keep its records up to date as to the number and identity of the exempt operators who discontinued their operations during the previous year. Thus, we favor and endorse the general overall purpose of section 4 of the bill. We are, however, opposed to limiting its application to vehicles of three or more axles and to the exception of carriers engaged in casual, occasional, or reciprocal transportation of exempt commodities.

Whether a vehicle is large or small, used regularly or occasionally, its presence on the highways in a poor mechanical condition, or when driven by an unqualified or fatigued driver, constitutes a hazard to the traveling public which should not be ignored. It should be kept in mind that the smaller vehicles and vehicles used in casual or occasional operations under the section 203(b)(6) exemption are still subject to the Commission's safety regulations, and all that the proposed amendment would require is the filing of a simple statement of name, address, and number of vehicles operated. It is difficult to conceive of how any carrier or person interested in highway safety, and who is already subject to the Commission's safety regulations, could be opposed to such a simple requirement which would assist him in conducting a safe operation.

We also wish to point out in this connection that it is not clear what is meant by the phrase "vehicles of three or more axles," i.e., whether it refers to a single unit or a combination of units. We therefore recommend that if this provision is retained in the bill, although we are opposed to it, that it be changed in line 15 on page 13 to read: "vehicles or combinations of vehicles of three or more axles". Moreover, we wish to call attention to the fact that the words "casual" and "occasional" have no exact meaning and that the enforcement of this proposed provision would be hampered by their inclusion.

In addition to the foregoing recommended changes, we also suggest the following changes which are of a technical or clarifying nature. The language used in lines 14 and 15 on page 13 refers to "motor carriers operating vehicles" pursuant to the exemption. In order to avoid possible difficulties in enforcement, such as proof that a person is a motor carrier as defined in the act, and to bring the language more in line with section 203(b)(6), we recommend that the word "person" be used in place of the words "motor carrier" or "carrier" as noted below in the suggested revised language. We also recommend that it be made clear in the proposed new section that it would apply to exempt carriers despite the language in section 203(b) which states that nothing in part II, except certain provisions of section 204, shall apply to motor vehicles operated under the exemptions in section 203(b)(6). This recommended change is also reflected in the revised language suggested below. Moreover, it appears that the first comma in line 24 on page 13 should follow the word "thereafter" instead of the word "year". In addition, since part II already contains a section 226, the proposed section designation in line 14 on page 13 would not be proper. We therefore recommend that this section be redesignated in the bill as section 226a, as noted below. As revised to reflect all of the recommended changes therein the proposed new section would read as follows:

"SEC. 226a. Notwithstanding any other provision of section 203(b), in order to insure that persons operating motor vehicles pursuant to the provisions of section 203(b)(6) subject only to the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and standards of equipment, have adequate knowledge of such rules and regulations, and to promote compliance therewith, each such person shall, before commencing operations and on or before September 1 of each year thereafter, file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of such person, (2) the location or principal address of such person, and (3) the number of vehicles owned or operated."

Subject to the foregoing recommended changes, we favor the enactment of section 4 of the bill.

Section 5 of the proposed measure would terminate the present exemption in section 402(b)(2) of the act applicable to the forwarding of used household goods, and would provide "grandfather" rights to those forwarders engaged in such service on August 15, 1962. In addition, the Commission would be required in prescribing regulations and practices of forwarders of used household goods to give consideration to the similarities of service provided by motor carriers of household goods and to establish uniform regulations to the extent practicable.

Specific recommendations for repeal of this exemption were contained in the Commission's annual reports for 1951 through 1955.

Since the enactment of part IV in 1941 the Commission has received many complaints from shippers of used household goods seeking its aid in connection with the practices of forwarders exempt by section 402(b)(2). Many of the complaints allege overcharges where the forwarder in making an estimate quotes a lower rate or weight than later charged, and also adds in handling, delivery, and other charges which the shipper had not anticipated and was unprepared to pay upon tender of his goods for delivery at destination. So long as such forwarder service is exempt the Commission is without authority to correct these practices and others inimical to the interest of household goods shippers.

The number of persons engaged in the movement of used household goods, particularly for the military, and claiming exemption under section 402(b)(2) is increasing rapidly and their services are adversely affecting the operations of regulated forwarders (who must publish and adhere to tariff rates) and household goods carriers by motor vehicle. Recently, a household goods container service has been developed that makes unnecessary the handling of household items piece by piece while in transit. At origin, they are packed and sealed in a container and remain so until delivered at the customer's new residence. A bill of lading is issued for the entire movement, one charge is made for the service, and complete responsibility is assumed by the transportation company which claims exemption under part IV and is not otherwise regulated. In providing this service such persons utilize, among others, motor common carriers of general commodities and rail carriers, including piggyback haulers.

Considerable doubt exists as to the status of persons arranging for the movement of household goods in container service as described above. Should they be engaged in forwarder service, as claimed, because of their unregulated competition with regulated freight forwarders and motor carriers, it would appear to be in the public interest to subject such activities to economic regulation. We therefore recommend enactment of paragraphs (a) and (b) of section 5 of the bill with appropriate "grandfather" provisions.

With respect to the "grandfather" provision proposed in paragraph (c), however, it is noted that the critical or "grandfather" date would be August 15, 1962, a date subsequent to the probable date of repeal of the used household goods exemption as provided in paragraph (a). This represents a radical departure from the traditional concept and purpose of "grandfather" provisions which is to permit established carriers to continue the operations in which they were engaged at the time, or shortly before, they became subject to regulation without the need of showing "public convenience and necessity" or consistency with the public interest. In short, the purpose of a "grandfather" provision is, as its name implies, to protect existing carriers from undue hardship as a result of a change in the law. We see no reason in theory or practice to provide grandfather rights for any new operations which may be inaugurated subsequent to the date of repeal. The use of a subsequent date would probably also have the effect of encouraging the institution of new forwarded operations after the date of repeal merely for the purpose of obtaining "grandfather" rights. We therefore recommend that the "grandfather" date be changed to coincide with the date of repeal or be fixed at a date prior thereto, such as September 15, 1961, as provided in the bill as originally introduced. If a prior date, such as September 15, 1961, is used, provision should be made for interim rights for persons instituting operations after such date but before the effective date of repeal. This could be accomplished by the deleting of the quotation marks and adding the following new sentence at the end of line 17 on page 15 of the bill:

"Any carrier which, on the date of enactment of this subparagraph, is engaged in operation as a freight forwarder (as defined in section 402(a)(5)) of used household goods but was not engaged in such operation on September 15, 1961, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within 120 days after the date of enactment of this subparagraph, continue such operation without a permit pending the determination of such application in accordance with the provisions of section 410."

It is also noted in connection with the proposed "grandfather" provisions that the scope of the operations proposed to be covered thereby exceeds the Commission's present jurisdiction under part IV of the act, i.e., to the extent

that they would include forwarded operations between "any point in the United States and any point in a territory or possession of the United States." Since part IV does not cover forwarding operations between the United States and its territories or possessions, the reference thereto in the bill appears to have been inadvertent. We therefore recommend that the words "or between any point in the United States and any point in a territory or possession of the United States" beginning in line 25 on page 14 and ending in line 2 on page 15 be stricken.

With further respect to the "grandfather" provisions, we know of no reason why some of the applications could not be handled informally. We therefore recommend that the words "and so far as practicable and legally permissible, without formal hearing or other proceedings" be substituted for the words "and after hearing" in line 9 on page 15 of the bill. A provision similar to this is contained in bill S. 320, passed by the Senate on July 17, 1961, and by the House on January 31, 1962, proposing to modify the second proviso in section 206(a)(1) of the act.

Subject to the foregoing changes, we recommend that paragraph (c) of section 5 of the bill be favorably considered.

Paragraph (d) of section 5 of S. 2560 would reenact section 417(b) of part IV as section 417(b)(1) and would add a new paragraph (sec. 417(b)(2)) pursuant to which any person who is injured by another (except a freight forwarder holding a permit from the Commission) as a result of an operation in clear and patent violation of the operating authority provisions of section 410, or any rule, regulation, requirement, or order thereunder, could apply directly to a U.S. district court, for an injunction restraining such violation. Provision is also made for serving of copies of complaints with the Commission. Except for noncompliance with a Commission order, only the Commission or the Attorney General may now seek injunctive relief for violations of these provisions.

The proposals in section 5(d) of the bill applicable to violations of the freight forwarder operating authority requirements of part IV are in their aims and purposes substantially the same as those in section 2 of the proposed measure applicable to violations of the motor carrier operating authority requirements of part II. Our comments and observations respecting the private remedy proposed in section 2 of the bill are, for the most part, equally applicable to the remedy proposed in section 5(d). We are therefore opposed to the enactment of this provision of the bill.

One of the most difficult enforcement problems with which the Commission is faced under part IV of the act is that of coping with groups and organizations which engage in freight-forwarder operations illegally under the guise of an etxempt shipper association. Such operations are usually extremely complex and are rarely of such a nature that they could be characterized as "clear and patent" violations under proposed new paragraph 417(b)(2). So difficult is this problem that the Commission has recommended in its 75th annual report that section 402(c) be amended so as to provide that those claiming such exempt status be required to apply for and show that they are entitled to a certificate of exemption. It is our view, therefore, that the proposed new paragraph would be of little or no value as an "auxiliary" enforcement measure, and, for the reasons hereinabove stated with respect to section 2 of the bill, we feel that it would be more of a hinderance than a help insofar as the Commission's enforcement efforts are concerned. It is interesting to note in this connection that, insofar as we can determine from a check of reported cases, no use whatever has been made of the existing provisions of section 417(b) which, to a limited extent, permits action by private parties.

If this proposed provision should, nevertheless, be favorably considered, we recommend that it be changed to read as follows:

"(2) If any person (not including a freight forwarder holding a permit issued by the Commission under the provisions of section 410 of this part) operates in violation of any provision of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States where such person so violating operates for the enforcement of the provisions of such section, or of such rule, regulation, requirement, or order; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served

upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as a party on its own motion and as of right in any such action in support of the plaintiff or the defendant. The defendant in any such action shall, if he prevails, recover reasonable attorney's fees to be fixed by the court, in addition to statutory costs, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, for the payment of such fees and costs as may be incurred by the defendant."

We are in accord with the general overall purpose of S. 2560. We are, however, opposed to the enactment of sections 2 and 5(d) thereof, and believe that the changes recommended herein are necessary if the most effective results are to be achieved. Subject to the foregoing, we recommend enactment of S. 2560.

Respectfully submitted.

RUPERT L. MURPHY, *Chairman.*

STATEMENT OF HON. RUPERT L. MURPHY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY COMMISSIONER DONALD P. McPHERSON, HERBERT QUALLS, THOMAS J. DELANEY, LEE R. NOWELL, BERTRAM STILLWELL, ASA J. MERRILL, HIRAM SPICER, AND DALE HARDIN

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 bills S. 2560 and S. 2764. As requested, our comments are directed, in the main, to Committee Print No. 1 of S. 2560, dated January 24, 1962.

Before discussing the various sections of S. 2560, let me say that the Interstate Commerce Commission applauds the achievement of both rail and motor carrier interests in meeting on the common ground of agreement respecting a number of the issues involved in this measure. Certainly the combined efforts of all are necessary if we hope to see this industry strong and healthy.

The chairman of this subcommittee, and, indeed, the chairman of the full committee, have publicly issued calls for the lifting of sights in the direction of the overall problems facing regulated carriage. We believe that the new attitude shown in connection with S. 2560 may well be a giant step in the direction of combined efforts to work out common problems.

In keeping with the atmosphere that now exists, the Commission wishes to join ranks with those who, generally speaking, favor the objectives of, and the approach taken in, S. 2560. While we will recommend the adoption of certain amendments, we suggest them essentially for the purpose of strengthening and reinforcing certain provisions of this bill.

My discussion here of these amendments will not, in all instances, include suggested amendatory language, and for that reason I should like to request that our written report on S. 2560 dated April 23, 1962, which carefully sets out such suggested language, be included in the printed hearings on this measure.

Senator SMATHERS. We have already done that.

Mr. MURPHY. Thank you, sir.

Under section 1 of the revised bill, the Commission would be required to establish uniform standards respecting State requirements for the registration, identification, and insurance filings of motor

common and contract carriers holding operating authority from the Interstate Commerce Commission. This would require the Commission to give due regard to the needs of the States for information concerning the authority and operation of such carriers, while, at the same time, considering the necessity for protecting the carriers from burdensome State requirements.

Most such State requirements are designed to provide the States with information for use in connection with the collection of State taxes and for the purpose of policing unlawful operations and enforcing State safety regulations. Requirements of this nature often differ widely among the various States, and may therefore be unduly burdensome on the carriers. The Commission agrees, therefore, that relief from a multiplicity of different State requirements is desirable.

In view of the fact that the imposition of any requirement may be considered burdensome, we suggest the substitution of the words "an undue" for the word "a" in line 4, page 10, of the bill. We suggest, for purposes of clarification, the elimination of item 4, line 19, on page 9 of the bill, and that item 3, lines 17 and 18, page 9, be changed to read as follows:

> (3) To file or obtain approval of policies of insurance, surety bonds, qualifications as a self-insurer, or other securities or agreements for the protection of the public, or evidence thereof.

Although the language used in items 3 and 4 is similar to that used in section 215 of the Interstate Commerce Act, the bill makes no provision with respect to requirements for approval of insurance policies or for the filing of evidence of insurance in lieu of the policies themselves. This becomes important, for example, since the Commission requires only the filing of evidence of insurance, not the actual policy, and, undoubtedly, some of the States follow the same practice.

In the interest of making clear the intent of the last sentence in section 1 of the bill, we suggest that it be changed to read:

> Any such State requirements which do not conform to the standards established by the Commission pursuant to this paragraph shall be null and void.

In this latter connection, we would like to invite the subcommittee's attention to the fact that the legislatures in some States meet biennially rather than annually. Therefore, we believe that the period within which the States must bring their requirements into conformity with the contemplated uniform standards might be somewhat short.

For example, if the establishment of uniform standards were not completed by the Commission until 2 years after enactment of S. 2560, and the succeeding year happened to be a year in which the legislatures in some States did not meet, it would then be 4 years before those legislatures could begin work to make their own requirements conform.

Thus, if they meet in the fourth year it would be necessary for them to bring their requirements into conformity during that one particular session, since their next biennial session would not convene until after the 5-year period had expired.

We recommend, therefore, that the 5-year period begin to run immediately upon the establishment of standards by the Commission, rather than upon the enactment of S. 2560. This could be accom-

plished by substituting the words "establishment of standards by the Commission" for the words "enactment of this paragraph" in lines 20 and 21 of page 9 of the bill.

The parenthetical expression in lines 8 through 11 on page 9 appears to be an attempt to exclude private carriers. Under section 204(a)(3) of the Interstate Commerce Act, private carriers are made subject to other provisions, such as section 220 and section 224. Strictly construed, a strong argument can be advanced that private carriers would not be excluded. Other language should be used if their exclusion is intended.

We believe, however, that private carriers should not be excluded, although the Commission should be authorized to prescribe such different standards as may be necessary for these carriers, as opposed to common and contract carriers. Specific language to accomplish this purpose is set forth in the Commission's written report on S. 2560, dated April 23, 1962.

Section 2 of the bill would add a new section 222(b)(2) to the act, providing that any person injured as a result of an operation by another person in clear and patent violation of his operating authority may apply directly to a U.S. district court for injunctive relief. Only the Commission, or its agent, may seek such injunctive relief at present.

The use of the words "clear and patent" would, in our opinion, create confusion and uncertainty in the law. It seems to us that an act which is a violation need only be characterized as a "violation." The addition of the words "clear and patent" seems to us to produce a less definite test, which would have the effect of raising a question in the mind of the court as to the degree of unlawfulness which must exist before a violation becomes "clear and patent."

Some violations of operating authority could possibly be characterized as "clear and patent," but the real problem is created by "buy and sell" devices and "leasing" arrangements entered into by some carriers with shippers. It is a rare occasion when such arrangements present clear and patent violations. Usually, they are surrounded by paper indicia of private carriage such as bills of sale, claimed merchandising endeavors, and signed equipment leases. Often it is a formidable task to show that such operations are in fact a disguise for unauthorized for-hire transportation.

True, the naive or foolhardy may attempt clear and patent violations, but the experienced violator shrouds his continuing operations in uncertainty. If a court is convinced that unlawful for-hire operations are being conducted, an injunction should issue whether the violation is clear and patent or is of such a nature that analysis and considerable judgment must be exercised in the determination.

The addition of the words "clear and patent" would actually render this portion of the bill almost a nullity. On the other hand, their elimination would give rise to other problems which could have a serious adverse effect on the Commission's own enforcement efforts. We are, therefore, opposed to the enactment of this paragraph whether or not the "clear and patent" test is included.

A private complainant ordinarily has a very limited means of securing admissible evidence of unlawful acts of a competing carrier or other prospective defendant. The inspection and visitorial powers available to the Government are not available to a private party.

Thus, although a private party may be convinced that unlawful acts are being performed, his ability to prove it in a court of law, in the absence of investigatory authority, is open to serious question.

Even so, if his revenues are being adversely affected, the temptation is great for him to institute a civil action even though premature or inadequately prepared.

We have had similar experience in cases in which complaints have been filed, with every good intention, I am sure, with the Commission by aggrieved parties.

An unsatisfactorily supported civil action resulting in a refusal to grant an injunction, or a finding by the court that the defendant's acts are not unlawful, would make substantially more difficult the presentation of a case by the Commission at a subsequent date attacking the same or similar acts of the same defendant.

Although not technically res judicata, nevertheless, a greater quantum of proof would undoubtedly be demanded by the court before it would be inclined to grant an injunction sought by the Commission.

In addition, it would be highly unlikely that the Commission could establish that the acts were knowingly and willfully committed so as to support a criminal prosecution of the defendant.

Many of these questionable arrangements coming before the Commission are extremely complicated and difficult of proof. Hasty presentation of a civil complaint, cast according to an incorrect concept, could very well jeopardize an enforcement action simultaneously being considered for presentation to the court by the Commission, or before the Commission by its Bureau of Inquiry and Compliance.

At first blush, section 2 of this bill would appear desirable as an aid to the Commission's enforcement program and in combating unlawful operations. However, in view of the misgivings I have just expressed, the Commission is unable, on balance, to recommend the enactment of section 2 of S. 2560.

If this section of the bill is, nevertheless, considered favorably, we recommend that the amendments set forth in our report to the committee dated April 23, 1962, be adopted. In the main, these amendments relate to the inclusion of temporary authorities and indemnification against undue harassment by competitors.

We also believe that present section 222(b) should be amended to enable the Commission to obtain service of process upon motor carriers and to join other necessary parties without regard to where the carrier or other party may be served. This would give effect to Legislative Recommendation No. 12 in our 75th annual report to the Congress. Amendatory language to accomplish this appears in S. 1043 and H.R. 5594, introduced at our request, during the first session of this Congress.

Section 3 of this bill would amend section 222(h) of the act by:

(1) Extending the civil forfeiture provisions to unlawful operations by motor carriers in violation of section 203(c),

(2) Permitting the Commission to institute forfeiture actions directly in the courts and,

(3) Increasing substantially the amount of forfeitures prescribed.

This portion of the bill is somewhat similar to Legislative Recommendation No. 4 in our 75th annual report, which was implemented in the Senate by the introduction of S. 2764.

This section of the bill does not, in our opinion, go far enough, however. It would not apply, as would the Commission's proposal, to safety violations.

Some doubt also arises as to whether it would be applicable in the case of violations by authorized carriers operating beyond the scope of their certificates or permits.

Certainly an authorized carrier is entitled not only to protection against unlawful operations by those who hold no authority, but also against loss of traffic to those who do hold authority but ignore its limitations.

We, therefore, recommend the insertion of the words "or section 206(a)(1) or section 209(a)(1);" immediately following the words "section 203(c)" in line 20 on page 12 of the bill.

The civil forfeiture provisions should, in our judgment, also apply to violations of the Commission's safety regulations. We do not believe that this is the place for unauthorized carriers to cut corners in order to realize a profit while hauling at lower rates. We recommend that violations of safety regulations be covered in section 3 of the bill as they are in S. 2764. Language to accomplish this is contained in our written report on S. 2560.

Our efforts to deal effectively with certain motor carrier violations have often been found slow and cumbersome. Criminal prosecutions, for example, must be brought in the district in which the violations occur. In some cases it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. On the other hand, civil forfeiture proceedings may be instituted wherever the carrier maintains its principal office, where it is authorized to operate, or where it can be found. The difference in the quantum of proof required in civil forfeiture proceedings would also reduce the time needed for the investigation of violations.

The owner of a vehicle may enter into a vehicle lease arrangement with a manufacturer. This manufacturer may allege that he uses the vehicle in private carrier operations. Arrangements of this type vary all the way from a bona fide lease of a vehicle, at one extreme, to the obvious sham at the other.

There are a number of vehicle arrangements which the Commission believes may be illegal forhire carriage by the vehicle owner. It is doubtful, however, that a criminal conviction could be secured because of the necessity for showing knowledge and willfulness and for proving guilt beyond a reasonable doubt. Under civil forfeiture provisions, violations would, of course, still have to be established by a preponderance of the evidence. In a criminal proceeding there can be no appeal from an acquittal.

In civil courts, an injunction against such operations in the future is all that can be secured. Where there is no pecuniary penalty or crminal stigma attached, a civil injunction action has little effect. A civil forfeiture action, carrying with it substantial monetary penalties, should prove to be a strong deterrent to questionable leasing arrangements.

The so-called buy and sell operations also have many variations. They may be continued for substantial periods during the pendency of a civil injunction proceeding and before a cease and desist order can be obtained. If this amendment is enacted, a number of these cases

could be made the subject of a civil forfeiture action, and, if successful, the operator would suffer a money judgment or forfeiture.

If amended as we suggest, this legislation would greatly facilitate our enforcement activities in the area of motor carrier safety. It is true that a high percentage of cases involving safety violations are disposed of by plea of guilty or nolo contendere.

Nevertheless, investigations leading to prosecutions are extremely time consuming because of the necessity of proving to the court every element of the alleged criminal offense. Thus, on the quantum of proof factor alone, much time now spent in preparing for criminal prosecutions could be devoted to handling a larger number of cases under the recommended civil forfeiture procedure.

More effective and expeditious enforcement could, we believe, be accomplished if we were authorized, as proposed in the bill, to institute forfeiture proceedings directly in the courts instead of proceeding through the Department of Justice as we are now required to do. Moreover, since a civil, rather than a criminal, proceeding is involved, participation by the Justice Department would not seem particularly important.

If amended as we suggest, the Commission's hand would be strengthened considerably in dealing with some of the principal factors contributing to the decline of regulated common carriage. Without the changes we recommend, section 3 of the bill constitutes a weakened and watered-down version of the Commission's proposed amendments to section 222(h). Enactment in its present form would be of very limited value, in our opinion.

Therefore, we recommend either the changes we have suggested, or that S. 2764 be enacted in its place.

Section 4 of the bill would require that motor carriers operating vehicles of three or more axles under section 203(b)(6) file with the Commission a statement giving their name, address, and the number of vehicles owned or operated. Those engaging in casual, occasional, or reciprocal transportation under this section would be excepted from such filing. Persons operating under this exemption are still subject to the Commission's rules and regulations as to qualifications and maximum hours of service of employees and safety of operation and equipment.

At present, there are over 37,000 persons operating about 199,000 vehicles under section 203(b)(6). We have no way of knowing with certainty who these carriers are, or where they are located. As of December 31, 1961, copies of our safety regulations had been served on only 22,820 of those coming within the exemption. It should be pointed out that a number of those who have received copies are no longer in operation.

This means, at the very least, that about 14,695 exempt operators have not been served, nor have they been notified that they are required to comply with these regulations.

In a nationwide road check last October, 58.8 percent of the exempt carriers had four or more vehicle defects, as compared with 28.7 percent for authorized carriers. Fifteen percent of the vehicles of exempt operators were removed from service for serious defects, as compared with 10.1 percent for authorized carriers.

These figures reveal nothing new. The compliance record of exempt carriers has always been considerably worse than that of authorized carriers.

The Commission cannot carry out its safety program effectively unless it knows who these carriers are and where they are based. A provision requiring these operators to file, annually, a statement showing name, address, and number of vehicles operated would help to overcome this difficulty. We favor and endorse the general purpose of section 4 of this bill. However, we are opposed to limiting its application to vehicles of three or more axles and to excepting carriers engaged in casual, occasional, or reciprocal transportation of exempt commodities.

It is not clear what is meant by the phrase "vehicles of three or more axles." We are not certain whether it refers to a single unit or a combination of units. This could be clarified, if the limitation is nevertheless retained, by changing line 15 on page 13 of the bill to read "vehicles or combinations of vehicles of three or more axles."

Even so, attention is invited to the fact that smaller vehicles and those used in casual or occasional operations under this exemption are still subject to our safety regulations. We are simply unable to conceive of how any carrier or person with even the slightest interest in highway safety, and especially one already subject to our safety regulations, could be opposed to the filing of a simple statement which would assist him in conducting a safe operation.

The point I wish to make here is that we need this type of assistance in our efforts to educate those already subject to our regulations. Only in this way can we insure compliance.

There are several other suggested changes contained in our written report on this measure which relate to this section of the bill. They are mostly of a technical or a clarifying nature and we recommend their adoption in your consideration of S. 2560. With these changes we favor the enactment of section 4 of the bill.

Section 5 of this measure would terminate the present exemption in section 402(b)(2) applicable to the forwarding of used household goods, and would provide grandfather rights to those forwarders engaged in such service on August 15, 1962. The repeal of this exemption was recommended in our annual reports for the years 1951 through 1955.

Since the enactment of part IV in 1941, the Commission has received many complaints from shippers seeking our aid in connection with the practices of forwarders exempt under this section of the act. Many of the complaints allege overcharges where the forwarder, in making an estimate, quotes a lower rate or weight than later charged, and also adds in handling, delivery, and other charges not anticipated by the shipper. As long as such service is exempt, we are without authority to correct these practices which are inimical to the interest of household goods shippers.

Recently, a household goods container service has been developed making unnecessary the handling of household items piece by piece while in transit. At origin, they are packed and sealed in a container and remain so until delivered to the customer's new residence. A bill of lading is issued for the entire movement, one charge is made for the service, and complete responsibility is assumed by the transportation

company which claims exemption under part IV and is not otherwise regulated.

Considerable doubt exists as to the status of persons arranging for the movement of household goods in such containers. Should they be engaged in forwarder service as claimed, it would appear to be in the public interest, because of their unregulated competition with regulated freight forwarders and motor carriers, to subject such activities to economic regulation. We recommend the enactment of paragraphs (a) and (b) of section 5 of the bill with appropriate grandfather provisions.

We note that the grandfather provision proposed in paragraph (c) would set August 15, 1962, as the critical date. This date probably will be subsequent to the date of repeal of the used household goods exemption. We believe this represents a radical departure from the traditional concept and purpose of grandfather provisions; that is, to permit established carriers to continue the operations in which they are engaged at the time, or shortly before, they became subject to regulation without the need of showing public convenience and necessity or consistency with the public interest.

Stated differently, the purpose of a grandfather provision is to protect existing carriers from undue hardship as a result of a change in the law.

We believe it would be preferable if the grandfather date were changed to coincide with the date of repeal, or fixed at a date prior to repeal. If a prior date is used, provision should be made for interim rights for those instituting operations after the critical date but before the effective date of repeal. This could be accomplished by adding a new sentence at the end of line 17 on page 15 of the bill, along the lines suggested in our written report on this measure.

The proposed grandfather provisions would include forwarder operations between any point in the United States and any point in a territory or possession of the United States.

Since part IV does not now cover forwarding operations between the United States and its territories or possessions, we recommend that the words:

or between any point in the United States and any point in a territory or possession of the United States

in line 25 on page 14 and line 2 on page 15 be stricken.

We know of no reason why some of the grandfather applications could not be handled informally, and we therefore recommend the substitution of the words "and so far as practicable and legally permissible, without formal hearing or other proceedings" for the words "and after hearing" in line 9 on page 15 of the bill.

Paragraph (d) of section 5 would reenact section 417(b) and would add a new paragraph under which any person injured by another—except an authorized freight forwarder—as a result of an operation in clear and patent violation of the operating authority of section 410, or any rule, regulation, requirement, or order under that section, could apply directly to a U.S. district court for injunctive relief. Except for noncompliance with a Commission order, only the Commission or the Attorney General may now seek injunctive relief for such violations.

The aims and purposes of section 5(d) of this bill are substantially the same as those of section 2 of this measure, except that section 5(d) applies to freight forwarders while section 2 applies to motor carriers.

Generally speaking, our comments and observations concerning the private remedy proposed in section 2 of the bill are, for the most part, equally applicable to the remedy proposed in section 5(d). We are, therefore, opposed to the enactment of this provision of S. 2560.

I want to reiterate that the Commission is in accord with the general purpose of S. 2560, although we are opposed to the enactment of sections 2 and 5(d). With the changes that I have outlined, we recommend enactment of S. 2560.

Mr. Chairman, we appreciate this opportunity to appear and express our views with respect to this important measure. If there are any questions at this time, I shall be glad to try to answer them for you.

Senator SMATHERS. Thank you very much, Mr. Chairman.

Counsel indicates he has no questions, and I have no questions, and we do have a time problem.

We thank you very much.

Our next witness is Martin L. Santini, chairman of the National Furniture Warehousemen's Association.

Mr. Santini.

STATEMENT OF MARTIN L. SANTINI, CHAIRMAN, NATIONAL FURNITURE WAREHOUSEMEN'S ASSOCIATION, CHICAGO, ILL.

Mr. SANTINI. Mr. Chairman, members of the committee, my name is Martin L. Santini, and I am chairman of the special committee on S. 2560 of the National Furniture Warehousemen's Association, which I will hereafter refer to as the NFWA.

Although my statement is made on behalf of NFWA, the Movers Conference of America, Household Goods Carriers Bureau, and the Movers & Warehousemen's Association of America, Inc., all have authorized me to say that they join NFWA in support of section 5 of Committee Print No. 2.

We sincerely appreciate the committee's interest in problems confronting the transportation industry, and we are grateful for the opportunity of appearing here today.

The NFWA membership consists of local businessmen who operate a household goods warehouse, engage in local and, at times, long-distance moving and act as hauling and booking agents for national or interstate motor carriers. Most of our members have in the past been called upon to function not only in their capacity as warehousemen and carriers of household goods, but also as freight forwarders of used household goods.

The shipper often relies upon the warehouseman's judgment as to the best way to transport his household goods from residence or from storage to his new home. When this occurs, the warehouseman must decide whether motorvan, motor freight, rail, or water carrier is best suited to the shipper's needs.

In packing or arranging for the packing of the shipment in containers, shipping the container by motor, rail, or water carrier—depending upon which mode is most efficient and economical in the

circumstances—and assuming responsibility for the safe transportation of the shipment to destination, the warehouseman functions as a freight forwarder of used household goods. Warehousemen engaged in this activity have served the public well, particularly during periods of emergency when gas, oil, tires, and trucks have been diverted to more critical needs.

As the committee is aware, our industry is now in a transitional phase primarily because of the development in recent years of containerization and its application to the transportation of used household goods.

Until about 4 years ago, door-to-door container service was virtually unknown. Today, the preponderance of oversea shipments of used household goods are handled in this manner. While this service is in its infancy so far as domestic shipments are concerned, it is catching on because of the efficiency, economy, and good claim experience realized with the container mode.

In keeping with this trend, many warehousemen and motor common carriers of household goods already have initiated door-to-door container service; others are now considering joining the trend, and it is fair to anticipate that use of the door-to-door container mode will increase in the years ahead.

Shipments will be loaded or consolidated in containers, and NFWA members will be called upon more and more to function as forwarders of used household goods. A fair scheme of regulation of this activity is, therefore, both timely and in the best interests of all concerned.

With this explanation of the basis of our interest, we would like to discuss section 5 of S. 2560.

First, we wish to register our agreement with the approach taken in section 5 of the Committee Print No. 2. Until recently, there have been differences of opinion within the industry with respect to removal of the exemption under section 402(b) of the Interstate Commerce Act. There are, of course, advantages to remaining free of regulation. After careful study, however, we have concluded that regulation of this activity is in the public interest so long as it takes account of the special nature of household goods forwarding.

In reaching this conclusion, we are convinced that if maintenance of a strong, efficient national transportation system is to be given more than lipservice, all component parts of the transportation complex should be regulated. Protection of the legitimate, regulated carriers from unfair and unregulated competition requires no less. Whatever the considerations that gave rise to the exemption of "used household goods" when part IV of the Interstate Commerce Act was passed, we believe that justification for such exemption no longer exists.

Freight forwarding of used household goods is now a proven method, already has made substantial inroads upon other methods, and is likely to capture a higher percentage of the market in the future. Consequently, the exemption should be deleted from section 402 of the act.

We are sure the committee realizes that some of our members now operating as exempt freight forwarders are less than enthusiastic about the prospect of regulation. By operating without regulatory restraints, particularly as to rates, they enjoy flexibility which would be lost if the exemption is eliminated.

However, many of our members are now regulated as carriers and are aware of the incongruous results which flow from regulating the carriage but not the forwarding of used household goods.

We are proud that on this issue our members have placed considerations of maintaining a sound national transportation system ahead of private interest, as evidenced by our support of section 5 of Committee Print No. 2.

Apart from the need to regulate all links in the transportation chain, we believe that proper regulation of household goods forwarders should be designed not only to protect the public and certificated carriers, but should impose no greater burdens upon such forwarders than those required to achieve the desired stability.

In this connection, we endorse the provisions in Committee Print No. 2 which would protect the warehouseman's right to engage in this activity without having to run the gamut of protracted proceedings before the Interstate Commerce Commission.

We support the relaxation of traditional entry controls—which are unsuited to this activity—and we support other provisions of the bill which, we believe, are necessary to protect the warehouseman's interests. These include the provisions which do not preclude a motor common carrier of household goods or officer of such carrier from being a forwarder of used household goods or from controlling such a forwarder under sections 5 (d) and (f) of Print No. 2.

Because of the peculiar nature of household goods forwarding, we believe it would be unnecessary, burdensome, and wasteful to provide for a grandfather clause and, thereafter, the same entry controls now applicable to freight forwarders of other commodities. Under a grandfather clause, many firms not currently operating as freight forwarders of used household goods will initiate or reactivate token operations regardless of economic feasibility or of shipper's interest in an attempt to qualify, without intending to use the permit, the Commission will inherit a monstrous regulatory load, and, after protracted hearings, permits will be issued, many of which may never be exercised and will become dormant.

Further, the Commission's administration of grandfather provisions of the act shows an unduly restrictive approach which would be fatal if applied to this particular activity.

Many warehousemen have operated as freight forwarders only occasionally in the past, but unless they are allowed to continue, they will (1) lose this business to competition and (2) be unable to offer their customers the same service performed in the past.

Committee Print No. 2 recognizes that this standard should not apply to freight forwarders of used household goods. It provides, instead, that a permit be issued to operate as a freight forwarder of used household goods, without territorial restriction (1) upon a finding that a person is fit, willing, and able properly to perform the service proposed, and (2) upon payment of a $50 application—and renewal—fee, the permit so issued to be subject to annual renewal, without further proof of fitness.

The application fee would discourage those who might otherwise apply in the belief that they would lose statute if they did not and would result, we believe, in applications being filed only by those interested in maintaining an active operation.

The net result will be less trouble to freight forwarders of used household goods, less of a workload for the Commission, revenue to offset the cost of processing applications, and no problem of dormant certificates.

We endorse this and all other provisions of section 5 of the revised bill.

Accordingly, we support section 5 of Committee Print No. 2 in all respects and recommend that it be passed. Such a law will, we believe, achieve two desirable objectives: (1) it subjects an important and growing segment of our industry to the regulatory precepts of the Interstate Commerce Act, and (2) it recognizes and protects, at the same time, the interests of persons now operating as freight forwarders of used household goods. If enacted, it will be a substantial step forward in achieving a sound transportation system.

Thank you.

Senator SMATHERS. Thank you very much, Mr. Santini, for a very constructive statement.

Counsel Grinstein has a question.

Mr. GRINSTEIN. Mr. Santini, can you think of any objection to providing, in the case of domestic shipments, the licensing provisions presently in Committee Print No. 2, but in the case of foreign shipments imposing entry controls, including a grandfather provision?

Mr. SANTINI. Mr. Grinstein, in analyzing the section 5 of Committee Print No. 2, the NFWA committee gave careful consideration to the forwarding of household goods in oversea operations as well as domestic operations.

Warehousemen have historically arranged for the packing and forwarding of shipments in international traffic. This has been going on for well over a hundred years, and it has applied in varying degrees. It has only been in recent years that the competitive picture has changed to make it attractive to handle these shipments on a through bill basis.

However, the warehousemen have in the past developed networks of international agency arrangements, as can be evidenced by the great number of foreign members we have in the NFWA, as well as in the FEDA organization which is an international association of furniture movers and warehousemen.

We feel that the irregular nature of the forwarding of household goods is such that it would, under the stringent application of the entry controls applied by the Commission, make it very difficult for the warehouseman to function in the full interest of the shippers. We believe that it would tend to favor those companies who have set up in more recent years primarily to service military shipments and deprive the shipper of his free choice of forwarders and especially those forwarders who in the past years have specialized in the handling of private and commercial shipments.

I would say that while the volume of household goods forwarding is for the most part in oversea operations, the biggest portion of that is with respect to military shipments, and only a minor portion is commercial or private shipments. But the trend is on the increase.

Now, the same reasons that we applied for domestic operations would be applied for the oversea operations in supporting section 5 in Reprint No. 2.

Senator SMATHERS. All right, sir. Thank you very much, Mr. Santini.

We now come to the opponents of this bill.

Mr. Gordon Stedman from the great State of Florida, executive vice president of the Growers and Shippers League.

Mr. Stedman, it is a pleasure to have you before our committee.

STATEMENT OF GORDON STEDMAN, EXECUTIVE VICE PRESIDENT, GROWERS AND SHIPPERS LEAGUE OF FLORIDA, ORLANDO, FLA.

Mr. STEDMAN. Thank you.

My name is Gordon Stedman. I am executive vice president of the Growers and Shippers League of Florida, with offices at 45 West Central Avenue, Orlando, Fla. That nonprofit corporation is an organization of growers and shippers of citrus fruits and vegetables from Florida.

This statement is also made for the Florida Fruit & Vegetable Association, the Florida Citrus Commission, the Florida Citrus Mutual, and the Florida Canners' Association.

The Florida Fruit & Vegetable Association, with principal office at 4401 East Colonial Drive, Orlando, Fla., is a nonprofit agricultural trade association under the laws of Florida representing its members who are fresh fruit and vegetable growers and shippers in Florida.

The Growers and Shippers League is also the duly appointed transportation agency of the Florida Citrus Commission of Lakeland, Fla., the Florida Canners' Association of Winter Haven, Fla., and has authority to speak for the Florida Citrus Mutual of Lakeland, Fla.

The Florida Citrus Commission is the regulatory body of the State charged with the enforcement of the State's citrus laws and with the statutory duty of protecting the Florida citrus industry with respect to transportation rates and charges on Florida citrus fruits.

The Florida Citrus Mutual is a nonprofit voluntary organization of growers and shippers of citrus fruit, which has for its purpose to bring about orderly marketing procedures to the end that economic stability will be maintained within this expanding industry.

The Florida Canners' Association is an association of the citrus canning plants in Florida, which are located throughout the State of Florida. The membership of this organization processes 100 percent of the canned citrus and citrus fruit juices, including frozen citrus juice concentrate, produced in and shipped from the State.

We do not object to the provisions of Committee Print No. 1 of S. 2560, except to the unnecessary, and in our opinion objectionable, provision of section 4, which I quote in my statement and will pass reading. That is taken from Committee Print No. 1.

I have personally been engaged in dealing with fruit and vegetable transportation continuously since 1927——

Senator SMATHERS. That is the section which had to do with filing a statement?

Mr. STEDMAN. That is right. Registration.

Senator SMATHERS. Yes. All right, sir.

Mr. STEDMAN. And in Florida since 1948. During all of this time I have had frequent contacts with other representatives of the fruit and vegetable industries as well as traffic officials of the railroads and motor carriers.

From my knowledge of exempt motor vehicle transportation of fresh fruits and vegetables, I am convinced that the problem of notification of motor vehicle haulers of these exempt commodities is greatly overexaggerated. There are many voluntary means now in operation by which most, if not all, of these operators and users of exempt transportation are now fully informed as to the commission's safety rules.

For example, on March 29, 1962, the commission issued an order for the revision of certain of the rules relating to Qualifications and Maximum Hours of Service of Employees of Motor Carriers and Safety of Operation and Equipment (pt. 195). That revision does not become effective until July 16, 1962.

As soon as I received a copy of the order from the commission, I mailed a complete copy of the order to all of the members of the Growers and Shippers League of Florida, as an appendix to our Bulletin No. 653, issued April 16, 1962.

Thus, our members throughout the fruit- and vegetable-producing section of Florida are now fully informed as to that revision about 3 months in advance of the effective date of the revision.

In the past, we and other similar organizations have endeavored to keep our members currently informed of such requirements. For example, a few years ago, the Private Truck Council of America, Inc., published a "Driver's Handbook and Digest of ICC Regulations," and we purchased 500 of those manuals and distributed them to our members in Florida. Similar distribution was made by Florida Fruit & Vegetable Association. Also, I know of many similar methods of voluntary dissemination of information by other organizations throughout the United States.

In short, what is now being done on a voluntary basis would be in substantial part merely duplicated by what is sought to be required by the proposed section 4 of S. 2560.

Senator SMATHERS. May I ask a question right there, Mr. Stedman?

In your organization, are you always aware of every new trucker that comes into the business of transporting citrus? Do they immediately notify you that they are now in business, following which you send them all these bulletins and all this information?

Mr. STEDMAN. No.

Senator SMATHERS. How do you find out about these fellows?

Mr. STEDMAN. We do not deal directly with any trucker. Our association is an association of growers and shippers. The truckers either deal directly with the shipper or most of them deal through a broker who is in contact regularly and daily with these truckers.

The broker arranges the movement for the shipper and is responsible for that movement to the shipper.

So there is a direct contact with these truckers, particularly in Florida.

Senator SMATHERS. In other words, if a couple of young fellows decide they want to buy some trucks and start hauling citrus and they live next door to a farmer who has a citrus grove, do you feel that you discover them immediately, and that the regulations they should know about somehow get to them?

Mr. STEDMAN. In some way that trucker would be contacted, and our purpose in disseminating this information is to see that our ship-

pers are well advised of the rules and regulations of the commission because they are the ones actually finally that deal with the trucker.

What we are trying to work out is an educational program.

Senator SMATHERS. Right.

Let us assume that the shipper and the broker know about it. But what we are talking about is knowledge on the part of the carrier.

Mr. STEDMAN. The truck operator.

Senator SMATHERS. The truck operator. Where does he get his knowledge unless we have some way of keeping track of him?

Mr. STEDMAN. That is why we feel that we have a very good situation in Florida through the truck broker.

Now, he is licensed under a State law. He has to have a broker's license to operate.

In dealing with the shipper, the truck broker takes full responsibility for delivery of that load so that in our opinion the truck broker is going to make certain that these agricultural haulers are informed, because he is guaranteeing the cost of that transportation plus the cargo.

Senator SMATHERS. Do you think other States are as enlightened as Florida in this respect?

Mr. STEDMAN. I think that Florida has the best situation along that line, frankly.

Senator SMATHERS. Do you think, then, that we would be overstretching our authority if we tried to bring the other States in the Union up to equal enlightenment with Florida through this measure?

Mr. STEDMAN. Well, I think that the other States should be brought up to date as well as Florida is, along similar grounds as we have down in Florida.

Senator SMATHERS. All right, sir. Thank you very much.

Mr. STEDMAN. We have many objections to section 4. Many of our exempt truck operators are small businessmen. They do not have elaborate office help, and any requirement for additional reports and paperwork would work a real hardship on them.

The proposal is discriminatory in that additional requirements would be made of section 203(b)(6) vehicle owners and operators, but not of the many thousands of private vehicle owners in the same category as to hours of service of employees and safety regulations.

Neither do we think that a single report as of a particular date would be effective in giving information to all vehicle operators.

Different suggestions have been made as to alternative methods of accomplishing like or better results, and I feel that additional study of those suggestions ought to be made before enactment of proposed section 4.

There is no sound reason, in our judgment, why S. 2560 should not be enacted without the inclusion of section 4. And if section 4 be omitted, the remainder of S. 2560 would operate to accomplish the objectives of the proposed legislation.

I will mention one very simple means of obtaining names and addresses in Florida through which additional dissemination of information may be made.

In Florida, we have a statute which requires registration of truck brokers with the Florida Railroad and Public Utilities Commission in Tallahassee. Those truck brokers handle probably 99 percent of

all motor vehicle movement of fresh fruits and vegetables out of Florida.

A list of those registered names and addresses can be obtained very easily, merely by writing to the Florida Railroad and Public Utilities Commission. Thus, a current mailing list is now available, without any additional Federal legislation, by which the Interstate Commerce Commission may disseminate any and all information respecting safety rules and hours of service regulations.

There is another field of possible Federal legislation which admittedly is not embraced in S. 2560 but is an important one if illegal operation of motor vehicles is to be curbed. I refer to recommendation No. 1 in the last annual report of the Interstate Commerce Commission, as to needed legislation with respect to effective enforcement of the law relating to transportation cooperatives.

Various investigations thereof have been made by the Commission, as for example in docket MC–C–2488, *Machinery Haulers Association* v. *Agricultural Commodity Service*, 86 M.C.C. 5.

In that proceeding, the Commission distinguished between a surface-appearing-correct paper organization, on the one hand, and what it held to be differing actual illegal operation on the other.

Legislation such as there recommended will do far more good in restricting illegal operations and enforcing existing law than can possibly result from unnecessary and expensive additional requirements imposed on perfectly lawful transportation by vehicles under section 203(b)(6) as is proposed by section 4 of S. 2560.

Therefore I earnestly urge that section 4 be eliminated from S. 2560 (Committee Reprint No. 1), and that if deemed desirable the ends sought by section 4 be considered separately in connection with other legislation to be developed later.

Also, I respectfully submit that the recent message on transportation from the President to the Congress recommends, not further restrictive requirement, but rather wider and freer opportunities for all forms of transportation to compete for the transportation dollar, with resulting benefit to the public, both producers and consumers.

Senator SMATHERS. All right, sir. Thank you very much, Mr. Stedman.

Mr. STEDMAN. Thank you, Mr. Chairman.

Senator SMATHERS. We appreciate your testimony. It is very constructive.

The next witness is Mr. James Harmanson, Jr., general counsel for the National Council of Farmer Cooperatives.

Mr. Harmanson, we are always glad to have you here. You are an old friend.

STATEMENT OF JAMES HARMANSON, JR., GENERAL COUNSEL, NATIONAL COUNCIL OF FARMER COOPERATIVES, WASHINGTON, D.C.

Mr. HARMANSON. My name is L. James Harmanson, Jr., and I am general counsel of the National Council of Farmer Cooperatives, 1616 H Street NW., Washington, D.C.

Mr. Chairman, in deference to the time element and the fact you have a considerable number of witnesses, I am going to omit portions

of the statement, and I would like to request that the complete statement be inserted in the record.

Senator SMATHERS. Without objection, the complete statement will be made a part of the record.

(The prepared statement of Mr. Harmanson follows:)

We appreciate the opportunity of presenting to your subcommittee today the policy position of the council with respect to certain sections of S. 2560, as proposed to be amended by the Committee Print No. 1 released on January 24, 1962, and S. 2764 introduced on January 30, 1962, by Senator Magnuson at the request of the Interstate Commerce Commission.

IDENTIFICATION OF THE COUNCIL

The council is a nationwide organization composed of farmer-owned and farmer-controlled cooperative marketing and purchasing associations. The council's direct members and their affiliated local, county, State, and regional associations number approximately 5,700 cooperatives which market agricultural commodities and purchase farm production supplies for a total of nearly 3 million farmer memberships.

The definition of an agricultural cooperative as set forth in the Agricultural Marketing Act of 1929, as amended, is the basis for legal eligibility for membership in our organization. The same definition is the statutory basis for exemption from economic regulation granted by Congress to motor vehicles controlled and operated by agricultural cooperatives in section 203(b)(5) of the Interstate Commerce Act, part II. I would therefore like to make clear that the council is composed of bona fide farmer cooperatives, as given statutory approval by the Congress and not of so-called phony or pseudocooperatives to which somewhat loose and general reference is being made rather frequently in some transportation circles of late. I am attaching to this statement as appendix I the text of that portion of the Agricultural Marketing Act of 1929, as amended, which defines an agricultural cooperative. I am also attaching to this statement as appendix II a list of the council's direct members.

COUNCIL POSITION

It is indeed a pleasure today to be able to appear before you to give support to parts of the legislative proposal under consideration. So often in the past our organization has found it necessary to testify before your subcommittee in a complete opposition role. We appreciated the opportunity to participate during the recess between the sessions of this 87th Congress, with other representatives of agriculture, in informal staff discussions with members of your staff and representatives of the motor carrier industry in an effort to widen the area of agreement and narrow the area of disagreement as to the proposals encompassed in S. 2560. I believe a comparison of the provisions of the Committee Print No. 1 of the bill with the bill as originally introduced reflects the value of such informal staff discussions by those representing vitally and directly affected industries.

I am attaching to this statement copies of two policy resolutions adopted by the council's delegate body in annual session on January 17, 1962, applicable to the subject matter of the bills under consideration. Before applying those policy resolutions to and commenting briefly on the several sections of the Committee Print No. 1 of S. 2560, and S. 2764, I would like to say just a few words about the development of these policy resolutions. They have run the gauntlet of the council's transportation committee, composed of traffic managers and commerce counsel of member organizations, a resolutions committee composed of a representative from each commodity and service division in the council and, finally, the official delegates of council members in annual session. Although many of the official delegates of council members are farmers, I do not suggest that the average farmer has informed himself or has had occasion to try to understand the details of this legislation. I do suggest very confidently, however, that those from many States in the country who have participated in the development and adoption of these policy positions know the dominant thinking of the farmers served by their associations and have reflected that thinking in the policy positions adopted.

SECTION 1

We have no objection to section 1 of the Committee Print No. 1 which, as we understand it, would have no applicability to interstate motor carriers exempt from economic regulation by Federal statute. If the federally regulated motor carrier industry believes that the provisions in section 1 of the Committee Print No. 1 are desirable and in the public interest, we, representing one segment of agriculture, do not object. This is not to be interpreted, however, as an expression of any view as to the technical or substantive merits of the section.

The Council would, however, have opposed section 1 of the bill, as originally introduced, because there were a number of provisions in it which would have permitted and we believe would have resulted in many interstate motor carriers important to the orderly and economical movement of agricultural commodities and farm supplies now exempt from economic regulation by Federal statute, being indirectly subjected to additional regulation by the Interstate Commerce Commission.

SECTION 2

Section 2 of the committee print provides that if any person, with certain exceptions which we shall note later, operates in clear and patent violation of certain sections of part II of the Interstate Commerce Act (the sections requiring operating authority in the form of a certificate of public convenience and necessity or a permit, or rules, regulations, requirements, or orders thereunder) any person injured thereby may sue for the enforcement of the section, rule, regulation, etc., allegedly violated, by injunction or other restraining order.

Thus, the committee print limits the right of any person to sue to those cases of clear and patent violations of operating authorities provisions of the statute or rules, regulations, etc., issued thereunder. With these important limitations contained in the committee print, we support section 2 thereof provided there is one addition which we regard as essential to prevent a barrage of suits without merit solely for competitive or harassment purposes.

We would point out that under the committee print suits are not authorized to be brought against motor carriers holding a certificate or permit issued by the Commission. Hence, suits by the amended section 2 of the committee print are, in effect, authorized generally to be brought only against private and exempt motor carriers. In order that only suits in good faith would be brought under the section, whether by railroads, water carriers, other motor carriers, or some other person who sincerely believes there is a violation and that he is being injured thereby, the statute should provide that the person bringing the suit be required to furnish a bond to compensate the defendant for any damage resulting from the suit in the event the action is not judicially sustained against him on the merits. The bonds should secure the defendant against loss, damage, expense, or other cost, including attorney's fees which he might suffer because of the plaintiff's bringing the suit in those instances where the application for injunction or other process is denied. This, we believe, is in accordance with elementary justice and is required for reasonable protection of the rights of those judicially found innocent of any violation under the law. With this addition to section 2 of the committee print, the council supports the section.

SECTION 3

The policy position of the council, adopted on January 17, 1962, which is applicable to the provisions of section 3 of the committee print is as follows:

"The council will support in the interest of more effective enforcement, increased civil penalties for violations of the *operating authorities provisions* of the Interstate Commerce Act. The council opposes, however, changes in existing law that would impose penalties for violations of hours of service and safety regulations without proof of willfulness or gross negligence." [Emphasis supplied.]

The council has gone the second mile, in my judgment, in lending its support, in the interest of more effective enforcement to the imposition of civil penalties (forfeitures) for violations of the operating authorities provisions of the Interstate Commerce Act. These are hazards in this proposal which would work a grave injustice and costly burden to motor carriers who honestly desire to comply with the law, unless the authority herein proposed to be vested in the ICC should be discharged very sparingly and responsibly. The whole area of motor carrier operations for which the term "gray area" has been coined is admittedly an area in which honest and informed men may differ as to whether a particular

operation is legal or illegal. It is immaterial whether lack of definiteness in the law itself or lack of certainty in the regulations issued under the law account for the alleged difficulty under existing procedures for prompt determination of whether a particular motor carrier operation is illegal (black) or legal (white). We do not believe that a civil forfeiture action, requiring no proof of willfulness or knowledge, is a proper proceeding for resolving in its merits the doubt created by the law, or regulations issued thereunder as to whether a particular motor carriage operation does or does not require operating authority. In such cases, we believe the appropriate procedure is an action brought under the criminal penalty provision where any violation must be shown to be knowingly and willfully committed.

We desire to emphasize that the council's support of section 3 of Committee Print No. 1 is limited to increased civil penalties for violations that are clearly violations of the operating authorities provisions of the Interstate Commerce Act. In the event Congress should enact the proposed civil forfeitures provisions in section 3 as applied to violations of operating authorities, it should be made clear to the Commission that civil forfeitures actions can be initiated only in those cases where the activity is clearly black, and not where there appears to be a tinge of gray. The council holds no brief for illegal operations and does not condone them in any respect but it should be recognized that the broad powers proposed to be granted by this section are fraught with the opportunity for abuse.

We are unalterably opposed to the imposition of civil forfeitures in connection with regulations pertaining to maximum hours of service of employees and safety of operations or standards of equipment as proposed by S. 2764. I hold in my hand a published pamphlet containing the Motor Carrier Safety Regulations including amendments as of July 1, 1961, 70 pages of small print with an additional 8 pages of index. Some of these regulations are clear and certain, and any person should with due care know whether he is or is not complying with those. Other of the regulations contain uncertain terms and with respect to these even a most prudent and conscientious man cannot be reasonably certain that his judgment and that of the Commission personnel will agree as to what constitutes satisfactory compliance. An operator may have taken all reasonably necessary steps to comply but still through mechanical failure or the fault of others, and not his own, be guilty of failure to comply with some one or more of the regulations.

We do not believe that the imposition of civil forfeitures for failure to comply with safety regulations when there is no attendant willfulness or knowledge is a justified means for the ends sought, worthy as the safety objective is.

SECTION 4

The council is opposed to the proposed registration of motor carriers operating under section 203(b)(6), or the registration of any other carriers who are not subject to economic regulation under Federal law. The proposed registration, even with its limitation to those motor carriers operating vehicles of three or more axles was carefully considered at the council's recent annual meeting and was rejected. The council's opposition to registration of exempt or private motor carriers is set forth in the attached policy statement.

If the sole purpose of the proposal is to insure that the motor carriers subject to the safety regulations have adequate knowledge of them, there must be less costly and less potentially frustrating methods than the registration proposal in the bill. Certainly the State divisions of motor vehicles would give a high degree of cooperation in distribution of a copy of the "Safety Regulations" to licensees of trucks of appropriate sizes and weights. Other means to accomplish this purpose and to avoid the cost and duplication of the separate registration with the Interstate Commerce Commission, must be available and we believe can be found.

If the proposed registration should be used for other purposes—such as to make spot checks on some exempt carriers' equipment with the view of trying to develop information which might help to build up a case for their economic regulation—we believe it is an improper means to accomplish the end sought.

Some of the legislative recommendations in the Commission's latest annual report confirm our belief that there has been no change in the Commission's long-standing desire to extend its regulatory powers to the economic regulation of the interstate movement by motor carrier of agricultural commodities. Long experience in the marketplace has developed a firm and unwavering conviction

on the part of agriculture generally at the grassroots that such extension of the Commission's regulatory powers over the movement of farm products would be disruptive, costly and an additional barrier in the interests of both producers and consumers to the orderly and economical distribution of food and fiber from the farm to the ultimate consumer. So the council views this registration proposal, even though well intentioned by the sponsors, as the entering wedge which might well be used through administration as an attempt to open wide the door for step-by-step regulation of the exempt carriers. In the absence of its demonstrable value as a tool to improve safety of operations on the highways, the council opposes the proposed registration of exempt (or private) carriers, no matter how much it may be watered down as to scope in order to try to make it more palatable.

SECTION 5

The council has no policy position with respect to the subject matter of section 5 of the committee print.

Matters not included in the scope of Committee Print No. 1 of S. 2560 and S. 2764, have in the course of these hearings been recommended for inclusion therein. In deference to the announced scope of these hearings, we have confined our testimony to the subject matter indicated. We respectfully urge that your committee give no consideration to inclusion in this legislation of proposals which go beyond the subject matter of Committee Print No. 1 of S. 2560 and S. 2764. If consideration of other matters is to be given, we recommend that separate hearings be called, with all interested parties given an opportunity to be heard.

Council members have a vital interest in some of these other matters which have been dealt with by several other witnesses in the course of the current hearings. If and when these matters are set for hearings, we respectfully request for the council an opportunity to present our position and views.

PROMOTING LEGAL OPERATIONS OF MOTOR CARRIERS SUBJECT TO PART II OF THE INTERSTATE COMMERCE ACT

(Adopted by delegate body of National Council of Farmer Cooperatives at annual meeting in San Francisco, Calif., Jan. 17, 1962)

Various proposals are being advanced for the stated purposes of curbing the illegal operations of motor carriers and promoting more complete compliance with hours of service and safety regulations. While the council is in complete agreement with the need for shippers as well as carriers to work toward achieving these objectives, we view with concern some of the legislative proposals advanced to accomplish them.

As both an aid to dealing with problems of enforcement in the motor carrier field, and to reasonably protect the legitimate rights and needs of agriculture, the council takes the following policy positions on current proposals:

(1) The council has no objections to appropriate legislation for the establishment of uniform regulations applicable to interstate motor carriers presently regulated by the States in order to achieve more complete compliance with Federal operating requirements. However, the council opposes any such legislative proposals which would directly or indirectly extend economic regulation by the Federal Government to carriers now exempt by law.

(2) The council will support appropriate legislation which will permit in the case of clear and patent violations of the operating authorities provisions of part II of the Interstate Commerce Act, the right to institute by persons injured from such alleged violations, court actions seeking to curb such violations. However, the persons bringing such actions shall be required to provide adequate bonds to protect the persons against whom the actions are brought from any damage resulting from suits where the actions are not judicially sustained.

(3) The council will support in the interest of more effective enforcement, increased civil penalties for violations of the operating authorities provisions of the Interstate Commerce Act. The council opposes, however, changes in existing law that would impose penalties for violations of hours of service and safety regulations without proof of willfulness or gross negligence.

Registration of Exempt and Private Motor Carriers

(Adopted by delegate body of National Council of Farmer Cooperatives at annual meeting in San Francisco, Calif., January 17, 1962)

The national council opposes registration with the Interstate Commerce Commission of exempt and private motor carriers as we believe it will not substantially aid in enforcement of safety rules or regulations or curtail illegal trucking operations. Further, such registration would result in an accumulation of a vast volume of records which would be of little, if any, practical value and would produce information which, in large part, should already be available from other Federal and/or State agencies.

Present laws and regulations, properly defined and enforced, should bring about compliance with the law.

The national council also favors such increases in fines and penalties or increased appropriations as may be justified to promote fuller compliance with existing statutory law.

Appendix I. Section 15(a) of the Agricultural Marketing Act

Approved June 15, 1929, as amended (49 Stat. 317, 12 U.S.C.A. 1141j(a))

As used in this act, the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however*, That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 percent per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

Appendix II. Direct Members of National Council of Farmer Cooperatives

Alabama Farmers Cooperative, Inc., Post Office Box 291, Decatur, Ala.
Allied Grape Growers, Post Office Box 329, Madera, Calif.
American Cotton Cooperative Association, Post Office Box 1056, Atlanta, Ga.
American Rice Growers Cooperative Association, 211 Poineer Building, Lake Charles, La.
Apple Growers Association, Hood River, Oreg.
Asociacion Azucarera Cooperativa Lafayette, Arroyo, P.R.
Associated Cooperatives, Inc., Post Office Box 911, Sheffield, Ala.
Berks-Lehigh Cooperative Fruit Growers, Inc., 130 East Locust Street, Fleetwood, Pa. .
Blue Lake Packers, Inc., Post Office Box 5038, Salem, Oreg.
Calavo Growers of California, Box 3486, Terminal Annex, Los Angeles, Calif.
Calcot, Ltd., Post Office Box 3217, H Street Annex, Bakersfield, Calif.
California Almond Growers Exchange, Box 1768, Sacramento, Calif.
California Canners and Growers, 260 California Street, San Francisco, Calif.
California Canning Peach Association, World Trade Center, Room 261 Ferry Building, San Francisco, Calif.
California Canning Pear Association, 64 Pine Street, San Francisco, Calif.
California Fruit Exchange, Post Office 2038, Sacramento, Calif.
California Lima Bean Growers Association, Post Office Box 512, Oxnard, Calif.

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California Tomato Growers Association, Inc., 145 South American Street, Stockton, Calif.
Consumers Cooperative Association, Post Office Box 7305, Kansas City, Mo.
Cooperativa Azucarera Los Canos, Post Office Box 38, Arecibo, P.R.
Cooperativa Cafeteros de Puerto Rico, Post Office Box 1511, Ponce, P.R.
Cooperative GLF Exchange, Inc., Ithaca, N.Y.
Cotton Producers Association, Post Office Box 2210, Atlanta, Ga.
Country Belle Cooperative Farmers, Post Office Box 507, Pittsburgh, Pa.
Dairymen's League Co-operative Association, Inc., 100 Park Avenue, New York, N.Y.
Diamond Walnut Growers, Inc., Post Office Box 1727, Stockton, Calif.
Eastern States Farmers' Exchange, Inc., West Springfield, Mass.
Eugene Fruit Growers Association, Post Office Box 1261, Eugene, Oreg.
Farm Bureau Services, Inc., Post Office Box 960, Lansing, Mich.
Farmers Cooperative Exchange, Inc., Post Office Box 2419, Raleigh, N.C.
Farmers Elevator Service Co., 2827 Eighth Avenue South, Fort Dodge, Iowa.
Farmers Grain Dealers Association of Iowa, 1101 Walnut Street, Des Moines, Iowa.
Farmers' Rice Growers Cooperative, 1235 Russ Building, San Francisco, Calif.
Florida Citrus Canners Cooperative, Post Office Box 1111, Lake Wales, Fla.
Florida Citrus Exchange, Post Office Box 2349, Tampa, Fla.
Fruit Growers Supply Company, Box 2706, Terminal Annex, Los Angeles, Calif.
Fruit Growers Supply Co., Box 2706, Terminal Annex, Los Angeles, Calif.
Great Lakes Cherry Producers Marketing Cooperative, Inc., 801 Cherry Street Southeast, Grand Rapids, Mich.
Hastings Potato Growers Association, Hastings, Fla.
Idaho Potato Growers, Inc., Post Office Box 978, Idaho Falls, Idaho.
Illinois Farm Supply Co., Post Office Box 585, Bloomington, Ill.
Indiana Farm Bureau Cooperative Association, Inc., 47 South Pennyslvania Street, Indianapolis, Ind.
Intermountain Farmers Association, Post Office Box 1620, Salt Lake City, Utah.
Knouse Foods Cooperative, Inc., Peach Glen, Pa.
Lehigh Valley Cooperative Farmers, Allentown, Pa.
Lindsay Ripe Olive Co., Post Office Box 277, Lindsay, Calif.
Louisiana Agricultural Cooperative, Inc., Baton Rouge, La.
Maine Potato Growers, Inc., Post Office Drawer 271, Presque Isle, Maine.
Mid West Cooperative, Inc., Post Office Box 398, Hamlin, Tex.
Midland Cooperatives, Inc., 739 Johnson Street NE., Minneapolis, Minn.
Minnesota Farm Bureau Service Co., 101 East Fairfield Avenue, St. Paul, Minn.
Mississippi Chemical Corp., Post Office Box 563, Yazoo City, Miss.
Mississippi Federated Cooperatives (AAL), Post Office Box 449, Jackson, Miss.
Missouri Farmers Association, Inc., Columbia, Mo.
Morrow County Grain Growers, Inc., Lexington, Oreg.
Mushroom Growers Cooperative Association of Pennsylvania, Kennett Square, Pa.
National Grape Co-operative Association, Inc., Westfield, N.Y.
National Live Stock Producers Association, 155 North Wacker Drive, Chicago, Ill.
National Wool Marketing Corp., 281 Summer Street, Boston, Mass.
Ne-Tex Co-operative Oil Mill, Wolfe City, Tex.
Norbest Turkey Growers Association, Post Office Box 1529, Salt Lake City, Utah.
North Iowa Cooperative Processing Association, Post Office Box 1338, Mason City, Iowa.
North Pacific Canners & Packers, Inc., Post Office Box 4683, Portland, Oreg.
Northwest Wholesale Inc., Post Office Box 1649, Wenatchee, Wash.
Nulaid Farmers Association, 2700 Merced Street, San Leandro, Calif.
Ocean Spray Cranberries, Inc., Hanson, Mass.
Ohio Farmers Grain & Supply Association, Fostoria, Ohio.
Oklahoma Cotton Cooperative Association, Post Office Box 1257, Oklahoma City, Okla.
Pacific Supply Cooperative, Post Office Box 4380, Portland, Oreg.
Pacific Wool Growers, 734 NW. 14th Avenue, Portland, Oreg.
Pennsylvania Farm Bureau Cooperative Association, Post Office Box 23, Harrisburg, Pa.
Plains Cooperative Oil Mill, Post Office Box 509, Lubbock, Tex.
Poultrymens Cooperative Association, Post Office Box 626, Riverside, Calif.
Producers Cooperative Oil Mill, Post Office Box 1886, Oklahoma City, Okla.

Puerto Rico Tobacco Marketing Cooperative Association, Post Office Box 331, San Juan, P.R.
Ranchers Cotton Oil, Post Office Box 248, Fresno, Calif.
Rice Growers Association of California, Post Office Box 958, Sacramento, Calif.
Rockingham Poultry Marketing Cooperative, Inc., Broadway, Va.
San Diego Cooperative Poultry Association, Post Office Box 468, San Diego, Calif.
San Joaquin Valley Poultry Producers Association, Post Office Box 1829, Fresno, Calif.
Sioux Honey Association, 509 Plymouth Street, Sioux City, Iowa.
Southern States Cooperative, Inc., Post Office Box 1656, Richmond, Va.
St. James Sugar Cooperative, Inc., St. James, La.
Sunkist Growers, Inc., Box 2706, Terminal Annex, Los Angeles, Calif.
Sun-Maid Raisin Growers of California, Fresno, Calif.
Sunsweet Growers, Inc., Post Office Box 670, San Jose, Calif.
Tennessee Farmers Cooperative, La Vergne, Tenn.
Texas Cotton Growers Cooperative Association, Post Office Box 990, Dallas, Tex.
The Farm Bureau Cooperative Association, Inc., 245 North High Street, Columbus, Ohio.
Tri-Valley Packing Association, 240 Battery Street, San Francisco, Calif.
Turlock Cooperative Growers, Inc., Box 948, Modesto, Calif.
United Co-operatives, Inc., Post Office Box 836, Alliance, Ohio.
Waverly Growers Cooperative, Waverly, Fla.
Western Farmers Association, 201 Elliott Avenue West, Seattle, Wash.
Willamette Cherry Growers, Inc., Post Office Box 283, Salem, Oreg.

State Councils Divisions

Agricultural Conference Board of Virginia, J. E. Givens, president, care of Southern States Cooperative, Inc., Post Office Box 1656, Richmond, Va.
Agricultural Cooperative Council of Oregon, Leon Garoian, secretary, Extension Hall, Oregon State University, Corvallis, Oreg.
Agricultural Council of California, Richard Johnsen, Jr., executive secretary, 1400 10th Street, Sacramento, Calif.
Colorado Cooperative Council, Inc., Alton Scofield, executive secretary, suite 100, 3268 South Broadway, Englewood, Colo.
Delaware Council of Farmer Cooperatives, H. Wilson Price, executive secretary, 905 South College Avenue, Newark, Del.
Farmers Cooperative Council of North Carolina, Harry B. Caldwell, secretary, Box H–1, Greensboro, N.C.
Florida Council of Farmer Cooperatives, Inc., Al Whitmore, president, Post Office Box 2111, Orlando, Fla.
Georgia Council of Farmer Cooperatives, M. C. Gay, secretary, Lexington Road, Athens, Ga.
Idaho Cooperative Council, R. W. Wilcox, secretary, 317½ North Eighth Street, Boise, Idaho.
Iowa Institute of Cooperation, O. L. Lindell, executive secretary, Post Office Box, 169, Ames, Iowa.
Kansas Cooperative Council, James L. McGuire, executive Secretary, 701 Jackson Street, Topeka, Kans.
Kentucky Cooperative Council, W. E. Howard, secretary, care of Kentucky Farm Bureau Mutual Insurance Co., 120 South Hubbard Lane, Louisville, Ky.
Louisiana Council of Farmer Cooperatives, Ewel P. Roy, secretary-treasurer, 239 Agricultural Administration Building, Louisiana State University, Baton Rouge, La.
Maine Cooperative Council, Winston E. Pullen, secretary, care of College of Agriculture, University of Maine, Orono, Maine.
Maryland Council of Farmer Cooperatives, Inc., Robert J. Beiter, secretary, University of Maryland, Department of Agricultural Economics, College Park, Md.
Michigan Association of Farmer Cooperatives, L. A. Cheney, secretary-treasurer, Post Office Box 960, Lansing, Mich.
Minnesota Association of Cooperatives, Edward E. Slettom, executive secretary, 2651 University Avenue, St. Paul, Minn.
Mississippi Council of Farmer Cooperatives (AAL), D. B. Roark, secretary-treasurer, Post Office Box 563, Yazoo City, Miss.
Montana Council of Cooperatives, Riley Wm. Childers, chairman, Box 531, Great Falls, Mont.

Nebraska Cooperative Council, Gordon Busboom, executive secretary, 426 Terminal Building, Lincoln, Nebr.
New Jersey Farm Bureau Committee on Cooperatives, the State Council of Farmer Cooperatives, C. H. Fields, secretary, 168 West State Street, Trenton, N.J.
New Mexico Cooperative Council, W. Y. Fowler, secretary, Post Office Box 425, University Park, N. Mex.
New York State Council of Farmer Cooperatives, Inc., K. S. Carpenter, secretary, 203 Warren Hall, Cornell University, Ithaca, N.Y.
Ohio Council of Farmer Cooperatives, Inc., C. A. Gehrig, executive secretary, 145 North High Street, Columbus, Ohio.
Oklahoma Agricultural Cooperative Council, Adlowe L. Larson, secretary, care of Oklahoma State University, Stillwater, Okla.
Pennsylvania Association of Farmer Cooperatives, Glenn G. Carter, executive secretary, 103 East Beaver Avenue, State College, Pa.
South Carolina Council of Farmer Cooperatives, R. D. Steer, secretary, Post Office Box 948, Greenwood, S.C.
Texas Federation of Cooperatives, Bruno E. Schroeder, executive vice president, 307 Nash Building, Austin, Tex.
Utah Council of Farmer Cooperatives, Morris H. Taylor, secretary, care of Utah State University, Logan, Utah.
Vermont Cooperative Council, L. D. Ware, executive secretary, Richmond, Vt.
Washington State Council of Farmer Cooperatives, H. M. Olsen, executive secretary, 4119 Arcade Building, Seattle, Wash.
Wisconsin Council of Agriculture Cooperative, Milo K. Swanton, executive secretary, 111 South Fairchild Street, Madison, Wis.

Mr. HARMANSON. I will try to move along relatively quickly to the issues that are before you.

Senator SMATHERS. Let me ask you one question quickly. I notice Mr. Stedman recommended the Commission's recommendation No. 1, as I think they call it, on the bottom of page 4 of his statement. He says:

> I refer to recommendation No. 1 in the last annual report of the Interstate Commerce Commission, as to needed legislation with respect to effective enforcement of the law relating to transportation cooperatives.

Do you favor that?

Mr. HARMANSON. No, sir; I do not.

Senator SMATHERS. All right, proceed. Go ahead.

Mr. HARMANSON. We appreciate the opportunity of presenting to your subcommittee today the policy position of the council with respect to certain sections of S. 2560, as proposed to be amended by the Committee Print No. 1, released on January 24, 1962, and S. 2764 introduced on January 30, 1962, by Senator Magnuson at the request of the Interstate Commerce Commission.

I am going to skip over to page 2, omitting the identification of the council.

Senator SMATHERS. All right, sir.

Mr. HARMANSON. It is indeed a pleasure today to be able to appear before you to give support to parts of the legislative proposal under consideration. So often in the past our organization has found it necessary to testify before your subcommittee in a complete opposition role. We appreciated the opportunity to participate during the recess between the sessions of this 87th Congress, with other representatives of agriculture, in informal staff discussions with members of your staff and representatives of the motor carrier industry in an effort to widen the area of agreement and narrow the area of disagreement as to the proposals encompassed in S. 2560.

I believe a comparison of the provisions of the Committee Print No. 1 of the bill with the bill as originally introduced reflects the value of such informal staff discussions by those representing vitally and directly affected industries.

There is attached to my statement two policy resolutions adopted in January by the delegate body of the council upon which this statement is based.

Section 1. We have no objection to section 1 of the Committee Print No. 1, which, as we understand it, would have no applicability to interstate motor carriers exempt from economic regulation by Federal statute. If the federally regulated motor carrier industry believes that the provisions in section 1 of the Committee Print No. 1 are desirable and in the public interest, we representing one segment of agriculture have no objections.

This is not to be interpreted, however, as an expression of any view as to the technical or substantive merits of the section.

The council would, however, have opposed section 1 of the bill, as originally introduced, because there were a number of provisions in it which would have permitted and we believe would have resulted in many interstate motor carriers important to the orderly and economical movement of agricultural commodities and farm supplies now exempt from economic regulation by Federal statute being indirectly subjected to additional regulation by the Interstate Commerce Commission.

Section 2: Section 2 of the committee print provides that if any person, with certain exceptions which we shall note later, operates in clear and patent violation of certain sections of part II of the Interstate Commerce Act (the sections requiring operating authority in the form of a certificate of public convenience and necessity or a permit, or rules, regulations, and so forth), any person injured thereby may sue for the enforcement of the section, rule, regulation, and so forth, allegedly violated by injunction or other restraining order.

Thus, the committee print limits the right of any person to sue to those cases of clear and patent violations of operating authorities provisions of the statute or rules, regulations, and so forth, issued thereunder.

With these important limitations contained in the committee print, we support section 2 thereof provided there is one addition which we regard as very essential to prevent a barrage of suits without merit solely for competitive or harassment purposes.

Since getting over to the hearing room this morning, I have noted there is a Committee Print No. 2 that has been made available, and in hastily reading it I notice that there is a provision for bonds to be given in bringing any such suit in order to protect the defendant in the event the case is finally adjudicated in his favor.

Therefore, I shall skip the rest, since that addition.

We are strongly in favor of the addition which has been made to this section of Committee Print No. 2.

That does not mean to say it is exact language, exact statutory language, that we think is perfect. We have not had time to study it. But at least the substantive point is certainly well covered to take care of our policy.

Section 3: The policy position of the council, adopted on January 17, 1962, which is applicable to the provisions of section 3 of the committee print, is as follows:

> The council will support in the interest of more effective enforcement, increased civil penalties for violations of the *operating authorities provisions* of the Interstate Commerce Act. The council opposes, however, changes in existing law that would impose penalties for violations of hours of service and safety regulations without proof of willfulness or gross negligence." [Emphasis supplied.]

The council has gone the second mile, in my judgment, in lending its support, in the interest of more effective enforcement, to the imposition of civil penalties—more properly, forfeitures—for violations of the operating authorities provisions of the Interstate Commerce Act. There are hazards in this proposal which would work a grave injustice and costly burden to motor carriers who honestly desire to comply with the law, unless the authority herein proposed to be vested in the Interstate Commerce Commission should be discharged very sparingly and responsibly.

The whole area of motor carrier operations for which the term "gray area" has been coined is admittedly an area in which honest and informed men may differ as to whether a particular operation is legal or illegal. It is immaterial whether lack of definiteness in the law itself or lack of certainty in the regulations issued under the law account for the alleged difficulty under existing procedures for prompt determination of whether a particular motor carrier operation is illegal (black) or legal (white).

I have heard with interest this morning the Chairman of the Interstate Commerce Commission in his testimony point out the difficulty in determining in some of these gray areas of buy and sell and leasing arrangements whether it is lawful or unlawful.

We do not believe that a civil forfeiture action, requiring no proof of willfulness or knowledge, is a proper proceeding for resolving on its merits the doubt created by the law, or regulations issued thereunder, as to whether a particular motor carriage operation does or does not require operating authority. In such cases, we believe the appropriate procedure is an action brought under the criminal penalty provision where any violation must be shown to be knowingly and willfully committed.

I am going to skip down.

The council holds no brief for illegal operations and does not condone them in any respect, but it should be recognized that the broad powers proposed to be granted by this section are fraught with the opportunity for abuse.

Then with respect to safety regulations. We are unalterably opposed to the imposition of civil forfeitures in connection with regulations pertaining to maximum hours of service of employees and safety of operations or standards of equipment as proposed by S. 2764.

I hold in my hand, Mr. Chairman, a published pamphlet containing the Motor Carrier Safety Regulations, including amendments as of July 1, 1961. There are 70 pages of small print with an additional 8 pages of index. Some of these regulations are clear and certain, and any person should with due care know whether he is or is not complying with those particular regulations.

But other of these regulations contain uncertain terms, and with respect to those regulations we honestly believe a prudent and conscientious man cannot be reasonably certain that his judgment and that of the Commission personnel will agree as to what constitutes satisfactory compliance.

An operator may have taken all reasonably necessary steps to comply but still, through mechanical failure or the fault of others, or the judgment factor, be guilty of failure to comply—and notice the section says not only "refuses" but "fails to comply"—with some one or more of the regulations. Then he would be subject to the increased civil forfeitures, if he fails, whether it is his fault or somebody else's fault.

We do not believe that the imposition of civil forfeitures for failure to comply with safety regulations when there is no attendant willfulness or knowledge is a justified means for the ends sought—and let me emphasize—worthy as the safety objective is and in complete agreement as we are with the safety objective that is sought.

Section 4: Here is the one where we have to be in the position of opposition rather than agreement.

Senator SMATHERS. I hate for you to do that. We are getting along so well. [Laughter.]

This is about the first time you have come up here in several years and agreed to anything, and we are proud to have you even for this length of time agreeing. [Laughter.]

Mr. HARMANSON. You know we try as vigorously as we can to represent the interests of our principals when they lay down the law.

Senator SMATHERS. I understand, and you do a good job.

Mr. HARMANSON. The council is opposed to the proposed registration of motor carriers operating under section 203(b)(6), or the registration of any other carriers who are not subject to economic regulation under Federal law. The proposed registration, even with its limitation to those motor carriers operating vehicles of three or more axles, was carefully considered at the council's recent annual meeting and was rejected.

This was not Washington-made policy by the staff. This was determined after running the gantlet of a transportation committee made up of traffic managers, and we had people from Florida and top policymakers. So it ran the gauntlet before this policy was established.

The council's opposition to registration of exempt or private motor carriers is set forth in the attached policy statement.

If the sole purpose of the proposal is to insure that the motor carriers subject to the safety regulations have adequate knowledge of them, the educational process we have heard about this morning, then there must be less costly and less potentially frustrating methods than the registration proposal in the bill.

Certainly the State divisions of motor vehicles would give a high degree of cooperation in distribution of a copy of the "Safety Regulations" to licensees of trucks of appropriate sizes and weights, even to the point of having an indication at the time of registration of whether or not these trucks are to engage in interstate commerce in order to eliminate all of the distribution of these safety regulations to those that may not be subject thereto.

Oher means to accomplish this purpose and to avoid the cost and duplication of the separate registration with the Interstate Commerce Commission must be available and we believe can be found.

We have been very much pleased to note the recommendations in the President's recent message. We believe the emphasis he has given to these cooperative arrangements between the States and the Federal Government may lend a much needed impetus to getting a closer working relationship between the States and the Federal Government in this area.

If the proposed registration should be used for other purposes—such as to make spot checks on some exempt carriers' equipment with the view of trying to develop information which might help to build up a case for their economic regulation—we believe it is an improper means to accomplish the end sought.

We think that if on merit there should be economic regulation of carriers now exempt, it should be attacked directly on the basis of evidence and not through an indirect method.

Some of the legislative recommendations in the Commission's latest annual report—and I say this very respectfully—confirm our belief that there has been no change in the Commission's longstanding desire to extend its regulatory powers to the economic regulation of the interstate movement by motor carrier of agricultural commodities.

Long experience in the marketplace has developed a firm and unwavering conviction on the part of agriculture generally at the grassroots that such extension of the Commission's regulatory powers over the movement of farm products would be disruptive, costly, and an additional barrier in the interests of both producers and consumers to the orderly and economicaly distribution of their products.

So the council views this registration proposal, even though well-intentioned by the sponsors, as the entering wedge which might well be used through administration as an attempt to open wide the door for step-by-step regulation of the exempt carriers.

In the absence of its demonstrable value as a tool to improve safety of operations on the highways, the council opposes the proposed registration of exempt (or private) carriers, no matter how much it may be watered down as to scope in order to try to make it more palatable.

We have no position on the matters encompassed in section 5 of the bill.

As far as conclusion is concerned, we hope that the committee will not act favorably on the recommendations of representatives of carrier industries who have asked you to widen this bill to include other matters. We are in complete agreement that a first step to try to deal with this problem of illegal carriage is needed, and we hope that you will move forward on that which you might have a chance of getting passed this year, rather than opening it up to other controversial matters.

We are vitally affected by some of the Commission's recommendations, particularly in the area of agricultural cooperatives. When that matter is ready to be heard by your committee, we request an opportunity to be heard and try to get the facts before you.

Thank you.

Senator SMATHERS. Thank you, Mr. Harmanson.

As usual, you have done another good job for your people.

Mr. HARMANSON. Thank you.

Senator SMATHERS. Let's take the out-of-town witnesses first.

Off the record.

(Discussion off the record.)

Senator SMATHERS. Back on the record. Mr. Culpepper.

We are glad to have you back, Mr. Culpepper, and you may proceed any way you like.

STATEMENT OF CAUGHEY CULPEPPER, PRESIDENT, NATIONAL CONFERENCE OF NON-PROFIT SHIPPING ASSOCIATIONS, INC., ATLANTA, GA.

Mr. CULPEPPER. Thank you, Mr. Chairman.

My name is C. B. Culpepper. I am appearing here as secretary and general manager of the Atlanta Freight Bureau and as president of the National Conference of Non-Profit Shipping Associations.

I have been in transportation work since 1921. I have been with Atlanta Freight Bureau since 1937. I have had actual contact with transportation all of the time, and, though I do not hold any degrees, I have a working knowledge of transportation, and I trust that the committee will bear in mind that, while I cannot support my knowledge with degrees, I can offer some actual experience in what I have been doing.

I do not want to fight the Civil War over, sir, but I would like to use one illustration here to show my position this morning.

Senator SMATHERS. If you want to do it, the Senate is going to meet at 12 o'clock, and we have got this question of qualifications for voters coming up. It is going to be fought over there. So——

Mr. CULPEPPER. That just explains my position here; that is all.

Senator SMATHERS. All right.

Mr. CULPEPPER. I had an uncle who came up here to Washington one time not very long ago just before he died, and a young lady cousin of ours came breathlessly in and told him she had just been over and seen the Lincoln Memorial.

She said, "Uncle Joe, doesn't it make you just quiver with delight?"

He said, "Honey, I want to tell you I am one of the three people in the United States that don't think Lincoln was God."

I am one of the three people up here that are opposed to this legislation.

So I was just——

Senator SMATHERS. You are qualifying yourself? [Laughter.]

Mr. CULPEPPER. I appreciate the opportunity to appear before the subcommittee to present the views of the National Conference of Non-Profit Shipping Associations and the Atlanta Freight Bureau regarding S. 2560. My statement will be very brief.

I will approach this proposed legislation from an angle which may be entirely foreign to the reasoning expressed by any of the proceeding witnesses or any of those who might follow me.

I do not intend to take the time of the committee to discuss any of the technical problems which the various sections and provisions might present.

We are opposed to the passage of this bill primarily because of the general and psychological effect which it will have upon the considera-

tion by the Congress of inevitable subsequent legislation and the trend toward unlimited regulatory powers to be placed in the hands of the Interstate Commerce Commission as well as the final funneling of alleged violations of rules and regulations into the Federal courts, which in itself could be a catastrophe.

To begin with, S. 2560 is, to us, a confusing piece of legislation. Apparently it attempts to cover some feature of everything about which any and all of the regulated carriers have complained, and it has woven into it some of the suggestions of the Interstate Commerce Commission.

It seeks to take away from the individual States the rights to license or certificate.

It seeks to provide means and methods for hailing a motor carrier violator into court.

It seeks to make possible court proceedings against an alleged violator by almost any individual.

It seeks to make universal the domicile of any offender.

It seeks to make it obligatory upon any motor vehicles to file forms and information with the Interstate Commerce Commission.

It seeks to dabble in the procedure under which freight forwarders of used household goods might or might not so dabble.

Now, this apparent criticism of the form of the bill is in no sense a slur upon the intelligence of the members of the committee which formed the reprint makeup of the bill. They are all smart men, and this apparent conglomeration is no babbling of inefficient lawmakers. They knew what they were doing, and what they are trying to do is exactly what we are opposed to.

You will note that all of these sections and provisions finally delegate to the ICC authority to take into the Federal courts on civil actions alleged violations.

I wonder, however, if you gentlemen realize what this will finally mean. It will mean that the ICC, a creature of the Congress of the United States, will gradually but surely cease to be your creature, responsible to you, and will become a creature of first the judiciary and then the executive department of the Government.

This is not a hair-brained theory, Mr. Chairman. It is a solemn prognostication.

As one specific reason for our opposition to the bill, this opposition is engendered by the avowed statements of previous witnesses to the effect that this is just the first step. It will certainly be the purpose of both the motor common carriers and the railroads and the Commission, just as soon as this legislation is enacted into law, to strike while the iron is hot and introduce further restrictive legislation which will effectively eliminate all categories of private carriers.

This is their ultimate goal, and that is why we are opposed to such sweeping and general legislation as that encompassed in S. 2560.

We have no objection to the strengthening of the laws regarding the rules and regulations relating to safety, but that should be undertaken by specific legislation.

We have no objection to tightening laws with reference to illegal private carriers, but that should be done by separate legislation.

Finally, while this precise act would not probably be calamitous to any member of the National Conference of Non-Profit Shipping

Associations or any member of the Atlanta Freight Bureau, previous witnesses have already suggested that amendments should be made to the bill which will make it necessary for all private carriers and all nonprofit shipping associations to register with the ICC and obtain a clean bill of health before operation could be begun.

You know as well as I do what that will mean. In the first place, it will mean the expensive initial procedure, interminable requests from the Commission for further information and data, and finally what would be, in effect, a show cause order before the certificate could be obtained.

I have a wonderful suggestion to make as a substitute for this legislation. Pass a bill permitting or directing the ICC to permit common carriers of any category to publish competitive rates with no minimum limitations except a compensatory basis, and let whatever form of transportation that can handle the business be the beneficiary of the inherent advantages which flow to each one of these industries.

Thank you, sir.

Senator SMATHERS. Thank you, Mr. Culpepper. Thank you, sir.

We appreciate your statement, and we appreciate your taking time to come up here.

Mr. CULPEPPER. I appreciate your letting me come. Thank you, sir.

Senator SMATHERS. All right, sir.

We will now have Mr. Giles Morrow, who is the general counsel for the Freight Forwarders Institute.

STATEMENT OF GILES MORROW, GENERAL COUNSEL, THE FREIGHT FORWARDERS INSTITUTE, WASHINGTON, D.C.

Mr. MORROW. Mr. Chairman, if you will permit my prepared statement to be inserted at this point in the record, I think I can finish very quickly.

Senator SMATHERS. We would like to do that. We would appreciate it.

We will, therefore, without objection, make your statement in full a part of the record.

Mr. MORROW. Thank you.

(The prepared statement of Mr. Morrow follows:)

My name is Giles Morrow. I appear on behalf of the Freight Forwarders Institute in support of Committee Print No. 1 of S. 2560. The institute is a national organization representing freight forwarders subject to regulation under part IV of the Interstate Commerce Act. I am general counsel of the institute, and also assistant general counsel of the United States Freight Co., which owns several freight forwarding companies.

The Freight Forwarders Institute is a trade association whose members, by dollar volume and tonnage handled, perform a great preponderance of the regulated forwarding business done in this country. For several years prior to the enactment of forwarder regulation, which came about in 1942, the institute cooperated with the congressional committees studying the need for and consist of such regulation, and consistently since that time the industry has expressed its views to Congress through the institute.

The rapid and continuing growth of unregulated carriage has an adverse effect on the freight forwarding industry. Unregulated carriers, and particularly those which operate in the manner of forwarders but claim exemption from forwarder regulation, take a large and increasing share of the business which we believe would otherwise move in the service of the regulated industry.

The freight forwarding industry, as represented by the institute, is in full accord with the objectives of S. 2560, as revised by Committee Print No. 1. We are happy to join with the railroad and trucking industries in full support of the bill. We think this unanimity of view among the involved industries should entitle their recommendations to great weight.

The first four sections of the bill, dealing with amendments to part II of the act, have been fully dealt with by others and anything I could say would be cumulative and repetitious. Consequently, I will confine my remarks to section 5, beginning on page 14 of the committee print, which proposes to amend part IV of the act.

Unregulated freight forwarding falls into three categories: (1) Bona fide private forwarding or consolidation activity, conducted by shippers who consolidate their own freight and do not fall within the definition of freight forwarding; (2) specifically exempted forwarder activity; and, (3) what the Commission has described as "gray area" forwarding, conducted in purported compliance with certain so-called "clarifying" provisions of the act, but in such a manner as to leave the operation suspect as to its lawfulness.

There can, of course, be no quarrel whatsover with bona fide private freight forwarding activity. However, regulation cannot succeed in its purpose so long as a large and increasingly important segment of the for-hire industry escapes its requirements.

The specific exemptions from part IV of the act are contained in section 402(b). They include agricultural cooperatives and the forwarding of livestock, fish, and used household goods. The only one of these which has been the subject of any known abuse or the cause for any concern is the exemption of forwarding activity confined to used household goods. Bill S. 2560 would remove that exemption, a fact which we commend to your favorable consideration for reasons which I will state.

In addition to this specifically exempted forwarding activity, with which the bill deals, we think that a large and important "gray area" of forwarding flourishes under the guise of shippers' associations or shippers' agents, operating in purported compliance with section 402(c) of the act. That section is not an exemption, but rather purports to define certain activity which does not come within the definition of a freight forwarder. S. 2560 does not deal with section 402(c), but in the course of my testimony I will discuss some of the problems to which that section gives rise.

USED HOUSEHOLD GOODS EXEMPTION

Section 5, paragraphs (a), (b), and (c), of S. 2560, would remove the exemption of used household goods forwarding from section 402 of the act and provide grandfather rights for exempt household goods forwarders now in bona fide operation. Thus, no one would be deprived of any existing rights or privileges, and a grossly discriminatory provision would be eliminated from the law.

This exemption is discriminatory because it applies only to forwarders engaged exclusively in the handling of used household goods, while those forwarders who handle general commodities in addition to household goods, as do the members of the Freight Forwarders Institute, are regulated as to all of their activities.

The exemption of used household goods forwarders evidently came into the act through mistake in the first instance. The House Committee on Interstate and Foreign Commerce, reporting the original forwarder bill, S. 210 in 1941, explained the inclusion of the used household goods exemption as follows:

"The exemption of forwarding confined exclusively to 'used household goods' was included because used household goods is customarily handled by motor carriers, and the regulation provided under part II was deemed to be all that was necessary at this time. Forwarding operations with respect to used household goods, when performed by forwarders engaged also in forwarding operations with respect to other commodities, will, of course, be regulated under part IV" (H. Rept. 1172, 77th Cong.).

The fact which the foregoing explanation overlooks is that when a freight forwarder engages in transportation he alone deals with the shipper, and the shipper has no contract or privity with the underlying carriers used by the forwarders. Hence the regulations applicable to the underlying carriers are no safeguard to the shipper who uses an unregulated freight forwarder. Furthermore, there is absolutely no valid reason why forwarders who also, in the course of their business, handle other commodities, should be regulated while those engaged exclusively in household goods transportation are freed from regulation.

The operations of the exempt household goods forwarders are having a serious impact on motor carriers of household goods as well as on the regulated freight forwarding industry. Testifying before your Subcommittee on the Decline of Regulated Carriage, on March 23, 1961, Mr. James F. Fort of the American Trucking Associations, and Mr. Eldon R. Clawson, of Bekins Van & Storage Co., dealt with this subject at some length. They described the seriousness of the problem and told of some of the abuses inherent in the functioning of these unregulated forwarders. When he testified before your subcommittee on S. 2560, on February 7 of this year, Mr. James F. Pinkney, of American Trucking Associations, referred to the prior testimony of Messrs. Fort and Clawson, and said that the ATA executive committee had voted to endorse this section.

On a number of occasions the ICC has recommended repeal of the exemption of used household goods forwarding. Typical of the Commission's recommendations is the following which was contained in its 69th annual report to Congress in 1955:

"28. We recommend that section 402(b)(2) be amended so as to terminate the exemption of freight forwarders of used household goods.

"This recommendation stems from the many complaints received by the Commission of alleged overcharges where the freight forwarder in making an estimate quotes a lower rate or weight than charged, and also adds in handling, delivery, and other charges which the shipper had not anticipated. Under existing law, the Commission is without power to correct this situation."

The Commission suggested some compelling practical reasons why the exemption should be repealed. Equally compelling, and even more fundamental, is the fact that there is not now, and never has been, any justification whatsoever for this discriminatory provision. It directly conflicts with the national transportation policy and makes it impossible to apply fair and impartial regulation to the forwarding industry.

RIGHT OF INJURED PERSONS TO SUE

Subsection (d) of section 5, beginning on page 15, of the committee print of the bill, would give injured persons the right to sue for violations of the permit requirements of the act (sec. 410) or of rules and regulations issued pursuant thereto. This proposed amendment to section 417(b) corresponds to the amendment to section 222(b) proposed by section 2 of the bill. The reasons given by others in support of section 2 of the bill are applicable with equal force to section 5(d) of the bill.

At the present time, under the terms of section 417(b), which the bill would redesignate "417(b)(1)" but not otherwise change, only the Commission or the Attorney General are authorized to bring suit against freight forwarders for violations of part IV of the act—except that private suits may be brought for failure to comply with a Commission order. By extending this right to all persons injured by nonlicensed forwarder operations, the bill would greatly aid in the suppression of illegal operations.

The procedures being followed at the present time in an effort to curb unlawful forwarder operations are extremely slow and cumbersome. Largely, it is supposed, because of lack of clear and definitive guidelines, the Commission has invoked its injunctive powers under part IV only on extremely rare occasions. Instead the Commission has instituted investigations where it has had reason to believe part IV is being violated.

A number of investigations of so-called shippers' associations, or shippers' agents, claiming exemption from part IV of the act, are now before the Commission for decision. It has taken from 3 to 5 years to process these cases through the Commission. If it should be necessary to follow this procedure in connection with each and every violation, the regulated industry would be put out of business by unregulated competition long before the last investigation could be initiated.

It is hoped that out of the pending proceedings, as soon as they are decided by the Commission, we will obtain some guidelines which will make it possible to go directly into court to enjoin unlawful forwarder operations. If injured persons are given the right to initiate such court actions it should greatly expedite the cleaning up of unlawful activities in the forwarder field.

There is one respect in which we think this provision of the bill should be amended. The remedy provided by the proposed new subsection 417(b)(2) could be invoked only in the case of "clear and patent violation" of section 410, etc. (see lines 14 and 15 on page 16 of the committee print). This language

does not appear in the preceding subparagraph, which applies in the case of suits initiated by the Commission or the Attorney General, and it would almost certainly be construed as requiring a higher degree of proof in the case of private suits than in the case of suits by the Government. There would appear to be no good reason for this.

As Mr. Harry Breithaupt, of the Association of American Railroads, pointed out to your subcommittee in his testimony earlier this month, an injunction suit is civil in character, and is not generally understood to require the same quantum of proof as a criminal suit. But the use of the words "clear and patent," particularly when those words do not appear in the corresponding preceding paragraph, could result in a requirement for proof "beyond a reasonable doubt." We strongly urge that the words "clear and patent" be stricken from the bill.

I call attention to a typographical error which appears on line 23 of page 15 of the committee print. The word "Commissioner" should be "Commission."

With these changes we wholeheartedly endorse this provision of the bill.

SHIPPERS' ASSOCIATIONS AND SHIPPERS' AGENTS

Desirable and necessary as the foregoing amendments to part IV of the act are, they do not strike at the major "gray area" problem of the freight forwarding industry. The major, indeed the critical, problem of the industry is unregulated competition provided in ever-increasing intensity by so-called shippers' associations and shippers' agents, operating in purported compliance with section 402(c) of the act.

The magnitude of this problem is highlighted by the following statement which appears at pages 118–119 of the Commission's 75th Annual Report to Congress, filed just recently:

"Service provided by freight forwarders was generally adequate. The volume of freight handled by forwarders having yearly gross revenues of over $100,000 has remained fairly constant during the last 5 years. It was about 25 million shipments aggregating slightly more than 4 million tons in 1960.

"Failure of freight forwarders to grow despite the expansion in the economy is due in part to *greatly increased activities of exempt associations* of shippers who are consolidating their own shipments of *substantial tonnages between major industrial centers.* This development also had an adverse effect upon the forwarders' *net income which was at the lowest level for any year during the last 5 years. The decline in net income can be attributed more or less directly to the loss of desirable online tonnage by the regulated forwarders, while they continue to provide service at remote offline points within the scope of their operations.*" [Emphasis added.]

The activity which the Commission thus described is conducted in purported compliance with the following provision of the act:

"SEC. 402(c). The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, or (2) to the operations of a warehouseman or other shippers' agent, in consolidating or distributing pool cars, whose services and responsibilities to shippers in connection with such operation are confined to the terminal area in which such operations are performed."

The foregoing was clearly not intended as an exemption of what otherwise would have been common carrier forwarding. It was intended to make clear that the act did not apply to bona fide private forwarding activity. The report of the House Committee on Interstate and Foreign Commerce with which the bill was brought before the House in 1941 makes this point very clear. It states:

"Subsection 402(c), as has been previously pointed out, *is a clarifying provision rather than an exemption.*" (H. Rept. No. 1172, 77th Cong., 1st sess., p. 7.)

The previous statement in the report, to which reference is made in the foregoing, reads as follows:

"The *definition* therefore draws a line of distinction which clearly excludes brokers, nonprofit associations of shippers, warehousemen, and pool-car operators, as those persons normally operate, since *such persons do not do all of the things required under the definition to constitute a freight forwarder.* In order to make absolutely sure, however, that the definition cannot by construction be held to cover shippers, groups of shippers, and nonprofit associations of shippers, consolidating or distributing freight for themselves or their members, or to cover warehousemen, pool-car operators, and other shippers' agents engaged in con-

solidating or distributing pool cars, and not assuming responsibility for the through movement of the property, subsection (c) was included in this section." [Emphasis supplied.] (Same report, p. 6.)

The regulated freight forwarding industry has absolutely no quarrel with bona fide private consolidation activity. Shippers have every right to consolidate their own freight for the most economical movement. We were thus in full accord with the purposes of section 402(c). Bona fide private forwarding as contemplated by that section still exists and probably has grown since 1942. We cannot object to that any more than the passenger carriers can object when a man buys his own private automobile and drives himself. But if the man starts hauling passengers for pay and as a regular business there is cause for complaint, and that is comparable to what has happened under section 402(c).

Almost immediately after the Forwarder Act was passed, in 1942, it became clear that many people saw in section 402(c) an attractive loophole through which to conduct freight forwarder services in competition with the regulated industry and yet avoid regulation. Large numbers of so-called shippers' associations sprang up immediately and the number is still growing.

In response to a request by the chairman of the Senate Interstate and Foreign Commerce Committee the Interstate Commerce Commission made a thorough study of unregulated transportation and that study was released in June 1960, in a booklet entitled "Gray Area of Transportation Operations, Statement No. 6010." At page 49 of the study the following statement is made:

"With respect to the field of freight forwarding, some 85 forwarders hold permits issued under part IV of the act. About 135 shipper associations or shippers agents claim exemption under section 402(c). The Commission is currently investigating a number of these shipper associations to determine whether they are engaging in services as a freight forwarder in violation of the act or the Commission's rules and regulations thereunder."

I will refer later to the Commission's investigations in this field. The point I wish to emphasize now is that according to the Commission's figures there are 135 shippers associations or agents claiming exemptions under section 402(c) whereas only 85 forwarders hold permits under part IV of the act.

Many of the so-called nonprofit associations today hold out their services to the general public, by direct mail, by advertising in newspapers and trade journals, by feature stories, and by other means. They advise the public of their rate reductions. They compare their charges with the published tariff rates of regulated freight forwarders.

These pseudoforwarders issue schedules of their charges which are the same as tariffs, although they do not file them with the Interstate Commerce Commission.

Insofar as we can determine, there is no distinction between the unregulated operator and the regulated freight forwarder except a purely fictional or paper distinction. The unregulated operators generally solicit freight under the guise of soliciting members. It is easy to "join the club." Membership certificates are literally peddled for as low as a dollar a copy.

As far back as 1946 the Interstate Commerce Commission in its 60th annual report to Congress, remarked on the increase in the number of so-called associations since regulation. In almost every year since that time, the Commission has directed the attention of Congress to the growing seriousness of the problem, and in several of its annual reports has strongly recommended that corrective legislation be enacted. Last year Commissioner Hutchinson, then Chairman of the ICC, testifying before your subcommittee on the decline of regulated common carriage, strongly renewed such recommendations for corrective action, saying—

"* * * a vigorous effort should be made to clarify and to tighten the various exemptions in * * * section 402(c) which, in our judgment, are the breeding ground for schemes to evade the obligations which must be assumed for for-hire carriers" (hearings, "Decline of Regulated Common Carriage," 87th Cong., 1st sess., p. 50).

During the decade of the 1950's a number of efforts were made to enact corrective legislation but without success. It may be helpful to briefly review the legislative activity in this area.

Senator Magnuson introduced bill S. 2713, to amend section 402(c) of the act, in 1952, in the 82d Congress, and it was consolidated for hearing with a number of other bills which were then before the committee. The transcript of the hearings on those bills was printed in a document headed, "Domestic Land and Water Transportation," consisting of more than 1,700 pages. Testimony on S.

2713 presented in behalf of the Freight Forwarders Institute, and certain other persons, is set out beginning on page 1278 of the printed proceedings.

Congressman Wolverton introduced H.R. 4503 (by request) in the 83d Congress. That bill, which by its terms seemed to follow the recommendations of the Interstate Commerce Commission, was also designed to amend and clarify the provisions of section 402(c) of the act with regard to shippers' associations. No hearings were held on H.R. 4503.

In 1954 the Presidential Advisory Committee on Transport Policy and Organization, generally referred to as the "Cabinet Committee," recommended, among other things, that section 402(c) be amended so as to provide more definite standards. To implement the recommendations of the committee, the Department of Commerce drafted a bill which was introduced in the 84th Congress as H.R. 6141.

Section 19 of H.R. 6141 contained provisions for the amendment of section 402(c) in the manner suggested by previous bills. Extensive hearings were held on this bill in the spring of 1956 by the House Committee on Interstate and Foreign Commerce. Testimony in behalf of the institute appears at pages 1149 and 1186 of the reports of the hearings.

Those who opposed the aforementioned efforts to amend section 402(c), obviously misconceived the purpose and effect of the legislation. Speaking for the forwarding industry I stated to the congressional committees, again and again, that there was no intent or purpose to suppress or put out of business any bona fide shippers' association. We were then, and now, are concerned only with the "gray area" operator. That is the Commission's sole concern. It was the only concern of the Transportation Association of America, which appeared in support of the principle of the legislation. Nevertheless, the bills were defeated, and, we believe, largely by reason of misleading information pressed upon Congress.

In 1957 the Commission began a series of investigations, on its own motion, into the activities of a number of these so-called shippers' associations. Extensive hearings have been held. Hearing examiners' reports have been issued in six of the cases (covering seven proceedings), five of them finding the involved operations to be unlawful. Two of the cases have been argued before a division of the Commission and are now awaiting decision.

As I have previously indicated, we are very hopeful that out of these pending proceedings will come some legal guidelines which will prove helpful in coping with unlawful freight forwarder operations for the future. Until these guidelines have been established it is difficult, if not impossible, to determine precisely what changes are needed in the existing statute.

We do know one thing—and this is my reason for discussing the subject without suggesting a specific change in the statute at this moment. We know that the problem is critical and it must be dealt with very, very quickly if the regulated forwarding industry is to continue in its full usefulness to the public. We expect decisions from the ICC momentarily. Some of the cases have been before the Commission for a long time. Those decisions should either pave the way to solution of the problem in and of themselves or point the way to legislative relief.

PRIVATE CARRIAGE

During the course of his testimony, Mr. Harry Briethaupt, speaking for the railroads, offered an amendment to S. 2560 designed to restrict private carriage to the performance of private transportation and to prevent such carriage from invading the field of public carriage. He said that the common carrier trucks were in complete agreement with the proposed amendment.

The proposal to which I refer would amend section 203 of the Interstate Commerce Act by adding thereto a new subsection reading as follows:

"(d) The motor vehicles referred to in section 203(b)(6) shall not include any motor vehicle used in performing for compensation any of the carriage thereby conditionally exempted from regulation if such motor vehicle is owned, leased, operated, or used by a private carrier of property by motor vehicle."

We should like to add the endorsement of the freight forwarding industry to that of the other common carriers favoring this amendment.

As Mr. Breithaupt pointed out, the true economics of private carriage are concealed when the private company, hauling its own product in one direction, is able to obtain, for compensation, a return haul of exempt commodities. If the private carrier obtains sufficient money to cover its gas and oil on the return trip it has improved its situation. This puts private carriers in direct compe-

tition with regulated common carriers, including freight forwarders. It is not believed that this result was intended by Congress in the first place, and certainly it does not conform to the announced policy to provide for fair and impartial regulation of all modes of carriage.

Preceding witnesses at these hearings have ably demonstrated the need for the considered amendment and anything further that I might say on the subject would be repetitious. We commend it to your favorable consideration.

CONCLUSION

With the few amendments I have suggested, we wholeheartedly support S. 2560. In the case of freight forwarders, the bill, unfortunately, does not reach the most troublesome of the "gray areas." However, because of pending litigation, the outcome of which should soon be known, we are not in a position right at this moment to suggest corrective legislation dealing with so-called shippers' associations or shippers' agents. The Interstate Commerce Commission has accumulated a vast amount of data and experience in connection with operations claiming exemption under section 402(c) of the act, and we hope that if amendment of the section becomes necessary, in order to curb abuses, the Commission will, at the appropriate time suggest an appropriate amendment.

Mr. MORROW. I am appearing in behalf of the Freight Forwarders Institute. The institute is a national association of freight forwarders regulated under part IV of the Interstate Commerce Act.

I am general counsel of the institute and also assistant general counsel of the United States Freight Co., which owns a number of freight forwarders and conducts extensive forwarder operations throughout the United States and in many foreign countries.

Unregulated carriage of all kinds is having an increasingly serious effect on the regulated freight forwarders and, in particular, the activities of unregulated forwarding companies are having a devastating effect on the industry.

We are, therefore, happy to join with the railroad and trucking industries in supporting S. 2560 as revised by Committee Print No. 1.

The first four sections of the bill, while we are in accord with them, have been dealt with adequately, and I will confine my remarks to section 5 of the bill.

I learned for the first time this morning, Mr. Chairman, of Committee Print No. 2, and, of course, I am without authority to state a position on it. I think we would be opposed to it.

I believe Committee Print No. 2 would—and this is an offhand opinion, and I would like an opportunity if I may to submit written views on it after the industry has studied it—but I believe it would do away with one of the cardinal principles of regulation, which is the control of competition.

It would simply let all of these people in without regard to convenience and necessity.

For that reason, I think our industry would oppose it.

Senator SMATHERS. You would oppose section 5 of both committee prints then?

Mr. MORROW. No, sir. We support section 5 of Committee Print No. 1.

Senator SMATHERS. Of No. 1? I see.

Mr. MORROW. While there are some things to recommend—I just had an opportunity to read No. 2——

Senator SMATHERS. Why do we not just talk about No. 1?

Mr. MORROW. All right, sir. That is fine.

Section 402(b), which section 5 amends, exempts a number of commodities, including agricultural commodities and livestock. How used household goods got into the section in the first instance is difficult to understand. Certainly we think that there is no excuse for it. It is discriminatory. It is based on a mistake we think. It is subject to abuse, very clearly, and it creates unfair competition.

Companies such as ours, the United States Freight Co., handle used household goods through separate subsidiary companies. Because the parent companies handle general commodities, the household goods companies are fully regulated, and we have been competing with these unregulated forwarders all these years.

The competition has become more intense in recent years, and we think they should be regulated.

If there is any reason to exempt them at all, the reason is present in the case of our operation.

The House committee, in putting the exemption of used household goods in the forwarder act initially in 1941, said, and this is just one sentence:

> The exemption of forwarding confined exclusively to used household goods was included because household goods is customarily handled by motor carriers and the regulation provided under part II was deemed to be all that was necessary at this time.

What that overlooks is the fact, of course, that when people deal with freight forwarders, the forwarder alone is responsible. The regulations applicable to the underlying carrier do not protect the shipper by forwarder.

I think in this area, above all others, the citizen needs protection from unscrupulous operators.

The Interstate Commerce Commission has on many occasions, as Chairman Murphy pointed out, called attention to the sharp practices that exist in this field.

Now, I will talk for a minute about the right of injured persons to sue, which is found in section 5(d) of the bill beginning on page 15. The amendment to 417(b) corresponds to the amendment to 222(b) in section 2 of the bill.

I realize the merit of some of the things Chairman Murphy said this morning in objecting to that section. I believe, however, that it will help us to curb black market freight forwarding if we can get some clear guidelines from the Commission out of pending investigations. Then I believe we can short-cut some of the long administrative proceedings that are necessary now in order to catch and get a cease-and-desist order against a black market operator.

So we are fully in accord with 5(d), in spite of the objections of the Commission.

Now, we do think that the words "clear and patent violation" ought to be stricken out of that section, because they are not used in the section that authorizes the Commission or the Attorney General to sue these unlawful operators, and we think that by being used in the section permitting private suits, certainly it would be construed by the courts to require a greater degree of proof, perhaps proof beyond a reasonable doubt, as in a criminal case, and we do not think that should be.

Senator SMATHERS. Have you ever talked about this with Mr. Harmanson? Can you get him to agree with you on that point?

Mr. MORROW. No, sir; but I think there is logic to our point of view on it, nevertheless.

We are fully in accord with the provisions of Subcommittee Print No. 1.

I would like to point out just for the record here, since this is a hearing dealing with black market operations, that the bill does not strike at the most serious problem we have, which is unregulated shippers' associations under section 402(c).

I have dealt with that in my statement which you have accepted for the record simply because I think the record ought to show the status of our situation with regard to black market operations.

We are not suggesting an amendment to this bill, because there are pending before the Interstate Commerce Commission at this time a good many proceedings against so-called shipper associations. In five or six of those we have examiners' reports holding the operations to be unlawful. We are very hopeful that it may turn out that the present law is adequate to take care of that area in the forwarding business. If it is not, certainly it will give us some guidelines to come back to the Congress with some specific suggestions at a later date.

That concludes my statement.

(Additional information received for the record:)

FREIGHT FORWARDERS INSTITUTE,
Washington, D.C., May 4, 1962.

HON. GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN SMATHERS: On April 24, 1962, I testified before your subcommittee on behalf of the Freight Forwarders Institute, expressing support of the Freight Forwarders Institute for bill S. 2560, as revised by Committee Print No. 1. During the course of the hearing my attention was directed, for the first time, to Committee Print No. 2 of S. 2560, dated April 20, 1962. That print makes certain changes in section 5(a) of the bill, relating to the forwarding of used household goods. I indicated to you that I would undertake to develop an industry position with regard to Committee Print No. 2, and submit a statement for inclusion in the record.

The board of governors of the Freight Forwarders Institute, having considered Committee Print No. 2 of bill S. 2560, authorizes and directs me to submit the following statement with respect thereto:

POSITION OF FREIGHT FORWARDERS INSTITUTE WITH REGARD TO COMMITTEE PRINT NO. 2 OF BILL S. 2560

Both Committee Print No. 1 and Committee Print No. 2 of S. 2560 would repeal the exemption of "used household goods" now found in section 402(b) of the Interstate Commerce Act. However, the two prints provide radically different treatment for the segment of the household goods forwarding industry which would thus have its exemption from regulation removed.

Committee Print No. 1 provides grandfather rights for all persons in bona fide operation as a freight forwarder of used household goods on a specified date. (The date would likely have to be changed.) Thereafter, persons desiring to enter the field would be required to apply for a permit and make the proof presently required by the act, including proof of consistency with the public interest and the national transportation policy.

Committee Print No. 2, on the other hand, does not provide for grandfather rights for existing operators. All persons including those now conducting household goods forwarding operations and those who hereafter might desire to enter the field, would be required to apply for permits, and permits would be granted if the applicant could show that he was "fit, willing, and able properly to perform the service proposed." Permits would be issued on an annual basis only, but would be renewable, without further proof or proceedings, on payment of a fee of $50. This print would make further changes in part IV which

will be discussed below. No provision is made in the committee print for continuance of operations during the processing of applications. This is an apparent oversight.

We oppose Committee Print No. 2, first of all, because it ignores and defeats one of the cardinal purposes of carrier regulation—the control of competition. Consistency with the public interest and the national transportation policy are the only criteria by which the Commission is able to prevent wasteful, duplicative, improvident, and unnecessary transportation services from being imposed upon the public and the transportation system. If the Commission is deprived of the right to apply these standards to the entry of new operators into the field of used household goods forwarding, the very purposes of regulation will be defeated.

Mr. Martin L. Santini, who testified on April 24 on behalf of the National Furniture Warehousemen's Association, said that Committee Print No. 2 would "protect the warehouseman's right to engage in this activity without having to run the gamut of protracted proceedings before the Interstate Commerce Commission." We submit that no one has a "right" to engage in common carrier activity without meeting the standards which the Congress has imposed for the protection of the public and of the transportation system as a whole. All other common carriers are required to prove that their operations will serve the public interest and the national transportation policy. All have had to "run the gamut" of Commission proceedings. To decree otherwise in this case would be to enact highly discriminatory class legislation. The public would be done a disservice because the interest of the public could not be considered in passing upon applications of this particular group for operating authority.

Committee Print No. 2 also would amend section 410(c) so as to permit the granting of a permit to act as a household goods forwarder directly to a motor carrier of household goods subject to part II. This provision would also defeat one of the cardinal purposes of regulation—to separately regulate and fully preserve the inherent advantages of each mode of transportation. Under this provision of the committee print, the same company could hold, simultaneously, a certificate under part II and a forwarder permit under part IV of the act. The operations could be intermingled and the Commission would never know which provision of regulation to apply to the operation. Endless opportunities for abuse would be present.

It does not seem necessary to further elaborate on the reasons why the provisions of section 5(a) of Committee Print No. 2 are obnoxious to the concepts of regulation. They clearly would discriminate in favor of one segment of the common carrier transportation industry, and the proponents of this proposed legislation have advanced no sufficient reasons for the discrimination. Their own convenience in avoiding proceedings before the ICC is not a valid excuse for class legislation.

Committee Print No. 2 not only is unsound in principle, it would be unworkable as a practical matter. There could be no stability of regulation under a procedure where permits would be issued as a matter of routine and could be renewed or abandoned at the will of the operator. In order to know who was an authorized operator and who was not, the Commission would have to keep a day-to-day check on whether permits had been renewed or allowed to lapse. Its tariff files would be in a constant state of chaos. Section 404 of the act requires freight forwarders to provide and furnish the service covered by their permits, upon reasonable request, but in the case of annual permits as provided for by Committee Print No. 2, the public would have no way of keeping track of authorized operators. The policing of an "off again, on again" law of this sort would present an administrative and enforcement problem utterly beyond the bounds of reason.

If regulation is to be applied to freight forwarders of used household goods—and we have urged that it should be—then it ought to be applied in a meaningful way, according to the pattern established for all other forwarders, and, indeed, for all other common carriers of any kind.

We renew our request that Committee Print No. 1 of S. 2560 be enacted, with the modifications suggested in my testimony on April 24.

Sincerely,

GILES MORROW, *General Counsel.*

Senator SMATHERS. All right, sir. Thank you very much, Mr. Morrow.

Our next witness is Mr. Durward Seals, traffic manager, United Fresh Fruit & Vegetable Association, Washington, D.C.

All right, sir.

STATEMENT OF DURWARD SEALS, TRAFFIC MANAGER, UNITED FRESH FRUIT & VEGETABLE ASSOCIATION, WASHINGTON, D.C.

Mr. SEALS. Mr. Chairman, if I may ask that my statement be read into the record, I would just like to say a few words with respect to it.

Senator SMATHERS. Without objection, we will have your statement printed in full, and you may proceed as you like.

Mr. SEALS. Thank you.

(The prepared statement of Mr. Seals follows:)

My name is Durward Seals. I am traffic manager of the United Fresh Fruit & Vegetable Association. This is a national trade association with headquarters in Washington, D.C., having nearly 2,600 members, residing in all of the States, who are engaged in growing, packing, shipping, and distributing fresh fruits and vegetables.

We appreciate the opportunity accorded us to participate in the prehearing discussions on S. 2560. Committee Print No. 1, introduced by the chairman on January 24, 1962, reflects the results of those discussions. We are appearing here today in opposition to section 4 of the revised bill, which would require the registration of most of the motor carriers operating under the exemption provisions of section 203(b)(6), part II, of the Interstate Commerce Act.

We have no objection to the provisions of sections 1, 2, 3, and 5 of Committee Print No. 1 of S. 2560.

At its annual convention in February of this year our association passed the following resolution opposing the enactment of section 4 of S. 2560:

"* * * This association further believes that section 4 of the bill known as S. 2560, which would require certain reporting to the Interstate Commerce Commission, is discriminatory, useless, and unduly expensive. But to provide for greater dissemination of knowledge of the rules and regulations of the ICC respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and to promote compliance therewith, there should be enacted legislation requiring each person filing a Federal use tax return on highway motor vehicles to mail concurrently therewith a copy thereof to the Interstate Commerce Commission."

We are offering this statement in furtherance of the above resolution. When S. 2560 was introduced by the chairman of the subcommittee on September 15, 1961, he described it as "a bill designed to assist the States and the Federal agencies in their joint efforts to control illegal interstate transportation on the highways. There has been a tremendous recent growth in 'gray' area and 'black' area truck operations—those operations without State or Federal authority."

Subsequently the press and the transportation journals have referred to S. 2560 as the "gray area" bill. But there is nothing illegal about the transportation of fresh fruits and vegetables by exempt haulers operating under the provisions of section 203(b)(6) of the Interstate Commerce Act. Therefore, we can see no relation between the registration requirements of section 4 of the revised bill and the objectives of the other provisions of the bill; namely, to assist the States and the Federal agencies in curbing illegal carriage.

As stated in our resolution, we believe the reporting requirement to the Interstate Commerce Commission is discriminatory, useless, and unduly expensive. We do not believe that it will be of any assistance in attempting to control illegal transportation.

If the sole purpose of section 4, as stated in the bill, is to insure that motor carriers operating under section 203(b)(6) have adequate knowledge of the rules and the regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, we believe this can be accomplished more easily and more cheaply by the enactment of legislation which would require each person filing a Federal use tax return on highway motor vehicles with Internal Revenue Service to mail con-

currently therewith a copy thereof to the Interstate Commerce Commission. The Interstate Commerce Commission could compile a mailing list from these tax returns.

Internal Revenue Service Form 2290 covers the operation of all two-axled trucks equipped for use as a single unit with actual unloaded weight of 13,000 pounds or more and all two-axled truck-tractor combinations with actual unloaded weight of 5,500 pounds or more. At present the form is prepared in duplicate. The original is filed with the Internal Revenue Service and the duplicate is retained by the taxpayer. Under our suggestion the form would be prepared in triplicate. The original would still go to the Internal Revenue Service, one copy would be retained by the taxpayer, and the third copy would be mailed to the Interstate Commerce Commission by the taxpayer.

The Internal Revenue Service has prepared and made available for wide distribution a simple and clear digest in question and answer form of the Federal-aid highway law and the regulations thereunder. This is identified as "Publication No. 349, Federal Use Tax on Highway Motor Vehicles." Form 2290 is a single-page form containing the name and complete address of the taxpayer, a tax computation schedule, and a tax rate table.

We believe more complete and more current information could be obtained by the use of this form than by the registrations requirements of section 4 of the revised bill.

A great deal of confusion exists in the transportation field today because of the failure on the part of those advocating legislative changes to distinguish between valid, legal, and beneficial transportation on the one hand and illegal or so-called gray area operations on the other. Furthermore, we believe that the greatest need today is not more legislation but more effective enforcement of the laws that are presently on the books.

This point is well demonstrated by the following excerpt from an address given by Mr. William H. Ott, general traffic manager, Kraft Foods, division of National Dairy Products Corp., at the 23d Annual Convention of the Private Truck Council of America, Inc., Detroit, Mich., February 1, 1962. While Mr. Ott's remarks are directed to private transport, the same observations, we believe, could be made with equal force to exempt agricultural hauling:

"My third question is as to the validity, if any, of the numerous arguments that are put forth in opposition to private transport. Are these such arguments as will stand close analysis? There is only one such which I am willing to admit has even the virtue of plausibility * * * the argument that there is much illegal for-hire transportation existing today, some performed under the guise of private truck operation, and that enforcement of the for-hire carrier law is more difficult by reason of the existence of private truck operations. But is this even an argument? Gray areas, whether they be light gray or dark gray, exist in other business activity, tax law, labor law, food and drug law, securities law. Why is the gray area in transportation so much different and why does it require so much more drastic treatment even to the point of wiping out completely one segment of transportation? Particularly why as to that segment which is not, in my contention, in reality a part of the transportation industry at all * * * but rather the butcher, the baker, the candlestick maker? What is required is not more law but more enforcement, a cleaning up—not in the sense of apprehending and punishing the offenders, necessarily * * * although that should be done * * * but by throwing light on the gray area * * * determining dividing lines; giving assurance to anyone who wishes to operate as to whether his operation is legal or illegal; substituting certainty for uncertainty."

We, therefore, recommend that section 4 of S. 2560, as revised, be deleted, or that it be amended to read as follows:

"SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows:

" 'SEC. 226. (a) In order to insure that motor carriers operating vehicles having a taxable gross weight of more than 26,000 pounds under the Highway Revenue Act of 1956, as amended, have adequate knowledge of the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and in order to promote compliance therewith, each such carrier shall, when filing with Internal Revenue Service its Federal Use Tax Return on Highway Motor Vehicles, file a copy of said Return with the Interstate Commerce Commission.' "

We appreciate this opportunity to present our views on this bill.

Mr. SEALS. My name is Durward Seals. I am traffic manager of the United Fresh Fruit & Vegetable Association. This is a national trade association with headquarters in Washington, D.C., having nearly 2,600 members, residing in all of the States, who are engaged in growing, packing shipping, and distributing fresh fruits and vegetables.

We have no objection to the provisions of sections 1, 2, 3, and 5 of Committee Print No. 1 of S. 2560.

I might add I am in substantial agreement with the statements made by Mr. Stedman and Mr. Harmanson, but we have one other suggestion that we would like to make with respect to the safety feature, and if it is all right with you, Mr. Chairman, I would like to read that recommendation from page 6 of the prepared statement.

Senator SMATHERS. All right, sir.

Mr. SEALS. We, therefore, recommend that section 4 of S. 2560, as revised, be deleted or that it be amended to read as follows:

SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows:

"SEC. 226. (a) In order to insure that motor carriers operating vehicles having a taxable gross weight of more than 26,000 pounds under the Highway Revenue Act of 1956, as amended, have adequate knowledge of the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and in order to promote compliance therewith, each such carrier shall, when filing with Internal Revenue Service its Federal Use Tax Return on Highway Motor Vehicles, file a copy of said return with the Interstate Commerce Commission."

That completes the suggestion, sir.

Senator SMATHERS. Do you think Mr. Stedman and Mr. Harmanson agree with you on that?

Mr. SEALS. I cannot say whether they agree. I believe Mr. Stedman might agree with the principle of it. I do not believe Mr. Harmanson would concur in that.

Senator SMATHERS. All right, sir. We are trying to find ways and means, as Mr. Harmanson so well stated it, of discovering areas of agreement, and when you fellows all agree on certain parts of it and disagree on other parts of it, it makes it right difficult to pass anything, as you know.

Mr. SEALS. Yes, sir.

Senator SMATHERS. But that is your recommendation with respect to section 4?

Mr. SEALS. Yes, sir. But we are open to a suggestion as to other amendments.

Our main purpose, I think, is to see that the bill as it has been amended—the Committee Print No. 2 we think is a good bill with the exception of section 4. If that were eliminated, we would have no objection to the bill.

Senator SMATHERS. All right, sir. Thank you very much.

That concludes the list of witnesses we had for this morning, except Mr. Paul Clarke, whom we have put over until tomorrow.

The committee will stand in recess until tomorrow morning at 11 o'clock, and we will have the meeting in this room.

(Whereupon, at 11:58 a.m., the subcommittee was recessed to be reconvened at 11 a.m., Wednesday, April 25, 1962, in room 5110, New Senate Office Building.)

CONTROL OF ILLEGAL INTERSTATE MOTOR CARRIER TRANSPORTATION

(Amendments to Interstate Commerce Act)

WEDNESDAY, APRIL 25, 1962

U.S. SENATE,
COMMITTEE ON COMMERCE,
SURFACE TRANSPORTATION SUBCOMMITTEE,
Washington, D.C.

The subcommittee was called to order, pursuant to notice, at 11:03 a.m., in room 5110, New Senate Office Building, the Honorable George A. Smathers presiding.

Senator SMATHERS. Our first witness today is the distinguished and able Frank Barton, former counsel of this committee, adviser on official and unofficial matters.

We are delighted to have you back, sir.

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

Mr. BARTON. Thank you, Senator. I am delighted to be here.

Senator, I have a statement, but with your permission, I will have it placed in the record and just make some brief comments on it.

Senator SMATHERS. That would be fine, sir. We would appreciate it.

(The prepared statement of Mr. Barton follows:)

My name is Frank L. Barton, Deputy Under Secretary of Commerce for Transportation.

It is a privilege to represent the Department of Commerce before your committee in its inquiry concerning the common carrier problem. We believe that your committee bill, S. 2560, offers many constructive measures for improving the status of the common carriers in the motor and freight forwarding industries.

The Department will have some specific comments to offer concerning detailed provisions in S. 2560, and then will offer some suggested amendments reflecting the views of the administration as set forth in the President's message on transportation, dated April 6, 1962. But first the Department should express its views as to why the common carrier is important to our transportation system and our economy, and why steps should be taken to provide better protection for the common carrier in his fight against gray and black areas of transportation.

Common carriers are important because of their obligation to serve. Because we force upon them this obligation, we should protect them against the abuses of those who do not assume any public obligation.

Common carriers should be financially strong. It is important that they attract the amount and type of business to keep them in sound condition. Strong common carriers make possible a wider economic opportunity to all classes of business, small as well as large. Without common carriers with a universal obligation to serve, transportation would quickly become a means to encourage the concentration of economic activity in a few hands.

S. 2560 provides several desirable means of reducing the erosion of our common carrier services.

Section 1 of the bill deals with State registration of motor carrier certificates and other documents. It would require that where any State provides for the registration of motor carrier certificates or permits or other documents such as insurance, securities, or vehicle identification, such State shall within 5 years of the enactment of the section make such registration requirements conform to uniform standards established by the Interstate Commerce Commission.

Section 1 is basically a means of establishing standard and systematic information in the States concerning the operations of common carrier motor vehicles. The provisions of the section do not become operative unless a State voluntarily requires registrations. When such States do institute such requirements, the ICC standards become effective after a transitional period.

Whether or not this section is effective depends on the extent of new information made available to Federal and State enforcement officers, working in cooperation. If the provision merely results in the filing of additional papers, it will only add to the present burdens of many sectors of the motor carrier industry. In testimony before your committee, the motor carrier industry itself was divided on this point. Certain sectors of the industry would prohibit the States from any filing requirements. This is clearly within the purview of the Federal Government where there is an unreasonable burden on interstate commerce. The main question, however, is whether present filing requirements constitute such a burden and if the process can be improved.

The Department endorses the principle in section 1. We are not now in a position to deny to the States their right to require the filing of certain data on motor carriers for their own uses in their own programs. We can, however, alleviate the burden on motor carriers of multiple filings by making all filings standard, as proposed in this section.

It is to be hoped that the Commission in formulating its uniform standards will give due attention to the present burden of paperwork and existing practices. As a mater of fact the Commission now makes available to interested States copies of all certificates granted. It is suggested that such copies might be used as the official evidence of certification, rather than requiring an additional filing by the carrier itself. Other Commission documents might similarily be utilized in any standard approach to State filing.

While section 1 is really procedural in scope, section 2 of the bill gets us into substantive enforcement. It provides that any person injured by noncertificated carriers operating in violation of the Interstate Commerce Act can bring suit in Federal district court for enforcement of the act, and the court would have jurisdiction to enforce obedience by any legal process.

The principal value of this provision is that it will enable the entire resources of the regulated motor carrier industry to be mobilized in the campaign against illegal operators. At the present time only the resources of the Interstate Commerce Commission can be used in an organized way. The enforcement ability of that body is limited. Even if it were much larger, it could not have the detailed knowledge of the transportation market and what is going on in it that the common carriers themselves have. If section 2 of S. 2560 is enacted, the motor carrier industry can organize itself for its own protection and be a valauble adjunct to the effort of the Commission. A provision for sufficient bond is a safeguard against capricious suits.

Section 3 deals in part with the same areas of enforcement treated in the President's message, which advocated increased civil penalties to be imposed on motor carriers for failure to file required reports, for violations of safety regulations, and operating without authority. The bill should be amended to make the civil forfeitures applicable to motor carrier safety violations.

Another important provision of the bill would provide for the registration of agricultural haulers, now exempt from all regulatory requirements except safety. The committee print dated April 20, 1962, provides that all motor carriers operating vehicles with three or more axles in transportation exempted under section 203(b)(6) of the act would be required to register with the Commission in order to aid in the enforcement of the act. The Department believes this to be a modest and entirely reasonable requirement. The basic exemptions from economic regulation which Congress intended would not be affected.

Section 5 of the bill applies to amendments to part IV of the Interstate Commerce Act dealing with freight forwarders. Freight forwarders of household goods would come under revised regulations based in part on the services offered by motor carriers of used household goods. Freight forwarders of used house-

hold goods, now exempt under the act, would be brought under regulation. The remainder of the section authorizes the ICC, the Attorney General or any injured party to bring suit in a U.S. district court for enforcement. This provision is similar to the provision of section 2 of the bill applying to illegal motor carriers. The Department of Commerce favors the enactment of section 5 of the bill.

S. 2560 is consistent with that section of the President's transportation message dealing with protection of the public interest. The message would add certain other types of enforcement activities. We would authorize the ICC to make cooperative enforcement agreements with States.

With respect to State enforcement agreements, our proposals are in line with ideas advanced by various State groups. The Doyle report makes a suggestion for a combined State-Federal effort at enforcement. It is imperative that State and Federal forces combine their efforts in enforcement of motor carrier statutes. The combined resources of the States are tremendous. State and Federal laws coincide in objective. Their enforcement efforts should have similar coordination under authority to work cooperative agreements.

We have already indicated the President's proposal for increasing the civil penalties for all major infractions for part II of the act.

A third proposal in the President's message would make the safety provisions of the act equally applicable to private as well as common and contract carriers. This item is covered in a bill now before your committee, S. 1287. The Department has already endorsed this bill in a letter to your committee, dated January 3, 1962, and reiterates its support at this time. This problem grew out of court cases involving an explosion of a dynamite-laden truck in Roseburg, Oreg. The courts ruled that the present statute applies different safety standards to private trucks. This situation should be cleared up through legislation.

The combined effect of S. 2560 and the additional enforcement items included in the President's message would provide substantial help to the common carrier system in overcoming its present handicaps in dealing with gray areas and illegal transportation. It would not only help the efforts of the Commission and the States; it would for the first time increase the potential of the regulated industry for reinforcing the efforts of enforcement agencies.

Your committee is to be commended for its efforts in behalf of the common carrier and the Department of Commerce endorses them.

Mr. BARTON. Mr. Chairman, the Department of Commerce believes that S. 2560, the bill under consideration, offers constructive means of improving the status of the common carrier. In proceeding, I should like to make some comments on S. 2560 and suggest a few amendments in accordance with the views set forth in the President's transportation message of April 6.

First, however, I should like to give the Department's views on why the common carrier is important to our transportation system and to the economy, and why the common carrier should be given assistance in the fight against gray and black areas in transportation.

The common carriers are important because of their obligation to serve without favor or discrimination. They should be protected against abuse of those having no such obligation.

Common carriers should be financially strong. It is important that they attract the business necessary to keep them in sound condition in order that they may serve the public adequately. Strong carriers make possible wider economic opportunity to all classes of business, large and small. And without common carriers with a universal obligation to serve, transportation would become a means to encourage the concentration of economic activity within the hands of a few, an extremely undesirable situation.

In the opinion of the Department of Commerce, S. 2560 offers means to reduce the erosion of common carrier services that are now occurring.

The bill provides that where any State requires motor carriers subject to economic regulation by the Commission to register their permits, or certificates, or vehicle identification, or file insurance policies, surety bonds or other securities or agreements, such States shall within 5 years of enactment make such registration requirements conform to uniform standards to be prescribed by the Interstate Commerce Commission.

The Department of Commerce believes that the terms of the bill protect both the State and the carriers involved.

The bill further provides that those injured by noncertificated carriers operating in violation of the Interstate Commerce Act can bring suit in the Federal district court to compel obedience to the act with the court having authority to enforce obedience by legal process. At present, as you know, only the Interstate Commerce Commission has authority to bring such suits against motor carriers operating illegally.

If this provision becomes law, the motor carrier industry could mobilize its resources against illegal operators for the protection of the industry's legitimate interests.

And the Department is very much interested in the fact that the provision for posting bond is a safeguard against capricious suits. We think that important.

The bill further deals in part with the same areas of enforcement treated in the President's message of April 6 which suggested increased civil forfeitures for: (1) Failure to make required reports; (2) operating without authority; and (3) violations of safety regulation. S. 2560 does not provide for civil forfeiture in violations of safety regulations, and I suggest that S. 2560 be amended to make civil forfeiture applicable to safety violations by motor carriers.

Senator SMATHERS. You think we could pass it if we did?

Mr. BARTON. Yes; I think so, Senator.

The bill provides for registration of agricultural haulers now exempt from economic regulation. It is provided that information be given ICC on vehicles with three or more axles operating pursuant to section 203(b)(6) in order to aid enforcement of the Interstate Commerce Act. The Department of Commerce believes this to be a modest and entirely reasonable requirement.

Of course, exemption from the economic regulation afforded by Congress would remain unchanged.

The bill proposes amendments to part IV of the Interstate Commerce Act to bring freight forwarders of used household goods under regulation and under revised regulation based in part on services offered by motor carriers of used household goods.

The bill would authorize the Commission, the Attorney General or any injured party to bring suit in U.S. district court for enforcement. This is similar, of course, to the treatment provided in the bill for illegal motor carrier operations. The Department of Commerce approves of this part of the measure.

The Chairman, the President's transportation message, as an added means of obtaining enforcement of the Interstate Commerce Act, would authorize the Interstate Commerce Commission to enter into cooperative agreements with States. In our opinion, it is imperative that States and Federal forces combine their efforts in enforcement of motor carrier statutes.

I further suggest that S. 2560 be amended to authorize such cooperative agreements as suggested in the President's message.

Another proposal in the President's message would make the safety provisions of the Interstate Commerce Act applicable to private as well as common and contract carriers. S. 1287 before the committee would make this change. The Department of Commerce endorsed this bill in a letter to Senator Magnuson dated January 3, 1962, and I hereby reiterate support of S. 1287 at this time.

You may recall that this problem grew out of a court case involving a catastrophe caused by an explosives ladened truck at Roseburg, Oreg. The courts ruled that the present law applies safety standards to private carriers different from those applicable to common and contract carriers. In our opinion, this should be cleared up by the appropriate legislation.

Mr. Chairman, the combined effect of S. 2560 plus the additional enforcement measures included in the President's message would in the opinion of the Department of Commerce provide substantial help to the common carrier system in overcoming its present handicaps in dealing with gray areas and with illegal transportation. Passage of the bill would not only help the efforts of the ICC in the States, it would increase the potential of regulated industry for reinforcing the efforts of the enforcement agencies.

In conclusion, I would like to say your committee is to be commended for its efforts on behalf of the common carrier. The Department of Commerce endorses these efforts.

Senator SMATHERS. Thank you very much, Mr. Barton.

May I refer to another matter for just a minute? In the President's transportation message, did he say that he recommended that common carriers, certificated common carriers, be given the opportunity to carry exempt commodities, commodities that are now considered agriculturally exempt?

Mr. BARTON. Well, he suggested that the exemption from regulation of minimum rates on such commodities be extended to all carriers.

Senator SMATHERS. In other words, he recommended that any carrier would have the privilege of carrying farm products.

Mr. BARTON. That is right; yes, sir. Of course, he proposed that the minimum rate regulation on railroads be removed and that the antitrust laws be applied in making these minimum rates.

Senator SMATHERS. Did the President's message also recommend that they be permitted to mix loads?

Mr. BARTON. No, sir; he didn't treat with that, Senator, no mention of that in the message.

Senator SMATHERS. He did not.

Do you as an experienced man in this field recommend that?

Mr. BARTON. Yes, sir; I think it would be a good idea.

Senator SMATHERS. All right, sir. As I gather it, the essence of your testimony is that the Department of Commerce approves of this bill S. 2560.

Mr. BARTON. Yes, sir; that is right.

Senator SMATHERS. Except you think actually it should go a little further and deal with the safety regulations as well as civil forfeiture for competitive excesses.

Mr. BARTON. Well, specifically on this bill, I think you could have amendments to allow the ICC to make cooperative agreements with the States and make safety violations subject to civil forfeiture.

Senator SMATHERS. Yes.

Mr. BARTON. Of course, the private carriers being made subject to the same safety regulations, common and contract, this could either be passed in 1287 or as a part of this bill.

Senator SMATHERS. All right, sir. I would personally just say I agree with you, but, frankly, as a practical matter, I do not think we could pass it if you put in the safety regulation because everybody who has got a truck—and we had all the witnesses yesterday—is against it. But you know how that goes.

Any questions, Senator Lausche?

Senator LAUSCHE. Has this bill or either of them been initiated by the Department?

Mr. BARTON. I beg pardon, Senator?

Senator LAUSCHE. Has the bill been initiated by your Department?

Mr. BARTON. No, sir; this is not our bill. We are merely commenting on the bill and offering the suggestions that pertain to this subject that were contained in the President's message on transportation.

Senator LAUSCHE. And that is, you support the bill as written except that you believe that it ought to go beyond its present provisions.

Mr. BARTON. Yes, sir; that is right, Senator.

Senator LAUSCHE. That is all.

Senator SMATHERS. Senator Case?

Senator CASE. No questions.

Senator SMATHERS. Thank you very much.

Oh, Mr. Barton, Counsel Grinstein, your successor, wants to ask you a question.

Mr. GRINSTEIN. Will the Department of Commerce submit language to amend S. 2560 to provide for cooperative Federal-State enforcement?

Mr. BARTON. Yes, sir; I think you will find the Department will submit that and other language to support the legislative proposals made in the transportation message.

Mr. GRINSTEIN. Thank you.

Senator SMATHERS. Thank you, sir.

Our next witness is Mr. L. E. Galaspie, director of traffic, Reynolds Metals Co., Richmond, Va.

STATEMENT OF L. E. GALASPIE, DIRECTOR OF TRAFFIC, REYNOLDS METALS CO., RICHMOND, VA.

Mr. GALASPIE. Thank you, Senator. We want to state our appreciation for the opportunity of appearing before you.

My name is L. E. Galaspie. I am director of traffic of Reynolds Metals Co., with offices in Richmond, Va. Today, I am appearing on behalf of the Transportation Association of America. Our company is a member of TAA, and I happen to be a member of the TAA board of directors and a member of its user panel.

Before giving you TAA's positions on S. 2560 and S. 2764, let me briefly describe the association for those members of the subcommittee who may not be fully acquainted with its composition and purpose. The Transportation Association of America is a national transporta-

tion policy organization made up of users, investors, and carriers of all types who work together for the purpose of establishing and maintaining sound policies that will assure the strongest possible transportation system under private ownership and operation.

This joint effort is carried out through the association's cooperative project in which over 250 leaders from all the above-mentioned transportation interests participate through their respective committees or panels as we call them.

My interest in the illegal for-hire transportation problem is severalfold. In addition to my participation on the TAA board and user panel, both of which have given careful consideration to proposals designed to help resolve this problem, I am also serving as vice chairman of the Committee Against Unlawful Transportation. TAA acts as the administrator of CAUT.

CAUT, I should like to point out, is an ad hoc organization of shippers, carriers, and Federal and State enforcement officials who are working together for the common objective of eliminating illegal transport practices. Since CAUT is not a policymaking organization, its program is being carried out mainly through education and support of tighter State and ICC enforcement of existing laws. While the committee cannot take a position on specific legislation such as proposed in S. 2560 and S. 2764, its members generally agree on the seriousness of the problem and the need for corrective action.

The TAA Board of Directors and the eight permanent panels making up the cooperative project have watched the accelerated decline of public carriers with growing concern. Our association realizes the extent to which the economy of our Nation depends upon the continued existence of healthy regulated carriers of all modes.

As I have already stated, TAA is dedicated to the principle of private enterprise in transportation. We accept the premise that no private enterprise can long exist if it fails to attract or generate adequate private capital. This is the situation facing many regulated carriers today.

We recognize that there are a number of reasons for the decline of our regulated carriers and that many of the solutions which have been proposed are highly controversial.

We are convinced that the Nation can no longer await a perfect solution. We must proceed as rapidly as possible in those areas where agreement exists or can be readily attained while continuing to seek satisfactory answers to the more controversial questions.

Perfection is, of course, desirable, but some progress is better than none. If we do nothing because we cannot solve all the problems at once, we may find we have waited too long. Important segments of the public carrier industry may be too far gone to recover.

So this is the spirit in which we have approached the question of illegal and so-called gray area transportation. No one knows for sure the extent of unlawful or questionable operations on the highways, but from available statistics, it has been estimated to be considerable.

The National Council of State Transportation Specialists, probably the most knowledgeable group in this particular field, believes 25 percent of the total intercity truck traffic to be unlawful or questionable. The ICC, on the other hand, has unofficially estimated the extent of such operations to be about 4.5 percent.

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In terms of potential operating revenues, we can thus say that somewhere from a low of $840 million to a high of $4.7 billion is being diverted from regulated carriers each year to the pockets of illegal operators. While this gross revenue would not alone insure healthy public carriers, it unquestionably would help considerably. The Transportation Association of America believes there should be no controversy involved in enforcement of the law of the land.

Turning specifically to S. 2560 in its revised form, TAA wholeheartedly supports the general objective of this bill—that of reducing illegal transportation on the highways as a means of strengthening our public carriers.

We specifically support the first section dealing with uniformity of State laws which require registration of interstate authority. Such registration at the State level is an essential step toward adequate enforcement of illegal for-hire transport operations, since our analysis of this problem convinces us that a major share of the responsibility for curbing such operations must be borne by State enforcement officials.

Let me take a moment to point out why this is so. The States have the right to know who uses their highways and the right to enforce reasonable regulations on such users, provided, of course, that in doing this, they do not place an undue burden on interstate commerce. By requiring all authorized for-hire motor carriers to register, the enforcement officials of the States are better able to identify unauthorized for-hire carriers and to take immediate action against them. State officials have, or should have, the power of arrest when dealing with such violations, thus permitting immediate on-the-spot enforcement action for maximum effectiveness.

The ICC enforcement officials, on the other hand, do not have, nor are they seeking, the power of arrest; thus their efforts in this field are considerably limited, and necessarily time consuming, because they first must make a full investigation and often take court action before the offending carriers can be made to cease illegal operations.

We should like to emphasize that while we favor uniformity of State laws designed to help curb illegal for-hire transport operations of interstate motor carriers, we believe that the uniform law should be carefully drawn so that its effect will be that of encouraging adoption by the States. It is important that the States not only adopt an adequate law, but that they enforce them effectively.

With these thoughts in mind, we should like to offer the following suggestions with respect to the first section of the bill dealing with uniformity of State laws:

(1) On line 4, page 10, insert "in the opinion of the Commission" after the word "which" and insert the words "an undue" after "constitute" so as to read:

*** * * State requirements which, in the opinion of the Commission, might constitute an undue burden. * * ***

Our reason for suggesting this change is that any reporting requirement constitutes a burden to some degree. Litigation can be avoided by more specifically expressing the intent of Congress and by adopting language generally used in the act.

(2) On line 6, page 10, change the permissive "may" to the directive "shall."

The reason for this change is to emphasize the intent of Congress that the standards of uniformity are not to be set unilaterally by the ICC, but rather result from free discussion and cooperation between parties of interest. The authority of the Commission to establish standards would in no way be compromised by this change.

Turning to section 3 of the bill, beginning on line 3, page 12, which prescribes penalties for certain violations, TAA supports the concept that penalties must be adequate to deter would-be violators. We agree with the Commission that present penalties are inadequate and that the courts and to increase substantially the amount of the forfeitures prescribed.

For these reasons, TAA supports this section of S. 2560 as well as the similar portion of S. 2764 to extend the civil forfeiture provisions of section 222(h) of the act to unlawful operations by motor carriers to permit the Commission to institute forfeiture actions directly in the courts and to increase substantially the amount of the forfeitures prescribed.

The association's support of this particular provision I should emphasize, extends only to its application to economic violations such as illegal for-hire motor carriage. TAA has no position on the question of strengthening the ICC's enforcement powers over carrier safety operations.

Going back exclusively to S. 2560, under section 4 of the bill, beginning at line 11, page 13, a new section 226(a) would be inserted in the act which would require motor carriers operating vehicles of three or more axels pursuant to the provisions of section 203(b)(6) of the act, with certain exceptions, to file a statement with the Commission.

TAA supports this provision as written, although there are other ways to achieve the desired objective. We believe it is important that the ICC have knowledge of those carriers transporting exempt commodities under this provision which compete directly with regulated interstate carriers so that the Commission can be certain that such carriers are fully informed about any rules and regulations that are applicable to their operations. The TAA board adopted this position, which is supported, or is not opposed, by all eight TAA panels, with the understanding that the provision includes vehicles operated by private carriers handling exempt for-hire agricultural commodities and that the filing or registration as it appears in the bill does not imply the equivalent of obtaining a license.

We also believe that the recording of information of this type should help the ICC through dissemination of rules and regulations applicable to exempt carriers to discourage the use of the exemptions, in the words of the Commission in its 75th annual report, as "a breeding ground for schemes and devices to engage in unlawful for-hire transportation."

TAA has no specific position in regard to the section of the bill dealing with freight forwarders of used household goods, nor do we have any position regarding the injunctive process.

We hope, in concluding our comments on the two bills before the subcommittee, that should any section of either bill become controversial to the extent that action thereon may be delayed, the separate provisions on which agreement can be reached will be enacted promptly.

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Now, going beyond the two bills under consideration, I should like to refer briefly to an additional proposal which TAA favors as constructive steps to curb or eliminate illegal for-hire transport operations.

TAA believes that an important and growing factor in the decline of public carriers is transportation performed by groups claiming to be agricultural cooperatives, and thus exempt from economic regulation by the ICC, but which are, in fact, performing transportation for the general public of nonexempt commodities.

The Commission in its 75th annual report points out that—

> Substantial amounts of important traffic are being diverted from authorized motor carriers * * * by various groups and organizations performing general transportation services under the guise of exempt agricultural cooperations * * *.

We agree with the Commission that "because of the necessity of overcoming in each case a presumption of eligibility," it is "unable to cope with this situation effectively." What is particularly disturbing is that under ths specific exemption an agricultural cooperative can solicit traffic from nonmembers provided the total amount of such traffic does not equal one-half of its total business.

Obviously, without some reasonable assurance that only bona fide agricultural cooperatives can utilize this exemption, a loophole in the law exists that encourages unlawful for-hire carriers to use this exemption as a subterfuge to enter the general field of for-hire transport.

To remedy this situation, TAA favors legislation to require certification by an appropriate agency, such as the ICC or the Department of Agriculture, of any agricultural cooperative which desires to perform exempt transportation service under this provision. This recently adopted position by the TAA board is either approved, or not opposed, by all eight panels in the cooperative project.

Another proposal to help arrest the decline of regulated carriers was made by TAA to this subcommittee in hearings last June. This proposal, in brief, recommended that Congress direct all Federal agencies to give preference in the procurement of for-hire transportation services to regulated carriers whenever reasonably available.

We are pleased to note that one of the specific provisions contained in the President's transportation message relates directly to this point. To be specific, the President stated:

> I am directing all agencies of the Government, in meeting their own transport needs to use authorized commercial facilities in all modes of transportation within the limits of economical and efficient operations and the requirements of military readiness.

We commend the President on this action since we believe such a directive should assist considerably the efforts being made to strengthen our common carrier transport industry.

Thank you, gentlemen, for the privilege of appearing before you.

Senator SMATHERS. Thank you very much, Mr. Galaspie.

Senator Lausche, do you have any questions?

Senator LAUSCHE. Your association takes the position that there has been an erosion of the capacity of business possessed by the different public carriers that we have and that, therefore, some remedial legislation is needed to stop the continuation of that erosion?

Mr. GALASPIE. Yes, sir; we feel very strongly.

Senator LAUSCHE. The bills that you have been discussing, do they go to the full limit of what you think needs to be done in order to achieve this objective?

Mr. GALASPIE. Sir, I will have to speak as an individual in that regard because some of the matters that this bill covers, even, have not been fully agreed to by the association. My personal opinion, for what it is worth, is that this bill does not go as far as it should. There should be other remedies, I think, and I believe that some of the remedies suggested by the President will assist in this.

But there must be, as Mr. Barton stated, a full cooperative effort between the ICC and the State officials, for example, so that we can permanently get the unlawful transporters off the highways to the greatest extent possible. When I say that, I do not mean to impinge upon the inherent right of every company, every individual, to transport his own goods. But those who are operating unlawfully should be taken off the highway somehow, someway.

Senator LAUSCHE. Now in your statement, you declare that the National Council of State Transportation Specialists have concluded that there has been a loss of legitimate business by the common carriers equal to 25 percent of what they ought to carry. Is that right?

Mr. GALASPIE. Twenty-five percent of the total intercity truck traffic; yes, sir. That is the testimony.

Senator LAUSCHE. That 25 percent would be $4.7 billion?

Mr. GALASPIE. Yes, sir.

Senator LAUSCHE. The ICC, on the other hand, says that the loss has been 4.5 percent or in dollars, $840 million.

Mr. GALASPIE. Yes, sir.

Senator LAUSCHE. Now it is a fact that whichever figure you take, it is a very serious item, and it ought to be remedied.

Mr. GALASPIE. It is quite a serious item; yes, sir.

Senator LAUSCHE. On this subject of allowing the States to pass laws requiring uniform registration, you recommend it, do you?

Mr. GALASPIE. I recommend that all States——

Senator LAUSCHE. That is, this bill contemplates the requirement of uniform registration.

Mr. GALASPIE. That is correct.

Senator LAUSCHE. And you subscribe to that?

Mr. GALASPIE. We do.

Senator LAUSCHE. Now, the fact is that with regard to this proposal, we are sending back to the States rights which have been taken away and, therefore, this proposal is free from the attack that we are encroaching upon the rights of the States.

Mr. GALASPIE. I believe that is a fair statement. This proposal, this bill, does not contemplate forcing any State to adopt registration laws, but it does say that if any State does have registration laws, or enacts such laws in the future, that within a 5-year period, they must conform to a uniform registration law as propounded by the Interstate Commerce Commission.

We suggest in our statement that it be made perfectly clear that the Interstate Commerce Commission shall confer with State officials before setting down uniform registration laws. We want to encourage the States to adopt such laws if possible.

Senator LAUSCHE. Will you clarify for me your position on the bill, giving the ICC the right to impose civil forfeitures on a carrier engaging in carriage which is unlawful? You discuss that on page 5.

Mr. GALASPIE. We have agreed with the provisions of the bill that the forfeiture provisions should be increased. There, again, my personal opinion is—I am not speaking for the association—my personal opinion is that these forfeitures do not go as far as they should. I think they should be greater.

As far as the association is concerned, we have taken no position as to the actual amount, but we do approve the additional provisions which would increase the forfeiture provisions and also to make those provisions applicable to unlawful for-hire carriage.

Senator LAUSCHE. I think that is all that I have, Mr. Chairman.

Senator SMATHERS. All right, sir.

Senator CASE. No questions.

Senator SMATHERS. Thank you very much, sir; I appreciate your testimony.

Mr. GALASPIE. Thank you.

Senator SMATHERS. Our next witness is Mr. Zagri, legislative counsel for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Washington, D.C.

STATEMENT OF SIDNEY ZAGRI, LEGISLATIVE COUNSEL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, WASHINGTON, D.C., ACCOMPANIED BY JOHN BRIDGE

Mr. ZAGRI. Mr. Chairman, for the record, my name is Sidney Zagri. I am legislative counsel for the International Brotherhood of Teamsters.

Senator SMATHERS. Yes, indeed.

Mr. ZAGRI. I would like to introduce to the committee Mr. John Bridge, who is a consultant in the field of transportation, has been since 1920, and he is appearing jointly with me as an individual, although he represents 40 common carriers in 4 motor transport divisions of 4 major railroads in his day-to-day activities. And I thought his practical experience would be helpful to us today.

Senator SMATHERS. Thank you, sir. Thank you very much.

You may proceed.

Mr. ZAGRI. On behalf of General President Hoffa and the general executive board of the International Brotherhood of Teamsters, representing over 1,725,000 members with a vast majority directly engaged in intercity freight, I appreciate the opportunity of appearing before this committee in support of the principles and the objectives of S. 2560 and S. 2764.

The interest of the Teamsters Union and its membership in the problem of unauthorized transportation is twofold:

1. The jobs of thousands of our members are being threatened and, in many instances, destroyed by the irresponsible cutthroat competition of the motor carrier engaged in gray area and/or illegal operations. This also includes many represented by Mr. Bridge. Many of these firms would have to go out of business and the relief they requested was directly due to the cutthroat competition that they have to endure at the hands of exempt carriers.

Just the other day, I was in the city of Chicago, on which Mr. Bridge will give you some specifics with which he is well acquainted in that regard. I am happy to say that our union cooperated in this matter. I was in the city of Chicago where I discussed this problem with the secretary-treasurer of one of our large local unions engaged in over-the-road trucking from Chicago to centers throughout the Middle West. Common carriers who have been in business for decades find themselves in serious trouble because of the ruthless competition of the exempt carrier, particularly in the transportation of perishable commodities exempt from economic regulation.

Not only is the competition cutthroat because of the absence of economic regulation, but also is made economically feasible by a complete and utter disregard for the safety regulations promulgated by the Commission which are applicable to all carriers, including exempt and private carriage.

The so-called bull haulers, the haulers of cattle, transporting cattle from adjacent States to Chicago, operate in complete disregard of the regulation establishing 10 hours maximum for driving, the practice being to drive as many hours without interruption as is necessary until market is reached. This sometimes will be 14, 16, or 18 hours without interruption.

I am told this is necessary because of the shrinkage that takes place, and they want to get the cattle to the market with the minimum of shrinkage. However, a responsible approach would be to have two drivers and a sleeper cab. This is not the type of equipment or the type of operation that is engaged in by the bull haulers.

The responsible common carrier is then faced with the competition of the bull hauler who then makes available his services at marginal prices in order to insure a backhaul. The marginal nature of this operation results in the destruction of standards of public safety as well as disregard for fair competition and prices. The elimination of minimum rates results in price wars which create increased pressures for driving long hours beyond the prescribed maximums, permitting equipment to deteriorate, and taking other unnecessary risks.

The result of this type of competition has been that legitimate common carriers seek economic relief under our collective bargaining agreements. In many instances, it has resulted in having the carrier place an embargo on a tariff on meats or perishable cargo. This means complete elimination of these runs and loss of jobs for our members.

Under the present setup, the economic dice is loaded against the common carrier. The exempt operator will compete on labor, either by hiring drivers below the union scale and without fringe benefits, who violate public safety regulations, or by hiring owner-operators who sell their equipment and services at marginal prices, particularly on backhaul operations, who will neglect maintenance of equipment and ignore driving time restrictions because of their "bargain basement" price practices.

Under these circumstances, shippers gain temporary price advantage, but in the process contribute to the destruction of a stable common carrier system. Also, the chaotic prices and structure in which the exempt carrier operates results in a tremendous turnover among owner-operators.

This subcommittee heard from Mr. W. M. McCurdy, president of the Perishable Commodities Carriers Association, Inc., San Antonio, Tex., when he stated that—

> The financial plight of members of the Perishable Commodities Association is such that about one-third of the small exempt truckers go out of business each year. There is always someone to take their place, but the turnover has reached a frightening proportion.

The economic loss due to this turnover is borne by the public, by the people of this country.

Mr. C. A. Buchanon, executive secretary of the National Agricultural Transportation League, stated in hearings before this subcommittee that the safety record of the exempt truckers "is not a pleasant one."

The public loses because hazardous conditions are created by wholesale violations of safety regulations. The Interstate Commerce Commission in 1957 conducted four nationwide road checks at more than 150 points plus a special check at the Florida-Georgia line: 46,000 interstate trucks were examined, and it was found that 17.5 percent, or nearly one out of every five, were in such hazardous condition that they had to be ordered out of service until repaired.

Spot checks without discrimination were made on common, contract, private, and exempt motor carriers; 67 percent, or two out of every three, of exempt units were found to have four or more vehicle or driver defects. This situation reflects the fact that many of the exempt carriers are compelled to subsidize their normal cost of operation by avoiding compliance with basic safety requirements.

The public safety aspects of this problem are of importance.

1. It is in the public interest to minimize the number of accidents on highways. Recent surveys of accidents on the New Jersey Turnpike from 1952 through 1957 shows that trucks were involved in 1,508 of 6,048 reported, or 25 percent. These truck accidents were above average severity since trucks were involved in 39 percent of fatal accidents and 43 percent of the fatalities.

Trucks were also involved in an abnormally high percentage, 30 percent, of front- and rear-end collisions, or 846 out of 2,805 accidents of this type. The accident rate for trucks on this turnpike for this period was 70 percent more than that of passenger cars.

A recent spot check on the Pennsylvania Turnpike, October 30, 31, and November 1, 1960, by the ICC, indicated that out of 1,000 vehicles inspected to determine possible irregularities, the following report was made:

> Based upon those spot checks, it made detailed inspections of 213 vehicles; with 116 of them belonging to authorized carriers; 40 to private carriers; 20 to exempt carriers; and 29 to carriers whose status has not yet been definitely established. Of the 213 vehicles inspected, 115, or 52 percent, were declared out of service as being too hazardous to operate on the public highways. These included 67 vehicles, or 48 percent, of the private carriers; 10 vehicles, or 50 percent, of the exempt carriers; and 15 vehicles, or 52 percent, of the carriers in unknown status.

2. According to the testimony of Rupert L. Murphy, Chairman, Interstate Commerce Commission, who appeared before this subcommittee on April 24, 1962:

> In a nationwide road check last October, 58.8 percent of the exempt carriers had four or more vehicle defects, as compared with 28.7 percent for authorized carriers. Fifteen percent of the vehicles of exempt operators were removed from

service for serious defects, as compared with 10.1 percent for authorized carriers. These figures reveal nothing new. The compliance record of exempt carriers has always been considerably worse than that of authorized carriers.

Compliance with public safety requirements by the exempt private carrier—and, gentlemen, this is a very crucial point from our point of view because it would increase the cost of operation to the point where the exempt carrier would have to charge rates comparable to those of the regulated carrier. Although complete equalization could not be acheived through this method, the elimination of the subsidization of low rates through failure to comply with maximum hour and equipment requirements would be eliminated.

It seems a rather unfortunate way to subsidize cutthroat competition at the expense or the possible expense of the safety of the traveling public. At least, if we could enforce the public safety regulations with reference to the exempt carriers which are the predominent violators, we would accomplish two things. We would accomplish No. 1, minimization of risk to the traveling public, and No. 2, of equal importance, we could tend to equalize the basis of competition by increasing the cost of the violators of the public safety regulations. It would be a major step forward toward achieving equality of competition short of economic regulation.

I would like to deal briefly with the problem of enforcement, and I think this is probably at the heart of our problem.

The lack of enforcement of existing laws and regulations is so widespread that the Doyle report on page 535 says:

> It is a common saying in the industry that under present interstate enforcement programs, an unauthorized motor carrier can carry out his illegal transportation activities in interstate commerce for a period of 5 years before he may be forced to cease and desist.

This is a statement of a responsible committee appointed by this committee of the U.S. Senate.

The illegal activities involve widespread violations of both economic and safety regulations. While these are to be treated separately, they are closely related. One is in a large measure the outgrowth of the other. The violation of safety standards often stems from the pressures of cutthroat competition.

Since the legislation before us deals primarily with the problems of enforcement, I would like to preface my remarks with reference to specific sections of the bill with a general observation concerning the essential ingredients of a sound law enforcement policy.

(1) There must be a policing authority commensurate with the scope of the regulatory responsibility. If the policing responsibility is abdicated, a vacuum results and the regulatory authority is frustrated.

(2) The policing authority must include the necessary tools for identification and detection of violations.

(3) There must be procedure insuring the expeditious disposition of cases arising from alleged violations.

(4) There must be adequate penalties as deterrents to future violations.

With reference to the first problem, the scope of the policing authority, as well as the execution of this responsibility by the ICC, it is a historical fact that the Commission has abdicated this responsibility for the most part in favor of police action by the States. The Com-

mission's annual reports recording the number of cases investigated, cases prosecuted, fines collected, et cetera, indicate a perfunctory approach to its enforcement responsibilities.

This is particularly emphasized when one contrasts the volume of violations that take place as illustrated by the following ICC safety road check made during May 1960 with the record of investigations and fines imposed for that entire year by the same Commission.

An ICC safety road check made during May 1960 indicates the extensiveness of public safety violations. That 1-month test covered 10,693 power units, including trucks and tractor-trailer combinations. Of this total, 1,212 units, 11.3 percent, were found unsafe to continue operation and were declared out of service until repaired. More than 19 percent of all units inspected had 5 or more defects reported. Of 5,534 authorized carriers checked, 2,831 or 43 percent had 2 or more defects reported. Of 3,594 private carriers checked, 2,110 or 61.5 percent had 2 or more equipment defects. Of 912 exempt carriers, 664 or 72.8 percent had 2 or more defects reported. These safety road checks were made during 1 month, during May 1960.

And yet, during the entire period from July 1959 through June 30, 1960, fines and forfeitures imposed as a result of the Commission's enforcement procedures totaled $616,106 of which $539,566 was required to be paid. For the period from July 1, 1960 through June 30, 1961, fines and forfeitures totaled $565,466, of which $515,431 was required to be paid. During the same period, 1,202 investigations were commenced and 1,027 completed. It is clear from the foregoing that the ICC's approach to enforcement is little more than a perfunctory one as contrasted with the volume of violations that take place.

Little or no hope for enforcement at the State level exists. Thirty-three States have no requirements for a periodic safety inspection for the vehicles registered therein. Similarly, although there is a growing concern among public officials responsible for highway safety for the number of accidents that are being attributed to substandard brake fluid, current reports show that 22 States do not regulate specifications for this important product.

In a colloquy between Mr. James F. Pinkney, representing the American Trucking Association and Senator Magnuson, and I believe also Senator Smathers, on February 7, 1962, Mr. Pinkney referred to "the limited manpower and necessarily cumbersome enforcement procedures" of the ICC.

Senator Magnuson stated:

* * * They always have a tendency to make the excuse that they have limited manpower. Now, I handle their appropriation in the Senate and if they will go back to hearings for years, we have always asked them if they needed more manpower to do certain things that this committee and Congress had directed them to do, and they have always said, no, this is all right, this is all we need. It's the budget amount, of course, and I'm getting a little bit tired of the ICC and everybody talking about limited manpower down there doing things that we want to do in this field, all of us.

Then, he concludes his statement:

If they have limited manpower, they ought to say so and they never have.

Mr. Pinkney then replied:

* * * You have, for example, in the State of Florida, thousands and thousands of trucks on the highways at all times, a great many of them engaged in what we

think are gray area or outright illegal operations. The same thing is true in many other States.

It would take a police force the size of the combined highway patrol forces of all of the States to adequately police that situation. The Interstate Commerce Commission, I don't believe, I don't think it would be wise to give them such a tremendous Federal police force of the size needed completely to police the situation.

Now, I believe, Senator Smathers interjected the following comment:

I think that when they were up here the last time, they indicated that actually they didn't want to become, they—the ICC—did not want to become police agents, so to speak, so, therefore, they don't ask for the money; they probably don't think they could get it; maybe they could and maybe they couldn't, they didn't want to ask for the money to set up what would amount to a large State highway patrol for each State, and they recognize, however, that they cannot enforce the laws if they don't have it, all those people, yet they don't want them. They, therefore, recommend, and they did recommend last year, that we give them the authority to work out some arrangement whereby they can work with the States in enforcing these regulations, and so I think what they were saying is that we don't have them and they don't go the next step and really say directly, and we don't want the enforcement authority, or the police authority in this area.

It is clear from this exchange that there is need for a clear definition by the ICC as to whether they intend to occupy the police power which is commensurate with their regulatory responsibility. Until this matter is cleared up, the fundamental problem of enforcement will be suspended in limbo.

I know of no other situation in the Federal Government comparable where the Federal agency abdicates its responsibility of enforcement and hopes that the States will fill the vacuum.

With the rate of deterioration of the common carrier system today, the estimate of the Doyle report that over 50 percent of the intercity delivery of freight would be in the hands of private or exempt carriage by 1975 is entirely too conservative. This problem calls for immediate solutions in terms of a police force comparable to that which is presently engaged in enforcing the authority of the Department of Agriculture, for example, in its manifold jurisdictions.

I am reliably informed that the Department of Agriculture today has a force of over 6,000 inspectors. I do not know whether the ICC responsibility would call for a police authority of 6,000 or 60,000 investigators. However, I do not shudder at the thought of such a force because it is not comparable to the type of police authority that is vested in the State highway patrol or the FBI or any other police authority that would frighten the average person, emanating from a Federal bureaucracy. The type of inspection that is indicated here simply calls for an investigatory authority which would be subsequently followed up by civil forfeiture procedures or for demands for injunctive relief.

It is suggested that this committee request the ICC to define the scope of its police authority and to estimate the staff that would be required to fulfill its responsibility under the law.

And then, I think, in the future when the ICC appears before the Appropriations Committee and Senator Magnuson asks him the question, they will at least have a factual basis for saying they have or have not enough funds to be appropriated. It will be a factual basis to go before the Budget Department, which I understand cuts their

request in half as it is. At least, they will have a factual basis for making an argument before the Budget Department.

So I think it would be a real service of this committee to request the ICC to define what its needs are to fulfill the authority vested in that Commission under the law for inspections for violations, both economic and public safety regulations.

Now, the problem of identification. Essential to effective law enforcement is the need for identification of potential law violators. At the persent time, at the Federal level, there is no requirement for registration of all vehicles, but only information regarding certificated carriers is available. At the State level, there is a complete lack of uniformity with reference to requirements to register ICC certificates or permits, identification of vehicles, filing of policies of insurance, et cetera.

Section 1 of S. 2560 attempts to establish uniform standards for registration in the several States where such requirements exist. The establishment of uniformity of standards would alleviate an unnecessary burden presently imposed upon the trucking industry. The adoption of such standards would take place through voluntary Federal-State cooperation in this area. Some benefits may be derived from such a program insofar as unauthorized carriers could be detected by State police with greater ease, due to absence of registration, which would be a clue indicating possible unauthorized carriage.

Gentlemen, I do not understand why the exemption of the private carrier is made in this particular section of the bill. It seems to me they, too, should have the benefits that this particular authority would provide.

Section 4 of the bill would require that all motor carriers of 3 or more axles exempt under the provisions of section 203(b)(6) file a statement with the Commission annually giving:

1. Name of the carrier;
2. Location or principal address of the carrier; and,
3. The number of such vehicles owned or operated.

This information would afford the Commission with the identification of all exempt carriers under the agricultural commodities provisions of the act. This would enable the Commission to check with greater certainty the activities of exempt carriers in many of the so-called gray area operations.

The third benefit would be that it would enable the Commission to send to each exempt carrier a copy of the public safety rules and regulations. This would place them on notice which would overcome the presumption of lack of knowledge which they presently plead when caught in a violation.

I agree with the testimony of the Chairman of the ICC that should be included in this section. I see no basis for making a differentiation between three-axle trucks and smaller vehicles as long as they are subject to the same safety regulation, and they should be registered and be given the information that is required to inform them of their obligations under the law.

Section 2: This section affords private persons who may be injured an opportunity to sue for an injunction in a Federal court to restrain illegal motor carrier operations and confers jurisdiction upon the Federal courts to issue such injunctions. At first blush, this grant of

power to private individuals is appealing, since it would appear to implement the limited enforcement facilities of the Commission. However, upon closer examination, the Commission's objection to this proposal is sound.

The private individual does not have facilities available to the Government in securing information necessary to support the case for injunctive relief. The burden of proof imposed upon an individual seeking such relief is made even greater by the requirement that the violation be "clear and patent." This suggests a burden of proof greater than that which is normally required to establish a case for injunctive relief.

Senator LAUSCHE. Mr. Chairman, may I ask a question?

Senator SMATHERS. What is that?

Senator LAUSCHE. This language that the charges must be proved by "clear and patent" evidence, are these words "clear and patent" common in determining the burden of proof?

Mr. ZAGRI. I do not think it is.

Senator LAUSCHE. I have never heard the burden of proof being defined in that way, "clear and patent."

Mr. ZAGRI. I do not say that is necessarily—I think it is unclear. The words "clear and patent" adds—I do not think there is any standard, and I agree with you, Senator, in law which would say that "clear and patent" requires larger burden of proof. I am simply saying that by injecting this language, a question arises as to whether or not a larger burden of proof is required. And I think that that language——

Senator LAUCHE. I have heard of "beyond a reasonable doubt." I have heard that phrase, of course. There is also "by the preponderance of the evidence," "by clear and convincing evidence," but "clear and patent" is new.

May I ask our expert: Is this in any other law?

Mr. GRINSTEIN. It was taken as a statement of jurisdiction rather than as the quantum of proof.

Senator SMATHERS. There have been other people who have objected to this language. I might say that the reason we have put it in is just as a trial, recognizing we may have to take it out. Those people who are on the other side fear that they may be put to great harassment by their normal competitors if we just let them go in and without very much evidence make a case.

We have tried to overcome that in two ways—by requiring a clear and patent violation and, second, by having to post a bond. But that was merely in an effort to lessen the opposition to it. However, there have been a number of witnesses who object to the "clear and patent" on the ground that it would require a greater burden of the person who brought the complaint than would ordinarily be required.

The question is, Do we need it or do we not?

Mr. ZAGRI. If you delete it from the act, I think it would clarify since no one seems to quite know what "clear and patent" means. But even so, we are opposed to this form of injunctive relief.

Senator LAUSCHE. You are opposed to giving the private citizen the right to bring the action?

Mr. ZAGRI. Yes, and the reason——

Senator LAUSCHE. You join with the Commission?

Mr. ZAGRI. Yes; that is correct. We agree with the Commission's position.

Senator SMATHERS. What they would like to do is give the Interstate Commerce Commission the additional agents and the greater authority to do this which they are not now doing.

Mr. ZAGRI. That is right.

Senator SMATHERS. Our desire was, in the light of the fact the Commission was not now doing it, and there had been the feeling and the realization that nobody was going to give the Commission all these agents, to give the individual who is injured the right to have some remedy for himself.

Mr. ZAGRI. I abhor this delegation by a Federal agency, its responsibility to private citizens, to state bodies, to everyone else except the body that is supposed to carry out the law. And that is why I feel if we centralize the responsibility where it belongs, give them the staff that is required, they have the power which the private citizen does not have to go out and get the evidence necessary to build a good case.

Now, the individual brings a case. He does not have the evidence that is necessary to make a convincing case for injunctive relief. The Commission then proceeds to bring its case. It will have a strike or two strikes against it where the individual citizen injunctive request has been denied.

Senator SMATHERS. But the point is, as you just got through saying, the Commission does not do this. Is that not what you have been spending all your time telling about?

Mr. ZAGRI. What I am saying, we should examine this in the light of its responsibility.

Senator SMATHERS. There are only two ways to do it—either you have the citizens do it who are injured, who actually know better when they are injured, or we create this giant Government agency with policemen all over. Otherwise, it is not going to get done. You have got to go one way or the other.

We believe there is no prospect of getting accomplished what we want to get accomplished, which is the elimination of these illegal areas, except by allowing a citizen who is a certificated carrier to bring a case himself under certain rules where he puts up a bond and so on. That eliminates the need for appropriating great sums of money to hire large numbers of agents to travel up and down the highway prosecuting everybody.

Senator LAUSCHE. The other side of the argument is that we are entering into a trend of assigning to private individuals this great sovereign power of enforcing law.

Mr. ZAGRI. I agree with you, Senator.

Senator LAUSCHE. Then, you have to envision what serious complications can come when you say to individuals—

> You shall bring this action which is in the nature of a criminal prosecution instead of it having been done by the State. That is to be fair, impartial, and objective.

That is about it on the other side of the argument.

Senator SMATHERS. Except this is not a criminal action. This is a civil forfeiture action, and it is well established in law that where civilians get involved and one injures the other, the one who is injured or thinks he is injured, he has a perfect legal right to go into any court and seek redress.

Mr. ZAGRI. But I share the fear of the Commission that this delegation of the Commission's authority to private individuals will muddy the waters and will make the Commission's job, which is already a difficult one, even more difficult where the individual seeking injunctive ruling does not have the evidence that is available to the Commission to effectually prosecute for injunctive relief.

Senator SMATHERS. This is the thing the committee will have to decide, and we appreciate your views, and it will be a part of the record.

Mr. ZAGRI. Yes, sir; I admit at first blush I was intrigued with the suggestion.

Section 2 of S. 2560 establishes civil forfeiture provisions.

The sum of $200 for each offense in violation of section 203(c) of the act dealing with economic regulation is established and an additional $100 for each additional day during which such failure or refusal shall continue.

S. 2764 extends the civil forfeiture provisions to include safety violations.

The objections of the trucking industry to S. 2764 can only be explained, to my satisfaction, at least, on the basis of the Commission's failure in the past to apply vigorously the safety regulation provision of the act to exempt and private carriers. Obviously, it is fear that the severe penalties imposed for violations, which would include minor infractions such as incorrectly filling out a log by a driver, would give the Commission great power over a carrier.

However, assuming that the Commission would expand its policing responsibility commensurate with its authority, it is difficult to reconcile the American Trucking Association's approval of civil forfeiture in cases of violation of economic regulations and opposition to similar forfeitures where safety violations occur.

If civil forfeitures were applied with equal vigor to exempt and private carriage, it would go a long way toward equalizing the competition between regulated and unregulated carriers.

The civil forfeiture procedure would speed up the trial of cases for several reasons:

1. All cases could be consolidated in one Federal court. That is, the locale of the principal office of the trucking company involved, instead of having to go to a series of Federal courts where the violations might occur.

2. Investigatory burden could be substantially reducd since the burden of proof would be much less than in a criminal case where the burden of proof has to be beyond a reasonable doubt. In a civil forfeiture proceeding, it would have to be only on the basis of a preponderance of the evidence.

The stiffness of the penalty would act as a deterrent to future recurrences of these violations in either the economic or safety regulatory area. If the penalty is not stiff, the exempt carrier who can assume that he will not be caught up with in, say, 5 years, according to the trial record, would find it a very profitable operation to simply write off the fines if they are small enough as a part of his overhead and continue to conduct his illegal operation.

Senator LAUSCHE. I have had that experience in Ohio with a frequency that is just frightening, the willingness to pay the fine and

continue the violation, the fine being inadequate and, therefore, the profit lying in the violation and not in compliance with the law.

Mr. ZAGRI. Exactly.

Section 5 deals with repealing the exemption on freight forwarders of used household goods. This will equalize competition in an industry where a stabilized is greatly needed. Due to the fact that the industry is in a transitional state, with the possibility of containerization becoming the predominant mode of transportation, it is premature to call for a certification. Economic regulation will be obtained through the issuance of permits.

Although the aforementioned provisions of the two bills under discussion are sound and deserving of support, it is to be recognized that these bills are only very small, first steps in dealing with the problem of erosion of common carriage due to the alarming growth of gray and black area operations.

Although the manifestations of the gray area problem are to be found in terms of buy-and-sell operations, leasing of driver and equipment to the shipper as a pseudoshipper operation, the basic cause is to be found in the inconsistency of the Interstate Commerce Act itself which sets up two inconsistent policies, one favoring a regulated common carrier system and the other favoring exempt transportation which is in direct conflict with the former policy. Most of the gray and black area operations stem from the exemption of private carriage and the agricultural exemptions of the act.

At this point, I would like to say I agree most heartily with the American Association of Railroads where they call for a fishback or cutback approach to this problem. They say either we should repeal all of our exemptions or repeal them insofar as it is possible at this session of Congress, or we should extend the exemptions in order to equalize competition.

Senator LAUSCHE. Either course would attain the same end, would it not?

Mr. ZAGRI. No; it would not attain the same end, I do not think. Because I think if the latter were followed, we would destroy our common carrier system, because as the counsel for all the railroads testified before this committee, the regulation or elimination of minimum rates regulation by repeal of the bulk commodities and agricultural commodities would affect 70 percent of all commodities hauled by class 1 railroads in 1960. So this would now multiply. It would legalize, actually, the gray area problem and eliminate minimums and for the first time in many, many years have the rule of the jungle prevail.

So I think that while logically in terms of equalization there is merit to the argument, we have got to go either way in terms of the interests of maintaining a strong common carriage system. There is no alternative. We have got to establish equal competition based upon a completely regulated transportation system.

The private carrier finds it difficult to maintain a balanced, two-way traffic pattern. For this reason, he is subject to the pressures to balance his accounts by obtaining traffic under marginal conditions, irrespective of the amount of compensation, disregard of maximum work hours, inadequate insurance, neglect of proper maintenance, and any other way that will profit or minimize a loss operation, particularly on a backhaul.

He will seek to minimize this loss by the fictitious extension of his own private carrier exemption, through leasing of his equipment to an authorized operator, hauling exempt merchandise, and often engage in hauling nonexempt commodities in violation of the act.

To the extent that he succeeds, he diverts revenue traffic from the common carrier. This is contrary to the public interest and to a healthy for-hire system.

We recommend that the term "private carrier of property" in the act be redefined along the lines recommended by the Doyle report, page 510, which would include the following points:

(1) The private carrier is primarily engaged in a business other than transportation;

(2) The property which he transports is his own and is of such nature as to be directly incident to his business other than transportation;

(3) The vehicle is owned or exclusively controlled by the private carrier; and

(4) The vehicle is manned by a bona fide employee or employees of the private carrier.

Another major source of gray area or illegal operation as documented by the ICC study stemmed from carriers engaged in transporting exempt agricultural commodities on the outbound and transporting nonexempt commodities on the inbound.

The problem is not with the farmer who trucks his own merchandise to market. He is usually not engaged in interstate transportation. His activities are covered by the exemption granted to private carriers. Nor is the problem concerned with for-hire transportation of the farm to first market traffic. The predominant trucking of exempt commodities in interstate commerce appears to be that of a large group of commercial carriers which are now estimated to cover more than 9,000, some of which have large fleets of trucks.

The principal operation of these carriers is subsequent to the initial farm-to-market movement. It takes place by the commercial establishments and often is long distances in intercity movement. The crux of the problem is, therefore, not to be found in the farm-to-market operation which was a principal justification for the original exemption, but rather in the development of a major transportation industry, exempt from economic regulation and public service costs, including the requirement of full insurance coverage which competes with regulated intercity motor carriers and the railroads.

The main area of controversy has centered about section 203(b)(6) relating to the definition of agricultural commodities. This subcommittee wrestled with this problem in 1958, resolved by rolling it back on one commodity, and we still have the problem, probably to a great extent, today than we had then.

Over the years the courts have broadened the definition of agricultural commodities to include commodities that were processed. The Motor Carrier Act of 1935 excluded from the definition "manufactured from." It included livestock, but no mention was made of meats. It included fish, but neither the statute nor the debate gave an inkling whether they were dead or alive, whole or sliced, cooked or raw, cleaned or uncleaned.

The Chairman of the Interstate Commerce Commission, in testifying before this subcommittee in March 28, 1958, stated:

> * * * We are of the view that agricultural exemptions have been extended by judicial decision greatly beyond what Congress intended. The Commission has for some time realized that this progressive broadening of the list of exempt commodities would have a ruinous effect upon the entire structure of regulated carriage. The situation has reached such proportions that several groups of exempt carriers are now pleading for regulation.

The Chairman of the Commission further stated that the principal purpose of the agricultural exemption was to benefit the producers of the commodities involved, primarily the farmers. However, as a result of a series of court decisions:

> These very exemptions are being used by commercial interests for their own advantages without any probable benefit to the farmer or producer, whose price is usually determined when the sale is made to a broker or dealer. Several haulers of exempt commodities have testified before this committee that by far the greater percentage of the services are performed for the processor rather than for the farmer-producers.

The effect of deregulation following court decisions in the case of dressed poultry and the transportation of frozen fruits, including them under the agricultural exemption was to substantially reduce the truck rates on these commodities. The average rate declined on fresh dressed poultry between 1952 and 1957 was 33 percent; and 36 percent on frozen fruits and vegetables between 1955 and 1957.

This type of decontrol led to chaotic rates with reference to many other commodities in many areas.

One of the major sources of gray area and illegal operations has been the creation of phony agricultural and shipping cooperatives in order to comply with these exemptions in the act. It is important that machinery be established to check the legitimacy of the cooperatives, and placing the burden of proof upon the cooperatives to qualify for the exemption.

The recommendations are: (1) Exempt farm-to-market for-hire transportation should be defined as for-hire transportation from the point of production to the first point of unloading or transfer. This definition avoids such questions as "ownership or title—market or assembly point" and excludes from questions, "Will the cargo be live or killed, processed or packaged, et cetera?"

I appreciate, Mr. Chairman, that as a practical problem, the farmer, although he would not be affected by this type of amendment would fear that he might be affected, but I think that because the problem exists, does not mean we should not try to tackle it. And I believe that one of the elements of leadership is to bring the facts home to the farmer and have him understand that his prosperity as an idvidual depends upon a strong common carrier system.

Senator SMATHERS. Have you ever tried to talk to some of these farmer representatives on this?

Mr. ZAGRI. I will be very happy to. I have not as yet.

Senator SMATHERS. Have you ever been very successful in convincing them of your view?

Mr. ZAGRI. I must confess, I have not even tried, but I would be happy to try.

Senator SMATHERS. There is an opportunity for great leadership there.

Mr. ZAGRI. I will try.

Senator SMATHERS. All right. Let us know how you do.

Mr. ZAGRI. 2. We endorse the recommendation of the ICC:

> We recommend: (a) That sections 203(b)(5) and 402(c) be amended to provide that agricultural cooperatives and shipper associations, respectively, shall be entitled to exempt status thereunder only upon application and proof of eligibility; and (b) that sections 220 and 412 be amended to permit the Commission or its duly authorized agents to inspect the books, records, and other documents kept or maintined by such cooperatives and associations.

In connection with the requirement the association must qualify under the provisions of the Marketing Act, it should be mandatory for the Secretary of Agriculture to maintain an up-to-date list of bona fide cooperatives, certified as being in compliance with the Marketing Act. Any association not found qualified under the provisions of the Marketing Act and the qualifying list of the Secretary of Agriculture should be barred from participating in exempt traffic and special penalty imposed as to effectively deter formation of so-called phony associations.

Senator SMATHERS. All right, sir. Thank you very much, Mr. Zagri.

Mr. ZAGRI. I believe that Mr. Bridge——

Senator SMATHERS. I will tell you about Mr. Bridge. We do not have him scheduled. We have 12 witnesses already listed. We know what his problem is, and we are sympathetic with it. And our hope is: How do we get 51 votes?

Thank you very much for coming, but we have listed witnesses here, and we have got to proceed in that order.

Thank you very much, Mr. Zagri, and we thank you, sir.

Gentlemen, there is a live quorum going on on the Senate floor, and I am going to have to go over and answer it. I would like to make this announcement, we will reconvene at 2:30. At that time, the committee would be most appreciative if those of you who are going to testify would submit your statements in full, and we will make them a part of the record. Then, as best you can, summarize that which you have to say. We would appreciate your doing that.

We will reconvene at 2:30 in this room.

(Whereupon, at 12:17 p.m., the subcommittee recessed, to reconvene at 2:30 p.m. the same day.)

AFTERNOON SESSION

Senator SMATHERS. The meeting will come to order.

Our next scheduled witness is Jerry Chambers, the president of Clipper Carloading Co.

STATEMENT OF JERRY CHAMBERS, PRESIDENT, CLIPPER CARLOADING CO., AND PRESIDENT, NATIONAL ASSOCIATION OF FREIGHT FORWARDERS, INC.

Mr. CHAMBERS Mr. Chairman and members of the Senate committee, my name is Jerry Chambers. I am president of Clipper Carloading Co. and also president of the National Association of Freight Forwarders.

80130 O—62——12

To expedite matters, I will simply summarize from the statement that I had prepared and copies of which are being distributed.

Senator SMATHERS. Fine. Thank you, sir.

Mr. CHAMBERS. I have been authorized by the National Association of Freight Forwarders to go on record as being in favor of Committee Print No. 1 of S. 2560.

The National Association would also like to present to the committee for its study and approval three additional amendments which we feel will strengthen the bill.

The first two amendments are, for all purposes, identical. They provide that any person injured by an illegal motor carrier or freight forwarder operation may sue for triple damages.

At the present time there is no provision where an injured common carrier may sue an illegal operator. The illegal operator has the benefit of the profits of his illegal operation, which it may take a number of years to curtail.

Under these proposed amendments, we would stand a reasonable chance of eliminating the profit motive from illegal transportation.

Frequently it will take many years to put a company out through administrative proceedings. We feel that the carriers themselves must have some ability and some means of proceeding against illegal operators.

The second, or I should say, rather, the third proposal of amendment that we have is to license brokers of exempt commodities. The clearinghouse for both shippers desiring to avail themselves of illegal transportation and so-called exempt commodity motor carriers desiring return loads is the illegal truck broker. This is the point of contact between an illegal shipper and an illegal carrier. It is a point of contact that can comparatively easily be policed.

The average broker has been in business for 7½ years. He is established, has offices, telephones, and so on. He does business with 118 so-called exempt trucking companies.

So that through this one broker connection you are able to reach a tremendous number of trucking companies.

The great majority of exempt commodities in the United States are booked through brokers. Many of these brokers are honorable, and they conduct their business in a proper manner. They only book exempt commodities. Many of them, however, will book anything on which they can make a dollar.

Through licensing these brokers, we will give to the honorable broker a franchise that is valuable to him. The illegal broker will quickly find his operations curtailed, and we feel that this is an effective point of control.

In Florida, for example, about 88 percent of the citrus crop is booked through brokers.

Now, outbound from Florida that would be a perfectly proper operation. And these brokers would be able to continue in business until such time as the Commission granted them a license. They would, in effect, have a grandfather clause in it.

When they begin to broker illegal commodities, say, from New York to Florida, then the Commission would step in, and they would have a record of that because the brokers would be forced to keep a record.

It is my understanding that the regular common carrier conference of the American Trucking Associations approves and gives its support to our amendments.

We have attached here exhibits A, B, and C. Exhibit C outlines in great detail the activities of truck brokers. It is Marketing Research Report No. 525 of the U.S. Department of Agriculture, very recently issued.

Thank you very much.

Senator SMATHERS. Thank you, sir.

It is very helpful and very constructive, and we certainly appreciate it, Mr. Chambers.

Your statement will be made a part of the record in full.

Mr. CHAMBERS. Thank you.

(The prepared statement of Mr. Chambers follows:)

My name is Jerry Chambers. I am president of Clipper Carloading Co., a common carrier freight forwarder, which is subject to the jurisdiction of the Interstate Commerce Commission. I am also president of the National Association of Freight Forwarders, Inc., with offices at 3401 West Pershing Road, Chicago, Ill. The association is made up of 22 common carrier freight forwarders, all subject to the jurisdiction of the Interstate Commerce Commission, and I appear before you today by authority and by direction of its board of directors.

Illegal transportation affects the freight forwarding industry as well as the rail and trucking industries. Speaking therefore, for the members of the National Association of Freight Forwarders, we would like to go on record as being in favor of committee print No. 1 of bill S. 2560. In addition we would like the record to show that we generally approve the position of the railroads as presented by Mr. Harry J. Breithaupt, Jr., general attorney of the Association of American Railroads, and the position of the Regular Common Carrier Conference of the American Trucking Associations, Inc. as presented by Mr. Albert B. Rosenbaum, its executive director, with one major exception.

Both of these gentlemen endorsed without reservation recommendations Nos. 1 and 2 of the Interstate Commerce Commission as contained in its latest annual report. It is the position of the National Association of Freight Forwarders, Inc. that recommendation No. 1 paragraph (a) therein if enacted into law would harm the freight forwarding industry. It reads:

"We recommend (a) that sections 203(b)(5) and 402(c) be amended to provide that agricultural cooperatives and shipper associations, respectively, shall be entitled to exempt status thereunder only upon application and proof of eligibility."

Our position has already been made known to the Interstate Commerce Commission, Mr. Gerald Grinstein, counsel for the Senate Surface Transportation Subcommittee, and Mr. Albert Rosenbaum of the Regular Common Carrier Conference of American Trucking Associations, Inc. This particular recommendation has not yet been discussed by this committee so I will not at this time further elaborate on our position. I will however, testify in opposition to it should it be presented in bill form. It was brought up today merely to clarify our position in connection with it. We have no objection to recommendations 1(b) and 2.

The National Association would like to present to the committee for its study and approval three additional amendments which we feel would strengthen the bill. These three amendments are for the purpose of controlling black market transportation.

The first two amendments are for all practical purposes identical, except that one deals with illegal motor carrier transportation and the other deals with illegal freight forwarder transportation. See exhibit A. Briefly these two amendments provide that if any person is injured in his business by illegal motor carrier or freight forwarder transportation, such person may sue for treble damages.

Today, there is no provision in existing law which gives a common carrier who has been damaged by illegal transportation, the right to sue the illegal operator for damages sustained.

The only recourse presently available is through the Interstate Commerce Commission. Companies found to be operating illegally are, after extremely lengthy hearings, ordered to cease and desist from such illegal operations and in some instances are assessed nominal fines. Unfortunately this remedy has proven to be inadequate to curb illegal transportation. Many companies whose operations have been found to be unlawful merely change their name and continue doing business at the same old stand. In the meantime regulated carriers continue to suffer.

Another disadvantage to the present method of seeking recourse through the Interstate Commerce Commission is the timelag which runs from the time a complaint is filed until a final decision is ultimately reached. An excellent case in point is Docket No. FF–C–6.

In this case, by order entered December 31, 1958, Division 1 of the Commission instituted an investigation into and concerning the operations of Freight Consolidators Cooperative, Inc. Hearings were held in Chicago, Ill., starting July 1959 and terminated at New York City, N.Y., in January 1960. An examiner's recommended report was issued January 9, 1962, stating that the coperative was illegally operating as a freight forwarder. To date, however, after nearly 3½ years have elapsed, we still have no Commission decision.

Freight Conosolidators Cooperatives, Inc., has been in business since 1952 and common carrier freight forwarders and motor carriers have suffered damage since that time. Experience has shown that it is impossible to meet this competition. When it comes to fending off these attacks, it must be recognized that common carriers operate in what might be termed an "administrative straitjacket."

It is not our intent to criticize the Commission, but it is a fact that administrative proceedings by their very nature are extremely lengthy. Authority to sue for damages will act as a deterrent to companies engaged in illegal operations and recompenses common carriers for damages suffered.

If illegal operators knew that persons suffering damages could sue for recovery, such knowledge would have an extremely salutary effect upon them. An illegal operator, who today retains all of the profits from his illegal transportation activities, will, if exhibit A is approved, be subject to equitable penalties. If the profit motive is taken away from illegal transportation operations there is no question but that such operations would quickly diminish.

Our other proposal has to do with brokerage as provided in section 211 paragraph (a) and paragraph (b) of part II of the Interstate Commerce Act. (See exhibit B.)

Today brokers of exempt agricultural commodities as defined in section 203 (b)(6) of the Interstate Commerce Act are not subject to Interstate Commerce Commission regulation. Brokers of nonexempt commodities, however, must have a license from the Commission. Unfortunately considerable tonnages consisting of nonexempt commodities are brokered by people who purport to be exempt agricultural commodity brokers.

In practice it has proven to be almost impossible for the Interstate Commerce Commission to police the illegal movement of nonexempt commodities by individual truckers or small trucking companies. A substantial portion of this illegal movement is by trucks purportedly hauling exempt commodities. The clearing house for both shippers desiring to avail themselves of illegal transportation and so-called exempt commodity motor carriers desiring return loads, is the illegal truck broker. It would seem, therefore, that control must be established over the broker through whom such illegal loads are booked.

The U.S. Department of Agriculture recently published their Marketing Research Report No. 525, which outlines very completely the activities of truck brokers in the booking of exempt commodities. (See exhibit C.)

A great percentage of the total movement of exempt fruits and vegetables is booked through so-called truck brokers. In Florida, California, Arizona, and Texas, 38 percent of the total fresh fruits and vegetables transported by truck in interstate commerce, are booked through truck brokers. In Florida 88 percent of the citrus crop is booked by truck brokers.

The average truck broker does business with 118 different trucking companies. This is the point of control that should be established.

A great percentage of these brokers conduct their business in an honest and legitimate manner and book only exempt farm products. There is a percentage, however, who will book any commodity if they believe that they can make a profit on it. We have recommended that these brokers be placed under the

jurisdiction of the Interstate Commerce Commission and that they be forced to keep records on all of their transactions which would be available to the Interstate Commerce Commission for inspection.

This will not present any problem for the legitimate exempt truck broker. As a matter of fact, he will be securing a valuable franchise and will not be forced to compete with an illegal truck broker who is also booking other commodities. The only person that will be restricted through this licensing of exempt commodity brokers will be the illegal broker. These brokers are generally not in business today and out tomorrow.

It will be noted that the average broker has been in business for 7½ years, so these people can be located at any time. They maintain offices, telephones, etc., and are in a position to keep the records that would enable the Interstate Commerce Commission to check to see whether illegal carriage had taken place. If a broker who has a valuable franchise to broker exempt commodities is offered an opportunity to broker nonexempt commodities, we feel that he would normally turn this down, because it certainly would result in the loss of his license to conduct legal and legitimate brokerage of exempt commodities.

We believe that this is a practical approach to the policing problems now facing both the Interstate Commerce Commission and the State regulatory bodies.

We would call your attention to the fact that this proposal provides that any broker who is in operation when this proposal becomes effective, can continue to operate without a license providing that an application for such license is made to the Interstate Commerce Commission within a stated period of time.

It is my understanding that the regular Common Carrier Conference of the American Trucking Associations, Inc., approves and gives its support to our amendments.

Thank you very much for allowing me to appear before you.

EXHIBIT A

PROPOSED DAMAGES AMENDMENT TO PART II OF INTERSTATE COMMERCE ACT

Section 2 of the Smathers bill (S. 2560) presently provides for injunctive relief to injured parties by amending section 222(b) of the Interstate Commerce Act. We suggest the following amendment also be added to section 222(b):

"If any person (not including a motor carrier holding a certificate or permit issued by the Commission under the provisions of sections 206, 207, 208, 209, and 210a of this part) operates in clear and patent violation of any provision of section 206, 207, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby in his business or his property, by reason of such violations, may sue therefore in any district court of the United States in the district in which the defendant resides, or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

PROPOSED DAMAGES AMENDMENT TO PART IV OF INTERSTATE COMMERCE ACT

Section 5 of the Smathers bill (S. 2560) presently provides for injunctive relief to injured parties by amending section 417(b) of the Interstate Commerce Act. We suggest the following amendment also be added to section 417(b):

"If any person (not including a freight forwarder holding a permit issued by the Commission under the provisions of section 410 of this part) operates in clear and patent violation of any provisions of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby in his business or his property by reason of such violations, may sue therefore in any district court of the United States in the district in which the defendant resides, or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

EXHIBIT B

BROKERAGE LICENSES

PROPOSED SECTION 211 (a) AND (b) AMENDMENT

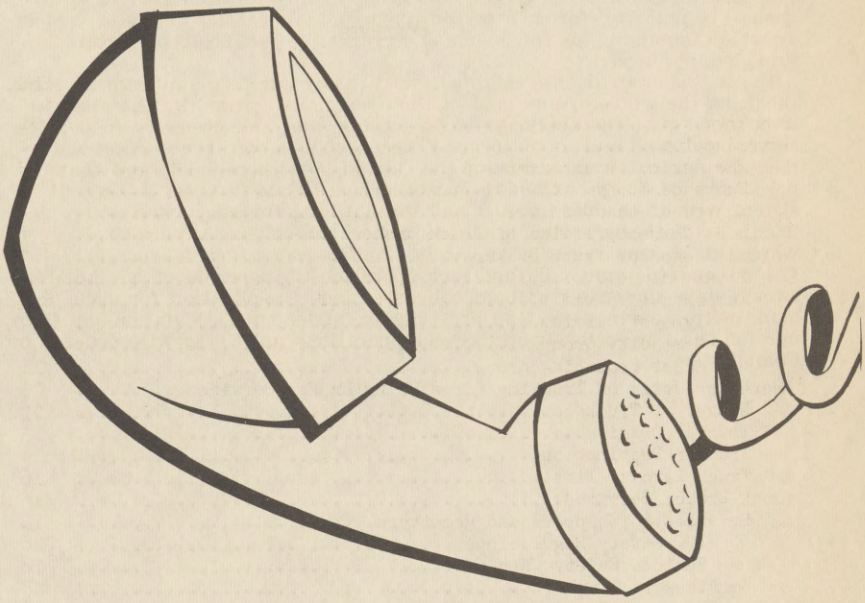
(New matter in italic, deleted matter in black brackets)

(a) No person shall for compensation sell or offer for sale, *as a broker*, transportation subject to this part, or *transportation excluded from this part by section 203(b) (5) and (6)*, or shall make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transactions: *Provided, however*, That no such person shall engage in transportation subject to this part unless he holds a certificate or permit as provided in this part. In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for [such] transportation *subject to this part*, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this part.

(b) A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license, is, or will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. Any broker in operation when this section takes effect, *brokering transportation defined in section 203 (b) (5) and (6)*, may continue such operation for a period of one hundred and twenty days thereafter without a license, and if application for such license is made within such period, the broker may, under such regulations as the Commission shall prescribe, continue such operations until otherwise ordered by the Commission.

EXHIBIT C

the role of truck brokers in the movement of exempt agricultural commodities



Marketing Economics Division
Economic Research Service
U. S. Department of Agriculture
Marketing Research Report No. 525

ACKNOWLEDGMENTS

This study was made possible through the cooperation of truck brokers located throughout the United States who provided basic information for the study.

Preliminary planning for the study was done by James R. Snitzler and Celia Sperling, former employees of the U. S. Department of Agriculture.

Special appreciation is extended to C. P. Schumaier of the Economic Research Service, U. S. Department of Agriculture, for reviewing the author's work and providing assistance on technical aspects.

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February 1962

SUMMARY

The truck broker plays a vital role in the transportation of exempt agricultural commodities, because of the services he performs not only for the trucker but for the shipper and receiver as well. He is a valuable link between the shipper or receiver and the trucker.

Truck brokers find the demand for their services is greatest for perishable, seasonally produced commodities which are handled without well-organized price reporting systems. In some industries production can be scheduled, but neither the production of nor the demand for these commodities can be accurately predicted. Consequently, some system is needed to make a large volume of very flexible transportation available when and where it is needed.

Exempt for-hire truck operators provide the large volume of cargo space necessary for the transportation of agricultural commodities, and the exemption from regulation of routes and rates makes the use of this space very flexible. Truck brokers provide the means for matching the available trucks with the available cargo, thus promoting efficient use of transportation resources.

This report is based on information furnished by 195 truck brokers throughout the United States who were engaged in the business of booking loads of agricultural commodities from economic regulation by the Interstate Commerce Commission during 1959. The loads booked moved predominately in interstate commerce. Figures in statistical tables were expanded to represent 246 truck brokers who were located and found to have been in operation during 1959.

These 246 truck brokers booked 3,808,000 tons of agricultural commodities in interstate commerce and 143,000 tons in intrastate commerce--a total of 3,952,000 tons during 1959.

Fresh fruits and vegetables made up 76 percent of total commodity tonnage booked in interstate commerce. The remaining 24 percent was distributed among nine additional commodity groups.

Exempt for-hire carriers of agricultural commodities hauled 81 percent, private carriers 10 percent, and common or contract carriers 9 percent of the total interstate tonnage booked. Commodity tonnage booked does not include the tonnage hauled by brokers also operating as for-hire carriers of exempt agricultural commodities with their own trucks.

Approximately one-half of the truck brokers interviewed also operated as for-hire carriers of exempt agricultural commodities. Almost one fourth of the truck brokers who operated as for-hire carriers also held Interstate Commerce Commission operating rights to haul one or more commodities under ICC regulation. Truck brokers operated an average of 9 semitrailers and 8 tractors, or an average of 17 pieces of equipment per broker.

Of the 246 truck broker firms, 120 (49 percent) were sole proprietorships, 93 firms (38 percent) were incorporated, and 33 (13 percent) were partnerships. Most of the firms operated on a full-time basis; half of the firms had been in

operation 7.7 years or more.

Brokers usually booked loads with trucking firms in their own region or nearby. Destination of the loads, however, was most often to eastern or mid-western markets.

Truckers had to lay over an average of 13 hours during the busy shipping season and an average of 57 hours during the slow shipping season before getting a load.

Truck brokers provided various services to shippers and receivers and to truckers. Services to shippers and receivers were: Checking the safety of vehicles used, driver licenses, and driver familiarity with ICC safety requirements, and supplying copies of ICC safety regulations to truckers. Services to truckers were: Obtaining cargo insurance, carrying public liability and property damage insurance to cover the truckers, providing information on State regulations, and assisting truckers in filling out forms.

Truck brokers established the rate for 39 percent of the agricultural commodity tonnage booked in 1959. No other group in the exempt carrier industry established the rate to this extent. Truck brokers in the North Atlantic region established the rate for more than 50 percent of the tonnage. No tariffs are published on exempt agricultural commodities, but suggested rate sheets are published by broker and shipper organizations. The suggested rates are generally adhered to under normal shipping conditions.

More than one-half of the truck brokers interviewed stated that rates varied somewhat during the shipping season. Rates varied most often because of changes in the supply of and demand for trucks. Although there is a noticeable degree of seasonal variation in rates, the overall level of rates has been quite stable during the last 10 years.

Truck broker fees varied between regions and between brokers within regions. Most truck brokers charged from 5 to 7 percent of gross freight receipts for booking loads and an additional 2 percent for advancing operating expenses. Many brokers advance operating expenses without making a separate charge when they know the trucker. Very few brokers charge the trucker a fee for obtaining cargo insurance and other services performed. The truck broker usually collects the transportation charge from the shipper or receiver and pays the trucker after deducting his commission for booking the load.

There are indications that the services of truck brokers will continue to be needed especially for seasonally produced agricultural commodities. The truck broker is in the unique position of being able to serve both shippers and truckers simultaneously. He can attract trucks to a particular shipping area when they are needed, and when the demand for trucks has been satisfied he can serve the same function for another shipping area.

THE ROLE OF TRUCK BROKERS IN THE MOVEMENT OF EXEMPT AGRICULTURAL COMMODITIES

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INTRODUCTION

Truck brokers of agricultural commodities exempt from regulation are the essential link between producers, truckers, and receivers, particularly for seasonally produced perishables. Truck brokers simply arrange transportation by truck for shippers or receivers of maturing perishables and other exempt commodities for movement to storage, processing points, and market areas, as contrasted to commodity brokers who arrange for the purchase and sales of commodities for a fee.

Timely and efficient movement is a critical part of the marketing of agricultural perishables. Receivers at scattered market points depend upon reliable delivery of these commodities from widely dispersed producing areas.

For-hire truckers of exempt agricultural commodities have the available capacity to serve the needs of both producers and shippers. They also provide the necessary flexibility to move perishables unrestricted by regulation of routes and rates. The truckers of exempt commodities try to provide transportation when and where it is needed.

The transportation system for exempt agricultural commodities depends on truck brokers to match shipments of perishable commodities as they mature in various producing areas with the available capacity of the exempt for-hire truckers 1/ and the market demands of processors and urban consumers. The coordination of producers, truckers, and brokers insures a reliable and efficient method of moving exempt agricultural commodities.

This report presents information on truck broker operations. Most of the transportation arranged for by brokers is for commodities trucked in interstate commerce. The report explains in some detail the important part the broker plays in the truck movement of exempt agricultural commodities.

1/ Exempt for-hire truckers, except for occasional leases to another carrier, carry only agricultural commodities that are exempt from regulation by the Interstate Commerce Commission.

The Agricultural Exemption

The agricultural exemption is that provision in the Interstate Commerce Act exempting motor carriers of agricultural commodities (including unmanufactured products thereof) from economic regulation by the Interstate Commerce Commission. Economic regulation includes control over who may engage in trucking, the routes or areas to be served, and the rates to be charged. This provision is designated in Part II of the Interstate Commerce Act as section 203 (b) and sub-sections (4a), (5), and (6). 2/ Motor carriers operating under the agricultural exemption fall in the category of 203 (b) (6) which reads as follows:

> ...motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation;

The agricultural exemption in Section 203 (b) (6) of the Interstate Commerce Act was amended by the Transportation Act of 1958 so as to provide that the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall include property shown as "Exempt" in the Commodity List in the Bureau of Motor Carriers' Administrative Ruling No. 107 of March 19, 1958, and shall not include property shown therein as "Not Exempt" but with certain exceptions.

The exceptions in the amendment are to the effect that notwithstanding what is shown in Administrative Ruling No. 107, the words of the exemption shall not be deemed to include "frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils,

---

2/ Sec. 203.
***
(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include***
(4a) motor vehicles controlled and operated by any farmer and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or
(5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;***

or wool waste (carded, spun, woven, or knitted)" and shall be deemed to include "cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products)."

Scope of Study

This report presents data on the operations of truck brokers throughout the continental United States in 1959. Truck brokers are concentrated in areas producing fresh fruits and vegetables. For ease in comparing geographic data, statistics are presented for regions rather than individual States. The North Atlantic region includes Delaware and Maryland; the South Atlantic region includes only the States of West Virginia, Virginia, North Carolina, South Carolina, and Georgia. (See figure 1 for identification of geographic regions used in the study).

Source of the Data

Questionnaires were mailed to a list of 825 names taken from "The Packer" Red Book, the National Agricultural Transportation League,

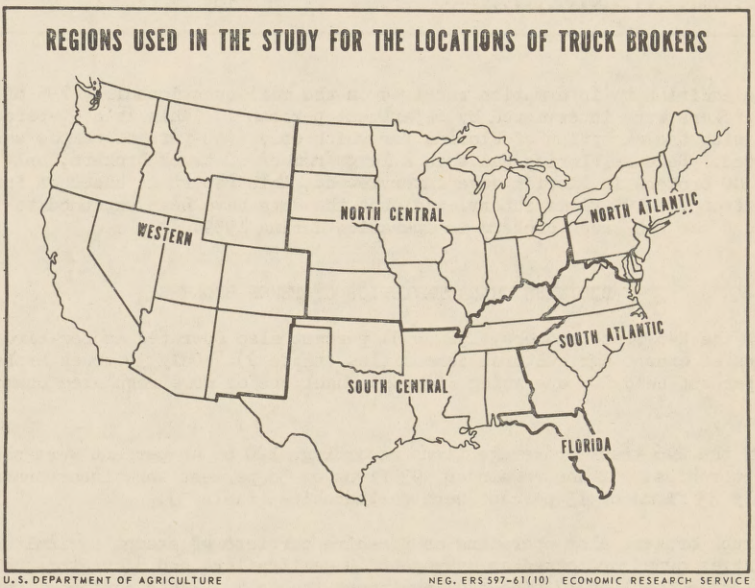

Figure 1

previous studies conducted in the Department, and replies to a truckstop questionnaire. From the replies received, 246 truck brokers of exempt agricultural commodities were located throughout the United States (table 1). This figure includes only truck brokers located by the survey; it excludes those people who occasionally arrange for a load of agricultural commodities to move by truck but whose primary business is something other than operating as a truck broker.

Table 1.--Number of truck brokers included in the study and number and percentage interviewed, by regions, 1959

Region	Total	Interviewed	
	Brokers	Brokers	Percent
North Atlantic	27	24	89
South Atlantic	22	21	95
North Central	46	41	89
South Central	30	25	83
Western	41	39	95
Florida	80	45	56
Total	246	195	79

In addition to information received on the mail questionnaire, 195 of the truck brokers were interviewed by Department personnel. This is a 90-percent sample with the exception of Florida for which only a 56-percent sample was completed. Because Florida had such a large number of truck brokers, only 45 of the 80 brokers in Florida were interviewed. This report is based on information from the 195 firms interviewed, but the data have been expanded to represent the 246 truck brokers in operation during 1959.

BUSINESS CHARACTERISTICS OF TRUCK BROKERS

Of the 246 truck brokers, 132 or 54 percent also operated as for-hire carriers of exempt agricultural commodities (table 2). Only 30 truck brokers or 12 percent held ICC operating rights to haul one or more regulated commodities.

Of the 246 truck brokerage firms reporting, 120 or 49 percent were sole proprietorships. Of the remainder, 93 firms or 38 percent were incorporated and only 33 firms or 13 percent were partnerships (table 3).

Truck brokers also operating as for-hire carriers of exempt agricultural commodities owned or leased an average of 9 semitrailers and 8 tractors per broker, or a total of 17 pieces of equipment (table 4). This equipment was used in part to transport regulated commodities as well as unregulated agricultural commodities.

Table 2.--Number of truck brokers also operating as for-hire carriers of exempt agricultural commodities and number holding operating rights from the Interstate Commerce Commission to haul one or more regulated commodities, by regions, 1959

Region	Truck Brokers	Operating as a for-hire carrier			Holding ICC operating rights		
		Yes	No	No Ans.	Yes	No	No ans.
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
North Atlantic	27	11	14	2	2	23	2
South Atlantic	22	14	8	0	2	20	0
North Central	46	21	23	2	9	36	1
South Central	30	19	11	0	6	24	0
Western	41	14	21	6	5	32	4
Florida	80	53	27	0	6	74	0
Total	246	132	104	10	30	209	7

Table 3.--Truck brokerage firms, by type of organization, by regions, 1959

	Sole proprietorship	Partnership	Incorporated	Total
	Brokers	Brokers	Brokers	Brokers
North Atlantic	10	3	14	27
South Atlantic	14	5	3	22
North Central	15	8	23	46
South Central	16	1	13	30
Western	27	8	6	41
Florida	38	8	34	80
Total	120	33	93	246

Of the total pieces of equipment operated by truck brokers, 72 percent were owned and 28 percent leased. For pieces of equipment owned, 58 percent were semitrailers and 42 percent tractors. For leased equipment, 40 percent were semitrailers and 60 percent were tractors (table 4).

Over 86 percent of the truck brokers operated on a full-time basis (table 5). All brokers in the Western region and all but one each in the South Atlantic and South Central regions operated full time. Of those operating part time, 12 percent operated between 6 months and a year, and only 2 percent operated less than 6 months during the year.

Table 4.--Pieces of trucking equipment owned or leased by truck brokers who also operate as for-hire carriers of exempt agricultural commodities, by type of equipment and by regions, 1959 1/

Region 1/	Truck brokers also operating as a for-hire carrier	Semitrailers				Tractors			
		Owned	Leased 2/	Total	Av. per broker	Owned	Leased 2/	Total	Av. per broker
	Brokers	Number	Number	Number	Number	Number	Number	Number	Number
North Atlantic	11	92	6	98	8.9	74	6	80	7.3
South Atlantic	14	139	33	172	12.3	135	37	172	12.2
North Central	21	178	79	257	12.2	98	113	211	10.0
South Central	19	119	91	210	11.1	40	138	178	9.4
Western	14	78	21	99	7.1	67	21	88	6.3
Florida	53	331	28	359	6.8	278	69	347	6.5
Total	132	937	258	1,195	9.1	692	384	1,076	8.2

1/ 26 straight trucks and 5 full trailers were also owned by truck brokers.
2/ Pieces of leased equipment do not include trip leases.

Table 5.--Truck brokers operating full or part time and having branch offices, and years of operation, by regions, 1959

Region	All brokers	Period of operation during year			Median years in operation 2/	Branch offices in other States		
		12 months 1/	6 to 11 months	Less than 6 months		Yes	No	No answer
	Firms	Firms	Firms	Firms	Years	Firms	Firms	Firms
North Atlantic	27	24	3	-	7.5	8	16	3
South Atlantic	22	21	1	-	10.0	6	14	2
North Central	46	38	7	1	5.0	9	34	3
South Central	30	29	1	-	6.5	6	24	-
Western	41	41	-	-	7.0	10	31	-
Florida	80	59	18	3	10.0	53	27	-
Total	246	212	30	4	7.7	92	146	8

1/ Includes headquarters and branch offices, if any.
2/ Half the brokers had been in operation longer than the specified number of years and half had been in operation a shorter time.

The median number of years in operation varied from 5 years in the North Central region to 10 years in Florida and the South Atlantic region (table 5). The median number of years for all regions was 7.7.

Of the 246 truck brokers, 92 or 37 percent have branch offices in one or more States, not including the State in which their home office is located. It is not uncommon for a truck broker to have three or more branch offices (table 5).

VOLUME BOOKED BY TRUCK BROKERS

Total Volume

Truck brokers in the South Atlantic region booked the smallest tonnage moved in interstate commerce and the largest tonnage in intrastate commerce. The South Atlantic was the only region with any considerable percentage of intrastate tonnage. Truck brokers in Florida booked the largest tonnage in interstate commerce and the second largest tonnage in intrastate commerce. The South Atlantic region had the smallest total tonnage booked and Florida had the most. Interstate tonnage accounted for 96 percent and intrastate for 4 percent of the total tonnage booked (table 6).

Interstate Volume

Type of Carrier

Of the total tonnage of agricultural commodities moved in interstate commerce booked by truck brokers, exempt for-hire carriers hauled 81 percent, common or contract carriers 9 percent, and private carriers 10 percent (table 7). Exempt for-hire carriers hauled 3,075,000 tons of the 3,808,000 tons hauled by all carriers.

Brokers in the North Atlantic region booked the smallest percentage of traffic with exempt for-hire trucks (70 percent) and the largest tonnage by common or contract carriers (21 percent). In the Western region, private carriers hauled 20 percent of brokers' bookings, a much larger share moved by private carriers than in any other region. Florida had the highest percentage (87 percent) booked with exempt for-hire carriers. There was considerable uniformity among the regions in kind

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Table 6.--Tonnage booked in interstate and intrastate commerce by brokers, by regions, 1959

Region	Truck brokers	Tonnage booked			Percentage distribution			Region percentage of total	
		Interstate	Intrastate	Total	Interstate	Intrastate	Total	Interstate	Intrastate
	Firms	Tons	Tons	Tons	Pct.	Pct.	Pct.	Pct.	Pct.
North Atlantic	27	398,432	21,341	419,773	94.9	5.1	100.0	10.5	14.9
South Atlantic	22	278,727	58,062	336,789	82.8	17.2	100.0	7.3	40.5
North Central	46	633,745	11,656	645,401	98.2	1.8	100.0	16.6	8.1
South Central	30	421,877	17,220	439,097	96.1	3.9	100.0	11.1	12.0
Western	41	769,836	8,709	778,545	98.9	1.1	100.0	20.2	6.1
Florida	80	1,305,838	26,490	1,332,328	98.0	2.0	100.0	34.3	18.4
Total	246	3,808,455	143,478	3,951,933	96.4	3.6	100.0	100.0	100.0

Table 7.--Interstate tonnage of agricultural commodities booked by truck brokers, by type of carrier and by regions, 1959

Region	Truck brokers	All carriers	Exempt		Common and contract		Private	
	Firms	Tons	Tons	Pct.	Tons	Pct.	Tons	Pct.
North Atlantic	27	398,432	277,309	69.6	82,874	20.8	38,249	9.6
South Atlantic	22	278,727	211,275	75.8	32,332	11.6	35,120	12.6
North Central	46	633,745	526,008	83.0	45,630	7.2	62,107	9.8
South Central	30	421,877	343,830	81.5	29,109	6.9	48,938	11.6
Western	41	769,836	584,306	75.9	32,333	4.2	153,197	19.9
Florida	80	1,305,838	1,132,653	86.7	135,241	10.4	37,944	2.9
Total	246	3,808,455	3,075,381	80.7	357,519	9.4	375,555	9.9

of carriers used; about 4/5 of the volume was hauled by exempt for-hire carriers and 1/5 by private and regulated carriers.

Commodity Groups

Fresh fruits and vegetables represented 76 percent of all commodity tonnage booked by truck brokers. For the remaining tonnage booked, grain, poultry, and eggs were the largest groups (table 8).

Fresh fruits and vegetables were the principal commodities booked by truck brokers in all regions with the exception of the North Central and South Central regions. Brokers in these two regions booked more grain than fresh fruit because this is a major grain producing area. Brokers in the South Atlantic region booked nearly 51,000 tons of grain, 18 percent of the region's bookings. A considerable volume of grain was also booked in the Western region, nearly 102,000 tons or 13 percent of total bookings.

Poultry and eggs accounted for 8 percent of the commodities booked by truck brokers. Poultry was booked primarily in the North Atlantic, North Central, and South Central regions. The North Central region had 63 percent and the South Central region 17 percent of total eggs booked. Only small percentages of eggs were booked in each of the other regions.

No appreciable quantities of nuts were booked by truck brokers in any region, although brokers in each region did book a small volume. Nuts were approximately 1 percent of total volume booked in each region and also 1 percent of total volume booked in all regions.

Hay and forage and milk and cream were seldom booked by truck brokers. These commodities combined accounted for only 1 percent of total bookings and were booked primarily by brokers in the North Central region.

Fish and shellfish amounted to 2.4 percent of total commodities booked by truck brokers. Actual estimated volume was 89,000 tons. Fish and shellfish were booked more often by brokers in the North Atlantic, South Central, and Western regions.

Nursery stock and seed, which accounted for an estimated 102,000 tons or nearly 3 percent of all commodities, were booked primarily by brokers in the North Central region. These commodities were 7.3 percent of total volume booked in the North Central region.

With the exception of fruits and vegetables, no commodity amounted to as much as 10 percent of total bookings in any region. This is not surprising as truck brokers are seldom located in other than fruit and vegetable producing areas.

Table 8.--Interstate tonnage booked by truck brokers, by commodity groups and by regions, 1959

Commodity	North Atlantic	South Atlantic	North Central	South Central	Western	Florida	Total
Fresh fruits and berries:							
Tons	55,382	72,748	82,387	63,703	361,053	801,077	1,436,350
Percent	13.9	26.1	13.0	15.1	46.9	61.3	37.7
Fresh vegetables:							
Tons	260,973	116,229	225,929	148,501	243,268	442,325	1,467,225
Percent	65.5	41.7	40.4	35.2	31.6	33.9	38.5
Nuts:							
Tons	4,383	3,066	5,070	6,750	7,698	8,160	35,127
Percent	1.1	1.1	0.8	1.6	1.0	0.6	0.9
Poultry:							
Tons	48,210	19,790	37,391	52,313	4,619	2,228	164,551
Percent	12.1	7.1	5.9	12.4	0.6	0.2	4.3
Eggs:							
Tons	2,789	2,509	81,119	21,938	4,619	15,891	128,865
Percent	0.7	0.9	12.8	5.2	0.6	1.2	3.4
Grain:							
Tons	413	50,728	93,794	84,797	101,618	2,560	333,910
Percent	0.1	18.2	14.8	20.1	13.2	0.2	8.8
Hay and forage:							
Tons:	797	1,115	12,675	2,109	770	997	18,463
Percent	0.2	0.4	2.0	0.5	0.1	0.1	0.5
Milk and cream:							
Tons	1,195	1,672	10,140	844	336	1,915	16,102
Percent	0.3	0.6	1.6	0.2	0.0	0.1	0.4
Fish and shellfish:							
Tons	16,336	6,689	6,337	37,125	13,857	8,934	89,278
Percent	4.1	2.4	1.0	8.8	1.8	0.7	2.4
Nursery stock:							
Tons	7,570	4,181	27,251	3,797	8,468	21,751	73,018
Percent	1.9	1.5	4.3	0.9	1.1	1.7	1.9
Seed:							
Tons	0.0	0.0	19,012	0.0	10,010	0.0	29,022
Percent	0.0	0.0	3.0	0.0	1.3	0.0	0.8
Other 1/:							
Tons	384	--	2,640	--	13,520	--	16,544
Percent	0.1	--	0.4	--	1.8	--	0.4
Total:							
Tons	398,432	278,727	633,745	421,877	769,836	1,305,838	3,808,455
Percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0

1/ Truck brokers in all regions booked 1,984 tons of livestock, 11,952 tons of cotton, 1,376 tons of wool, and 1,232 tons of miscellaneous commodities (16,544 tons); each group consisted of less than ½ of 1 percent of total commodities booked.

Table 9.--Volume of agricultural commodities shipped by truck and booked by truck brokers in major producing areas, 1959

Commodity groups and producing areas	Total volume shipped by truck 1/	Truck brokers		
		Volume booked 2/	Volume as percentage of total	Number
	1,000 tons	1,000 tons	Percent	Firms
Fresh fruits and vegetables:				
Florida	2,500	1,250	50.0	80
California	1,400 3/	350	25.0	17
Arizona	363	86	23.7	4
Texas	277	44	15.9	7
Total	4,540	1,730	38.1	108
Grain:				
North Central Region	7,143	94	1.3	46

1/ From Fresh Fruit and Vegetable Carlot Shipments, (AMS-41), Agricultural Marketing Service, U.S. Department of Agriculture, 1959. Computed from truck unloads at various markets; may include some intrastate shipments.
2/ Entirely interstate movement.
3/ California border passings (interstate movement).

Major Producing Areas

Truck brokers in Florida booked approximately $1\frac{1}{4}$ of the $2\frac{1}{2}$ million tons of fresh fruits and vegetables moved out of the State during 1959 (table 9). Brokers booked an estimated 88 percent of the fresh citrus movement and 28 percent of the fresh vegetable movement. Truck brokers are very significant in the out-of-state movement of Florida fresh fruits and vegetables because trucks move about two-thirds of the total volume.

Truck brokers in California booked approximately 25 percent of the 1.4 million tons of fresh fruits and vegetables trucked out of the State during 1959. Truck brokers are not as significant in California as in Florida in moving fresh fruits and vegetables, as approximately 65 percent of the California volume moved by rail. Thirty percent of the truck shipments moved to destinations within the State, primarily to markets in Los Angeles and the San Francisco-Oakland area.

Truck brokers in Arizona booked approximately 24 percent of the State's interstate truck shipments of fresh fruits and vegetables during 1959. This is very nearly the same percentage as in California. Truck brokers booked 86,000 tons of the total interstate truck movement of 363,000 tons. Arizona does not compare with California and Florida in production but it is rapidly becoming a major producing area. Total shipments of Arizona fresh fruits and vegetables in 1959 were nearly 18 percent greater than for 1957.

Truck brokers in Texas booked approximately 16 percent of the total truck shipments of fresh fruits and vegetables moved out of the State during 1959. Truck brokers booked an estimated 44,000 tons of the total truck movement of 277,000 tons. Approximately 41 percent of Texas fresh fruit and vegetable shipments in interstate commerce during 1959 moved by truck.

Truck brokers in the four major fruit and vegetable producing areas of Florida, California, Arizona, and Texas booked an estimated 1,730,000 tons or 38 percent of the 4,540,000 tons of fresh fruits and vegetables moved by truck in interstate commerce. Truck brokers book about one of every three truck shipments of fresh fruits and vegetables in interstate movement.

The volume of grain booked by truck brokers in the North Central region was relatively insignificant when compared to the total volume of grain moved by truck in interstate commerce. Truck brokers booked an estimated 94,000 tons of a total estimated movement of 7,143,000 tons, or 1.3 percent. Truck movement of a considerable volume of grain was also arranged by grain brokers and others in the grain trade. Much of the grain was moved from the elevators by itinerant merchant truckers who buy and sell grain but do not use the services of a truck broker.

While the evidence which could be assembled is meager, the relatively more frequent use of truck brokers for fresh fruits and vegetables than for grain is probably due to three factors: (1) perishability, (2) kind of market organization, and (3) seasonal demands.

Grain is less perishable than fruits and vegetables. The time between sale and shipment of grain depends more on the agreement between the buyer and seller than on when the crop matures.

The different kinds of grain are relatively homogeneous commodities with a well-organized price-reporting system based on relationships to the Chicago grain futures market. This price reporting system makes it much simpler for truckers to engage in "buy and sell" operations for grain than for fruits and vegetables, and makes the services of truck brokers unnecessary.

Milk is very perishable but little was brokered apparently because long distance interstate movement is small. Fluid milk has a very stable demand and lends itself to contractual transportation arrangements.

Thus it appears that brokers of exempt agricultural commodities find the demand for their services most useful for perishable, seasonally produced commodities without a well-organized price-reporting system. Grain lends itself to "buy-sell" operations because it is readily available and readily salable over wide areas at small risk on the basis of widely disseminated price information.

Table 10.--Trucking firms hauling loads booked by truck brokers, and truckers hauling exempt commodities only, by regions, 1959

Region	Truck brokers	Trucking Firms 1/	Truckers per broker	Trucking firms hauling exempt commodities only	
	Number	Number	Number	Number	Percent
N. Atlantic	27	4,315	160	3,464	80.3
S. Atlantic	22	2,190	100	1,810	82.6
N. Central	46	6,127	121	5,017	81.9
S. Central	30	4,714	157	3,667	77.8
Western	41	4,032	98	3,370	83.6
Florida	80	7,554	94	6,558	86.8
Total	246	28,932	118	23,886	82.6

1/ Includes 1-man operators.

CHARACTERISTICS OF TRUCKING FIRMS USING BROKER SERVICES

Number of Truckers

Truck brokers in the North Central region and Florida did business with more trucking firms than truck brokers in the other regions. However, the North Atlantic region had the most trucking firms per broker--160 compared to the average of 118 per broker (table 10).

Of the nearly 29,000 truckers hauling loads booked by truck brokers, 83 percent hauled exempt commodities only. There is only a slight variation from this percentage by any individual region.

Trucker Origins

A high percentage of the trucking firms had home offices in the same area as the truck brokers who booked them, or in a nearby area.

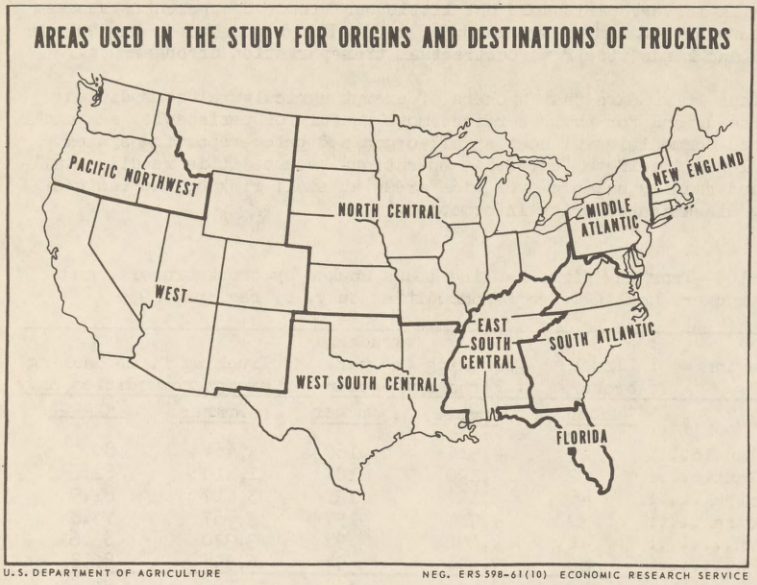

Figure 2

Truck brokers listed the Florida, South Atlantic, and North Central areas most often as being the location of the home office of the truckers they did business with (table 11). Fewest truckers originated in the New England and Pacific Northwest areas. The North Atlantic area includes Delaware and Maryland; the South Atlantic area includes only States of West Virginia, Virginia, North Carolina, South Carolina, and Georgia. (See figure 2 for origin areas of truckers.)

Trucker Destinations

The Middle Atlantic and North Central areas are the principle destinations of loads booked by truck brokers, chiefly because most of the major metropolitan centers are located in these two areas. Fewer trucks were destined for the Pacific Northwest, East South Central, and Florida areas (table 12).

Table 11.--Truck brokers booking loads with trucking firms, by location of brokers and truckers, 1959

Location of brokers	Truck brokers	Home office of truckers 1/								
		New England	Middle Atlantic	South Atlantic	Florida	E.South Central	W.South Central	North Central	West	Pacific Northwest
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
North Atlantic 2/	27	2	13	10	13	0	3	8	3	0
South Atlantic...	22	2	9	21	12	6	3	7	0	0
North Central....	46	4	14	18	18	13	18	36	12	2
South Central....	30	0	5	6	8	18	18	18	6	2
Western....	41	1	6	7	10	14	22	20	40	14
Florida....	80	2	22	70	80	19	6	22	5	0
Total.....	246	11	69	132	141	70	70	111	66	18

1/ Brokers were asked to list an area of origin only if 5 percent or more of the truckers hauling loads booked by them originated in that area.
2/ Eight truck brokers did not list any trucker origins.

Table 12.--Truck brokers booking loads with trucking firms, by destination of load and location of brokers, 1959

Location of brokers	Truck brokers	Trucker destinations 1/								
		New England	Middle Atlantic	South Atlantic	Florida	E. South Central	W. South Central	North Central	West	Pacific Northwest
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
North Atlantic 2/	27	8	14	11	9	3	1	11	5	0
South Atlantic...	22	12	20	9	7	2	2	16	1	0
North Central....	46	14	25	19	15	14	21	35	8	4
South Central....	30	2	7	6	5	7	14	19	10	1
Western....	41	2	11	10	9	10	15	23	28	9
Florida....	80	73	75	15	0	9	11	61	28	5
Total	246	111	152	70	45	45	64	165	80	19

1/ Brokers were asked to list an area of destination only if 5 percent or more of the truckers hauling loads booked by them went to that destination.
2/ Eight truck brokers did not list any trucker destinations.

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Table 13.--Average layover of truckers before truck broker could get them loads, by regions, 1959

Hours	Busy shipping season	Slow shipping season	Total shipping season
	Hours	Hours	Hours
North Atlantic	13	36	24
South Atlantic	11	49	30
North Central	14	32	23
South Central	14	56	35
Western	11	69	40
Florida	17	100	58
Total	13	57	35

Brokers from each region listed several areas to which at least 5 percent of the trucks they booked were bound. (See figure 2 for destination areas of truckers.)

Truck Layover Time

During the busy season truckers had to lay over an average of 13 hours before the truck broker could get them loads (table 13). A few truck brokers stated that there was no delay during the busy season.

Layover during the slow season was considerably longer than for the busy season in all regions. The North Central region had the shortest layover (32 hours) and Florida had the longest (100 hours or 4.2 days). Of the 246 truck brokers interviewed, 12 percent ordered a truck only when a load was available, and 13 percent did not book loads during the slow season. The average layover for truckers during the whole shipping season ranged from 1 to $2\frac{1}{2}$ days; the average for all regions was 35 hour or almost $1\frac{1}{2}$ days.

TRUCK BROKER SERVICES

Services to Shippers and Receivers

ICC Safety Regulations

Of the truck brokers interviewed, 58 percent checked whether the drivers of trucks hauling loads booked by them had an unrevoked or unexpired license to drive (table 14). Some truck brokers did not check because they booked business only with known drivers. Other brokers checked only the license of an unknown driver.

Table 14.--Truck brokers providing specified services to shippers and receivers, by regions, 1959

Region	Total truck brokers	Check for unrevoked or unexpired license to drive			Check to see if driver is familiar with ICC requirements on safety regulations relating to --						Do you supply copies of ICC safety regulations		
					Maximum driving time			Keeping a daily log					
		Yes	No	No ans.	Yes	No	No ans.	Yes	No	No ans.	Yes	No	No ans.
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
North Atlantic	27	19	8	--	13	13	1	12	15	--	3	24	--
South Atlantic	22	10	12	--	11	10	1	11	10	1	4	18	--
North Central	46	30	15	1	28	18	--	28	18	--	8	36	2
South Central	30	13	16	1	12	17	1	12	17	1	6	23	1
Western	41	17	23	1	14	26	1	12	28	1	7	32	2
Florida	80	54	26	--	25	55	--	22	58	--	13	67	--
Total	246	143	100	3	103	139	4	97	146	3	41	200	5

Nearly 42 percent of the truck brokers checked whether the driver was familiar with ICC requirements on safety regulations for maximum driving time and 39 percent checked whether the driver was familiar with ICC requirements on daily logs.

Of the truck brokers interviewed, 17 percent supplied copies of ICC safety regulations to the drivers of trucks hauling loads booked by them. Although some brokers did not supply copies of safety regulations, they had this information available in their offices for drivers. Other brokers furnished information to truckers on request.

Vehicle Safety Checks

Almost 84 percent of the truck brokers made a safety check on the trucks hauling loads booked by them. Fifty-eight percent of the checks were visual inspection, 22 percent mechanical, and 4 percent other checks or kind of checks not indicated (table 15).

Services to Truckers

Types of Services Provided

Of the 246 truck brokers, 96 (39 percent) always obtained cargo insurance for loads booked, and 97 of the truck brokers occasionally obtained cargo insurance for truckers, usually to supplement the base amount of cargo insurance policies carried by truckers (table 16). About 22 percent of the truck brokers never obtained cargo insurance for truckers because they dealt only with a known established clientele.

About 84 percent of the truck brokers carried a blanket cargo insurance policy on loads booked regardless of policies carried by truckers. This assured a high degree of cargo protection.

More than one-half of the truck brokers (60 percent) carried personal liability and property damage insurance to cover truckers with whom they booked loads regardless of policies carried by truckers.

Only 14 (6 percent) of the 246 truck brokers did bookkeeping for truckers. However, truck brokers frequently answered questions about bookkeeping and they sometimes referred the truckers to a bookkeeper.

Many truck brokers provided information on State regulations: 77 percent of the truck brokers provided information on gross axle weight limitations, 76 percent on length limitations, 72 percent on PUC operating authority, 72 percent on fuel use, ton-mile, and axle-mile taxes, and 73 percent on vehicle licenses. Over 40 percent of the truck brokers assisted truckers in filling out forms to comply with State regulations.

Table 15.--Truck brokers checking on the safety of vehicles hauling loads, by type of check and by regions, 1959

Region	Total truck brokers	Type of check performed: Visual inspection	Mechanical inspection of safety devices	Miscellaneous checks 1/	Type of check not indicated	All types	No check
		Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
North Atlantic...	27	15	3	1	1	20	7
South Atlantic...	22	14	6	0	1	21	1
North Central....	46	20	18	1	0	39	7
South Central....	30	15	7	0	0	22	8
Western.....	41	18	6	2	0	26	15
Florida.....	80	60	14	1	3	78	2
Total.....	246	142	54	5	5	206	40

1/ Checks State safety stickers, chooses only familiar carriers, checks drivers' safety record.

Table 16.--Number of truck brokers providing specified services for truckers, by regions, 1959 1/

Region	To what extent do you obtain cargo insurance for truckers			Do you carry cargo insurance		Do you carry personal liability and property damage insurance		Do you do bookkeeping for truckers		Do you supply information on State regulations: Gross axle weight limitations		Length limitations		PUC operating authority		Fuel-use, axle-ton-mile taxes		Vehicle licenses		Do you assist truckers in filling out forms to comply with State regulations		Total brokers
	Always	Occasionally	Never	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	
N. Atlantic....	15	3	9	19	8	15	12	4	23	23	4	23	4	23	4	21	6	21	6	18	9	27
S. Atlantic....	7	10	5	16	6	8	14	1	21	17	5	17	5	15	7	14	8	15	7	10	12	22
N. Central.....	29	12	5	39	7	30	16	1	45	37	9	37	9	37	9	36	10	34	12	22	24	46
S. Central.....	15	8	7	27	3	15	15	6	24	24	6	24	6	23	7	24	6	24	6	16	14	30
Western.....	26	5	10	33	8	11	30		41	30	11	30	11	28	13	26	15	25	16	19	22	41
Florida.....	4	59	17	72	8	68	12	2	78	59	21	55	25	50	30	55	25	60	20	20	60	80
Total.....	96	97	53	206	40	147	99	14	232	190	56	186	60	176	70	176	70	179	67	105	141	246

1/ Other services by some brokers include ample parking space for trucks, a lounge consisting of chairs and reading matter, bunks, showers, and a few TV sets.

Cargo Insurance

Cargo insurance policies carried by truck brokers in addition to cargo insurance policies carried by truckers ranged from $1,000 to $35,000 and over (table 17). The amount of cargo insurance most often carried was from $5,000 to $7,500. Fourteen truck brokers who carried cargo insurance did not specify the amount carried.

Only 45 of 246 truck brokers, or 18 percent, did not carry cargo insurance. These 45 brokers generally required the truckers to have an adequate amount of cargo insurance.

Personal Liability and Property Damage Insurance

The amount of personal liability and property damage insurance most frequently carried by truck brokers to cover the truckers with whom they booked loads was $100,000 per person for each accident, $300,000 total for each accident, and $50,000 property damage (table 18). Of the 146 truck brokers carrying PL and PD insurance, 60 were covered for this amount. Fifteen truck brokers did not specify the amount of coverage.

Florida had the largest percentage of truck brokers (68 out of 80) who carried PL and PD insurance. The Western region had the smallest percentage, with 12 of 41 or 29 percent. The percentage in other regions ranged from 36 percent in the South Atlantic to 63 percent in the North Central. Fifty-nine percent of all truck brokers carried public liability and property damage insurance (146 of 246 brokers).

TRUCKING CHARGES AND BROKER COMPENSATION

Establishing Trucking Rates

Truck brokers had a major role in establishing the trucking charges for exempt agricultural commodities; they established the rate on 39 percent of the tonnage booked in 1959 (table 19).

Rates were negotiated by interested parties for 31 percent of the tonnage; truck brokers were usually involved. Brokers publish rate sheets for agricultural commodities moving between specified points. These rate sheets are based on costs of operation and are used as a guide under normal shipping conditions.

Range in Trucking Rates

More than one-half of the truck brokers (55 percent) reported rates varied somewhat during the 1959 shipping season (table 20). Rates varied more often in the Florida, North Atlantic, and Western regions than in the North Central, South Central, and South Atlantic regions.

Table 17.--Truck brokers carrying specified amounts of cargo insurance on loads booked, by regions, 1959

Amount of Insurance	North Atlantic	South Atlantic	North Central	South Central	Western	Florida	Total
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
$1,000 - $2,499	7	1	4	1	0	0	13
$2,500 - $4,999	3	3	4	2	6	31	49
$5,000 - $7,499	2	4	6	7	7	29	55
$7,500 - $14,999	1	2	7	6	7	4	27
$15,000 - $24,999	0	0	6	2	4	2	14
$25,000 - $34,999	4	2	7	6	4	0	23
$35,000 & over	0	1	1	1	2	1	6
Answered "yes", no amount given	2	2	3	1	3	3	14
Answered "no" or no answer	8	7	8	4	8	10	45
Total	27	22	46	30	41	80	246

Table 18.--Truck brokers carrying specified amounts of personal liability and property damage insurance, by regions, 1959

Amount of Insurance			North Atlantic	South Atlantic	North Central	South Central	Western	Florida	Total
Person	Accident	Property damage	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
$ 25,000	$ 50,000	$ 10,000	--	1	--	--	--	--	1
25,000	100,000	50,000	--	--	--	1	--	--	1
50,000	100,000	10,000	--	--	2	--	--	3	5
50,000	100,000	25,000	2	--	--	1	1	5	9
100,000	200,000	25,000	--	--	--	--	--	3	3
100,000	200,000	50,000	--	--	1	1	--	--	2
100,000	300,000	25,000	2	1	1	--	--	32	36
100,000	300,000	50,000	6	1	20	9	6	18	60
100,000	300,000	100,000	--	--	1	--	2	2	5
100,000	350,000	50,000	--	--	1	--	--	--	1
100,000	400,000	50,000	---	1	--	--	--	--	1
100,000	500,000	25,000	--	1	--	--	--	--	1
100,000	500,000	50,000	--	--	--	--	--	2	2
100,000	500,000	100,000	--	--	1	--	--	--	1
150,000	300,000	100,000	--	--	1	--	--	--	1
200,000	300,000	50,000	--	--	--	1	--	--	1
300,000	500,000	100,000	1	--	--	--	--	--	1
"Yes," but no amount given			2	3	1	3	3	3	15
None			14	14	17	14	29	12	100
Total			27	22	46	30	41	80	246

Table 19.--Percentage of tonnage booked by brokers for which specified groups established the rate, by regions, 1959

Region	Truck brokers	Rate established by--					Total
		Shippers	Receivers	Truckers	Brokers	Negotiations	
	Number	Percent	Percent	Percent	Percent	Percent	Percent
North Atlantic	27	33.4	.0	1.5	52.7	12.4	100
South Atlantic	22	36.2	3.8	5.1	39.0	15.9	100
North Central	46	31.1	3.9	2.0	38.9	24.1	100
South Central	30	23.9	8.2	.0	33.4	34.5	100
Western	41	15.7	7.1	.5	31.1	45.6	100
Florida	80	20.5	4.7	.2	41.9	32.7	100
Total	246	24.2	4.9	1.0	39.2	30.7	100

Table 20.--Number of truck brokers specifying whether rates vary for hauling the same commodities between the same points during the shipping season, by regions, 1959

	Do rates vary			Percentage of brokers answering "yes"
	Yes	No	Total	
	Brokers	Brokers	Brokers	Percent
North Atlantic	17	10	27	63.0
South Atlantic	11	11	22	50.0
North Central	19	27	46	41.3
South Central	14	16	30	46.7
Western	23	18	41	59.0
Florida	51	29	80	63.8
Total	135	111	246	54.9

The rrason given most often by truck brokers for rates varying during a shipping season was "the supply of and demand for trucks." Sometimes trucks become concentrated in a particular producing area because it is almost as costly to move out empty as loaded, and rates are severely depressed for a short time. It is unlikely that rates can go sharply above normal for long because brokers can rapidly attract a supply of trucks to move maturing crops.

Other reasons given as to why rates may vary are: Competition at market points for incoming commodities, a trucker may state the rate for which he is willing to haul a load, the shipper may determine different rates, and the rates may vary for some commodities but not for others.

A few reasons given by brokers as to why rates do not vary are: Agreement between broker and shipper or receiver, some brokers establish suggested rate sheets and will not vary from them, and sometimes contracts are established between a trucker and a shipper or receiver.

Most of the the truck brokers interviewed stressed that although rates had risen gradually during the last 10 years for regulated commodities, exempt for-hire rates for agricultural commodities had remained relatively stable despite increased equipment and operating costs. There has been ample capital investment to provide a growing capacity in the exempt for-hire industry, indicating that this freely competitive nonregulated segment of our transport industry has been able to offset increased costs with larger, more efficient equipment and to provide shippers and consumers with low-cost transportation.

The range in reported truck rates on agricultural commodities varied from an average of 11 cents per 100 pounds between high and low rates on

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shipments to Philadelphia, Pa., up to an average of 59 cents per 100 pounds on shipments to Miami, Fla. The range in rates varied an average of 33 cents per 100 pounds on shipments to the 9 major markets listed in table 21.

The greatest range in rates recorded from truck brokers was $1.15 per 100 pounds, from California to the New York market. The smallest range recorded was 2 cents per 100 pounds from South Carolina to the Jacksonville, Fla., market.

Methods of Collecting Brokerage Fees

Truck brokers generally collected the transportation charge from the shipper or receiver and paid the trucker the proceeds after deducting their own commission. Seventy-one percent of the truck brokers interviewed used this method in collecting service fees (table 22). Seven percent of the truck brokers collected their commission from the shipper or receiver and the trucker received his charges from the shipper or receiver. Nine percent collected their commission from the trucker after he had received payment from the shipper or receiver. The remaining 12 percent of the brokers reporting used two or more methods in collecting service fees.

Brokers' Charges for Booking Loads

Truck brokers interviewed listed 7 percent of gross freight rereipts as the fee most often charged for booking a load of agricultural commodities (table 23). Five percent of gross freight receipts was the next most often listed fee. Only 16 of 246 truck brokers charged less than 5 percent and only 21 charged more than 10 percent. Some fees listed by truck brokers include a small charge for obtaining cargo insurance.

Brokers' Charges for Advancing Operating Expenses

The usual charge by truck brokers for advancing operating expenses to truckers was 2 percent of gross freight receipts when such a charge was assessed (table 24). Eighty-five of 246 truck brokers stated they did not charge separately for this service.

Table 21.--Truck rates reported by truck brokers on agricultural commodities to 9 major markets, by origin of shipments, 1959

Destination and origin of commodities	Maximum rates	Minimum rates	Range
	Cents per cwt.	Cents per cwt.	Cents per cwt.
To Chicago, Ill.:			
Citrus, from--			
Haines City, Fla.	130	85	45
Lake Alfred, Fla.	130	75	55
Lakeland, Fla.	120	90	30
Los Angeles, Calif.	260	190	70
Nectarines, from Fresno, Calif.	280	215	65
Grapes, from Bakersfield, Calif.	320	270	50
Watermelons, from Allendale, S.C.	135	110	25
Cabbage, from--			
Norfolk, Va.	190	85	105
Pharr, Texas	150	125	25
Carrots, from Pharr, Texas	150	125	25
Cauliflower, from Rinerhead, N.Y.	180	150	30
Celery, from Belle Glade, Fla.	175	145	30
Greens, from Norfolk, Va.	145	85	60
Lettuce, from--			
El Centro, Calif.	220	180	40
Los Angeles, Calif.	250	170	80
Potatoes, from--			
Riverhead, N.Y.	100	70	30
Antigo, Wisc.	45	40	5
Antigo, Wisc.	35	30	5
Tomatoes, from--			
Charla Vista, Calif.	235	190	45
El Centro, Calif.	335	240	95
National City, Calif.	295	220	75
To Atlanta, Ga:			
Apples, from Charlottesville, Va.	100	65	35
Citrus, from Orlando, Fla.	70	60	10
Grapes, from Bakersfield, Calif.	255	225	30
Wheat, from Topeka, Kansas	100	75	25
Ferns, from Chehalis, Wash.	1/	1/	1/
Lettuce, from El Centro, Calif.	220	150	70
Potatoes, from Highstown, N.J.	95	90	5
To Dallas, Texas:			
Peat moss, from Imlay City, Mich.	90	80	10
Apples, from Grand Rapids, Mich.	110	80	30
Dry beans, from --			
Detroit, Mich.	90	70	20
Saginaw, Mich.	85	75	10
Potatoes, from Greeley, Colo.	80	75	5
Oats, from Omaha, Nebr.	75	50	25
Eggs, from Sioux City, Iowa	135	95	40
To Denver, Colo.:			
Citrus, from --			
Orlando, Fla.	185	155	30
Terrero, N. M.	100	85	15
Cabbage, from El Centro, Calif.	150	120	30
Celery, from El Centro, Calif.	160	120	40
Lettuce, from El Centro, Calif.	140	100	40
Mixed vegetables, from Pharr, Tex.	110	80	30

1/ Maximum rate - $1,000 per truck load, minimum rate - $900 per truck load, range - $100 per truck load.

Table 21.--Truck rates reported by truck brokers on agricultural commodities to 9 major markets, by origin of shipments, 1959--Continued

Destination and origin of commodities	Maximum rates	Minimum rates	Range
	Cents per cwt.	Cents per cwt.	Cents per cwt.
To Miami, Fla.:			
Apples, from Florida, N.Y.	175	85	90
Lettuce, from Florida, N.Y.	250	225	25
Onions, from Florida, N.Y.	130	100	30
Potatoes, from --			
Wyoming, Del.	130	50	80
Berwick, Pa.	120	50	70
Long Island, N.Y.	150	65	85
Eggs, from Chicago, Ill.	180	150	30
To Jacksonville, Fla.:			
Cantalopes, from Yuma, Ariz.	300	250	50
Watermelons, from Allendale, S.C.	12	10	2
Cabbage, from Batavia, N.Y.	110	90	20
Onions, from --			
Batavia, N.Y.	110	90	20
Homer, Mich.	100	80	20
Potatoes, from --			
Cranbury, N.J.	75	35	40
Robinsville, N.J.	85	35	40
Long Island, N.Y.	100	50	50
Corn, from Allendale, S.C.	12	10	2
To Los Angeles, Calif.:			
Apples, from --			
Oroville, Wash.	120	80	40
Wenatchee, Wash.	125	90	35
Yakima, Wash.	120	70	50
Pears, from Cashmere, Wash.	115	80	35
Onions, from Nampa, Idaho	80	75	5
Potatoes, from --			
Nampa, Idaho	80	75	5
Yakima, Wash.	115	75	40
Corn, from Omaha, Nebr.	105	80	25
Wheat, from Wichita Falls, Tex.	75	50	25
Chickens, from Springdale, Ark.	130	100	30
To New York, N.Y.:			
Citrus, from --			
Vero Beach, Fla.	140	110	30
Haines City, Fla.	130	100	30
Leesburg, Fla.	140	100	40
Orlando, Fla.	130	105	25
Crescent City, Fla.	120	105	15
Jacksonville, Fla.	125	100	25
Tampa, Fla.	130	90	40
Nectarines, from Fresno, Calif.	415	300	115
Plums & grapes, from Fresno, Calif.	415	300	115
Peaches, from --			
Fresno, Calif.	425	350	75
Atlanta, Ga.	185	155	30

Table 21.--Truck rates reported by truck brokers on agricultural commodities to 9 major markets, by origin of shipments, 1959--Continued

Destination and origin of commodities	Maximum rates	Minimum rates	Range
	Cents per cwt.	Cents per cwt.	Cents per cwt.
To New York, N. Y.: (continued)			
Asparagus, from Fresno, Calif.	415	325	90
Corn, from Belle Glade, Fla.	225	200	25
Mixed vegetables, from Atlanta, Ga.	185	155	30
Potatoes, from --			
Norfolk, Va.	75	45	30
Antigo, Wisc.	100	90	10
Rice, from Stuttgart, Ark.	125	115	10
Rutabaga, from Leland, Mich.	80	70	10
Tomatoes, from Miami, Fla.	155	100	55
Chickens, from --			
Atlanta, Ga.	110	95	15
Chicago, Ill.	125	120	5
Wadena, Minn.	185	165	20
Turkeys, from Omaha, Nebr.	200	100	100
Eggs, from --			
Omaha, Nebr.	175	100	75
Atlanta, Ga.	125	95	30
To Philadelphia, Pa.			
Watermelons, from Leesburg, Fla.	105	95	10
Onions, from --			
Higgins, Mich.	90	85	5
Knowlesville, N.Y.	60	50	10
Potatoes, from --			
Homestead, Fla.	110	90	20
Antigo, Wisc.	90	80	10

Table 22.--Truck brokers using specified methods of collecting their transportation service fees, by regions, 1959

Method of collecting service fee	North Atlantic	South Atlantic	North Central	South Central	Western	Florida	Total
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
Shipper or receiver pays transportation charge to broker, who pays the trucker after deducting brokerage commission	19	17	38	25	20	56	175
Brokers and truckers are paid separately by shipper or receiver	1	1	3	--	6	7	18
Shipper or receiver pays trucker, who pays broker a commission	7	3	2	5	4	2	23
Two or more of above methods	--	1	3	--	11	15	30
All methods	27	22	46	30	41	80	246

Table 23.--Truck brokers charging truckers specified fees for booking loads of agricultural commodities, by regions, 1959

Fee, as percentage of gross freight receipts	North Atlantic	South Atlantic	North Central	South Central	Western	Florida	Total
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
Less than 5 percent	2	1	7	4	2	0	16
5 percent	14	9	10	7	4	12	56
6 percent	4	3	1	1	4	10	23
7 percent	2	6	10	2	5	51	76
8 percent	0	1	2	4	14	4	25
10 percent	3	1	7	8	10	0	29
Over 10 percent	2	1	9	4	2	3	21
Total	27	22	46	30	41	80	246

Table 24.--Truck brokers charging truckers specified fees per trip for advancing operating expenses, by regions, 1959

Fee, as percentage of gross freight receipts	North Atlantic	South Atlantic	North Central	South Central	Western	Florida	Total
	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers	Brokers
Less than 1 percent	1	0	0	0	0	0	1
1 percent	4	0	0	0	2	4	10
2 percent	11	1	14	5	4	37	72
3 percent	1	2	0	0	0	5	8
Over 3 percent	0	0	0	0	0	1	1
No separate charge	0	9	18	8	19	31	85
No answer	10	10	14	17	16	2	69
Total	27	22	46	30	41	80	246

U.S. GOVERNMENT PRINTING OFFICE : 1962 O - 627308

Senator SMATHERS. The next witness will be Mr. Sam H. Flint, chairman of the Legislative Committee of the National Industrial Traffic League, Washington, D.C.

STATEMENT OF SAM H. FLINT, GENERAL TRAFFIC MANAGER, QUAKER OATS CO., CHICAGO, ILL., AND CHAIRMAN OF THE LEGISLATIVE COMMITTEE, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. FLINT. Mr. Chairman, you have my name and the capacity in which I appear. I am also general traffic manager of the Quaker Oats Co., located in Chicago.

In accord with the chairman's directions, I have filed my statement. I will summarize it very briefly.

The National Industrial Traffic League is an organization of shippers, all of the principal industrial concerns in the Nation who are concerned with transportation. We also have as members, chambers of commerce, freight bureaus, and others.

Through these memberships we represent many thousands of shippers and we feel we speak authoritatively for shippers.

The National Industrial Traffic League is vitally concerned with a strong regulated for-hire transportation system. For that reason, we generally support the bill before us now.

We have only two exceptions, and I might say that since I prepared my statement—in fact, only today—I became aware of Committee Print No. 2, and that will affect, to some extent, my statement, because the two things with which we were concerned——

Senator SMATHERS. Do not worry about Committee Print No. 2. We are just going to worry about No. 1. We may change to No. 2, but you can just direct your remarks to No. 1.

Mr. FLINT. All right, sir. Thank you, sir.

Well, we are vitally concerned with sections 2 and 5 insofar as they provide for injunctive processes to be brought by any person rather than through the Commission. We feel that this is unnecessary.

We generally subscribe to the statements made by Chairman Murphy of the Interstate Commerce Commission before this committee.

We feel that there is a great danger of harassment. We feel that there is very real danger of adverse publicity to industrial concerns which could do them irreparable damage even though an injunction might never issue.

We suggest, in lieu of the "any person" injunctive provisions in sections 2 and 5, that the Commission's recommendation 6 in its seventh annual report to the Congress be implemented. I believe this has been reproduced as recommendation No. 12 in the 75th annual report.

The recommendation reads as follows:

> That section 222(b) be amended to enable the Commission in enforcement proceedings to obtain services of process upon motor carriers and to permit the joining of any other necessary party without regard to where the carrier or other party may be served.

We urge that the committee will report favorably upon this bill except for the proposed amendments to sections 222(b) and 417(b) of the Interstate Commerce Act, and that in lieu of section 2 of the bill

the committee will recommend the adoption of this legislative recommendation No. 6 which I just quoted.

Now, I would like to go for just a moment outside the scope of the bill to mention two things which have been brought before you by other witnesses.

Section 4 of the bill would amend section 226(a) by requiring registration of carriers and vehicles to be made by those operating for-hire vehicles of three or more axles under the exemption in section 203(b)(6).

Now, some of the witnesses have suggested the registration requirement be extended to private truck operators. Another witness suggested elimination of the exclusion relating to casual or occasional transportation under section 203(b)(6). The National Industrial Traffic League for a number of years past and today is strenuously opposed to any such registration for private carriers.

Detailed argument in opposition to registration has been presented in connection with previous bills, and I will not repeat it here other than to say registration of private truck operators or their vehicles is not required in the interest of safety.

Complete registration information is available in each of the individual States and could be made available to the Interstate Commerce Commission if it would serve any purpose.

Information as to size of equipment is available in connection with the payment of the Federal highway tax and could be made available to the Interstate Commerce Commission if desired.

The league feels that if the partial registration provision in section 226(a) is applied to private truck operators, it will be only a first step in obtaining extensive registration and reporting requirements.

Now, also in the February hearings certain spokesmen for carriers urged a drastic amendment of S. 2560, greatly enlarging its provisions. This would be accomplished by incorporating in the bill a separate recommendation of the Commission—it is recommendation No. 1 in its 75th annual report—requiring shipper associations to apply for and prove their right to function before they can operate and thereafter to be subject to certain requirements.

I am not prepared at this time to state the league's position fully or finally, but I would like to quote our policy on this subject, reading, and I quote:

> The league opposes any curtailment, by statute or by administrative action, of the right of shippers, groups of shippers, or bona fide nonprofit cooperative organizations of shippers, to consolidate for themselves or for their bona fide members, quantities of freight for the purpose of securing the benefit of quantity rates and services in transportation.

I urge that if the committee is to consider the Commission's recommendation No. 1, it do so separately from this bill and provide full opportunity for debate and explanation.

Thank you very much for the privilege of appearing before you.

Senator SMATHERS. Thank you very much.

We appreciate your comments, and we will put your statement in full in the record.

Thank you. It has been very helpful.

(The prepared statement of Mr. Flint follows:)

My name is Sam H. Flint. I am general traffic manager of the Quaker Oats Co. with general offices in Chicago, Ill. I am appearing today in my capacity as chairman of the Legislative Committee of the National Industrial Traffic League.

The National Industrial Traffic League is a national organization of those directly and individually engaged in the shipment and receipt of commodities; its membership includes chambers of commerce, boards of trade, and similar commercial organizations whose direct membership likewise have a substantial and continuing interest in traffic and transportation matters. The league's membership is drawn from all parts of the United States and represents practically every line of industrial and commercial activity. The members make use of all the different transportation agencies: rail, water, air, highway, pipeline, parcel post, express, and freight forwarder. The league is a promoter of sound economical transportation and is interested in the development and maintenance of an adequate, efficient, and economical national transportation system under private ownership and operation; it is interested in the maintenance of capable and self-sufficient transportation agencies, and in the full and free flow of the commerce of the Nation.

The league favors the aims and purposes of S. 2560 and most of its provisions. It is, however, gravely concerned with and opposed to the present proposals in section 2 and those in section 5 insofar as they amend sections 222(b) and 417(b) of the Interstate Commerce Act.

At the 1961 annual meeting of the league's membership, detailed and thorough attention was given to the provisions of S. 2560 (as originally introduced) through action of the league's special committee on unregulated or unauthorized transportation. The chairman of that committee is Mr. E. E. Allison who is director of traffic of the Anchor Hocking Glass Corp. This committee reported to the league generally upon the efforts being made in various quarters and through Congress to alleviate the ills of the regulated transportation industry resulting from illegal or "gray area" transportation activities. Acting upon this committee's report, the league voted approval of the proposed bill without dissent except for the proposed amendments to section 222(b) as contained in section 2 of the bill. As to that section the league voted to suggest that the Congress substitute legislative recommendation No. 6 made by the Interstate Commerce Commission in its 74th annual report to the Congress as follows:

"That section 222(b) be amended to enable the Commission in enforcement proceedings to obtain service of process upon motor carriers and to permit the joining of any other necessary party without regard to where the carrier or other party may be served."

Section 222(b) presently provides for injunctive relief against violations of the licensing requirement of part II of the Interstate Commerce Act, but only upon suit by the Commission or its agent against a motor carrier or broker. Section 417(b) contains parallel provisions applying to freight forwarders under part IV.

Under section 2 of S. 2560, as amended, the process of injunctive enforcement of the licensing provisions of the statute could be invoked by any person injured by a violation of those provisions in a suit against any person who was operating in clear and patent violation except that a certificated motor carrier would be exempt from such suit. Thus a private carrier transporting his own property could be hailed into court by any irresponsible person, including a disgruntled carrier who had previously hauled that person's traffic, but who had lost it to bona fide private carriage because of high rates or inferior service. The possibilities for harassment of private industry would be extensive and intolerable.

It is our understanding that early drafts of the proposed measure did not exclude certificated motor carriers and any person could therefore have applied for injunctive relief against a certificated motor carrier as well as a private carrier or other person. Objections (based on possibility of harassment of motor carriers) were registered by segments of the regulated industry with the result that the exclusion was inserted and the right of injunctive relief extended to all but carriers holding Commission certificates or permits. This is a most unfair and discriminatory feature amounting to class legislation. There is no rational basis for treating certificated motor carriers different from other persons in respect of enforcement procedures. Regulated motor carriers can be and sometimes are guilty of violation of the licensing provisions of the statute and if injunctive processes directed to such carrier violations are to be initiated only by the Commission, the same rule should apply to noncarrier violations.

We are not aware of any general demand for the particular measure offered, i.e., extending the right of injunctive relief to all persons, rather than limiting it as at present to the Interstate Commerce Commission as the agency charged with enforcement responsibility. The league therefore opposes the provisions of section 2 of S. 2560. In lieu thereof, it points to the recommendation of the Interstate Commerce Commission, quoted above, and urges that enforcement would be improved by following that recommendation, and without any possible unfairness to the public.

Section 5 of the bill, as now before us, is an amendment made after the aforesaid league meeting in which the original bill was considered. It is similar to the provision of section 2 of the bill amending section 222(b) of the act except its provisions relate to part IV of the act which governs freight forwarders. Section 5 of the bill would amend section 417(b) of the present law and in subparagraph (2) provides in substance that any injured person may bring an action against any person (other than a freight forwarder) for injunction against any operation which is a clear and patent violation of section 410 of the act or of any rule, regulation, requirement, or order thereunder. This is clearly opening a wide door for harassments and is strongly opposed by the league on the same grounds stated above for its opposition to section 2 of the bill.

We urge that the committee will report favorably upon this bill except for the proposed amendments to sections 222(b) and 417(b) of the Interstate Commerce Act and that in lieu of section 2 of the bill, the committee will recommend the adoption of the legislative recommendation No. 6 of the Interstate Commerce Commission as contained in its 74th annual report.

Senator SMATHERS. The next witness is Mr. Ralph W. Johnson from Richmond, Calif. representing Vanpac Carriers, Inc.

Mr. Johnson, we are delighted to have you, and all the way from California.

STATEMENT OF RALPH W. JOHNSON, VICE PRESIDENT, VANPAC CARRIERS, INC., RICHMOND, CALIF.

Mr. JOHNSON. Thank you very much, Senators Smathers, my name is Ralph W. Johnson, and I am a vice president of a firm called Vanpac Carriers, with our home office in Richmond, Calif.

With the concurrence of the committee, we would like to submit our statement into evidence that was presented earlier.

(The prepared statement of Mr. Johnson follows:)

Mr. Chairman, members of the committee, my name is Ralph W. Johnson. I am vice president of the firm of Vanpac Carriers, Inc., with main offices in Richmond, Calif. Our firm is an unregulated freight forwarder engaged in the movement of used household goods under the exemption contained in section 402(b) of the Interstate Commerce Act. I appear here on behalf of our own company, as well as on behalf of the following companies which are engaged in the same business and which have asked me to speak for them: Columbia Export Packers, Inc., Torrance, Calif.; Imperial Household Shipping Co., Inc., Torrance, Calif.; King Forwarders, Inc., Wichita, Kans.; Routed Thru-Pac, Inc., New York, N.Y., and Smyth Worldwide Movers, Inc., Seattle, Wash. We are hopeful that a single detailed statement concurred in by a representative number of unregulated freight forwards will be more meaningful to the committee than repetitive individual statements and more conservative of the committee's time.

STATEMENT OF POSITION

The only part of S. 2560 (Committee Print No. 1) with which we are concerned is section 5 which basically provides for the elimination of the present exemption for freight forwarders of used household goods.

We are strongly opposed to section 5 of S. 2560 because we do not feel that the elimination of this exemption is in the best interests of the Government, the public, or the existing unregulated freight forwarders.

DEVELOPMENT OF THE DOOR-TO-DOOR THROUGH-CONTAINER METHOD UNDER THE EXISTING HOUSEHOLD GOODS EXEMPTION

In judging whether the present exemption has been a good thing or a bad thing for the shipping public and the Government, we believe it would be pertinent to trace briefly the technological developments in the movements of household goods, particularly to oversea areas.

Pack-and-crate method

In years gone by, oversea shipments of household goods were performed under what was known as the pack-and-crate method. Under this system, the household goods were picked up at residence loose in a truck and brought to a pack and crate contractor's plant, where they were boxed for oversea shipment and turned over to an inland carrier for delivery to the port. At the port, they were then loaded on a vessel, while at the port of destination, the crate of household goods again moved to a packing contractor's plant where the crate was opened, the household goods shipped loose in a truck to the ultimate residence at destination. This system had many disadvantages insofar as damage, transit time, claims, cost and fixing of responsibility were concerned.

Motor-van-sea-van method

About 7 or 8 years ago the household goods motor van carriers instituted a method known as motor-van-sea-van which offered some improvements over the old pack and crate method. There were, however, weaknesses in this method, primarily in that the furniture was handled anywhere from 6 to 12 times since the shipments traveled the inland portion of the move by motor van carrier and at the port area were unloaded from the motor vans and placed in warehouses to be subsequently loaded in sea vans which transported the furniture across the ocean. Upon arrival at the oversea port, the household effects were unloaded from the sea vans into a warehouse and subsequently were again loaded into a motor van which transported the shipment to final destination or into a warehouse at final destination awaiting ultimate delivery. The repeated handling of the furniture subjected it to damages, pilferage, misplaced, or lost items and also service failures, because of peak work periods when there just weren't enough vans available for the inland portion. The method also had other weaknesses due to its inflexibility and complicated rate structure.

Door-to-door through-container method

In the summer of 1958, the Unregulated Freight Forwarders, after several years' efforts, perfected what is now known as the door-to-door through-container method of shipping household effects. This new method combined all of the good features of previous methods with none of the disadvantages and was quite simple in its concept, in that the furniture is loaded at the residence into an oversea shipping container, sealed in the presence of the owner and is not opened or molested or unloaded until ready for delivery in front of the owner's residence at destination. The effects of one individual were never mixed with that of another. If storage is involved, the shipment remains in the same containers.

There is one responsibility for the shipment from start to finish. Another unique feature with this method is that a package price is quoted from origin to destination and it is the only method where the customer can tell before the movement what the charge will be. The new door-to-door through-container method greatly reduced damages, missing items, soiling, improved transit time and, generally speaking, is such an outstanding improvement over previous methods that the U.S. Army and Air Force swung almost completely to its use.

Numerous other shippers of household effects have also seen the advantages of this new method and are now using it. These people include a wide variety of commercial concerns, other governmental departments, including the Department of State, and the public in general.

WHAT IS THE NEED FOR REGULATION?

If the door-to-door through-container service of the unregulated freight forwarded has been so good, one might ask, what is the need for regulation? In fact, this is the very question which we respectfully ask of the committee.

I have read the testimony given by various proponents of S. 2560 at the earlier hearings held on this bill in an attempt to understand what reason is advanced for the legislation. In the statement of Senator Edwin Johnson,

former chairman of the Committee of Commerce, he stated that the legislation "*apparently* is intended to protect motor (van) carriers from exempt freight forwarders and *apparently* this change is intended to prevent unwarranted rate advantages by freight forwarders of used household goods." [Emphasis added.] We do not take issue with this assumption as to intention, but the question to be answered by this committee is whether there is a need for additional legislation to protect motor van carriers.

Legislation not requested by industry

Oftentimes legislation is introduced at the request of an industry because of an existing problem that the industry feels can be solved by legislation. This is certainly not the case here because the unregulated freight forwarder industry has not requested this legislation or any other.

We bring to the committee's attention that many motor van carriers have established affiliated companies and are performing the same services under the Interstate Commerce exemption as unregulated freight forwarders unconnected with motor van carriers. This is a belated recognition of the advantages to the Government, the military, and the shipping public which have come about through the perseverance of the unregulated freight forwarders. We also point out that the Mover's Conference of America, which testified on S. 2560 through its general manager, Mr. Thomas Kingsley, took no specific position upon the need for section 5 of S. 2560. We also point out that in testimony given by Mr. Eldon Clawson, counsel for one of the large motor van carriers, at your hearings held on March 22 and 23, 1961 (pp. 80–83), no position for the enactment of this legislation was taken. We do not believe in legislation for legislation's sake or regulation for regulation's sake and submit to the committee that before they eliminate the exemption presently in the law a factual determination be made that such elimination is in the public interest.

WHAT ARE THE DISADVANTAGES OF REGULATION?

Progress threatened

The passage of this bill would possibly forever prevent the development of the containerized movement of household goods within our country. At the present time almost all shipments of used household goods moving between points within the continental United States are moved via motor van carrier. Within the past year or two there has been an effort made on the part of the unregulated freight forwarder to try to move this traffic in containers via rail or motor freight. Many problems have been experienced by those unregulated freight forwarders who have been trying to develop this method of transportation and so far the actual volume of shipments handled has been small. Progress, however, is being made. If the freight forwarders were to be "grandfathered-in on the basis of shipments they have made to date, their rights would be so limited as to prevent any future development of this method, and if the unregulated freight forwarders don't develop this new method, certainly nobody else will. Progress would clearly be hamstrung and the American public would be the loser if this were to happen.

Effect of legislation on unregulated freight forwarders

At the present time any furniture warehouseman who has the need or desire may forward shipments of used household effects between any points in the United States whenever it will best serve the needs of himself or his customer. If the proposed regulation were to go through, the picture would change completely, and a person who formerly had the right to send shipments anywhere would possibly be restricted to sending shipments to those places where he could prove he sent them before. Because of the nature of the movement of household goods it is not always possible to get people to move to the same destinations and the next customer may want to move to a point to which the forwarder may not have shipped before and under the proposed legislation the forwarder might have to turn that customer down. As you can see, this would work a serious, if not disastrous, handicap upon the freight forwarder industry.

Competition eliminated

The passage of this measure would serve primarily to limit or eliminate completely the competition that the unregulated freight forwarders pose to the existing motor van carriers.

Few benefit at expense of many

This legislation, if passed, would benefit a few motor van carriers by the elimination of the freight forwarder competition. It would be a case of improving the competitive position of these few motor van carriers at the expense of the unregulated freight forwarder industry and to the detriment of the U.S. Government and the public in general.

If this proposed legislation were to pass it would deprive shippers of the opportunity of using the services of the unregulated freight forwarders and they would once again be forced to resort to the former methods of shipping household goods which have proved not nearly so desirable.

Harassment of the unregulated freight forwarder

Ever since the inception of the door-to-door through-container method, forces have been at work trying to put the unregulated freight forwarder out of business by one means or another. Allegations have been made to regulatory bodies that the unregulated freight forwarders were operating illegally, and actions have been instituted in this connection. To date, all such allegations and actions (ICC, FF–C–10 and ICC, FF–C–14) have been successfully countered by the unregulated freight forwarders. The use of agents, both within the United States and overseas, has been denied to the unregulated freight forwarder by pressures brought to bear on these agents by certain motor van carriers to such an extent that the Justice Department has issued formal complaints against some of those motor van carriers for their harassment of the unregulated freight forwarders.

We bring this to the committee's attention for several reasons. First, because we believe that the proposed legislation is not dictated by the public interest but is founded on the private interest of certain of the motor van carriers, which have failed in their legal maneuvers to put the unregulated freight forwarders out of business and now seek the help of Congress to do the job. Second, the position taken by certain of the motor van carriers, that the operations of the unregulated freight forwarders are not those contemplated under part IV of the Interstate Commerce Act is an indication to us that any application for grandfather rights which might be made under the proposed legislation would be met with multitudinous protests by certain of the motor van carriers taking the same position which they have taken in the two ICC cases (FF–C–10 and FF–C–14) to which I have previously made reference. Thus, the unregulated forwarders really have no assurance of getting grandfather rights which are apparently contemplated under the proposed law. Third, to date, the development of the door-to-door through-container method has been limited, in substantial measure, to the movement of household goods between U.S. points and points in oversea areas. On the other hand, the development of this movement within the United States in domestic commerce is still in its infancy.

This is due primarily to the fact that changes in the rail rate structures are only now making such development and progress feasible. If rights were to be predicated on present physical operations within the United States, the geographical scope of such rights issued might be very limited and the number of unregulated freight forwarders which could qualify might be very few. This would, in my opinion, kill the development of the door-to-door through-container method within the continental United States.

We assert that to deprive the users in the continental United States of the advantages of the door-to-door through-container method, which shippers of household goods overseas have come to enjoy, is definitely not in the public interest.

Free enterprise and the American system

Lastly, but not the least important by any means, is the fact that this legislation is definitely un-American and contrary to the American free enterprise system. If this legislation were passed it would, for all practical purposes, forever close the door to anyone, regardless of how well qualified, who wanted to go into this business. Great strides have been made in the past few years by the unregulated freight forwarders in improving methods and techniques of transporting household goods which could not have ben made had this proposed legislation been in effect several years ago. The passage of this legislation would eliminate any possibility of further improvement and development which normally result from the American system of free enterprise and initiative.

In summation, I urge you, therefore, not to give favorable consideration, but instead to defeat that portion of the Smathers bill as it relates to the unregulated freight forwarder.

SUGGESTED CHANGES IN THE LEGISLATION

Although we believe that there has been no showing that section 5 of S. 2560 is necessary or desired at this time, and we hope that we have indicated to the committee some affirmative reasons why it should not be passed, if the committee in its wisdom decides to enact such legislation, we ask that the following changes be reflected in the proposed law:

1. As a prerequisite for grandfather rights, the bill, as written, requires bona fied operation. The term "bona fide" has no real meaning. This term was not used in recent legislation granting grandfather rights to freight forwarders, motor carriers, and water carriers operating to Alaska and we suggest that it be deleted.

2. The bill as written requires a hearing to be held before grandfather rights can be awarded. This will involve needless expense and once again it was not set forth as a requirement in the Alaska grandfather statute. Many applications can be handled through informal conferences with savings in time and expense to all concerned. The requirement for a hearing should also be deleted.

3. Some clarifying language should be inserted in the bill to make it clear that freight forwarders of the type engaged in the operation described to this committee are entitled to grandfather rights. This is necessary to protect the freight forwarders from the avalanche of litigation which will ensue unless it is clearly stated that it was not the intention of Congress to hold out grandfather rights to the household goods freight forwarder industry, while motor van carriers attempt to snatch them away on the theory that we do not qualify for freight forwarder rights, as was alleged in docket Nos. FF–C–10 and FF–C–14.

4. Clarifying language should be inserted establishing that a freight forwarder of used household goods between the United States and oversea points will be entitled to grandfather rights for that portion of his operation which takes place in the United States.

5. Amend section 418 of the Interstate Commerce Act to make clear that freight forwarders can employ common carriers by water engaged in the foreign trade of the United States, which carriers are regulated by the Federal Maritime Commission.

6. Amend section 405(e) so that said subsection does not apply to any tariff filed by any freight forwarder of household goods within 90 days from the enactment of S. 2560.

This accords freight forwarders of household goods protection from being put out of business through suspension of their freight tariffs filed in connection with their grandfather application. A similar provision is presently contained in section 405(e) for original grandfather forwarders.

I appreciate the opportunity accorded me to present the position of my company and the other unregulated freight forwarders of household goods for whom I speak. I sincerely trust that the committee will become convinced, as I am, that no action should be taken at this time to eliminate the exemption presently in the law covering the carriage of used household goods by freight forwarders.

Mr. JOHNSON. I represent here today a number of firms who are primarily unregulated freight forwarders, and I would like to comment, if I may, on prints 1 and 2 insofar as section 5 is concerned.

Senator SMATHERS. All right, sir. That is what we are here for—to hear you.

Mr. JOHNSON. The people we represent are for the most part, if you want to use the word, pure unregulated freight forwarders. By that I mean we have no affiliations with van lines or regulated freight forwarders. We are, pure and simply, unregulated freight forwarders.

We feel that section 5 of print 1 would have a more or less disastrous effect quite possibly on our companies, and we do not believe that would be in the general interest of the Government or the public in general.

The statement that we have prepared pretty well covers all of the major points, but I would like to review just briefly some of these points, and in case the committee has any questions I would be very happy to answer any of them.

As near as we have been able to determine, there is no need to regulate the unregulated freight forwarders. To my knowledge, the only need that has been shown at all was a statement on the part of a gentleman from the Interstate Commerce Commission where he mentioned that he had received complaints from shippers in connection with, I believe, overcharges. I do not know what period of time he was referring to, but it is quite possible these were violations that occurred long ago and are not necessarily pertinent at the present time.

I would also like to point out that this legislation has not been requested by the unregulated freight forwarders.

Senator SMATHERS. You think they prefer not to be regulated?

Mr. JOHNSON. Generally speaking, yes, sir; and particularly not in the maner which is proposed in print No. 1.

Specifically, the things that we find wrong are the things harmful we feel in print No. 1 are:

First of all is the provision for the grandfathering-in. We do not know and we have no reason to believe what kind of grandfather rights we would end up with if this bill were passed. It is not clear at all.

At the present time we are operating freely, serving our customers without any restrictions as to where we can go, and we would not want to be restricted. We do not feel we could serve the public if we could only go to or from certain places.

Another effect of print No. 1, we feel, would be the elimination of competition. We are definitely competing with motor van carriage of this traffic, and we feel that if this bill is passed as print No. 1 it could possibly effectively eliminate the unregulated freight forwarder. This would be primarily to the benefit of the motor van carriers and, conversely, to our detriment and, we feel, to the detriment of the shipping public.

Our industry has been harassed in the last few years of its existence. Only recently, within the past few years, have we really had much of an operation. Prior to that it was more or less sporadic. But with the trend toward containerization, we feel that there is a future ahead for us.

But if print No. 1 is passed, we feel that it could very effectively put an end to the containerization development in the country. I do not think that that is in the best interests of the country. Because the containerization has been developed primarily by the unregulated freight forwarders.

There is another aspect to print No. 1 which we should touch on, and that is the free enterprise aspect. We may be a voice crying in the wilderness, so to speak, but we have always believed in free enterprise, and we are afraid for that if print No. 1 were to go through with the restrictive provision that if you were not in business as of I believe August 15 of this year that you could not go into business.

Now, I realize that theoretically a person could file an application and prove public convenience and necessity and so be given a permit. But from a practical standpoint you just cannot do that. It would be

something like saying that if you were not an attorney as of August 15 you could never be one unless you could prove public convenience and necessity and that is an extremely difficult thing to prove.

We do not feel that we would be doing justice to the coming generations if we closed the door and effectively prevented any more people from going into business.

In that connection I would like to quote from a letter which I believe is typical of the thinking of a great many people in regard to this closing-of-the-door feature of print No. 1. This letter is in connection with our inquiry to a mover as to what he thought about the grandfather provision. And he says, and I quote:

> It appears to me that the main benefit in bringing the nonregulated freight forwarder of household goods under regulation is the putting to an end of the number of persons who can engage in this form of transportation.

Now, we are not opposed to regulation where it is needed and called for. If we as unregulated freight forwarders are doing something wrong, if we are gouging the public, or if we are operating unsafely or with any bad practices, we would welcome and cooperate in legislation to correct any abuses. But just to pass legislation without specific abuses in mind I feel could not be in the best interest of either the forwarders or the public.

That, I believe, concludes my comments on print 1.

In the case of print No. 2, I would like to state that we are not opposed to print No. 2, although again we have not seen the need for it.

In print No. 2, however, if it is the feeling of the committee that legislation should be passed, we would be agreeable to print No. 2 with a couple of modifications, and I would just like to point them out if I may.

No. 1 is the requirement for an annual permit. Now, I do not know the reason for an annual permit, but any time you have to apply periodically for a permit there is always the chance they may turn you down, which gives us a certain uncertainty as to the continuity of our business.

We would rather see a permit be issued as good until revoked for just cause.

The other point in connection with print No. 2 is that there is a hazard to us as an industry in the possibility of people protesting our application. That appears in section 5(c) on page 15. The wording is rather legal in nature, and I am not an attorney, but our counsel has advised us that we would be open to protests on our permit even before we got the permit under this present wording.

I would suggest that we be allowed to in some way participate in the wording of this to alleviate any fears that we may have.

Senator SMATHERS. You want to do what?

Mr. JOHNSON. We would like in some way to change the wording.

Senator SMATHERS. Why do you not send in what you think it ought to be? The record will be open.

Mr. JOHNSON. Which would eliminate that threat to our existence. All right, sir.

Senator SMATHERS. We do not say we will adopt it, but at least we will have it in front of us so we can consider it. So you send it in.

Mr. JOHNSON. Yes, sir. I appreciate that.

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The injunctive power also bothers us, which is spelled out on page 16 of print No. 2; namely, in section (g). That covers half of page 16 and most of page 17. Until we were issued a permit, we would be open for injunction. That is spelled out starting with line 14 on page 17.

We would not have under that the bond protection that exists earlier.

Having been through some of the harassment that our industry has been subjected to, I feel we would get it under this.

If it would meet with your approval, we would like to submit verbiage there.

Senator SMATHERS. All right; that is OK.

Mr. JOHNSON. I believe that that covers my comments, and I appreciate very much the opportunity of appearing before you.

Senator SMATHERS. Thank you very much, Mr. Johnson. We appreciate your comments, too.

(The following additional information was received for the record:)

DENNING & WOHLSTETTER,
Washington, D.C., May 8, 1962.

Re S. 2560.

Hon. GEORGE A. SMATHERS,
Chairman, Subcommittee on Surface Transportation,
Senate Committee on Commerce, Washington, D.C.

DEAR SENATOR SMATHERS: This supplements the testimony given by Ralph W. Johnson on behalf of Vanpac Carriers, Columbia Export Packers, Imperial Household Shipping Co., King Forwarders, Routed Thru-Pac, and Symth Worldwide Movers, unregulated freight forwarders of used household goods, at the hearings held on S. 2560 by your committee on April 24 and 25.

You will recall that Mr. Johnson took the position that the freight forwarders he represented were opposed to regulation; nevertheless, that if the committee should determine regulation was necessary and appropriate, they would favor Committee Print No. 2, with certain modifications, but were unalterably opposed to the passage of Committee Print No. 1. The minimum modifications in Committee Print No. 2 and the reasons therefor are as follows:

1. There presently appears to exist a hiatus in print No. 2, the effect of which may be to render illegal the operations of all freight forwarders of used household goods in this way. The day the act becomes effective, the exemption presently contained in section 402 of the Interstate Commerce Act would be eliminated. Since no person could apply for a permit as a freight forwarder of used household goods until the act became effective, such operations would necessarily be conducted without a permit. We suggest that it be made entirely clear that the interim savings clause presently in section 410(a) covers persons making application for permits under the new section 410(a)(4).

2. We are fully appreciative of the fact that the committee desires to regulate freight forwarders of used household goods—not put them out of business. However, the injunctive authority contained in section 5(g) of S. 2560 would place in the hands of motor carriers of household goods, competing with the unregulated freight forwarders, the machinery to harass and litigate freight forwarders of used household goods out of business.

As we understand paragraph (2), it provides that a person may apply to a district court for an injunction against the activities of any person who does not hold a freight-forwarder permit and who operates in violation of section 410 of the act. Unless Congress makes it clear that the operations of persons engaged in the carriage of household goods as freight forwarders, both overseas and domestically, primarily on behalf of the military, and the method by which their operations are conducted, are freight forwarders within the definition of section 402 of the act, competitive interests will have the opportunity to bring injunction actions in Federal district courts throughout the United

States and will put out of business through the harassment of unnecessary litigation the very industry which Congress is attempting to preserve by regulation. With the thought that past experience is some help in predicting future activities, we respectfully refer the committee to the discussion of this matter set forth under the heading "Harassment of the Unregulated Freight Forwarders" which appears in Mr. Johnson's initial statement.

A further objection to this provision is that the question of whether operations are being conducted in accordance with the act should be determined in the first instance by the Interstate Commerce Commission. That is the agency which Congress established to regulate the industry and to develop a uniform body of law to govern its specialized problems. If the initial determination of whether certain operations are in violation of section 410 of the act is taken away from the Commission and placed in the hands of courts throughout the land, it would run contrary to the well-established doctrine of primary jurisdiction which is one of the basic principles on which Federal administrative law is founded. Decisions by various district courts throughout the United States would break down the uniformity of decision and result in discriminatory treatment. We therefore take the position that paragraph (2) as set forth in section 5(g) of S. 2560 should not be enacted into law.

3. We do not believe that the bill makes it sufficiently clear that operations of the type described to the committee in Mr. Johnson's initial statement are entitled to freight forwarder permits under section 410(a)(4) of the act. The question arises from the fact that section 402 of the Interstate Commerce Act defines a freight forwarder as performing several functions, including which is the consolidation and distribution of shipments.

Since the movement of household goods in freight forwarder service is an expedited type of service, it is not always possible to hold shipments so as to move the household goods of two or more persons at the same time by underlying carrier. We believe that it should be made clear by definition and committee report that the collection and consolidation of personal effects of an individual household in a single container and the delivery of those effects at destination constitute consolidation and distribution within the meaning of section 402 of the act. If this is not done, the present bill would invite multitudinous protests against applications for permits, unnecessarily add to the workload of the Interstate Commerce Commission, and, what is most important to the forwarders, provide the opportunity for increased harassment of the unregulated freight-forwarder industry by certain motor carriers of household goods.

We would suggest that the definition of the term "freight forwarder," as presently set forth in section 402(5), be amended to provide as follows:

"The loading of individual components of a household into a single container and the unloading of said freight at destination shall constitute compliance with paragraph (5)(A) of this section."

4. We also ask that the changes suggested in Mr. Johnson's initial statement which is addressed to print No. 1 of S. 2560, be made in print No. 2, insofar as applicable.

We trust that these technical suggestions will be of some help to your committee and, on behalf of the undersigned, once again express our appreciation for your kind consideration of our problems.

Very truly yours,

DENNIS & WOHLSTETTER,
By ALAN F. WOHLSTETTER,

Attorneys for Vanpac Carriers, Inc., Columbia Export Packers, Inc.; Imperial Household Shipping Co., Inc.; King Forwarders, Inc.; Routed Thru-Pac, Inc.; and Symth Worldwide Movers, Inc.

Our next witness is Mr. Edward Scheibly, president of S. & S. Bus Co., Albany, N.Y., and Robert Wade, of Robert Wade Chartered Service, Schenectady, N.Y., accompanied by the distinguished Washington jurist of the name of Edward L. Merrigan.

STATEMENT OF EDWARD L. MERRIGAN, ATTORNEY, WASHINGTON, D.C., ACCOMPANIED BY EDWARD SCHEIBLY, PRESIDENT, S. & S. BUS CO., ALBANY, N.Y., AND ARNOLD WADE, ROBERT WADE CHARTERED SERVICE, SCHENECTADY, N.Y.

Mr. MERRIGAN. Thank you, Mr. Chairman.

I appear here today, Mr. Chairman, on behalf of two companies, one from Albany, N.Y., the S. & S. Bus Co., represented by its vice president, Mr. Edward Scheibly, and, on my right, Mr. Arnold Wade, of Schenectady, N.Y.

Both of these companies, Mr. Chairman, are small businesses. They operate what we call charter buses from Schenectady and Albany to various points in the United States.

Both of these companies have been operating, and in the case of Mr. Wade since 1926. He and his father operated at that time a bus company doing substantially the same business that they do today. That is, they have approximately 10 buses, with approximately 4 full-time drivers. They conduct charter trips from Schenectady to various points in the United States under a certificate issued by the Interstate Commerce Commission, MC–172.

You will note by that number, the lowness of the number, it indicates that Mr. Wade was one of the very first carriers issued a grandfather certificate by the Interstate Commerce Commission back in the 1930's and early 1940's.

What he was doing in 1926 and what they continue to try to do up until today is to take charter groups from Schenectady to Washington, D.C., to your good State of Florida, to Massachusetts, to New York City, from Albany via New Jersey, and so forth.

Those trips, of course, are chartered trips run for schools and fraternities and various groups that take trips as groups.

Since 1926, Mr. Chairman, they have also been involved in transporting groups that they assemble themselves. In other words, instead of just sitting at home and waiting for a charter group to come to them, since 1926 they have been going out and trying to interest groups of retired persons and elderly people in their area and various professional people who want to take tours down to Florida, for example, during the winter months.

They go out and solicit their own charter groups and sell these charter groups individual tickets and take these groups on down to Florida.

Substantially the same business is done from Albany by the S. & S. Bus Service.

As I say, both of these companies hold certificates issued by the Interstate Commerce Commission and are subject to constant regulation by the ICC back into the early 1940's.

Just recently, the ICC notified Mr. Wade, who, as I say, has been operating since 1926, that under his certificate authorizing charter operations he was no longer authorized to assemble his own groups and go to Florida, Virginia, Washington, that the only groups he could carry under his certificate would be groups that came to him.

In other words, the charterer would have to come to him in order for him even to leave Schenectady with a group of people to go down to any of these places I named.

And without trying to point up your good State of Florida constantly, that happens to be the greatest source of business.

He was told that he could no longer try to get together groups of elderly people who otherwise would not take the trip to take the bus to go down to Florida and spend 10 or 15 days in Florida and then come back to New York, that he would only be able to take groups that came to him and take them as a group, not as individual customers, that he could not advertise nor could he sell individual tickets to these people on these trips, although it is a charter party.

The Interstate Commerce Commission recently under enforcement provisions of the law took more strenuous steps against the S. & S. Bus Service over in Albany. They brought an injunction procedure against the company in the U.S. district court there and restrained the company by a complaint filed in that court from organizing its own charter trips to Florida. And the specific trips to Florida are covered by this complaint which I hold in my hand here and which with your permission, Mr. Chairman, I would like to make part of the record.

Senator SMATHERS. Without objection we will make it part of the record.

(The document referred to follows:)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

CIVIL NO. 8862

INTERSTATE COMMERCE COMMISSION, PLAINTIFF, *v.* S & S BUS SERVICE, INC., YANKEE TRAVELER TRAVEL CLUB, INC., EDWARD P. SCHEIBLY, SR., AND EDWARD P. SCHEIBLY, JR., DEFENDANTS

COMPLAINT

Plaintiff, the Interstate Commerce Commission, for its complaint against the above-named defendants, alleges that:

1. The defendants, S & S Bus Service, Inc., Yankee Traveler Travel Club, Inc., Edward P. Scheibly, Sr., and Edward P. Scheibly, Jr., are engaged and are about to engage in acts and practices which constitute violations of 49 United States Code, Chapter 8, Section 306(a), and the plaintiff brings this action to enjoin such acts and practices.

2. This action arises and the jurisdiction of this court is invoked under 49 United States Code, Section 322(b) and Section 2 of the Elkins Act (49 United States Code 42).

3. At all times mentioned herein, the defendants, S & S Bus Service, Inc., a New York corporation, Yankee Traveler Travel Club, Inc., a New York membership corporation, Edward P. Scheibly, Sr., and Edward P. Scheibly, Jr., maintained their offices and place of business at Washington Avenue Extension, Rensselaer, New York, within the jurisdiction of this court.

4. At all times mentioned herein S & S Bus Service, Inc. was the holder of a Certificate of Public Convenience and Necessity issued by the Interstate Commerce Commission in Docket Number MC–84112 which authorizes said defendant to conduct charter operations from Albany, New York and points within a radius of 30 miles of Albany, to points and places in the States of New York, New Hampshire, Vermont, Maine, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Ohio and Michigan.

5. At all times mentioned herein Edward P. Scheibly, Sr. was the President and Edward P. Scheibly, Jr., the Vice-President of S & S Bus Service, Inc.

6. At none of the times mentioned herein did S & S Bus Service, Inc., Edward P. Scheibly, Sr., or Edward P. Scheibly, Jr. hold any authority from the Interstate Commerce Commission to conduct special operations in interstate commerce.

7. At all times mentioned herein Edward P. Scheibly, Sr. was the President of Yankee Traveler Travel Club, Inc.

8. At none of the times mentioned herein did Yankee Traveler Travel Club, Inc. hold any authority issued by the Interstate Commerce Commission, to conduct any operations as a motor common carrier or motor contract carrier or to act as a broker of passengers.

9. Since September 21, 1960, the defendant, S & S Bus Service, Inc., has transported and is transporting passengers in special operations in interstate or foreign commerce for compensation over and upon public highways between Albany, New York and New York City, New York.

10. Since July 4, 1959, S & S Bus Service, Inc. in concert and participation with Yankee Traveler Travel Club, Inc., Edward P. Scheibly, Sr., and Edward P. Scheibly, Jr. have transported and are transporting passengers in special operations in interstate or foreign commerce for compensation over and upon public highways between Albany, New York, and points in Canada, New Hampshire, Pennsylvania, Massachusetts, Connecticut, and other states.

11. That S & S Bus Service, Inc. has made reservations for individual passengers to be transported in special operations in interstate commerce between Albany, New York, and New York, New York, for a two-day trip by motor vehicle beginning on December 31, 1961.

12. That S & S Bus Service, Inc., in concert and participation with Yankee Traveler Travel Club, Inc., Edward P. Scheibly, Sr., and Edward P. Scheibly, Jr., have advertised and are making reservations for a special operations Florida tour from Albany, New York, to begin on January 13, 1962.

13. At all times set forth herein there was not in force and there is not now in force a certificate of public convenience and necessity or other authorization issued by the plaintiff nor any authority arising by operation of law or otherwise authorizing the defendants or either of them to engage in the transportation described in paragraphs nine through twelve of this complaint.

14. Such transportation was and is in violation of 49 United States Code, section 306(a).

15. Unless restrained from doing so by this court, the defendants intend to and will continue to engage in the acts and practices set forth hereinabove.

Wherefore plaintiff demands a temporary restraining order, preliminary injunction, and permanent injunction against further such unauthorized operations by defendants, their agents, servants, employees and attorneys, and those persons in active concert or participation with them in the transportation of passengers in interstate or foreign commerce on public highways for compensation unless and until such time as there shall be in force with respect to defendants a certificate of public convenience and necessity or other appropriate authority to perform such transportation issued by the plaintiff, and that plaintiff have such other relief in the premises, together with its costs, as is just.

Larsh B. Mewhinney and Seymour Glanzer
Interstate Commerce Commission
Attorneys for Plaintiff

Mr. MERRIGAN. After a hearing before Judge Foley, one of the most distinguished jurists in the Federal courts in New York State, the case was decided, and Judge Foley at that time suggested there was great need for legislation in this field, that is, the enforcement part of the provisions of the Interstate Commerce Act which we are dealing with here before your committee today, that there had to be more adaptability, that there had to be more flexibility, and there had to be some change in the 1960's in this transportation field.

With your permission, I would like to make a copy of his decision on the Commission's complaint a part of this record so that the committee will have a full idea of what we are talking about here today.

Senator SMATHERS. Without objection, we will make it part of the record.

(The document referred to follows:)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

CIVIL NO. 8862

INTERSTATE COMMERCE COMMISSION, PLAINTIFF, *vs.* S & S BUS SERVICE, INC., YANKEE TRAVELER TRAVEL CLUB, INC., EDWARD P. SCHEIBLY, SR., EDWARD P. SCHEIBLY, JR., DEFENDANTS.

Appearances:

Seymour Glanzer, Esq., Larsh B. Mewhinney, Esq., Attorneys for Plaintiff, Interstate Commerce Commission, 346 Broadway, New York 13, N.Y. Seymour Glanzer, Esq., Of Counsel.

Edward L. Merrigan, Esq., Attorney for Defendants, 425 13th Street NW., Washington 4, D.C.

Hon. James T. Foley, D.J.

MEMORANDUM-DECISION AND ORDER

This suit, a rare one in this District during my experience as District Judge, seeks injunctive relief against the named defendants under the provisions of 49 U.S.C.A. 322(b) and 42. The preliminary procedures based upon the complaint have been pressed by the counsel and regional attorney for the Commission, Mr. Glanzer, with such intensity as to indicate a matter presumably from the Commission viewpoint as one of magnitude and substantial consequence. My decision herein will indicate my feeling in this respect without any indication to belittle or criticize the ardor of Government representatives in the righteousness of their cause.

The application for decision is solely for preliminary injunction. The determination must be kept within the legal confines settled for such problems. Previously, the plaintiff Commission sought a temporary restraining order in accord with the complement of relief requested in the complaint for restraint. This was sought, as I recall, on the same day the complaint was later filed with the Clerk of the Court at Utica, N.Y., December 28, 1961. It was then intended by the Commission counsel that telephone notice to the attorney for the defendants in Washington in accord with the reasoning in *Arvida Corporation* v. *Sugarman*, 2 Cir. 259 F. 2d 428 might be sufficient to give fair notice of the application for the temporary restraining order. This would, of course, be before the summons and complaint were served upon the named defendants. A reading of the Arvida concurring opinion by Chief Judge Lumbard suggests that such telephone notice, which in his judgment at least should be given in these applications for temporary restraining order, obviously applies to New York City where the parties and lawyers are all near the subway. Of course, it is common sense such reasoning would have little bearing in this sprawling, twenty-nine-county district particularly in a case as here, where one lawyer is in Washington and the other and the Judge are in Albany, New York. Chief Judge Lumbard throughout this opinion cautions—and I find from experience of many instances the advice is commendable and necessary—that government agencies should apply for temporary restraining orders without notice only in exceptional circumstances.

Fortunately, in our situation, a temporary restraining order was consented to by long distance telephone on December 28, 1961, by the attorney for the defendants in Washington, D.C., and hearings were later held on the motion for preliminary injunction on January 8th and 9th, 1962, in Albany, N.Y. It amuses me—and I have encountered such attitude often—that some of the legal and enforcement representatives of the regulatory and administrative bodies of our great government, in good faith I believe, rush into the District Court with the full array of legal weaponry and want momentary decisions. It is usually admitted and even argued in behalf of speedy dispatch by the District Court that the matters involved are ones that may at times take several years for the administrative and regulatory boards and Commissions experienced in these specialties to process and decide if the questions are there to be heard on the merits. Such inconsistency is not my concern. Such sense of urgency in the

court procedures, often unnecessary, always prompts me to reflect again upon the philosophy and wisdom of a great Judge, Learned Hand, that speed and hurry ought to be the antipodes of judicial behavior. (*California Apparel Creators et al.* v. *Wieder of California, Inc.* (1947), 162 F. 2d 893, 903).

In this, my first venture practically or academically, into bus travel by tour groups, there was disclosed at the hearing that S & S Bus Service, Inc. is conducting, to my inexperienced discernment in this transportation field of tour groups by bus as small an operation as may exist. It has eight buses with three steady and six part-time drivers. The Scheiblys, father and son, still drive at times, on bus tours. The terminal, one mainly for the housing of the buses, was built by Scheibly, Jr., himself, with the assistance of several laborers outside the City of Rensselaer. The father, who today has the impressive titles of President of S & S Bus Service, Inc. and Yankee Traveler Travel Club, Inc., years ago conducted a small meat business in the City of Albany. From 1943 and for several years thereafter, he was a trained bus driver for Greyhound. Both father and son testified at the hearing and impressed me as decent, honest and industrious people imbued with overwhelming desire and purpose to conduct a safe and competent tour operation by bus. I am fully aware, of course, that these fine attributes of character, reputation and good citizenship do not justify the conduct of operations clearly beyond the grant of authorization in the certificate issued by the Plaintiff Commission. Nor would a strong-willed effort to bulldoze beyond the express and clear limitations of the certificate be countenanced by the Courts.

S & S Bus Service, Inc., is not a complete outlaw in the conduct of its operations. It does possess a certificate of public convenience and necessity issued to it July 14, 1955 by the Plaintiff Commission. Such certificate allows it to conduct "charter operations" over irregular routes from Albany, N.Y. and points within thirty miles of Albany to points and places in Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New Jersey, Delaware, Maryland, the District of Columbia, Ohio, Michigan and return. To recite this grant in its breadth would make one think immediately that this small company could service its customers, who from the evidence before me seem happy and satisfied with the tour service, and meet the regulations and requirements of the powerful Plaintiff Commission and its supervisory and enforcement agents. The term "charter operations" has no statutory definition, but was given definition by the Commission to differentiate the charter operation grant from that of special operation privileges. These definitions were promulgated on June 26, 1941 in Fordham Bus Corporation Common Carrier Application, 29 M.C.C. 293, 297, with the candid admission that these terms, "charter" and "special", are frequently confused and sometimes erroneously used as synonyms. The pertinent excerpt is:

"Charter service contemplates the transportation of groups, such as lodges, bands, athletic teams, schools, or other travel groups assembled by someone other than the carrier, who collectively contract for the exclusive use of certain equipment for the duration of a particular trip or tour. Special service, on the other hand, contemplates that service rendered generally on week-ends, holidays, or other special occasions to a number of passengers which the carrier itself has assembled into a travel group through its own sales to each individual passenger of a ticket covering a particular trip or tour planned or arranged by the carrier. * * *"

Based upon this definition, inasmuch as it does not have the authority in its certificate to conduct special operations, the Commission has been successful in charging S & S Bus Service Co. Inc. with transgressions in the past. Again the position of the Commission is that by the sale of individual tickets for the past year and one-half for tours in interstate commerce it violated and continues to violate the provisions of Section 306(a)(1), 49 U.S.C.A. The Commission and its representatives place the greatest impact for sanction to differentiate between charter and special operations on the phrase of the definition concerning the sale of individual tickets by the carrier as the main indicator of the assembling of the travel groups by the carrier rather than by someone else. To the Commission this definition means—and I do not intend to get lost in logomachy—that S & S must not advertise or sell individual tickets for group tours under its present franchise no matter how commendable and worthy its operation with carriage of a true tour group. The other words in the distinction between charter and special operations seem to be subordinated to this yardstick of sale of individual tickets to passengers by the bus company. Review of these definitions has been extremely scarce and there has been no court disapproval of such defi-

nitions mainly because consideration of the definitions was not vital to the judicial decisions. (*Fordham Bus Corp.* v. *U.S.*, 1941, 41 F. Supp. 712; *Crescent Express Lines, Inc.* v. *U.S. et al.*, 49 F. Supp. 92, 94; aff'd. 320 U.S. 401, 406, fn. 5; *National Bus Traffic Association* v. *U.S.*, 143 F. Supp. 689). It seems noteworthy that in review of the matter in which the definitions were made by the Commission Judge Frank remarked significantly about the slight difference between charter and special operations and seemed to accept as a fact of life, not a cardinal sin but accepted practice, the promotion of tour groups by the carrier itself. (*Fordham Bus Corp.* v. *U.S.*, supra, p. 717.)

A recent and interesting discussion applies new and modern concepts to these group tours that have become so popular in recent years. (*National Bus Traffic Association* v. *U.S.*, 143 F. Supp. 689, aff'd. 352 U.S. 1020; see also *Auch Inter-Borough Transit Co.*, ICC Docket MC–140, 12/26/61, 30 Law Week 2335). In the *National Bus Traffic Association* case, referred to usually as the *Tauck* case, Judge Biggs noted that most interstate bus operators certificated by the Commission are authorized to sell individual tickets to passengers, but some are not. (pg. 692). He stated the important thing is that the travel group is a cohesive whole interested in a tour for pleasure and not in mere transportation. Judge Hartshorne, concurring, has good comment, sensible to me, that this group sightseeing industry so differs in nature from mere individual transportation that the one does not inequitably interfere with the other. He points out that when the sightseeing tour becomes a sham the Courts will act promptly. There seems to be no emphasis by these Judges on the individual ticket-selling phase of definition as conclusive standard. (pg. 697). (See *Bingler Vacation Tours, Inc.* v. *U.S.A.*, DCNJ, 1955, 132 F. Supp. 793). My review and purpose which may go beyond the ordinary need in a preliminary injunction motion is to express a feeling that these matters accepted by the Courts as almost completely within the domain and competence of the Commission might need new adaptability and flexibility in definition to meet the revolutionary changes of the 1960's in the transportation field. (See Preliminary Report, Committee on Rulemaking of the Administrative Conference of the U.S., 30 Law Week, 2450, 3/20/62).

Two of the witnesses who testified at the hearing in support of the government motion for the preliminary injunction, a Pinkerton detective hired by one of the large regular route bus lines of the country, and an investigator for the Public Service Commission, stated they bought individual passenger tickets at the Albany Plaza, boarded the bus of the defendant Company and made a trip to New York City and return. It is ironical, and to me slightly unfathomable, but such sale, purchase and carriage apparently was permissible, at least it was not questioned, under a permit issued by the Public Service Commission of New York to S & S to operate as a contract carrier of passengers to points and places of interest in the State of New York. (Defendant's Exhibit B). This New York permit, dated October 21, 1958, expressly permits the sale of individual tickets to passengers by S & S, and then imposes certain restrictions to insure such trips will remain as group tours and not become so frequent as to become regular routes. (Defendant's Exhibit B.) The intrusion into the Federal area came when the bus, boarded by the Public Service Commission Inspector, took a popular short-cut area through New Jersey without any stop in that State on the way to New York City. To me, this deviation is a slight one not of great moment, clearly in the field of technical violation and a matter that should be worked out on a common-sense basis by the carrier and the two supervisory Commissions, Federal and state.

The trip by the Pinkerton detective on January 6, 1962, is a delightful episode. He testified at the trial and I also admitted his report in evidence. (Exhibit A). As previously stated, the sale and purchase of the ticket to New York City was legal under the permit of the Public Service Commission. The taint of illegality would only be federal when the bus traveled through New Jersey, as do most of the other buses today, going from this area to New York City. This bus stayed in New York on the New York Thruway, but the detective testified that the driver told him he would rather go through New Jersey as usual but there was an injunction against the Company. However, the weight of the testimony by the private investigator gives full support to a true tour. The bus stopped for the group to have coffee and doughnuts on the way down to the big city. Then the Pinkerton man, with the task of gaining information became a friend of the bus driver to such a degree that when the bus got to New York City the bus driver asked the Pinkerton man, who had him under surveillance, to "mind" the bus while he guided the majority of the passengers to the show at the Radio

City Music Hall. On the return trip, made again on the New York Thruway, the group stopped at Patricia Murphy's at Yonkers. Both these witnesses were also presented to show that each was given on the bus what government counsel describes in flattering manner as brochures of coming travel tours from the Yankee Traveler Travel Club, Inc. Several are in evidence, and are not a Baedeker guide in any sense, but simply mimeographed sheets of the places and points of interest to be covered in future tours.

The defendant Yankee Traveler Travel Club, Inc., is claimed by the Plaintiff Commission to be a subterfuge or artifice through which the S & S Bus Company sells individual tickets, and thus circumvents the charter operation limitation of authority. The Scheiblys testified openly about this travelers club and to me, if it is used as subterfuge or device to mislead, it is devoid of any concealment or craft. It was operated under an assumed name since April 1956, and incorporated as a membership corporation in 1959. It issues membership cards, holds meetings, charges $1.00 per year for dues, and it was uncontradicted that it has a substantial membership. It is not hidden at all that Scheibly, Sr., is its guiding hand, that S & S mails out its advertising, takes its telephone calls, etc. All this promotion is in accord with the American competitive system and its usual disposition not to sit on its hands and wait for business to develop. I am not prepared to rule on this record and at this preliminary stage that this separate organization is not a bona fide and sincere group interested in travel together for relaxation and entertainment. This phase calls for more development at a trial on the merits as to the illegality of the acts of this travel group and its formation in violation of law or regulations of the Commission. The report of an examiner of the Commission in 1957 (I.C.C. Exhibit 1) resulting in a cease and desist order against the Scheiblys in the transporting of passenger on an individual ticket basis discloses that the conduct of the Yankee Traveler Travel Club, Inc., was discussed therein but no definite ruling or order was made as to the legality or illegality of its acts. In fact, the decision of this examiner reads to me as a compassionate one.

In this preliminary motion, I do not intend to discuss the legal questions the defendants seek to raise as to the grant to the original predecessor of S & S, one Schultz, in 1938 of authority to conduct charter and special operations. Concededly, the grant was modified in 1942 when the final certificate to Schultz was issued and limited to "charter operations." It would seem without definite conclusion necessary at this time that subsequent construction of the grandfather permit by the Commission is controlling on the Courts unless clearly erroneous. The proper recourse is to reopen the grandfather proceeding. (Nelson v. U.S., 355 U.S. 554, 558). Courts usually yield to the Commission's informed judgment and rulings on a matter so much within its competence. (U.S. v. Pierce Auto Lines, Inc., 327 U.S. 515, 535, 536). The commission has strong authority in its favor that in this collateral injunctive proceeding the certificate accepted by S & S in 1955 with its limited authority after passing through and accepted by several other previous holders is immune from attack in this type proceeding. (Callanan Road Co. v. U.S., 345 U.S. 507, 512).

There is in my judgment sufficient showing to grant partial injunction against S & S Bus Co. Inc. and the named defendants, Scheibly Sr. and Jr., only as officers of that particular company enjoining the transportation of passengers interstate on an individual ticket basis pending the trial. This means that in the sale of individual tickets under its New York permit, S & S cannot transport to interstate points of interest nor can it go through New Jersey on tours to New York City. As I have already stated, this slight deviation of route interstate with no stopping is a matter, in my judgment, of small proportion and should be easily settled on an administrative level. The reason for this limited scope of restraint is my firm judgment that an injunction is a drastic step and should not be broader than the illegal acts charged or proven. (Douds v. Local 50, Bakery & Confectionery Workers, 127 F. Supp. 534, 537; aff'd. 2 Cir. 224 F. 2d 49; Hamilton Watch Co. v. Benrus, 2 Cir. 206 F. 2d 738; SEC v. Boren, 2 Cir. 283 F. 2d 312; Bowles v. Montgomery Ward & Co. Inc., 7 Cir., 143 F. 2d 38, 42).

My conclusion to grant this limited injunction is based to a great extent upon previous admitted violations by S & S and its officers that the sale of individual tickets to groups violated the definition of the Commission as to the conduct of charter operations. However, the conduct and activity of Yankee Traveler Travel Club, Inc. and its officers, in advertising and assembling groups for their tours is not enjoined at the present time. The record made at this point does not establish illegality in violation of law or regulation in that respect

clearly, and it is not the function of preliminary injunction proceedings to decide substantial factual and legal questions on the merits. (I.C.C. v. Hudson Transportation Co., 174 F. Supp. 373, 376).

The Yankee Traveler promotion has been going on for several years, and District Supervisor James of the Commission testified at the hearing that he had such knowledge, and with such knowledge attempted advice to S & S as to leasing or chartering arrangements, at least for bona fide groups, that might satisfy the Commission definitions. Another substantial reason for this Court to hold off injunctive relief in certain respects is the fact that S & S Bus Co. shortly after this action was instituted filed an application with the Commission for an extension of authority in its certificate to include special operation privileges. It is now my information that full hearings may be held in Albany on this petition. (See I.C.C. v. Barron Trucking Co., 3 Cir., 276 F. 2d 275). Another factor to be weighed is the testimony of Arnold Wade, a bus operator in Schenectady, who, being in the exact position of the original predecessor of S & S, has conducted special operations, i.e, the sale of individual tickets to tour groups interstate for approximately twenty years, although his certificate is limited to charter operations. He testified he was not warned by the Commission that he was violating his franchise until November 1960. His petition to reopen by the Commission for reconsideration and modification of his 1942 certificate has been granted. There is lack of convincing proof in the record that this small operation is causing irreparable harm to private competition, or is seriously disruptive and antagonistic to the national transportation policy of the United States.

A balancing of the equities with attempt to mix with good judgment warrants denial of the extremely broad injunctive relief sought at this stage by the Commission. (Perry v. Perry, CADC, 190 F. 2d 601, 602; 54 Stat., 898, 899; 49 U.S.C.A., historical note preceding Section 301). The final solution should be primarily for the Commission and it would be helpful, I am sure, if clarification were made as to the manner in which the S & S Bus Company should conduct its operations if the charter operation limitation is not extended. There are many factors to be weighed by the Commission, and its task is not easy. However, it does seem fair to note there were no dissatisfied customers of S & S produced before me, and even the investigators admitted pleasant, companionable, safe, and courteous transportation in their tours of New York City.

This is a government of law. Reasonable regulation is necessary to progress in this complicated transportation area and should not be resented but should be complied with. Bitterness, recriminations, and vengeful feeling should be laid aside. We strive often to minimize such attitudes in judicial proceedings. I am sure the Commission, as a quasi-judicial body, wants an approach by its representatives that insures a feeling in every citizen, no matter how small or obscure, that his side has been heard dispassionately and with consideration and fairness. In such atmosphere, admittedly difficult to achieve by any human effort, from my experience, adverse determinations are accepted with less resentment.

The application for preliminary injunction is granted only to the limited extent herein outlined, otherwise denied. An order shall be agreed upon as to form and content, otherwise settled on five days' notice.

It is So Ordered.

Dated: Albany, N.Y., March 29, 1962.

JAMES T. FOLEY,
United States District Judge.

Mr. MERRIGAN. Mr. Chairman, bringing this situation right up to your bill, these two small businesses have no objection whatsoever to further regulation as you propose in your bill and as Senator Magnuson proposes in his, further regulation of illegal operations; that is, by companies that have no certificate, companies who are trying to invade the field and illegally operate.

But if we are going to have further regulation in the form of injunction proceedings brought by big companies like Greyhound and Trailways against these small businesses, then there is a need for a very small amendment to the law which is directly germane to the legislation which you are considering which would give these

small businesses that have had for years the right to carry charter parties the right to advertise and to sell their own tickets to charter groups.

We have proposed here today, with your permission, and we would like to file it as part of the record, a proposed amendment to section 208(a) of the act which would provide as follows:

As presently worded, section 208(a) says that the Commission cannot impose any terms or conditions or limitations which restrict the right of a carrier to add to his equipment or his facilities so as to develop his business and to meet the demands of the public as they may be required.

We propose to add to that—

and no carrier authorized by the Commission to engage in charter operations shall be prohibited from developing his or its business by proper advertising or by the sale of tickets to passengers in a special or chartered party assembled by the carrier for a trip within the territory specified in his or its certificate.

As you can see, Mr. Chairman, if an amendment such as this is not adopted and you pass S. 2560; that is, if the Senate passes S. 2560 and the Congress goes on to pass it and it becomes law, these small businesses will no longer be subject to suits, civil suits, brought only by the Interstate Commerce Commission. They will be subject to suits brought by their large competitors which are Trailways and Greyhound largely up in the areas out of which they operate.

Frankly, during the trial before Judge Foley in this case I just discussed with you, a Pinkerton detective was hired by Trailways Co. to ride with Mr. Scheibly's bus from Albany to New York just to determine whether the bus went through New Jersey, that little 8- or 10-mile stretch in New Jersey which leads to the Lincoln Tunnel, rather than took the New York Thruway into New York City.

So here is Trailways, a company that needs little or no help I take it from this committee insofar as financial or economic stability is concerned, hiring a Pinkerton detective to ride on a bus run by a family—eight buses, four drivers—out of facilities constructed by hand by this company.

Now, if they will go to the extent of hiring a Pinkerton detective to ride on this bus, just imagine what this company's position will be should you give Trailways the right to bring an injunction proceeding absent any participation by the ICC.

So the purpose of this entire amendment, and it is very brief, is simply to say these people are authorized under a certificate issued by the Interstate Commerce Commission to operate in charter operations today.

There should be no reason in the United States of America why a company cannot do its proper advertising in a newspaper and ask its customers to come on a chartered bus and go down to Florida or go to Washington or go to Williamsburg, Va.

And there should be no reason why a company which has been doing this since 1926 should not continue to be authorized to take that charter party which it carries in its chartered bus and sell each person a ticket rather than collect one fare from the group as a whole.

That is what is involved in this entire proceeding here, and that is what is involved in this amendment.

Senator, I have practically completed this part of the testimony, but what I really wanted to ask is that this proposed amendment that we submitted be made part of the record if that is possible.

Senator SMATHERS. Right.

(The proposed amendment referred to follows:)

PROPOSED ADDITION TO S. 2560

Add a new section 5 to read as follows:

"SEC. 5. Paragraph (a) of section 208 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a comma and the following:

" 'and no carrier authorized by the Commission to engage in charter operations shall be prohibited from developing his or its business by proper advertising or by the sale of tickets to passengers in a special or chartered party assembled by the carrier for a trip within the territory specified in his or its certificate.' "

Section 208(a) of Interstate Commerce Act (49 U.S.C. 308(a)), with proposed amendment italicized:

Terms and conditions of certificate—(a) Specification of routes and termini; extension of routes; restriction on additions to equipment.

"Any certificate issued under section 206 or 207 of this title shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204(a) (1) and (6) of this title: *Provided, however*, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require, *and no carrier authorized by the Commission to engage in charter operations shall be prohibited from developing his or its business by proper advertising or by the sale of tickets to passengers in special or chartered party assembled by the carrier for a trip within the territory specified in his or its certificate.*"

Mr. MERRIGAN. I wanted to point out with your permission that the statute as it is presently drafted—that is, sections 207 and 208—both refer to special or charter operations, which are the operations conducted by these two companies, but there is no definition of either of those terms in the law itself. There is no statutory definition of charter operations contained in the law.

With your permission, I would like to file this sheet which contains copies of the two provisions of the Interstate Commerce Act which refer to specially chartered operations so it will be clear what we are talking about.

Senator SMATHERS. Fine.

(The document referred to follows:)

Sections 207(a) and 208 (b) and (c) of Interstate Commerce Act containing only provisions in act with reference to "charter operations" and "chartered parties":

(207) "Issuance of certificate—(a) Issuance authorized to qualified applicants for regular routes and between fixed termini.

"Subject to section 210 of this title, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able prop-

erly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however*, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations."

(208) "Deviation from route.

"(b) A common carrier by motor vehicle operating under any such certificate may occasionally deviate from the route over which, and/or the fixed termini between which, it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe."

(208) "Transportation of special or chartered parties.

"(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this chapter may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed."

Mr. MERRIGAN. I would also like to make clear for the record both of these companies possess certificates from the State of New York authorizing them to sell individual tickets to their charter parties within the State of New York, so that they have every right in all of their intrastate operations under the New York law to conduct the very operations I am talking about here.

Without this amendment, of course, and if your bill should become law, these two companies face a sort of devastating situation, because if their competitors can then start bringing injunction proceedings against them, operating in the same way as they have for 26 years, they face pretty much catastrophe.

They both have invested approximately $125,000 each, their entire life savings, in these businesses, and it would be almost impossible for them to continue unless this amendment were made part of the law if your bill did become law.

I want to make it clear that we do favor complete, honest law enforcement in this field. But here we do not have a gray area, we have an area where these people thought they were perfectly white and suddenly are being led into a black area by an interpretation of the statute that follows some 35 years or 40 years after they began their operations.

Senator SMATHERS. Thank you very much. I appreciate it.

Mr. MERRIGAN. Thank you, Mr. Chairman. I very much appreciate the opportunity.

Senator SMATHERS. The next witness is Mr. E. Philip Hickman of Horntown, Va.

STATEMENT OF E. PHILIP HICKMAN, HORNTOWN, VA.

Mr. HICKMAN. Senator Smathers, my statement is very brief, and to take it out of context or condense it would detract from it, so, with your permission, I would like to give you the entire statement I prepared.

Senator SMATHERS. You go ahead at your own pace, Mr. Hickman.

Mr. HICKMAN. My name is E. Philip Hickman. My father and I operate a father-son farm, growing and shipping approximately 500 acres of potatoes each year. This farm is located in Accomack County

on the Eastern Shore of Virginia. I have been engaged in the production and marketing of potatoes and vegetables all of my life.

I am president of the Accomack County Farm Bureau and vice president of the Association of Virginia Potato & Vegetable Growers. However, I am appearing here today as a producer and shipper of potatoes.

I am appearing here today to make some personal observations about the general purposes and provisions of S. 2560 and S. 2764.

My farm is located on the Eastern Shore of Virginia, a narrow peninsula approximately 70 miles long and varying in width from less than 1 mile to about 7 miles. It is an area of concentrated vegetable and potato production. Our transportation needs are served by one major highway and a single-track rail line of the Pennsylvania Railroad. The majority of the farm products grown in this area are moved by motortruck. A large portion of these are truckers of exempt commodities.

Our markets are primarily the eastern area of the United States, southern Canada, and west to Chicago. Deliveries to my markets are ordinarily made in 24 hours by motortruck and 3 to 5 days by rail.

The potatoes we grow are a highly perishable commodity with a relatively short shelf life. Time saved in transportation results in longer shelf life.

My harvesting and marketing operations take approximately 4 weeks (June 20 to July 20). During this time we will move about 15 to 17 truckloads daily, consisting of approximately 325 hundredweight each.

The entire Eastern Shore area ships on the average of 300 truckloads per day during the season and some peak days in excess of 500 loads. Any interference with the free flow of trucks would prohibit the expeditious marketing and would result in a loss to me as well as to my neighbors. This would occur if these potatoes were not marketed when ready. They would rot in the ground because of high temperatures and heavy rainfall which usually occur at the end of our normal harvest season. Our potatoes cannot be stored. They must be marketed and consumed promptly.

I have learned from experience that the price I receive for potatoes is the price at the terminal market less all transportation and marketing costs. This is in direct contrast to the pricing mechanism for mnaufactured products generally. These are priced by the manufacturer with transportation and marketing costs added to his price to arrive at the price paid by the consumer. This is the basis on which I buy my farm supplies.

I am well aware that the railroads and the motor carriers are reporting lower earnings, and I sympathize with them. From my own experience, constantly rising costs of labor, supplies, machinery, and taxes, with declining prices for potatoes and vegetables generally, have resulted in a severe economic squeeze in my operation.

Some years ago the majority of the potatoes on the Eastern Shore moved to market by rail; today they move to market by truck. Railroads, however, established incentive rates for heavier loads in 1960. This has resulted in substantial increase in rail movement in this territory.

Rail transportation out of my area operates at a distinct disadvantage because of the much greater transit time. For example, rail service to Montreal, Canada, is based on fifth-morning delivery. By mortortruck, it takes 24 hours. Export business to Canada is of great importance to us on the Eastern Shore of Virginia in June, or during the first 15 days of our harvest. Delivery to Cleveland by rail is based on third-morning delivery and about 24 hours by truck.

In 1957 we moved our packing operations from the rail siding to the farm because of the declining use of rail service and our increased use of truck service. Haulers of exempt commodities will come out to the farm and pick up potatoes. On-farm packing operations as opposed to central packing operations on rail sidings have become typical in this area. This is a more economical method for us.

While large amounts of my potatoes are being hauled by exempted carriers, from 30 to 50 percent are hauled by ICC-certificated carriers. These include Midwestern fresh meat haulers, steel product haulers, frozen food haulers, and private carriers as an incidental part of their own business. They will haul manufactured or processed products east to metropolitan centers and then arrange with a local truck broker to move my potatoes back to or near their point of origin.

The availability of these carriers increases the supply of trucks with a resulting saving in transportation costs. This results in a higher net return to me.

I am opposed to any legislation that would tend to restrict the movement of motortrucks hauling exempt commodities, such as my potatoes. I agree with President Kennedy, who stated in his transportation message to Congress that—

> I am convinced that less Federal regulation * * * is in the long run a prime prerequisite of a healthy intercity transportation network.

I believe that any restrictive legislation, such as S. 2560 and S. 2764, would limit my ability to move potatoes to any and all markets depending upon the needs in the various markets. I would emphasize here that the needs of these markets vary from day to day and season to season depending upon the weather and the supplies from competing areas.

I am not opposed to registration of motortrucks per se. However, I believe that the registration and other provisions in S. 2560 and S. 2764 would in the long run tend to reduce the supply of trucks, and because of increasing regulation force out of business the small independent owner-operator. It would also tend to restrict geographical flexibility of movement, with an inevitable increase in rates and reduction in service.

It is my firm conviction that registration would be only the first step in a series of steps in the direction of economic regulation of all transportation services I use.

I concur in the statement made by Matt Triggs, assistant legislative director, American Farm Bureau Federation, who said in his testimony on February 7, 1962, that—

> We cannot help but believe that the real objective of many of those who favor the enactment of section 4 of S. 2560 is that they too conceive of registration as the first step toward full economic regulation.

I thank you for giving me the opportunity to appear before this committee to present my views on this matter in opposition to this proposed legislation.

Senator SMATHERS. Thank you very much, Mr. Hickman. We appreciate your testimony.

Mr. HICKMAN. Thank you, sir.

Senator SMATHERS. We are now going to call Capt. A. C. Ingersoll, and the water carriers who are associated with him. They might all come up, or however you want to do it, Captain.

STATEMENT OF A. C. INGERSOLL, JR., PRESIDENT, FEDERAL BARGE LINE, ST. LOUIS, MO., AND CHAIRMAN, EXECUTIVE COMMITTEE, COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS

Mr. INGERSOLL. Thank you, Mr. Chairman.

My name is A. C. Ingersoll, Jr. I am president of the Federal Barge Line in St. Louis, Mo. I am appearing here today as chairman of the executive committee of the Common Carrier Conference of Domestic Water Carriers.

We represent the preponderance of common carrier transportation in domestic water transportation on the east coast, on the west coast, on the gulf coast, on the Great Lakes, and on the inland waterways.

We have banded together in the last year in an endeavor to reverse the trend, the decline of common carrier transportation by water.

Our interest in this bill is that we are suffering from the same sort of influences which are hurting the truckers. This bill is called by some the "gray area bill." Water carriers live in a vast gray area where common carriage and contract carriage and exempt carriage and private carriage are all tangled up together in a way that was never intended by the Congress when they passed the Transportation Act of 1940.

We know that this bill is directed primarily at the problems of the truckers. We support it because we believe that the solutions to the problems of the truckers in this area will help in the solutions of problems of the water carriers arising from similar causes.

We urge your committee give consideration to expanding this bill to dealing with similar problems in the water carrier field.

With that brief statement, I would like to submit a somewhat more prolonged statement for the record on behalf of the Common Carrier Conference.

Senator SMATHERS. All right, sir.

(The prepared statement of Mr. Ingersoll follows:)

My name is A. C. Ingersoll, Jr., I am president of the Federal Barge Lines, Inc., of St. Louis, Mo. I am here as chairman of the executive committee of the Common Carrier Conference of Domestic Water Carriers. The 29 companies who are members of this organization have lately joined together to attempt to preserve the common carrier service rendered to the public in 39 of the 50 States by the Nation's domestic common carriers by water.

The principal contribution our members have to make to the economy is the fact that they are, in general, the lowest cost method of transporting commodities adapted to their service. The companies operate in the coastwise and intercoastal service, on the Columbia River, in the San Francisco Bay area, to Alaska and Hawaii, on the Atlantic Intracoastal Waterway, on the Great Lakes, on the Mississippi-Ohio River and on its tributaries, and on the Gulf Intracoastal Canal.

Characteristically, we are small companies compared to railroads and to the corporations we serve. It is our conviction that there is an important role in the economy for the common carriers by water. No one else can provide a regular common carrier service at nondiscriminatory and reasonable rates to the general public. But the rapid increase in exempt and private transportation in recent years threatens the continued availability of this service. Congress must decide whether this function is important or not.

We have heard S. 2560 referred to as the "gray area" bill. The water carriers live in a vast "gray area," in which common carriage, contract carriage, private carriage, and exempt transportation are tangled in a manner never intended by the Congress when water transportation was regulated by the Transportation Act of 1940.

In order to be sure that shipping space is available during seasons of peak demand, a big shipper will engage in private carriage, exercising a right no one would deny to any shipper. But then to make this guaranteed do-it-yourself service less of an expensive luxury, he takes advantage of the bulk exemptions to engage in the for-hire business on an added-traffic, backhaul basis. The common carrier loses twice; the big block of traffic that went to private carriage, and the miscellaneous bulk exempt business the private carrier picks up for-hire to sustain his private carrier operation that might not otherwise be economically feasible.

Another aspect of exempt transportation not anticipated by the Congress is the manner in which the ability of a shipper to ship bulk traffic by water on secret rates gives him an extra sales advantage over his rail-bound competitor who is hampered by the Robinson-Patman Act in making rail freight absorptions to meet such competition.

Although we know that S. 2560 is principally addressed to the problems of the trucking industry, we support it, because we hope that the principles established for controlling the problems of the truckers will be helpful in the water carrier field. We urge you to broaden the application of S. 2560 to include water carrier problems. My colleagues of the conference will discuss some specific probems where clarifying legislation would help preserve the ability of the low-cost common carriers by water to provide service for the public.

Mr. INGERSOLL. Harry Patterson of the Sioux City & New Orleans Barge Line in Houston was up here to testify on behalf of the Mississippi Valley-gulf coast division of the conference, but he had to run to catch a plane.

With the chairman's permission, I would like to submit his statement for the record.

Senator SMATHERS. Without objection, we will make his statement in full a part of the record.

(The prepared statement of Harry W. Patterson, member of the Common Carrier Conference of Domestic Water Carriers—Mississippi Valley-gulf coast division, follows:)

My name is Harry W. Patterson, and I represent the Sioux City & New Orleans Barge Line, of Houston, Tex., a common carrier with operating rights between points on the Missouri River on the one hand, and points on the Mississippi to New Orleans, the Illinois River to Chicago, and the Ohio River to Pittsburgh. I appear before you today as a member of the Common Carrier Conference of Domestic Water Carriers—Mississippi Valley-gulf coast division—to speak on behalf of the bargelines on the Mississippi-Ohio system and on the Gulf Intracoastal Canal.

We appreciate the opportunity you have given us to testify in favor of S. 2560, a bill to control the so-called "gray area" of exempt and illegal "for hire" traffic in the motor carrier field. I join my voice to others in urging you to broaden this bill to include similar problems in the water carrier field.

I think you will find interesting the background story of our company because it is typical of many of the smaller common carrier bargelines which have, in the past, expanded rapidly to meet the demands for service on the inland rivers.

Sioux City & New Orleans Barge Line was organized in 1939 by local business and civic interests of Sioux City, Iowa. In 1943, it obtained a certificate of convenience and necessity from the ICC to operate as a common carrier on the Missouri River. This pioneering operation performed a very limited service

with one towboat and one barge until World War II intervened and no further operations were conducted until 1953. At that time, a group of Houston, Tex., businessmen, led by Capt. D. D. Parker, purchased all of the stock of the old company and applied to the ICC for common carrier operating rights between points on the Missouri River on the one hand, and points on the Mississippi River to New Orleans, the Illinois River to Chicago, and the Ohio River to Pittsburgh. A certificate of convenience and necessity authorizing this common carrier service was issued on May 17, 1954, and operations were instituted under the new management with 1 towboat and 12 barges. On July 12, 1960, the ICC granted towing rights to the company over the authorized routes which allowed it to tow barges owned by shippers.

Since 1954, S.C. & N.O. has performed a regular common carrier service on the Missouri River, the first ever performed on that river by a privately owned company. It has expanded its fleet to 8 towboats and 106 barges, which represent a capital investment of $10,500,000. In 1961, outbound tonnage on the Missouri River was 402,000 tons and inbound tonnage was 175,000 tons. S.C. & N.O. brought 74 tows into the Missouri River during 1961 during the navigation season of approximately 7 months. This represented an average frequency of service of one tow every 2½ to 3 days.

This service to Missouri River shippers and receivers, brought about by the expansion and growth of this company, would not have been possible, and, in fact, the investment would never have been made without the protection of the Interstate Commerce Act and the certificates of convenience and necessity issued by it.

There is no need for me to rehearse for this committee a definition of the destructive competition facing the common carrier bargelines at the hands of the private carrier. Both this year in these hearings and last year in the hearings on the decline of common carriage, plenty of evidence has been introduced to demonstrate how the intermingling of "for hire" and private carriage is contrary to the public interest in preserving a stable common carrier industry.

I would like, however, to remind you of one quote from Representative Wolverton, of New Jersey, during the debates on the Transportation Act of 1940. Representative Wolverton favored the extension of regulation to the water carriers and used the experience of the truckers with regulation since 1935 to quiet fears that regulation would destroy the water carriers. His comments make interesting reading today, in the light of S. 2560. Obviously, regulation has not gone far enough in either trucking or water transportation:

"* * * 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."

We are facing here the same problem Representative Wolverton described, the chiseling competition of private carriers who could not operate in the water carrier field but for the existence of the exemptions.

The issue is a complex one. Our complaint has never been with legitimate private carriage. The right of the private company to transport his own goods should, of course, be preserved. Our complaint is with the situation where private carriage is accompanied by a vigorous, if uneconomic, "for hire" operation on the side, in turn made possible by the exemptions.

On the rivers, the devices for commingling private and "for hire" transportation are numerous.

The so-called semicaptive may operate equipment owned by one or more shippers under numerous charter agreements. In one way or another, however, the operator gives back to the shipper a rebate which amounts to all or part of the profit which the operator would have received if he had been independent.

The reverse of this is the so-called semi-for-hire. This type of carrier is a private operator who moves his own goods one way and who combines with one or two other shippers, some of whom may be his own customers, for a movement in the other direction as a for-hire carrier.

The common thread which runs through all these arrangements is that the economics of transportation are not the controlling factor in the competition offered to the common carriers. Needless to say, such operations would not be possible without the exemptions.

A common claim in defense of this activity is that it cuts the price of transportation and is, therefore, beneficial to the consumer. First, of course, there is ample evidence to show that the savings are not passed along to the consumer as is the case under published rates. Indeed, a principal feature of the secret rate is that the economic advantage, if any it gives, need not be passed along to the consumer. Second, the price obtained is not always a lower one. On the Missouri, at the peak of the season when all transportation service is taxed to capacity, one private operator singles out grain elevators known to be full and in distress because of their inability to take more grain. For these houses, he will supply a barge, but at a premium price far above the published rate.

Other operators work all the varations in the buy-and-sell racket so familiar to you from the hearings on the problems in the motor carrier industry. In one way or another, these are devices to avoid regulation where regulation exists, or to chisel on the published transportation tariffs.

The threat to the continued ability of the common carrier to provide the public with regular, dependable service at nondiscriminatory rates has not come about through any fault of ours. Our expansion has been rapid for relatively small companies. We have provided service to the extent of our abilities. Our equipment is as modern, our service as frequent and as reliable as could reasonably be expected. But the license to chisel is just too tempting a weapon for the private carrier. Using nontransportation financial resources, which the small carrier cannot hope to match, some of the largest corporations in the country appear determined to eliminate the regular common carrier.

Under the present state of the law, the publicly controlled carrier has no recourse. The problem has been identified; the remedy is relatively simple. Commonsense suggests that the private carrier be required to justify his operation on its own economic merits. The intermingling of "for hire" and private carriage, including the leasing back and forth of equipment, should be forbidden. The legitimate private carrier will have no complaint.

As matters stand now, the exemptions represent the largest single incentive to private carriage in the country. Millions of tons a year are transported by private operators today solely because of the opportunities offered for backhaul under the exemptions. If the exemptions are made available to private carriers, this incentive will be gone. Not only will the traffic wrested from the common carrier at uneconomic rates be returned to common carriage, but much of the present private carriage will also return to common carriage.

If, as Secretary of Commerce Luther Hodges said, in his annual report last February, "the keystone of transport progress is a strong common carrier industry," what could be more in the public interest than this assist to the publicly controlled common carrier?

Secretary Hodges also said in the same report:

"* * * 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 Congress has long been concerned with the decline of the common carrier. If the public interest is to be preserved, the time for action cannot long be delayed.

Mr. INGERSOLL. Mr. John Weller, the president of Seatrain, who is chairman of the Atlantic coast division of the Common Carrier Conference, wanted to come down here and testify on this matter, but he was prevented by last-minute business from appearing, and asks if he could submit a letter for the record in support of this bill.

Senator SMATHERS. Without objection we will keep the record open for his letter.

Mr. INGERSOLL. Mr. Lew Russell, of the Tidewater Barge Line in Portland, Oreg., who is the vice chairman of the Pacific coast division of the Common Carrier Conference, also wanted to come here and testify in support of this bill. He likewise was prevented by last-minute business from appearing.

Mr. INGERSOLL. The Great Lakes division of the conference is here represented by its vice chairman, Mr. Arthur Sullivan, from Chicago, of Gartland Steamship Co., who would like to make a statement on the record in support of the bill.

Senator SMATHERS. Bring Mr. Sullivan up.

STATEMENT OF ARTHUR C. SULLIVAN, JR., MEMBER OF EXECUTIVE COMMITTEE, COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS, GREAT LAKES DIVISION; ACCOMPANIED BY JOHN H. EISENHART, JR., GENERAL COUNSEL

Mr. SULLIVAN. Thank you, sir.

Senator SMATHERS. Thank you, Captain Ingersoll.

Mr. SULLIVAN. I would like to introduce our general counsel, John Eisenhart, to answer any questions of a legal nature.

Senator SMATHERS. Thank you, sir.

Mr. SULLIVAN. I am going to read portions of the lengthy statement submitted.

Senator SMATHERS. We will make your statement part of the record, and you make it as brief as you can.

Mr. SULLIVAN. Yes, sir.

(The prepared statement of Mr. Sullivan follows:)

My name is Arthur C. Sullivan, Jr., and I am president of the Gartland Steamship Co. of Chicago, Ill. I appear here today on behalf of the Great Lakes Ship Owners Association of which I am vice president. I am also here as a member of the executive committee of the newly formed Common Carrier Conference of Domestic Water Carriers, Great Lakes Division. This group is concerned with the reversal of the recent decline in the role of the common carrier by water.

We are most grateful for this opportunity to appear before you today to endorse S. 2560. We are aware, of course, that the bill under consideration is concerned with the so-called "gray area" problem in the motor carrier field. It is an attempt, however, to work out solutions for motor carriers of problems that are very similar to the ones faced by all independently owned water carriers. I know that the introduction of this legislation followed the very useful hearings on the decline of the common carrier held by the Surface Transportation Subcommittee last year. In those hearings, water carriers testified. We, therefore, urge you today, either by amendment of S. 2560 or in a separate measure, to provide similar solutions to the water carrier problems as well.

Our problem is to find a way to reverse the present trend toward the elimination of U.S. flag, independently owned Great Lakes shipping. Although changes have occurred in technology, in the degree of cheap labor foreign competition and in distribution patterns, we believe the evidence is clear that a vigorous, healthy, independently owned Great Lakes fleet is essential in the public interest. No method of transportation is as economical for commodities adapted to large volume movement, as the modern, automated Great Lakes ship.

Every consumer of electricity, large or small, in the vast Great Lakes region, owes his low light bill to lake shipment of coal for steam generating plants. Hundreds of coal mines remain competitive in the constant struggle for survival against the inroads of gas and oil because of low-cost lake delivery of their product. Hundreds of thousands of jobs depend on this one aspect of lake shipping alone.

The farmer relies on lake ships to provide economical and dependable means of moving the huge grain crops from the midwestern "breadbasket" to eastern mills for consumption in the populous East. Both producing farmer and consuming miller benefit from low-cost water transportation of grain.

Some of the Nation's largest steel complexes lie within reach of lake shipping. Inbound, hundreds of millions of tons of ore, metallurgical coal, limestone and other necessities of the great steel companies are delivered by lake ships. In turn, steelplate and other rolled products, pig iron, castings, and steel pipe are transported throughout the Great Lakes system as the market requires. The

flexibility in sources of raw material supply provided by economical lake shipping is a major benefit; so, also, are the alternative markets made available by very low-cost water transportation for steel products.

Despite its proven usefulness to the public, the Great Lakes shipping industry under the U.S. flag is facing a serious crisis. It is our hope that this committee will take an interest in our problems and help us, as you are planning to help the motor carrier industry, toward constructive solutions.

The crisis in the independently owned U.S.-flag fleet stems primarily from our difficulty in asserting the true economy of water transportation in the face of uneconomical rate cutting, first by the higher cost railroads, and, second, by the so-called captive or proprietary fleets.

The rate wars which have raged intermittently in the past few years throughout the Great Lakes area have discouraged investment in new Great Lakes ships to such an extent that not a single new lake boat is now under construction for U.S. account, despite the urgent need for modern equipment.

There is no new rail technology that comes close to meeting the efficiency of Great Lakes transportation. Nor do we see any "breakthroughs" in improved technology among our foreign competitors that cannot be matched by American technology. Why, then, are we in difficulty?

The fact of the matter is that chaos and confusion of Government regulation and lack of regulation has reached such a point that the independent operator attempting to perform regular, dependable service at nondiscriminatory rates appears to be actively discouraged. The uncertainties are sufficient to dry up investment. Without new investment, any industry will eventually die.

Ten years ago, the independently owned Great Lakes ships accounted for half of the entire domestic Great Lakes capacity; today, the independently owned capacity has declined to a third of the domestic total. Two-thirds of the capacity is now in the so-called captive or proprietary fleets. This is a startling decline, with serious implications for the availability of regular, dependable service for the general public. If the trend continues—and nationally this committee has heard evidence that the trend to private carriage is due to continue—the small producer will have to wait on the convenience of the captive fleet for service. When the captives are fully occupied, there will be no service for the general public. Is this a situation that should be allowed to develop?

Our group last appeared before a Senate committee in 1960. At that time, we described for you the different types of vessels in the Great Lakes industry and the types of service developed from the specialized capacities of the vessels. I would like to repeat here for you, in brief form, a summary of that statement because I think it is essential to an understanding of our problem today.

The type used in the regulated trades, chiefly pig iron and other steel products, is known as the crane vessel, which is a converted medium-sized bulk ore carrier. The size of these vessels runs from 5,000 tons cargo deadweight up to 9,000 to 10,000 tons. A customary conversion results in the widening and lengthening of the hatches in order to permit stowage of long lengths and other specialized cargo. Two traveling cranes are mounted on deck to permit the vessel both to load and unload itself. The lifting capacity of these cranes is about 30 tons. Eleven of them are now available for inservice, four for the captive group, and seven for the independent group. Two of the seven independent ships are laid up for lack of traffic.

The traffic served by this type of vessel has been hard hit by railroad selective rate cutting. Railroads have reduced their rates to uneconomic levels in areas where the competition with the lake boats exists and raised them elsewhere. My own company operated crane vessels before the war, but the regulatory situation has been so uncertain since the war that we have not reentered this part of the trade. However, plenty of traffic exists which the lake vessels could carry more economically than any other mode. When we appeared before you in 1960, we were just beginning to fight a critical case before the ICC involving uneconomic and discriminatory rail rates on pig iron, the principal commodity handled by the crane vessels.

On February 21, 1962, 2 years after the rates had been permitted to go into effect, the Commission handed down a decision declaring the rates unjust and unreasonable and ordering their cancellation. This decision is now being appealed by the railroads. In the meantime, of course, the traffic has long since disappeared to the railroads causing the layup of 2 of the remaining

11 crane vessels. (See dockets Nos. 33366, 33536, and 33444.) We would like to introduce this decision into the record because it states more eloquently than we can the problems our regulated trades face.

The second type of Great Lakes ship is the self-unloader. These vssels are strictly bulk carriers, with capacity running from 10,000 to 20,000 long tons cargo deadweight in modern versions. The cargo holds are hoppered and discharged onto an unloading belt. This vessel must be loaded by shoreside equipment. However, they are equipped with unloading booms which swing out over the side of the vessel permitting discharge of the bulk cargo 250 feet or more from the dock face. There are 44 of these operating today compared to 47 in 1960; 17 are in the captive fleet and 27 are in the independent fleet. Not a pound of this self-unloader traffic moves on a regulated basis.

The third type is the standard Great Lakes vessel bulk carrier, used primarily in the iron ore, coal, limestone, and grain trades. Vessels of this type of less than 10,000 tons are now considered by all operators as marginal. New boats have been 25,000 long tons cargo deadweight with 25-foot-6-inch draft. There are now 192 bulkers in operation compared to 250 in 1960. Captive fleets account for 144 and independent operators account for 48.

It is not my purpose today to describe the problem of selective rate cutting by the railroads. We have complained elsewhere of this issue. As far as the lake trades are concerned, the probability that there will be commonsense decisions recognizing the economy of lake boats is much too uncertain for any shipowner to risk any new money in investment in equipment. When the present ships reach the end of their useful life, this service will simply disappear, unless present chaotic pricing practices are radically changed to provide a fair climate for the low-cost operator.

The problems posed by the exemptions, however, seem so inequitable that the Congress may wish to take appropriate remedial action immediately. The exemptions provide so many opportunities for uneconomic competition by private carriers in the Great Lakes area that the independent operator is being seriously damaged, just as in the motor carrier trades.

Let me first say that we have no objection whatever to legitimate private carriage. It is only when the private carrier, taking advantage of the exemptions, enters the "for hire" trades in cutthroat uneconomic competition with the independent operator that we believe we have a legitimate complaint.

Testifying before this committee last year, the then-Chairman of the ICC, Everett Hutchinson, defined the problem as follows:

"Before a shipper can provide his own transportation at a cost equal to or below that of the regulated carrier, he must obtain a high degree of equipment utilization. Whether a private carrier can realize maximum utilization of equipment usually depends on the backhaul. When a shipper transports raw materials, or supplies, for his own business on return trips, thus fully utilizing his equipment, the general public benefits, short range at least, because the lower transportation costs can be reflected in lower costs to the consumer. This type of private carriage, although it reduces the amount of traffic available to regulated carriage, is legitimate and is in the public interest. We know of no reason to change this type of operation.

"This brings us to another type of carriage. When a private carrier is unable to fully utilize his equipment in the transportation of raw materials or supplies on the return haul, he is often compelled to resort to some form of questionable for-hire operation if his transportation is to be cheaper than that offered by regular for-hire carriage.

"It is in this general area that private carriage no longer promotes the public good, and, contrary to the public interest, begins to encroach on traffic which should move by the regulated carrier. This questionable for-hire carriage, which embraces the gray area, may assume the form of either exempt or private carriage, or it may be unauthorized and illegal per se, but difficult to detect and police in any event."

There is, of course, the argument that the shipper is greatly benefited by this sort of chaotic condition. However, we have it on the authority of Prof. George Baker, president of the Transportation Association of America, that there is another view even among shippers. Last year, speaking before this committee, Professor Baker said:

"In the TAA operations I do come in contact with shippers, with users who do take the longer run. There could be many, many more of them. And I think that the shortrun gain which simply looks ahead a very short time and looks for the shortrun gain and forgets the kind of longrun interest that the shipper has in the preservation of available common carrier service, is the wrong one."

General Doyle, in his comprehensive review of transportation policy, had this to say about the problem of the private carrier. Legitimate private carriage, the report said, is a healthy check on any tendencies of regulated carriers to exploit the user, should such exist. It then went on:

"This fact, however, should not be a club to depress rates of regulated carriers below those which will produce a fair return. We have said that a private one with good utilization and efficient operation should be able to beat the price of the regulated for-hire carriers. If he can, he will, for he admits no duty to support public carriers. Furthermore, he will utilize private carriage in only that part of his distribution pattern where it is economically or otherwise desirable and will expect public carriage to satisfy his other transportation needs. We accept this user viewpoint as justifiable. From the viewpoint of Government, representing the interests of the whole public, we must evaluate the effect of private carriage as it is today upon the national objective of a strong public carrier system."

The report then recognized the heart of the problem:

"Some of today's private carriage exists because it is, in fact, more economical. Much more, however, depends for existence upon the private carrier obtaining traffic for compensation in order to help defray operating costs not justified by his own shipments. Since the private carrier is not, primarily, seeking this traffic for a profit from his transportation operation, he is often willing to carry it at bargain rates so long as any contribution is made toward his own operating costs. Since the private carrier is not authorized to offer public for-hire transportation, generally he must seek this contribution through transportation which is exempt from economic regulation; through some fictitious extension of his own private carrier's exemption; through leasing of his equipment to an authorized operator, or through illegal operations. No matter how he obtains it he is in direct competition with regulated for-hire carriers and, to the extent he succeeds, diverts revenue traffic from them contrary to the public interest in a healthy for-hire system."

Then, as you will recall, the report recommended a redefinition of the term "private carrier of property" in such a way that private carriers would be prevented from participating directly or indirectly in for-hire transportation. (See p. 510, Doyle Report.)

Nor is there any dispute about the problem between us and the railroad industry. Mr. William Maloney, testifying before this committee for the Association of American Railroads last year said:

"I would like now to discuss for a moment the matter of accelerated growth of private carriage. A manufacturing concern operating its own fleet of trucks or its own fleet of barges can haul its own property in one direction and transport for-hire exempt commodities in the reverse direction.

"Thus, the true economics of private carriage are concealed and the transportation industry is deprived of the traffic. So long as the private company obtains a load of exempt commodities at a rate sufficient only to pay for the gas and oil on that leg of the movement, it is ahead of the game. Thus, the so-called private carrier seizes upon the agricultural exemption to make economically feasible the transportation of its own property. The railroads are convinced that much private carriage today could not be economically justified and would not exist if it were not for the ability of the private company to engage in for-hire transportation for exempt commodities.

"While it is impossible to measure with preciseness the volume of exempt commodities being moved in for-hire transportation by private carriers, there can be no doubt that such volume is substantial. Moreover, we are concerned not only with the volume of that exempt traffic but with the volume of traffic that would otherwise move by common carriage if it were not for the exemption."

And, of course, the chairman of this subcommittee has recognized the problem himself:

Last August 30, the chairman said:

"Beginning with the establishment of the ICC and extending to recent years, the core of this Nation's transportation system has been the regulated common carrier. The whole framework of our regulation was grounded on the common carrier as the dominant public servant for the movement of people and freight—that is what Congress intended when it passed the laws originating the ICC.

"Now, however, we find that without intention or positive direction the private, the exempt, and the otherwise unregulated carrier accounts for 70 percent of this country's total transportation movement * * * . I am sure that all of us

feel that the time has come to evaluate how best the public can be served with knowledge of this new trend and how best to cope with this fact, while at the same time trying to foster and promote a healthy national transportation system."

So far, I have developed for you the general theory of the misuse of private carriage. Our right to complain is based primarily on the fact that what is offered as public service by the "captive" fleets is not based on any magical ability on the part of private carriers to perform service more efficiently than the independent common carrier. On the Great Lakes, we have a classic example of an attempt by a major industrial company to use its private ships to beat down the rates of both railroads and independent shiplines to uneconomic levels. The full details of this story are available in briefs filed in dockets 33366, 33536, and 33444 on behalf of the Great Lakes Ship Owners Association. Needless to say, the particular ship involved, which for years on the Great Lakes has been known as a "fighting ship" designed solely to produce uneconomic rates on the part of the independent operators, is not unique to one company. Other companies have other ships which are used for the same purpose.

In the pig iron case, however, great effort was made to part the veil of mystery on private carrier costs. Here is a partial analysis, by the Interstate Commerce Commission, of United States Steel's attempt to force uneconomic rates on Columbia Transportation Division, of the Oglebay Norton Co., a common carrier lake operator, by using unrealistic cost estimates for the SS *Clifford Hood*:

"The vessel cost shown of $1,965 includes various items which when compared with similar costs of vessels moving the same commodity and operating under conditions similar to those which the *Hood* could be reasonably expected to operate, and between the same origins and destinations here concerned, indicate that the amounts allowed for these various items are in some instances unreasonably low and unrealistic.

"For example, this intervener allows $33 per day for personal injury, hull, indemnity, and cargo insurance, as compared with $277 per day incurred by the Gartland Steamship Co. for a vessel of similar size and type, and $229 for fuel expense as compared with $290 per day expended by Gartland. The allowance of $46 per day for administrative expense appears insufficient to cover the salaries of personnel and office expense required to handle all the administrative detail involved in the operation of a vessel of this type, and $21 per day assigned for depreciation is insufficient to recover, during the remaining life of the vessel, its depreciated value and the cost of its major repairs. Also, no allowance is made for light running time, which is not covered by the 10 percent contingency allowed for time loss. A comparison of the total vessel cost of $1,965 per gross ton for the *Hood* with the $3.31 cost per gross ton shown by Columbia for operating its vessels from Cleveland, constitutes a wide variance between proven operation costs and hypothetical estimates."

In summarizing the private vessel argument, the decision said:

"As we view the record, private vessel competition, or the imminent threat thereof, has not been established by the respondents. An essential element in the employment of private vessels to transport pig iron from the Lake Erie ports to Chicago would be the cost of operation. As far as appears, there has been no actual movement by private vessel from and to these points, and the costs shown for operating the *Hood* are rough estimates only, which upon analysis and comparison with actual operating costs of vessels carrying this commodity between these ports appear to be of little probative value. The cost estimate from Buffalo to Chicago by Republic was not supported by competent evidence, and the only probative water costs of record are those shown by Columbia. These are relevant inasmuch as the evidence is persuasive that the real competition herein lies between the railroads and common carriers by water."

This case, of course, dealt with an issue where it was possible to demand facts from the "captive" operation in an ICC proceeding. When similar tactics are applied to the exempt trades there is no recourse.

What then is the answer?

The simple answer, of course, would be to follow the policy laid down by Senator Wheeler when the Transportation Act of 1940 was being debated in the Senate.

"* * * 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."

There can be no doubt that the private operators who drop down into the exempt trades when things are slack in their own proprietary service are in competition with the independent operators. In the short run, a few favored shippers may receive advantages of uneconomic rates from this practice. In the long run, the survival of independent operators is in doubt if this practice is not controlled. The final effect of uncontrolled cutthroat competition hardly needs debate.

The first proposal would be to repeal the exemptions. This is first choice of the railroad industry, of the common carriers on the inland rivers, and of the Great Lakes independent operators. S. 1284, introduced last year at the request of the ICC, would repeal section 303(b) which exempts the bulk commodities. If this is done, fairness would require the repeal of 303(c) as well. In 1940, when it was assumed that common, private, and contract carriers were not in competition with each other, section 303(c) gave the contract carriers on the Great Lakes the privilege of using the exemptions. It would obviously not be right to repeal the exemptions for private and common carriers and not for the contract carriers.

A second proposal would be to retain the exemptions, but simply prevent private carriers from intermingling private and "for hire" transportation. Vessels used in the proprietary trades would be "dedicated" to those trades alone and could not be switched into the "for hire" trades. If Professor Baker is right in his belief that the large industries of our Nation take the long-range view of the importance of the survival of the independent common carrier industry, this solution might well be a practical one.

Whatever happens, some interest must be shown soon and some action taken soon on the plight of the independent Great Lakes operator if his useful role on the economy is to continue and his service expended to meet the needs of the growing economy.

Already the Canadians are alarmed by the competition of cheap labor in foreign shipyards and by "foreign" they mean British shipyards in the mother country. Six new vessels are under construction or conversion for Canadian operators under a program where the Canadian Government provides a subsidy of 40 percent of the construction costs to equalize the differences in costs in United Kingdom, Irish, and Japanese shipyards as compared to Canadian shipyards. A subsidy of 60 percent would be required to equalize U.S. construction costs with those of United Kingdom and Japan. The Canadian program became effective May 12, 1961, and guarantees a modern fleet to serve Canadian industry and, it is becoming increasingly clear, an undue portion of U.S. industry as well.

On our side of the border, we have not yet even been able to obtain liberalization of the depreciation of our ships. Under present internal revenue regulations, a 50-year effective life for depreciation purposes is required for U.S. lake vessels. Canada, in contrast, makes possible depreciation of a vessel within 3 years.

Our story is one of lack of understanding, lack of interest and neglect. If the Government assumes the responsibility of making the rules, then it should also make sure that the rules are fairly and realistically applied in the light of 1962 facts. The present regulatory climate in practice punishes the common carrier. As far as the Great Lakes are concerned, we can only warn you that new commonsense rules to help reverse the decline of the independent common carrier are long overdue.

We appreciate your courtesy in hearing our story today.

Mr. SULLIVAN. My name is Arthur C. Sullivan, Jr., and I am president of the Gartland Steamship Co. of Chicago, Ill. I appear here today on behalf of the Great Lakes Ship Owners Association of which I am vice president. I am also here as a member of the executive committee of the newly formed Common Carrier Conference of Domestic Water Carriers, Great Lakes Division. This group is concerned with the reversal of the recent decline in the role of the common carrier by water.

We are most grateful for this opportunity to appear before you today to endorse S. 2560. We are aware, of course, that the bill under consideration is concerned with the so-called gray area problem

in the motor carrier field. It is an attempt, however, to work out solutions for motor carriers of problems that are very similar to the ones faced by all independently owned water carriers.

I know that the introduction of this legislation followed the very useful hearings on the decline of the common carrier held by the Surface Transportation Subcommittee last year. In those hearings, water carriers testified.

We therefore urge you today, either by amendment of S. 2560 or in a separate measure, to provide similar solutions to the water carrier problems as well.

Despite its proven usefulness to the public, the Great Lakes shipping industry under the U.S. flag is facing a serious crisis. It is our hope that this committee will take an interest in our problems and help us, as you are planning to help the motor carrier industry, toward constructive solutions.

Ten years ago, the independently owned Great Lakes ships accounted for half of the entire domestic Great Lakes capacity; today, the independently owned capacity has declined to a third of the domestic total. Two-thirds of the capacity is now in the so-called captive or proprietary fleets. This is a startling decline, with serious implications for the availability of regular, dependable service for the general public.

If the trend continues—and nationally this committee has heard evidence that the trend to private carriage is due to continue—the small producer will have to wait on the convenience of the captive fleet for service. When the captives are fully occupied, there will be no service for the general public.

This is a situation that should not be allowed to develop.

The problems posed by the exemptions, however, seem so inequitable that the Congress may wish to take appropriate remedial action immediately. The exemptions provide so many opportunities for uneconomic competition by private carriers in the Great Lakes area that the independent operator is being seriously damaged, just as in the motor carrier trades.

Let me first say that we have no objection whatever to legitimate private carriage. It is only when the private carrier, taking advantag of the exemptions, enters the for-hire trades in cutthroat uneconomic competition with the independent operator that we believe we have a legitimate complaint.

A simple answer, of course, would be to follow the policy laid down by Senator Wheeler when the Transportation Act of 1940 was being debated in the Senate. I quote:

> * * * 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.

There can be no doubt that the private operators who drop down into the exempt trades when things are slack in their own proprietary service are in competition with the independent operators. In the short run, a few favored shippers may receive advantages of uneconomic rates from this practice. In the long run, the survival of independent operators is in doubt if this practice is not controlled. The final effect of uncontrolled cutthroat competition hardly needs debate.

The first proposal would be to repeal the exemptions. This is first choice of the railroad industry, of the common carriers on the inland rivers and of the Great Lakes independent operators. S. 1284, introduced last year at the request of the ICC, would repeal section 303(b) which exempts the bulk commodities.

If this is done, fairness would require the repeal of 303(c) as well. In 1940, when it was assumed that common, private, and contract carriers were not in competition with each other, section 303(c) gave the contract carriers on the Great Lakes the privilege of using the exemptions. It would obviously not be right to repeal the exemptions for private and common carriers and not for the contract carriers.

Whatever happens, some interest must be shown soon and some action taken soon on the plight of the independent Great Lakes operator if his useful role on the economy is to continue and his service expanded to meet the needs of the growing economy.

Our story is one of lack of understanding, lack of interest, and neglect. If the Government assumes the responsibility of making the rules, then it should also make sure that the rules are fairly and realistically applied in the light of 1962 facts.

The present regulatory climate in practice punishes the common carrier. As far as the Great Lakes are concerned, we can only warn you that new commonsense rules to help reverse the decline of the independent common carrier are long overdue.

We appreciate very much your letting us speak.

Senator SMATHERS. Thank you very much. Thank you, Mr. Eisenhart.

Mr. William J. Small, president of Service Fuels Co., Cleveland, Ohio.

Mr. Small, we do not have you last because you are the smallest.

STATEMENT OF WILLIAM J. SMALL, PRESIDENT, SERVICE FUELS CO., CLEVELAND, OHIO

Mr. SMALL. I want to be last because then you will be happy to see me. You will know the meeting is over. [Laughter.]

Mr. Chairman, my name is Small, and I own and operate a coal sales agency in Cleveland, Ohio. My business is very much dependent on lakes shipping.

I got here on the coattails of the Great Lakes Ship Owners Association. I am not against any form of transportation whatsoever. I am for it all. I think one of the greatest strengths of this country is an excellent internal transportation system.

It hurts me deeply to see the one I am concerned with dying.

It is not just the loss of the boats. There is a human side to it too, the loss of the skill of the men that operate it.

I made out a statement which I understand is in your committee, and it says everything I have to say. I established that I am here, I am alive and breathing, and thank you very much.

Senator SMATHERS. Mr. Small, you are almost the best witness we have had in weeks.

Thank you very much.

Mr. SMALL. Thank you very much.

Senator SMATHERS. Your statement will be placed in the record.

(The prepared statement of Mr. Small follows:)

My name is William J. Small and I am the president of the Service Fuels Co., located at 1104 Terminal Tower, Cleveland 13, Ohio. My primary functions in the use of my business are twofold:

(1) As a sales agent for one coal mine in western Pennsylvania and three in eastern Kentucky, we are the responsible distributors and merchandisers for the production of coal from these four operations.

(2) As a lake forwarding agency we are responsible for the organization and distribution of a large volume of coal in cargo lots in lake transportation.

The volume of the two combined is approximately 2 million tons per year. In a manner of identification, we also sell and distribute by methods, other than by lake transportation. The end point of this distribution is primarily industrial, utilities, and metallurgical. Our experience is of long standing, it is successful and we have no complaints to make as yet on this score but we are fearful.

I am aware that the original scope of these hearings is more appropriately directed to the "gray area" problems of the motor carrier industry; but my fears, in large measure, are based on "gray area" problems in Great Lakes transportation by water. I am concerned that this subcommittee is also aware of our problems on the lakes.

Our use of vessels on lakes is dictated by the need of the people that we represent conditioned by service that is necessary for orderly transportation, flavored by obligations for service already performed and ability to continue in the foreseeable future. In so doing, we use the vessels of six carriers on the lakes.

None of the foregoing transportation that is used by us is subject to, in any form, regulation by the Interstate Commerce Commission.

For clarification now of what is going to follow later, the lake transportation above named is divided into two categories; namely, "private or captive" and "independent or common." For the purpose of simplicity, we shall call them from here on captive and independent. Of the six vessel companies named, one is captive, the other five are independent. The definition of "captive" and "independent" is arrived at as follows:

Captive: A secondary function of a larger complex whose survival is not dependent on a vigorous transportation consideration.

Independent: A company whose principal function is lake transportation, a service open to all and absolutely dependent on the salability of its services and the ability to stay alive strictly on its own resourcefulness.

Now I feel that I must explain the reason that I said though presently successful. I am fearful about the future. We are not suffering from obsolescence. Our service has been satisfactory and well received. The only weakness it has is that it is based on an industry that is being allowed to die on account of:

(1) Inability to police its own house; and

(2) From the first reason, a growing weakness to defend itself against foreign competition.

The evidence of this is not hidden. It is here for everyone to see. Last year, alone, 40-odd American steamships were sold for scrap. There will be many more this year. There has been an accelerated pace in this regard.

The awareness of this danger is not new with me, nor is the need or the nature of the repair necessary to protect and defend what is left. The industry can no longer operate on its old archaic principles. The individualism that looked so good a generation ago has now turned inward and is feeding off itself. In other words, the industry is being cannibalized. An exception to this trend has been shown by a group known as the Great Lakes Ship Owners Association. This is shown by their determination and willingness to accept regulation and a reasonable position stated thusly, "That the bulk exemptions now included in the Transportation Act of 1940 must be removed." Their position is a very definite solution to the major problem but its value is defeated unless it is applied without prejudice to all.

In the operation of my own business it has not been my responsibility to distinguish between captive or independent lake transportation. My job is to do the best that I can do with what is available at the time that it is needed. This is done in the full understanding that with the destruction of the independent I shall be destroyed with them. Other industries on the lakes much greater in value and need to this Nation's economy in comparison to my own, will be severely handicapped and dislocated on account of this impending failure.

There should be no dispute over the freedom of a captive operator to own and operate vessels in the carriage of his own materials. There should be no dispute over his right to hire the vessel of an independent operator if his own capacity should become inadequate or for any other reason that he may have. By the same token he should not be allowed to abuse his privilege, due to his less responsible position as a secondary function but more as a convenience to his higher responsibilities, which is not in anyway, shape, or form, principally a lake transportation company. He does not even pretend to make available to anyone, who may have need for his services, that such services shall be procurable at any price. Neither does he deny that he may select that part of public transportation that may suit his own purpose.

Up to now my worries and frustrations have been on a purely domestic basis. A new factor has just entered the scene. There is now being built or contracted for in Canada four maximum-size lake freighters. A fifth is now being negotiated for and I understand that there may be a total of seven. The money for the four is being supplied, two each, by Canadian General Electric and Seagrams. They will be allowed to write off this investment at 33⅓-percent per year, which money will come from the investors' profits. This is permissible for 3 years. The construction appears as being for a well known and experienced deep sea vessel operator by the name of Papachrisdidos. At the end of 3 years, Mr. Papachrisdidos will have the option of buying these vessels at a price that shall be determined then. This is known in Canada as the Angel plan.

What disturbs me is why seven large vessels can be constructed in Canada for the purpose of engaging in the carriage of materials on the Great Lakes with no tangible business for them presently in sight. The impact of the possibility of this available capacity with almost no finacial burden almost exceeds my own imagination. Please believe me there exists now in Canada one of the great steamship companies of the world. That is Canada Steamship Lines. They are excellently managed, their fleet is modern, they are large, efficient, aggressive, and as a service organization, second to none.

For an American steamship company to construct an equivalent vessel in an American yard, it would cost approximately $8,500,000. That figure multiplied by seven is not a small sum of money.

It is my hope that what I have said will generate some awareness of our own sad position, I do not mean to appear as the person who has all answers, but do sincerely believe that we have first got to stop our own insensible selfishness. All Great Lakes American shipping is in great jeopardy. The principal danger is from non-American competition.

If American shipping needs a policeman to take their eyes off each other, that shall, I am sure, be your decision made fully in the light of the responsibility which is uniquely yours and over which I do not think any debate is necessary.

I am very thankful for the privilege and freedom that is part of my citizenship, to have been able to communicate my thoughts to you with no other consideration but that they are my sincere beliefs.

Senator SMATHERS. Without objection, we will put in the record a letter and statement of James D. Mann, managing director of the Private Truck Council of America, Inc.

(The documents referred to follow:)

PRIVATE TRUCK COUNCIL OF AMERICA, INC.,
Washington, D.C., April 25, 1962.

HON. GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee, Washington, D.C.

DEAR SENATOR SMATHERS Enclosed is the statement which I am submitting on behalf of the Private Truck Council of America, Inc., on S. 2560. In summary, the statement makes the following points:

1. *Uniform standards.*—There is a question under the revised language of the committee print as to the status of private truck operators who are subject to regulation by the Commission under the Transportation of Explosives Act, entirely independent of section 204 of the Interstate Commerce Act. We have suggested an amendment which we believe will remove any ambiguity in this respect.

Commissioner Murphy in his testimony yesterday stated that the Commission's report on S. 2560 dated April 23, 1962, recommended specific language for page 9, lines 8 through 11, to bring private carriers under the so-called "uniform standard" section of the bill and which would authorize the Commission to prescribe different standards for private carriers, as opposed to common and contract carriers.

We have not seen the Commission's recommended amendment and consequently have had no opportunity to study it. We would appreciate the committee's permission to submit our views in writing, at a later, but not too distant, date.

2. *Private suits for injunction.*—We believe that section 2 will result in a great increase in litigation against private truck operators in the form of numerous private suits by for-hire carriers for injunctions. Further, under the pesent act most questions of interpretation which are of general interest arise first in proceedings before the Commission and are decided first by the Commission or its examiners in the light of their "expertise" and the informed participation of intervenors such as the council and other associations.

We note that Commissioner Murphy yesterday stated that the Commission has misgivings as to section 2 and is unable, on balance, to recommend the enactment of section 2 of S. 2560.

S. 2560 could result in innumerable suits in district courts in which judges not knowledgeable in this special field would decide questions of widespread industry and public interest without those advantages of the present administrative process. The bill could thus result in an interpretative jungle in the field of regulatory government which Congress has so far regarded as requiring a specialized expert administrative agency and process.

3. *Civil forfeiture provisions.*—The proposed exaction of civil forfeitures for what might be innocent violations of section 203(c) is a severe penalty. The council believes that the criminal penalties and injunctions already provided in the act are adequate, and the addition of civil forfeitures would be unduly and unnecessarily harsh.

4. *Registration of haulers of exempt commodities.*—Although the purported intention of section 4 is to require registration of for-hire carriers of exempt commodities, under its ambiguous terms, a large private fleet operator who uses only one vehicle to haul exempt commodities would have to register all of his vehicles with the Commission. Further, he would have to notify the Commission every time he sold or purchased a new vehicle even though such vehicle was not used in the hauling of agricultural commodities.

We express no views on section 5 of the bill as it is not of interest to the council as such.

Careful consideration of the points we have raised will be gratefully appreciated.

Respectfully submitted.

JAMES D. MANN, *Managing Director.*

STATEMENT OF JAMES D. MANN, MANAGING DIRECTOR, PRIVATE TRUCK COUNCIL OF AMERICA, INC., WASHINGTON, D.C.

The Private Truck Council of America, Inc., 711 14th Street NW., Washington, D.C., is a national nonprofit organization of those who own and operate motor trucks as an incident to their principal businesses of manufacturing, farming, mining, wholesaling, retailing, and servicing. Council members are engaged in such diverse activities as processing and distribution of meat, carbonated beverages, bakery proucts, ice cream, milk, beer, petroleum, and groceries, and laundering and dry cleaning just to mention a few.

The purpose of the council is to preserve the inherent right of private truck operation.

WHAT IS A PRIVATE TRUCK OPERATION?

There is so much talk today about "private trucks," it is well to have an understanding of this term.

William H. Ott, general traffic manager, Kraft Foods, the first president of the council and subsequently president of the National Industrial Traffic League, a national organization of the Nation's principal shippers, has defined it well:

"Private truck operation is a tool—an appliance, which is fitted into the needs of the individual business concerned, rather than as is usually the case with for-hire carriage, being required to fit the business pattern into the needs of the for-hire carriers."

To elaborate more fully, "private" trucks are operated by industry and agriculture over the streets and highways as an integral part of all kinds of activity, farming, mining, lumbering, fishing, manufacturing and processing, distribution at wholesale and retail, and servicing. Such vehicles are operated as an incident to these other primary businesses, as part of the supply line or the assembly line, as a necessary element of the distribution of the resulting product, or as a tool in the performance of a particular service. In large part, they perform delivery services of a specialized character in locations, at times, and under conditions which customarily are not and cannot be duplicated by for-hire carriers of any class.

In short, the "private" truck operator is anyone who operates trucks in connection with, and as a bona fide incident to, a nontransportation enterprise in which he himself is engaged, in contrast with engaging in the business of transportation as such.

COUNCIL VIEWS ON ILLEGAL TRANSPORTATION

Let me say without equivocation that the Nation's private motortruck owners are not against the common carriers, be they rail or motor. Private motortruck owners are among the best customers the common carriers have, since the majority purchase far more transportation than they operate themselves.

However, the right to operate one's own trucks, as an incident to his primary business, to move his raw materials and distribute his own manufactured products, or to perform other operations incidental to his particular kind of business, is fundamental and must be preserved. We cannot emphasize this principle too strongly to your committee.

The private motortruck owner does not condone and/or advocate illegal for-hire truck transportation. On the contrary, since its founding in 1939, the Private Truck Council of America, Inc., has continuously and firmly opposed illegal for-hire truck transportation. To that end it has kept its members advised as to what is legal and illegal through its bulletin services and publications.

The legitimate private truckowner is concerned, however, over the smear tactics, whether intentional or not, which continuously link him in the same breath, with the "gray area" operator and the illegal for-hire operator.

S. 2560 (Committee Print No. 1)

(*a*) *Uniform Federal standards for State regulation.*—The committee print would omit from the amended section 202(b) of the act those references to so-called private carriers which were in the bill as originally introduced an confine the applicability of the amendment to "any motor carrier subject to regulation by the Interstate Commerce Commission (other than regulation solely pursuant to the provisions of sec. 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment) operating in interstate or foreign commerce within the borders of" a given State.

However, there is a quetsion under the revised language of the committee prints as to the status of private truck operators who transport explosives, because they are subject to regulation by the Commission under the so-called Transportation of Explosives Act (act of September 6, 1960 (Public Law 710, 86th Cong., 2d sess.), 18 U.S.C., ch. 39), entirely independently of section 204 of the Interstate Commerce Act.

The Private Truck Council recommends that the Committee Print No. 1 (p. 9, lines 6 to 11) be amended to read (suggested new language italicized) :
"any motor carrier subject to regulation by the Interstate Commerce Commission (other than regulation solely pursuant to the provisions of sec. 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment *or of the act of September 6, 1960 (Public Law 710, 86th Cong., 2d sess.), 18 U.S.C., ch. 39, relating to explosives and other dangerous articles, or of both such section and such act*)."

(*b*) *Private suits for injunctions.*—Section 2 of the bill as originally introduced would have amended section 222(b) of the Interstate Commerce Act to provide for private suits for injunctions against violation of any provision of part II of the act (the motor carrier part), except as to reasonableness of rates, fares, or charges and discriminatory character thereof, and including violation of the safety regulations.

The Committee Print No. 1, as well as No. 2, would confine this provision for private suits to "clear and patent" unlawful unauthorized operation as a common or contract carrier or broker, would expressly confine such suits to "injured"

petitioners, and would require copies of the petitions or applications to be served on the Commission.

Even though Committee Print No. 2 contains new language, beginning on line 25, page 11, and ending on line 4, page 12, reading: "Any application for relief shall be accompanied by a bond sufficient to protect the interest of the party or parties against whom any injunction or other process is issued should it later be proven unwarranted by the facts and circumstances," the council believes that section 2 would result in a great increase in litigation against private operators in the form of numerous private suits by for-hire carriers for injunctions, in which the courts would determine questions of distinction between private operation and for-hire carriage without benefit of prior proceedings or determinations by the Commission or participation by intervenors such as the council, except to the extent that the Commission or such organizations might be able to appear as friend of the court.

Under the present act most questions of interpretation which are of general interest arise first in proceedings before the Commission and are decided first by the Commission or its examiners, in the light of their "expertise" and the informed participation of intervenors such as the council and other associations, intimately familiar with this special field of regulation, which point out on behalf of broad groups of interested persons, the general implications of such questions, and which are freely granted leave to intervene because of their important contribution to sound development of the law. Judges, in turn, on appeal if any from Commission decisions, have the benefit of this prior process before a specialized agency, and the intervenors also are parties on appeal. Of considerable practical importance also is the fact that such proceedings are focused in Washington, so that it is relatively simple to learn of them in time, to keep track of them, and, if advisable, to participate in them. (It has been through this process, for example, that the "primary business test" was established, with participation by the council.) Even in the few instances where a case is presented directly and initially to a court, this is done by the Commission and presumably in accord with established Commission interpretation and policies.

In sharp contrast would be the situation under the amendment proposed in the bill, which could result in a multiplicity of private suits by innumerable for-hire carriers in district courts throughout the United States in which judges not knowledgeable in this special field would decide questions of widespread industry and public interest without those advantages of the present administrative process, and in which associations such as the council could not participate, unless to the limited extent of amicus curiae, a privilege seldom granted, even if they learned of them in time and had sufficient funds and available qualified personnel for necessary legal services and travel and other expense. The bill could thus result in an interpretative jungle, in a field of regulatory government which Congress has so far regarded as requiring a specialized expert administrative agency and process.

The addition of the requirement in the committee prints that copies of applications for relief in the district courts be served upon the Commission is an improvement, in that word of such suits would be available somewhat sooner in Washington, but our objections otherwise still apply.

(c) *Civil forfeiture provisions.*—Section 3 of the bill as originally introduced would have extended the civil forfeiture provision to violations of the safety regulations, as well as unauthorized and unlawful operations, and in addition to doubling the amounts of forfeiture. The committee print would confine the extension of the forfeiture provision to violations of section 203(c), by amending the present section 222(h) of the act.

Section 203(c) of the Interstate Commerce Act provides:

"(c) Except as provided in section 202(c), section 203(b), in the exception in section 203(a)(14), and in the second proviso in section 206(a)(1), no person shall engage in any for-hire transportation business by motor vehicle, in interstate or foreign commerce, on any public highway or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such person a certificate or a permit issued by the Commission authorizing such transportation, nor shall any person engaged in any other business enterprise transport property by motor vehicle in interstate or foreign commerce for business purposes unless such transportation it within the scope, and in furtherance, of a primary business enterprise (other than transportation) of such person."

The proposed exaction of civil forfeitures for what might be innocent violations of section 203(c) is a severe penalty. The council believes that the criminal penalties and injunctions already provided in the act are adequate, and the addition of civil forfeitures would be unduly and unnecessarily harsh.

(*d*) *Registration of for-hire carriers of exempt livestock, fish, and agricultural commodities.*—Purportedly the purpose of section 4 is to require exempt haulers of agricultural commodities to register with the Interstate Commerce Commission. The language of the section is ambiguous and indefinite. For example, if a large private truck fleet operator uses only one truck in his fleet to haul exempt commodities under section 203(b)(6) of the act, under the terms of section 4 he would have to register all of his vehicles with the ICC even though they never hauled exempt commodities.

Committee Print No. 2 contains a new sentence (p. 14, lines 6–8) stating "in the event the carrier shall cease to operate, or at the time any vehicle is acquired or disposed of, the carrier shall similarly notify the Commission." Similarly, here a private fleet operator who only uses one vehicle in his fleet to transport exempt agricultural commodities would have to notify the Commission every time he purchases a new vehicle or disposes of an old one regardless of whether the vehicle was used in the hauling of exempt commodities.

Commissioner Murphy has stated that he could not see how any one could be opposed to filing a simple statement which would assist him in conducting a safe operation.

Based on past experience with Government forms, there is no assurance that the statement would be a simple one as this section authorizes the Commission to prescribe the form and manner of the statement. Even though the section states that the statement shall show: "(1) The name of the carrier, (2) the location of principal address of the carrier, and (3) the number of such vehicles hauled or operated" there is nothing in section 4 that would restrict the form solely to these three items.

Further, section 4 can only result in the multiplication of vast correspondence, based upon the forms received, which will be costly, and with no resulting safety accomplishments. We agree with Mr. Durward Seals, traffic manager of the United Fresh Fruit & Vegetable Association and Mr. L. James Harmanson, Jr., general counsel of the National Council of Farmer Cooperatives that surely there is a simpler and less frustrating way in accomplishing the aims sought by the Commission.

Because of its ambiguity, and burdensome effects, both in time and money upon private fleet owners the council is opposed to section 4 of both Committee Print No. 1 and Committee Print No. 2.

When I appeared before this subcommittee on behalf of the Private Truck Council of America on March 21, 1957, on S. 1490, I stated—and I might add that these are still the views of the council:

"Despite the unfortunate statutory term 'private carrier,' the businesses in question are not a so-called regulated industry, like the for-hire transportation industry, or the radio broadcasting industry, or the banking industry, etc., but rather are all kinds of American businesses. There is no more reason for them to be registered and served with copies of the ICC Motor Carrier Safety Regulations than there is for them to be registered by the Department of Labor and served with copies of the Fair Labor Standards Act and regulations, by the National Labor Relations Board and served with copies of the National Labor Relations Act and regulations, by the Department of Health, Education, and Welfare, and served with copies of the Food, Drug, and Cosmetic Act and regulations, or by any or every other Federal Government agency having regulatory functions.

"Rather, the policy established by Congress is to give notice of Federal regulations to business in general through the Federal Register.

"If most American businesses; i.e., businesses operating one or more trucks, are to be required to register with the Federal Government for purposes of being served with copies of regulations, we would have taken a long step in the direction of ultimate regimentation. * * * The receiving and compiling of registrations and any other purposes for which the Interstate Commerce Commission would use this data would increase administrative costs. The end result would be an additional and useless tax burden to those concerned.

"From the standpoint of American business, completing the initial registration list and keeping it up to date, would mean additional administrative and clerical work for private truck operators and we know of no benefits which would accrue by virtue of such registration."

The council also is of the opinion that registration would inevitably inspire demands for further regulatory powers. We oppose any such requirement for Federal registration.

COMMON CARRIER—SUGGESTED AMENDMENTS

Although witnesses at the hearings before this subcommittee on February 7, 8, 1962, were requested to confine their comments to Committee Print No. 1 of S. 2560, spokesmen for rail and motor common carriers urged additional amendments to the bill.

Since these amendments are not in the announced scope of these hearings, we are expressing no views on them at this time. However, if the committee intends to consider the common carrier sponsored amendments which are not in either Committee Print No. 1 or Committee Print No. 2, the council recommends that additional and separate public hearings be held.

CONCLUSION

As the only national organization solely representing private truck operators, we express the hope that the committee in its efforts to attack various problems of the common carrier industry will not set the stage for attacks on private truck operators or curtail in any way their inherent right to operate as incidents of their primary business. Yet we fear that unless the committee recognizes the validity of our foregoing criticisms and adjusts the bill accordingly, such result could unfortunately occur to the great detriment of our national economy and many businesses throughout the country.

Senator SMATHERS. The meeting will stand in recess until further call of the Chair.

(Whereupon, at 3:45 p.m., the subcommittee was recessed subject to the call of the Chair.)

(The following statements were subsequently submitted for the record:)

STATEMENT OF FRED W. BURROWS, EXECUTIVE VICE PRESIDENT, INTERNATIONAL APPLE ASSOCIATION, INC., WASHINGTON, D.C.

Mr. Chairman and members of the subcommittee, my name is Fred W. Burrows. I am executive vice persident of International Apple Association, Inc., an association of approximately 1,400 members interested in the production and distribution of fruit.

International Apple Association availed itself of the opportunity to participate in a prehearing conference on S. 2560, following which some of the objectionable features were removed as evidenced by Committee Prints Nos. 1 and 2 of this bill.

We are, however, concerned that section 4 in Committee Print No. 1 carries an amendment to section 226 of the Interstate Commerce Act requiring motor carriers operating vehicles of three or more axles under the provisions of section 203(b)(6) "upon commencing operations and on or before September 1 of each year, thereafter file" with the Interstate Commerce Commission a statement giving name of carrier, location or principal address of carrier, and number of vehicles owned or operated. Committee Print No. 2 makes mandatory the filing of such statement with the Commission "before commencing operations" and extends coverage to "motor carriers operating trucks or other vehicles of three or more axles," as well as inserting a provision that carrier shall notify the Commission if it ceases to operate, or acquires or disposes of a vehicle.

According to the language contained in the proposed section 226(a), registration of trucks operating under the section 203(b)(6) exemption is for the purpose of insuring that such carriers "have adequate knowledge of the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment * * *."

The annual registration of these carriers with ICC as contained in Committee Print No. 1 as well as the necessity for reporting to ICC on new vehicles acquired and those discarded and also retirement from business as contained in Committee Print No. 2 seem to bear little relation to informing exempt truckers of the safety regulations. Instead it has every appearance of a foot in the door toward economic regulation of truckers hauling agricultural and horticultural com-

modities, which were declared exempt by Congress in the Motor Carrier Act as originally enacted and subsequently amended. To this we most vigorously object.

We respectfully direct the attention of the members of this committee to section 226 of the Interstate Commerce Act, which not only authorizes the Commission to investigate and report on the need for what is tantamount to and eventually became the safety regulations, but also directs the Commission to avail itself "of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter." Surely the Congress did not intend to preclude dissemination of information when it directed the Commission to avail itself of the assistance of all departments or bureaus of the Government.

It has at hand the facilities of the Treasury Department, which has on file in its Internal Revenue Service the Federal use tax return on highway motor vehicles. A copy of this form, if directed to be filed with the Interstate Commerce Commission, could furnish the information necessary to enable that body to supply copies of its safety regulations to all truckers operating in interstate and foreign commerce. This would obviate the necessity for truckers to fill out another form and the ICC to organize another system of record keeping with its attendant increase in personnel and multiplication of cost to the taxpayers of this country.

There is also the possibility of supplying motortruck carriers with copies of ICC's safety regulations when they register their vehicles in States where domiciled. Since there has been such hue and cry of "gray area" operation, the State regulatory bodies would hardly object to dissemination of information to their truck registrants which would keep them apprised as to safety of vehicle operation.

In addition to the above-cited means available for placing ICC's safety regulations in the hands of every interstate truck operator, information has been and is being disseminated to exempt haulers through trade associations and truck brokers by distribution of pamphlets carrying these regulations. Through such means, many more exempt haulers have undoubtedly been reached than ICC Chairman Rupert L. Murphy indicated at page 14 of his statement presented to your honorable committee on April 24.

We respectfully urge further consideration be given to other means for informing truck operators as to ICC's safety regulations than the mandatory registration carried in section 4 of S. 2560.

We also wish to voice our objection to section 3 of S. 2560 (Committee Print No. 2), in that a carrier coming within the registration provision of section 4 of this bill could be subjected to a $200 fine for failure to notify the Commission that a new vehicle had been purchased or an old one disposed of, and a continuing fine of up to $100 per day for each day the Commission remained unnotified. If enforced, this could mean a very real monetary burden on those to whom the Commission seeks only to disseminate information as to its safety regulations.

STATEMENT OF PAUL CLARKE, ASSISTANT PRESIDENT, NORTH AMERICAN VAN LINES, INC., FORT WAYNE, IND.

I am assistant president of North American Van Lines, Inc., and have been employed as such since 1953. Earlier I practiced law in Cleveland, Ohio, and represented North American since 1940. For several years I have been quite active in household goods industry affairs. This activity includes a board membership in Household Goods Carriers' Bureau, Inc., which is the ratemaking and tariff-publishing organization utilized by most of our industry. I also serve on various industry committees.

North American Van Lines, Inc., is one of four certificated household goods carriers that have authority to transport shipments over irregular routes between all points in the United States. It is third in size, has about 900 agents located in almost an equal number of communities, and is extensively engaged in shipping household goods for the Department of Defense between points in the United States and points abroad, particularly Europe. North American uses both prevailing modes of transportation. One is van-sea-van, which includes loading household goods from residence at origin into a van, transporting these goods by van to a port, loading the goods from the van into a steel container, shipping the steel container via water to a port outside the United States, and then un-

loading from the steel container into a van for delivery to residence or sending the steel container by other means of transportation direct to residence at destination, where it is unloaded. The other mode is call through container. It consists of loading the steel container or a wooden box at origin residence, shipping it via sundry means of transportation direct to the residence destination outside the United States, and unloading it.

This statement is intended to strongly support the method of regulating freight forwarders of household goods proposed in Committee Print No. 1 of S. 2560.

It hardly seems necessary to burden this committee with arguments and comment justifying regulation of forwarders. Van carriers of household goods, like North American and some 4,000 other interstate household goods carriers of varying size, are strictly regulated; forwarders of commodities other than household goods, with minor exceptions, are regulated; and no justification in law, equity, or economics, supports nonregulation of forwarders. Historically these forwarders were only exempted because, as has been pointed out previously by the American Trucking Associations, Inc., and was earlier stated by the House Interstate and Foreign Commerce Committee in its Report No. 1172 (77th Cong., 1st sess.):

"The exemption of forwarding confined exclusively to 'used household goods' was included because used household goods is customarily handled by motor carriers, and the regulation provided under part II was deemed to be all that was necessary at this time. Forwarding operations with respect to used household goods, when performed by forwarders engaged also in forwarding operations with respect to other commodities, will, of course, be regulated under part IV."

Conditions have changed drastically in the last 3 years. The unregulated forwarders are deeply into the transportation of oversea household goods for the Department of Defense and now handle about 50 percent of the total volume. This development, which has created problems of serious import for regulated carriers of household goods, came about because the military decided to make greater utilization of the through container mode. This method involves very little investment. About 50 unregulated forwarders are vigorously competing with the regulated carriers for this business.

Domestically, unregulated forwarders have yet made no serious inroads because door-to-door container service cannot compete on a cost basis with door-to-door van service. However, when a cheap, disposable, or reusable collapsible container is developed, as it will be shortly, these unregulated forwarders will become very competitive in the domestic market, too, especially between high-volume points.

Transportation was regulated to preserve and further shipper interest, and is especially needed in household goods hauling because it involves so much direct shipper participation. Household goods shippers own their shipments; they are amateur shippers, and most of them are women. Pure transportation is only about 60 percent of a household goods move. The remainder is highly specialized, personalized service, and the quality of this service is decisive of shipper satisfaction. Obviously, it becomes more difficult to satisfy a household goods shipper. The Interstate Commerce Commission recognized this problem, and partially solved it by extensive and specific regulation of household goods carriers.

Rules were promulgated by the Commission many years ago for our industry. These rules have been modified over the years, and are in process of further official scrutiny now. Regulated carriers must accurately estimate the weight and size in cubic feet of each shipment, and how much the total move will cost. The Commission has specified in detail how weight is estimated and constantly prods us toward greater accuracy.

Charges for a household goods move, which include pure transportation and other services such as preliminary packing of fragile items in cartons, supplying wardrobes for clothing, careful and time-consuming loading, unloading and unpacking, are based upon rates set forth in tariffs filed with the Commission, and regulated household goods carriers must charge the amounts specified in these tariffs. The transportation charge is based on weight times distance of the move, and weights, per a rule of the Commission, can only be obtained on certified scales. The van, with all inside equipment aboard, is weighed before and after loading. These two weights are automatically printed by the scales on weight tickets, and the difference is what the shipment weighs.

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Distance, which is the second factor in determining pure transportation charges, is specified in an official mileage guide filed with the Commission which shows mileages between all points. These mileages must be adhered to in computing rates.

Household goods carriers can lawfully limit their liability for loss or damage to 30 cents per pound, or assume greater liability for an additional charge. They may also make cargo insurance available to shippers. These activities are strictly regulated by the Commission and carriers must furnish a lengthy information sheet to shippers that details the rights, obligations, and privileges of both carriers and shippers.

The Interstate Commerce Commission, chiefly through its Bureau of Motor Carriers, is constantly striving to get better compliance by the regulated household goods carriers with the prescribed rules and practices. It uses civil and criminal proceedings, plus suspension or revocation of operating authority in extreme situations. However, even all these powers are not wholly adequate.

Forwarders of household goods are completely free of any regulation, or even supervision, though their shippers need, and are entitled to, the same protection. Forwarders may charge any rates suitable to their purposes, and actually do on an individual shipment basis. No standards are set for them, nor are they policed in any way. They can disavow responsibility for loss and damage, and operate solely to extract the maximum profit from each shipment. They can accept lucrative shipments and completely disregard the transportation needs of shippers whose tonnage is unprofitable; stay in business only so long as high profit tonnage is available, and then discontinue operations until another high profit opoprtunity occurs, because very little capital and facilities are needed.

A regulated household goods carrier must serve all shippers in its certificated territory. Proper service requires adequate facilities. These include terminals, vehicles, communications systems, and so forth; trained employees; programs such as advertising and quality control that are designed to attract shippers and improve performance. Financial responsibility and adequacy is vital. None of these are possessed, or needed, by an unregulated freight forwarder. A desk, telephone, and a person to use them are enough, and many forwarders have little more. Yet these forwarders are in and out of business as profit dictates, competing vigorously for good tonnage and ignoring bad.

It is not really relevant that unregulated forwarders use certificated, financially sound, responsible carriers. This responsibility does not extend to shippers who entrust their household goods to an unregulated forwarder. Nor does the use of certificated carriers make the consequences of unlimited, unregulated competition more bearable by regulated carriers of household goods. "Convenience and necessity" was made law so that regulated carriers can plan on a reasonably determinable volume of available tonnage, and operate accordingly. The household goods industry will not have this protection until forwarders are regulated.

The peculiarities and complexities of household goods moving make its proper regulation difficult, even by a Commission armed with adequate powers. Conversely, the complete absence of regulation which permits forwarders to operate solely in their "best interest" is not in "shipper interest," especially considering the personalized nature of household goods moving.

So far as I can determine, the only opposition to regulation of household goods freight forwarders is by these forwarders. Regulated freight forwarders favor regulation of the unregulated. American trucking associations support regulation. The moving industry unanimously endorses regulation. The Department of Defense supports regulation, as do shippers of household goods. Only the unregulated are opposed, and their opposition is completely devoid of logic or shipper welfare.

Undoubtedly this committee has been told that the unregulated forwarders of household goods are soundly and adequately financed. This isn't true, and the very few which have sufficient backing are subsidiaries of stable enterprises engaged in other ventures.

You will be told that forwarders have not gouged the public; that they adhere to performance standards, and charge uniform rates. This is true, but only because the sole customer of these forwarders is the Department of Defense. Because of vast buying power, it can set and maintain levels of service, and impose other requirements.

This actually amounts to regulation of sorts. However, no civilian shipper can do this, so the performance of forwarders for the Department of Defense is completely devoid of significance as to whether regulation is necessary for the protection of civilian shippers. As stated earlier, the unregulated for-

warders are even now moving household goods between most high volume areas. When certain technical problems are solved, which may occur shortly, their competition for civilian tonnage will become intense, and it is growing daily.

You will be told that use of unregulated forwarders by the Department of Defense is proof of reliability, stature, utility, and so forth. This isn't true. Department of Defense, as do all governmental agencies which are not buying highly specialized and rare skills, divides its business equally among all which offer service at the same price, provided minimum standards are met. This is why unregulated freight forwarders are used.

You will be told that freight forwarders use regulated carriers. This is true, and these carriers are general commodity truckers, and railroads. However, with minor exceptions, certificated carriers are not used to perform the highly personalized origin and destination services, which are so important to a good household move and shipper satisfaction. Even if these services are furnished by local movers, performance standards of the principal are reflected by its agent, the local mover. Without standards, the agent is likely to do an inferior job. Since forwarders have only such minimum standards as the Department of Defense imposes, and no standards at all for civilian shipments, these important origin and destination services may be slovenly and haphazardly performed, with resultant adverse effects on shippers.

You may be told that regulation of freight forwarders will divert business from rails and general commodity truckers. This is not true. It isn't practical to use vans for container transportation. Containers are an integral part of the door-to-door method, which is much used by the Department of Defense, and only rails and truckers are equipped to haul these containers.

You will be told that regulation of forwarders will, in some fashion not made clear, hurt local movers, and prevent them from doing something which is historically part of local moving. This isn't true. Packing and crating shipments for rail and general commodity transportation is exempt if these activities are limited to terminal areas. If a local mover is freight forwarding, it can continue under the liberal "grandfather proviso" in print 1. Most local movers never did actually function as freight forwarders. The very few which might wish to do so in the future should be required to prove shipper "convenience and necessity." No good reason exists for exempting prospective forwarders of household goods from this requirement which is imposed on all other forms of transportation.

You will be told that some household goods carriers are also forwarders. This is true for two reasons. First, up to now, numerous forwarders have been set up under different names by a single owner or management. Second, under Department of Defense's policy of rigidly rotating military shipments among all entities submitting service tenders, this single ownership or management received a disproportionately low number of shipments. To combat this situation, some household goods carriers did establish freight forwarding entities and are getting additional shipments. Now, however, the Department of Defense gives evidence of disapproving common ownership and management of multiple entities. If this happens, household goods carriers will discontinue forwarder operations.

I also wish to emphatically support the "grandfather proviso" in print 1. Print 2 will, I fear, actually defeat the very regulation it seeks to accomplish. Print 2 will permit anybody to become a certificated freight forwarder of household goods upon a mere showing of being "fit, willing, and able." Certainly, the ICC can't be expected to adopt and enforce stringent requirements of "fitness" and "ability," considering how wide the entrance gates are opened by print 2.

The accomplishments of trade associations are many. One is keeping members currently informed about important happenings. This means that every movers and warehousemen's association will hastily inform its membership, which collectively includes almost every local mover in the United States, that a freight forwarder permit can be obtained and retained, for only $50 a year.

Most of these local movers will get and keep a permit, if only for status symbol purposes, because being "certificated by the ICC" does give the permitholder certain prestige.

Even though this newly created permitholder has no intention of forwarding household goods, at least in the immediate future, possession of appropriate authority will be a heady stimulant. A natural consequence is sporadic, inexperienced, uninformed utilization which, though well intended, will certainly not

serve shipper interest and be illegal, in all probability, because forwarding entails making and breaking bulk instead of sending along a single shipment.

Obviously, proper regulation of an ignorant, though well intended occasional forwarder is difficult. If multiplied by the vast number of forwarders that print 2 will create, the regulatory problem becomes insurmountable, and print 2 thereby defeats its main objective.

I am certain that the Interstate Commerce Commission, which was unaware of print 2, apparently, when Commissioner Murphy testified, is opposed to print 2. At best, it will produce shoddy service, foster misunderstanding between shipper and forwarder, and confront regulated carriers of household goods with unlimited and uncontrolled competition.

Print 1 accords and is consistent with the previously expressed intent of Congress. It incorporates the time tested principles and practices on which our transportation system is based. It protects existing forwarders with a generous "grandfather proviso" and, in conjunction with other provisions of the Interstate Commerce Act, safeguards the interests of these forwarders, carriers, and most of all, shippers. Print 1 does not impede proper regulation of forwarders. Instead, it fosters regulation, and regulation is badly needed.

Statement of Robert J. Corber, Counsel for the National Association of Motor Bus Owners

My name is Robert J. Corber. I am a partner in the law firm of Steptoe and Johnson, 1100 Shoreham Building, Washington, D.C., which is general counsel for the National Association of Motor Bus Owners. My appearance today is as counsel for NAMBO.

NAMBO is the national trade association for the intercity motor bus industry. It represents approximately 1,000 carriers accounting for three-fourths of intercity motor bus transportation. Its members engage in the transportation by bus of passengers and small package express.

NAMBO fully supports the first section of S. 2560. It believes the enforcement sections of the bill are unduly severe as they apply to safety regulations.

UNIFORM STATE FILING REQUIREMENTS

The first section of the bill would empower the Interstate Commerce Commission to promulgate uniform standards for States to observe in requiring interstate operators to make filings on (1) operating authority; (2) identification of vehicles; (3) insurance coverage or self-insurance qualifications; or (4) other securities or agreements. The need for uniform State laws on these subjects has long been manifest. The lack of uniformity among relevant State laws impedes interstate operators and creates unnecessary financial and administrative burdens.

A matter of particular concern and burden to interstate operators has been divergent insurance requirements among the several States. Pursuant to section 215 of the Interstate Commerce Act (49 USCA, sec. 315) the Commission issues regulations governing personal injury and property damage insurance which must be maintained by carriers engaged in interstate commerce subject to its jurisdiction. The minimum insurance coverage required is $25,000 for bodily injuries or death of one person and $10,000 for damage to property.[1] In addition, minimum limits for bodily injuries or death in any one accident are $100,000 for buses seating seven or less, $150,000 for buses seating 12 or less, $200,000 for buses seating 20 or less, $250,000 for buses seating 30 or less, and $300,000 for buses seating 31 or more passengers.[2]

The Commission's regulations allow carriers meeting certain rigid requirements to qualify as self-insurers. Each self-insurer must satisfy the Commission of its ability "to satisfy its obligations for bodily injury liability, property damage liability, or cargo liability without affecting the stability or permanency of the business of such motor carrier." [3]

A tentative survey by NAMBO indicates that only two States expressly accept ICC compliance on insurance as fully adequate under their laws. Eight States and the District of Columbia impose no requirements on interstate carriers. Only

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[1] 49 Code of Federal Regulations (CFR), sec. 174.2(a).
[2] Ibid.
[3] 49 CFR, sec. 174.5.

seven States exempt self-insured carriers approved by the Interstate Commerce Commission. Our survey indicates 37 States impose insurance requirements independently of the ICC.

These divergent State requirements are particularly burdensome when applied to interstate charters. Any certificated motor bus carrier is authorized to engage in the transportation of special or chartered parties under section 208(c) of the act (49 USCA, sec. 308(c)) to any place in the United States. This business is important to intercity buses, accounting for nearly 8 percent of total industry revenues each year. But it involves multistate operations which can be seriously burdened by different State laws. A single special or chartered party frequently requires operation in several States outside the regular route territory of the carrier. Thus, the operations of charters traverses States not regularly or continuously served. Under these circumstances, compliance with special State laws in addition to Commission requirements creates financial and administrative waste which reduce needed charter revenues. In many instances, special insurance policies or substantial deposits up to $50,000 may be required even though the carrier operated only a few charters each year into the States imposing these extra requirements. It has been reported to NAMBO that on a number of occasions charter trips have been interrupted and delayed while carriers satisfy State filing prescriptions.

These burdensome State procedures cannot be rationalized by any theory of safety. The Commission standards have proved in many years of operation to be more than adequate to meet safety considerations.

Insurance standards are examples of problems with other State requirements. When State prescriptions are not uniform and refuse to accept ICC standards, they create unnecessary burdens on interstate carriers to the detriment of a sound transportation system.

In view of the burdens incurred by interstate operators in meeting State filing requirements, it is the position of NAMBO that the best solution would be to make ICC standards exclusive so that no interstate operator qualified under ICC requirements would be compelled to comply with State filing prescriptions. However, the association is of the opinion that the uniformity required by S. 2560 would be an improvement and a step in the right direction. Accordingly, it supports the first section of this bill.

ENFORCEMENT PROVISIONS

The forfeitures prescribed by section 3 of the bill for failures or refusals to preserve, keep and file certain records and for failure or refusals to comply with safety regulations, appear to NAMBO to be underly severe insofar as safety regulations are concerned. Intercity bus operators have an extraordinarily good safety record and it is being improved each year. Passenger deaths in bus accidents have averaged 0.25 or less per 100 million passenger-miles each year since 1947. All deaths connected with bus operations have been less than 1.2 per 100 million passenger-miles each year since 1949 and the rate has been declining in most years. The passenger fatality rate for buses is currently about one-twentieth of that for automobiles, and is equal to or less than the rates for railroads and airlines.

The record of bus operator compliance with Commission safety regulations is high—higher than other regulated carriers.[4] In the light of bus carrier safety achievements there is no need for further enforcement powers for the Commission. On the other hand, there is danger that further enforcement measures would unduly burden complying carriers in areas of the safety regulations which are not entirely clear in their meaning and application.

Inadvertent and minor violations of the safety regulations could occur without intention of knowledge of the carriers. The meaning of "on duty" time logged by drivers under the Commission's regulations is not always clear. The requirement in the Commission's regulations that all accidents be reported raises difficult questions in connection with such minor passenger incidents as jamming a finger in a window, tripping over a piece of luggage, and so forth. Exposing the carrier to forfeitures of $200, plus $100 for continuing violations in areas of uncertainty such as these could be grossly unfair and unnecessary for safety.

[4] See ICC docket No. MC–40, sub. 1, Safety Regulations.

CONCLUSION

For the reasons stated, NAMBO urges your committee to report favorably the first section of the bill. We believe the forfeitures provisions of the third section of the bill are unwise, in regard to safety regulations of the Commission.

STATEMENT OF SAMUEL W. EARNSHAW, ATTORNEY AND TRANSPORTATION COUNSEL, WASHINGTON, D.C., ON BEHALF OF MEMBERS OF NEW ENGLAND NONPROFIT SHIPPING COOPERATIVES

This statement is submitted on behalf of the members of New England nonprofit shipping cooperatives, who presently ship and receive less-than-volume freight moving between New England and other parts of the country, principally but not exclusively in piggyback service:

Charter Oak Shippers Cooperative Association, Inc., West Hartford, Waterbury, and Milford, Conn.
Progressive Shippers Cooperative Association, Shrewsbury, Mass.
Modern Shippers Co-op., Inc., Allston, Mass.
Manufacturers Shippers Association, Boston, Mass.

Many of the freight movements involved are new movements for New England, and have been made possible only by the special advantages and benefits provided by this method of shipping, namely, the nonprofit cooperative group method.

Some of these advantages are:

Efficient intercity service to and from market and supply points, including both availability of departures and time in transit.

Very substantial savings in freight costs and expenses.

Flexibility of schedules and service.

Complete and continuing control by shippers or consigners (as the case may be) over the entire movement from origin to destination.

Stability and reliability, by regular and consistent use of ICC-regulated common carriers.

Summarizing these advantages, they add up to the fact that, despite sizable increases in labor-based costs, rates, and changes since World War II, especially those affecting less-than-volume or small-shipment traffic, commerce and industry have found this way to use regulated common carriage economically and efficiently in preservation and development of their distant markets and sources.

The parties to this statement strongly feel that S. 2560 as now worded carries within it seeds of prejudice and injury to bona fide group shipping which could well destroy the usefulness of this method of freight transportation, essential as it is to the effective operation of the Industries we represent. Specifically, the objections of these groups to section 5 of S. 2560 are the following:

1. The transportation principle sought to be protected is the fundamental and long-established right of users of transportation to combine their shipments in order to obtain the advantages and economies of volume rates and service by regulated common carriers. This is a basic principle of transportation, beneficial to both carriers and shippers, which encourages and facilitates the geographical distribution of labor around the country in the national interest. (Under this principle, shipper A and shipper B, be they neighbors, fellow members of the same industry, or otherwise have some affinity of interest enabling them to ship between the same points, can efficiently and economically so combine their less-than-volume shipments or traffic as to make up carload, truckload, or other volume shipments, and thus profit by the clear-cut advantages thereof in the promotion of commerce and in the public interest.)

2. Creating a right to seek injunction or similar judicial relief in the individual party or carrier in the manner proposed by sections 2 and 5 of S. 2560 would infringe upon and conflict with the reasonable and proper application of this collective shipping principle, and would jeopardize member industries' ability to remain competitive, as they have been able to do since the group shipping method has been used in New England.

3. Vesting the power and the right in the individual or private party to enforce the Interstate Commerce Act as proposed is inconsistent with the power and the practice of the Interstate Commerce Commission in the same field, and with its expert technical knowledge and approach to handle such

complicated technical problems as are necessarily involved, as long recognized by the courts in the primary jurisdiction doctrine.

4. The creation of the extraordinary remedy of injunction by a private party to enforce a public right would create opportunity for harassment and other abuses of perfectly legitimate shipping cooperatives; it would afford opponents a forum from which to drum up and spread adverse publicity against member industries, regardless of merits, and would otherwise lend itself to unfair or destructive use by vested common carrier groups against perfectly legitimate operations.

5. Sections 2 and 5 of the bill would largely transfer enforcement functions from the administrative, an arm of the Congress, to the judicial, and would ultimately slow up, not expedite, procedures by overloading the district courts with a whole new flood of technical, complicated enforcement cases, predominantly factual in nature, and burdensome to all.

6. The bill would confine some injunction suits, but not all, to "clear and patent" violations, indicating a sound and desirable intention to keep the scope of such private injunctions narrow. However, the application of this language is not clear and the court precedents interpreting it not sufficiently comprehensive, to afford legitimate cooperative shipping groups necessary minimum protection. (Adverse parties could still bring multiple suits, in harassment of associations, even though clear violations were not established in every case.) Similarly, these industries strongly feel that the proposed bonding provision for section 222(b)(2) on part II injunctions, and section 417(b)(1) for part IV (which might include alleged shipper association violations), but not proposed for clear and patent section 410 violations (the forwarder permit section), are entirely inadequate to afford any reasonable protection to legitimate operations from either harassment or unfair complaint.

It is elementary, for example, that an injunction will only be granted to a private party for "irreparable injury" to it, yet in this case the potential damage to the defendant or defendants engaged in group shipping cannot possibly be measured in dollars, since the injunction itself would work irreparable injury to such defendants, and a specific amount "sufficient to protect the interests of the party or parties against whom any injunction or other process is issued" simply cannot be reasonably determined in advance.

Finally, the undersigned join with other public interests which have appeared before the subcommittee, the National Industrial Traffic League, National Conference of Nonprofit Shipping Associations, and others, opposing any broadening of S. 2560 to include the highly controversial matter of association registration, exemption and certificate-revocation procedures. These matters, closely related to administrative investigations still pending before the Interstate Commerce Commission, are too important and too far reaching to deal with without far more extensive and comprehensive hearings than have been possible under the time and procedural limitations governing the present bill.

The undersigned industries, interested in protection and preservation of sound nonprofit shipping principles and practices in the public interest, respectfully request the Congress to give due consideration to this statement of position and to the facts above set forth, in its further consideration and legislative handling of Senate bill S. 2560.

Respectfully submitted.

The Members of Charter Oak Shippers Cooperative Association, Inc., West Hartford, Waterbury, and Milford, Conn.— Elliott Brauch, President; Felix Szumiaski, Vice President; James B. Griffin, Treasurer; Harold S. Wright, Secretary.

The Members of Progressive Shippers Cooperative Association, Shrewsbury, Mass.—Louis G. Buratti, President; C. J. Lucey, Jr., Treasurer; Oswald T. Fagan, Clerk.

The Members of Modern Shippers Co-op., Inc., Allston, Mass.—John A. Buckley, President and Clerk; Herbert Tatelman, Vice President; Harold Rubenstein, Treasurer.

The Members of Manufacturers Shippers Association, Boston, Mass.— Kenneth Fraser, President, Lexington, Mass.

STATEMENT OF JOHN PAUL JONES, ATTORNEY, MEMPHIS, TENN.

I am an attorney with offices at 189 Jefferson Avenue, Memphis, Tenn.; a member of the bar of the U.S. Supreme Court, the Interstate Commerce Commission, and the Supreme Court of Tennessee.

As a practicing lawyer, representing for-hire motor carriers and private carriers, the serious gray area problem of illegal transportation reveals itself significantly to me. The statements herein are my own and not those of any other person or group of persons.

Section 2 of S. 2560, as originally drafted when the bill was introduced on September 15, 1961, would, in my opinion, be the most effective weapon for action now to alleviate the siphoning of common carriage revenue by illegal transportation.

The Interstate Commerce Commission apparently is opposed to enactment of section 2. Its chairman, Rupert L. Murphy, testified concerning section 2 before this subcommittee the week of April 23 as follows, according to the April 30 issue of Transport Topics, page 12:

"Another objection to the provision is that a carrier, if its revenues are adversely affected, may be greatly tempted to institute a civil action 'even though premature or inadequately prepared.'

"An unsatisfactorily supported civil action resulting in a refusal to grant an injunction or a finding by the court that the defendant's acts are not unlawful, would make substantially more difficult the presentation of a case by the Commission at a subsequent date attacking the same or similar acts. * * *"

Chairman Murphy, according to the April 21 issue of Traffic World, page 17, stated on April 18 to a Workshop Conference of the Committee Against Unlawful Transportation in Washington:

"We have about reached the peak of our ability to investigate and process enforcement cases against those who engage in unlawful transportation.

"ALL WE ARE ABLE TO DO

"With the staff available to us, we are doing about all that we are able to do. The extent to which our overall enforcement efforts will reduce unlawful transportation remains to be seen.

"This Commission has always been ready to concede that its direct enforcement efforts will never be sufficient, standing alone, to cope effectively with the widespread problem of unlawful trucking. We simply do not have the staff to keep track of the thousands of individual operators moving into and out of the gray area. Aside from these staff limitations, we have pointed out on many occasions that a Federal regulatory agency such as this Commission is not designed or equipped to discover and prosecute single-vehicle violations. First, there would be the problem of public acceptance of anything approaching a Federal police force, but even if that were not in the picture there would be need for the establishment of a network of U.S. commissioners along all of our major highways in order to provide an effective and convenient means for prosecution of these violators.

"Obviously, such a Federal system would be an unnecessary duplication of the State enforcement agencies already on the scene. It is for this reason that we have made every effort to cooperate fully with State enforcement agencies. Of necessity, these arrangements have in the past been on an informal basis and there are statutory limitations which limit our ability to exchange information freely with the State groups.

"Chairman Murphy said, however, that there was some hope that *in the future* it would be possible to formalize the cooperative relationship. [Emphasis supplied.]

The efficient and dedicated function of the Commission in this area as well as the entire field of transportation is recognized by all.

Injunctive remedy, with the present requirement of clear and convincing proof—not the "clear and patent" test—has been for over a hundred years the best remedy in our system of government for the deprivation by private citizens of the property rights of other private citizens. In the labor field, the use of the injunctive remedy, beginning before the turn of the century and culminating in the passage of the Norris-La Guardia Act in 1932, has proven its effectiveness in resolving economic disputes. Injunctions by private parties, as well as the National Labor Relations Board, are standard procedure in labor-management relations. After all, illegal transportation is an economic issue between

the law-abiding carrier and shipper, on the one hand, and, on the other, the carrier and shipper who are willing to break the law in order to make a profit or a greater profit, at the expense of the former.

The Commission's statement of premature or inadequately prepared cases should be considered in the background of the historic and built-in safeguards of the injunctive process. These safeguards will effectively deter premature or inadequately prepared applications for injunctions. The litigants will not waste their money on such actions. For example, an injunction bond is mandatory under rule 65, Federal Rules of Civil Procedure. The premium for this type of bond is substantial. The party against whom an injunction is improvidently issued is entitled to damages therefor, including attorney's fees, from the party who obtains it. *Illinios Highway Transp. Co.* v. *Hantel* (323 Ill. App. 364, 55 N.E. 2d 710). There is precedent for the use of the private injunction in the gray area. The statutory private injunctive remedy has been available in one State for some time to a party injured by illegal intrastate truck transportation. For example, see Tennessee Code Annotated, 65–523. For a detailed analysis of the application of such a statutory remedy for private parties, see 60 C.J.S. Motor Vehicles section 95. It is not a new remedy for carriers and shippers.

The careful delineation of the injunction in illegal trucking, similar to that for labor disputes found in the Norris-La Guardia Act, would not be objectionable. It would, however, be repetitious to some extent, in this writer's opinion, because the above precedent embraces all of the safeguards our governmental system requires for the injunctive process in interstate transportation. The Commission's Bureau of Inquiry and Compliance could have its efforts in enforcement of the act coordinated here by a strict requirement in the bill that each party, before he is heard by the court, produce evidence in the form of certified mail receipts that he has served airmail a copy of all of his pleadings on the district director of the Commission in the district where the court sits as well as the Director of the Bureau in Washington. The clerk of the court could be required to furnish the Director and the Bureau with copies of the court's orders and include the expense in the costs.

It is submitted that the possibility of premature or inadequately prepared cases is outweighed by the value of the injunctive remedy to the shippers and the carriers who need present relief so badly; that the passage of section 2 as originally written will be of yet-to-be-realized help in the present elimination of the gray area.

STATEMENT OF FRANK E. LANDSBURG, PORTLAND, OREG.

There has been widespread concern throughout the country in recent years because of the growth of the so-called gray area in transportation. Transportation people, organized labor, Government officials, and the shipping public generally are alarmed by the diversion of traffic from legitimate common carriers (rail and truck) to nonregulated carriers of dubious legal status. It appears that if the present trend is continued, our common carrier system as we know it today may eventually be destroyed.

Unfortunately, much of the discussion which has taken place on this subject has only served to obscure the real issues. Actually, those issues are quite simple and can be stated in a few words.

Less than one-half of the freight now moving over our highways in interstate commerce is subject to economic regulation under the Interstate Commerce Act. More than one-half is exempt from such regulation except as to safety. A shipper may patronize a properly authorized carrier and pay that carrier's published legal rates or he may employ the services of a truck operator under a number of pseudoprivate carrier arrangements. Such carriers are not subject to Federal rate regulation and they are therefore free to cut the common carrier rate (which cannot be changed except on 30 days' notice) to any level which may be necessary to get the business.

The result is that common carriers with their frozen rate structures are indirectly prohibited by law from competing pricewise with their unregulated competitors and are gradually being priced out of the market.

The foregoing situation is sufficient in itself to explain why we have a gray area in transportation. Unfortunately, it is only one part of the problem. The important point is that the present regulatory law is wholly inadequate to cope with the new types of carriers and the new conditions which have

developed since the law was passed 26 years ago. Obviously, an industry cannot exist half regulated and half unregulated, particularly if the regulated segment is required by law to provide costly common carrier service at fixed legal rates (which must be observed) while the unregulated segment is permitted to compete over the same route on a bargaining basis at rates of its own choosing.

The average shipper is not interested in the probability that the gray area operator will eventually go broke and usually does. He is only interested in cutting what should be his legitimate transportation cost as much as 50 or 60 percent regardless of the legal hazards which may be involved. It should be evident that the regulated common carrier cannot compete under any such circumstances.

The gray area problem is just that simple. The only sensible solution to the problem is equally simple and may be stated adequately in five words: "modernize the Federal regulatory law." The attached 11-point legislative package, if adopted, would solve the problem.

FEDERAL LEGISLATION REQUIRED TO COPE WITH THE GRAY AREA IN TRANSPORTATION

(1) Repeal section 203(b)(6). The original intent of this exemption was to permit farmers to transport the products of their farms to market and supplies for their farms on the return trip, free from economic regulation. Actually, the exemption has created a vast new segment of unregulated commercial carriers within the transportation industry, exempt from rate control or any of the other pertinent common carrier regulatory requirements. These so-called exempt carriers have diverted a tremendous amount of freight from common carriers, both rail and truck, and will continue to do so on an expanding basis until the amendment is repealed. They do not offer any legitimate advantage to the farmer, as brokers of farm commodities usually enter the picture and pick up all of the rate savings which the farmer was supposed to receive. If the section were repealed, farmers could legally transport their products to market on their own trucks and supplies back to their farms as private carriers without economic regulation. That arrangement would not hurt anyone.

(2) One of the most prolific sources of so-called gray area operations is found in pseudoprivate carrier operations under a so-called lease of equipment. The following definition, if it were adopted and made a part of the law, would dry up this area in short order without interfering with the legitimate practice of avoiding capital expenditure by acquiring a bare vehicle (property) without driver through lease rather than purchase. If the Interstate Commerce Commission had this proposed statutory tool to work with, it would then be able to terminate most of the pseudoprivate carrier operations. As of now, its people in the field are totally unable to deal with this part of the problem and will never be able to deal with it until an equipment lease is properly defined.

LEASE OF EQUIPMENT—DEFINITION

An equipment lease, other than an interchange arrangement between authorized common carriers, is an agreement which pertains to a vehicle only and does not include the assumption of any responsibility by the lessor for the operation of the vehicle, except during such shop service periods as may be provided for in the leasing agreement. The responsibility of the lessor is terminated when the vehicle is serviced and delivered by the lessor to the lessee and is inspected and accepted by the lessee. Thereafter, the lessee must assume complete responsibility for the operation of the vehicle except during shop service periods and for all operational costs which may be incurred through the lessee's use of the vehicle during the period of the lease. Any participation by the lessor, his agents or representatives, directly or indirectly, in the selection or employment of the driver, or the assumption by the lessor of any operational costs or responsibility while the vehicle is engaged in transporting persons or property in the service of the lessee, nullifies the presumed private carrier status of the lessee and identifies the purported leasing arrangement as a contract of carriage, subject to the certificate or permit requirements of part II of the Interstate Commerce Act.

(3) The law should contain a definition establishing a clear line of demarcation between private and for-hire transportation.

It appears that the original intent of the act was to permit the transportation of privately owned property over the highways by the owner thereof, without

economic regulation. That right is not subject to question. It was not the intent, however, to permit persons so engaged to transport the property of others for compensation on the return trip simply to reduce their private transportation costs.

A simple definition, if properly drawn, would change gray to black and white in this critically important area. It would also sharply reduce the horde of pseudoprivate carriers (actually for-hire carriers), many of which have been born out of wedlock to lessor parentage of dubious reputation.

(4) Another source of gray area operations is found in buy-and-sell operations. The law should be amended to require that buying and selling be an integral part of a primary nontransportation business rather than an independent transportation activity carried on without any such relationship. There is no question but that an effective definition would go a long way to solve this part of the problem. The practice of taking temporary title to a shipment in order to obtain the transportation business should be prohibited.

(5) Agricultural cooperatives and shippers' associations should be defined under the Interstate Commerce Act. Up to this time, the Interstate Commerce Commission has been forced to use the definitions contained in other laws which never were intended to apply to transportation.

(6) The present law should be amended to require all interstate carriers, regardless of their status (other than the regulated group), to register with the Commission, provide insurance for the protection of the general public, and establish a legal address. In the absence of such requirements and particularly in the absence of legal addresses, it is practically impossible to enforce the law as to such carriers.

(7) The field staff of the Interstate Commerce Commission should have the right to examine the transportation records of unlicensed brokers, shippers, exempt carriers, cooperatives, and shippers' associations. The Commission can do very little in the way of enforcing the law in the absence of such legal authority. Interstate Commerce Commission field representatives know that many of these people are operating illegally, but they also know that there is no way in which the Commission can develop a case against them which will stand up in the Federal courts. In the absence of this essential authority, these violators simply close their doors in the investigator's face after they have told him precisely where to go.

(8) Arrangements should be made through which the Commission could enter into an agreement with the customs service to stop Canadian carriers at the border if they are not in compliance with the law. The proposed registration amendment would go a long way to make this possible. It appears that both the Canadian and American border officials would welcome such an arrangement and would be glad to cooperate with the Commission in the foregoing respect.

(9) The enforcement of the law could be made much more effective if the Interstate Commerce Commission's representatives in the field were permitted to interchange information with the representatives of the State regulatory bodies. Cooperation between the two groups should be spelled out and the way cleared to permit the two levels of government to join in their efforts to eliminate illegitimate operators. It is not practical to increase the Federal force if the same results could be obtained by authorizing proper cooperation between the State and Federal organizations.

(10) A new class of carriers (special contract carrier) should be created by the Commission or by law to serve common carriers only. There are certain seasons in all common carrier operations when overloads occur beyond the carrier's fleet capacity. Few carriers, if any, can afford the capital investment which would be necessary to acquire standby equipment beyond the company's normal requirements. The logical result is illegal trip leasing. This situation breeds wildcats and gray area operations. If common carriers were able to use the services of legitimate, properly authorized owner-operators under contractual arrangements during such periods, a substantial amount of illicit traffic would be diverted back to the common carrier. Many wildcat operations would gradually dry up. Fixed responsibility would be reestablished in the common carrier and a legitimate status would be available to individuals who desire to enter the trucking industry but who are not now able to meet either the public convenience and necessity or public interest requirement. In other words, if such a classification were created, it would, within a short time, bring a large part of the presently unregulated carriers under Federal regulation as a segment of the common carrier industry and would greatly improve the general economic situation in the transportation industry.

(11) Probably the greatest weakness in the present law is the lack of realistic enforcement machinery designed primarily to handle violations of section 206 of the act (operating without interstate authority) and section 204 (motor carrier safety regulations).

At present, a person apprehended while violating either of the aforementioned sections cannot be arrested. He is permitted to continue his violations until a formal investigation can be made (assuming he can be located at a later date) and a criminal action filed against him in the Federal courts. That usually takes a long period of time and, after a case is filed, it may be months or even years before it can be heard. A small fine may ultimately be imposed, even in an important case which required months of investigation at a substantial cost to the Government.

The unhappy end result is the common knowledge that substantial profits can be made out of illegal operations, with very little risk other than the possibility of a small fine sometime in the future. It is not surprising under the foregoing circumstances that gray area operations thrive and take their daily toll of the legitimate common carrier.

To get at this part of the problem effectively, Commission supervisors and inspectors should be authorized to cite violators to appear before a U.S. commissioner for trial and their cases should be processed within a few days of the commission of the offense. If such a system were adopted, a large number of pertinent cases could be handled quickly and effectively rather than the comparatively small number possible under the present cumbersome procedure. Unsafe operations on the highways would be greatly reduced. The profit would be taken out of illegal operations, and such operations could gradually be dried up.

The Interstate Commerce Commission now has adequate facilities and personnel both in Washington, D.C., and in the field to effectively handle this so-called gray area problem. A large part of the Commission's potential, however, is now being wasted in its fruitless efforts to enforce a law which, because of loopholes, only applies to about one-half of the industry.

The answer is to give the Commission the statutory tools it needs to work with, and through the use of these tools enable it to execute the national transportation policy established by the Congress of the United States.

STATEMENT OF FOSTER OCKERMAN, COMMISSIONER, DEPARTMENT OF MOTOR TRANSPORTATION, COMMONWEALTH OF KENTUCKY

In the remarks which follow, I address myself to the provisions of section 1 of S. 2560. This section provides, briefly, that any State which requires regulated carriers to register their Interstate Commerce Commission certificates or permits, identify their vehicles, file policies of insurance or surety bond, or file other securities or agreements, must bring registration laws into conformity with standards which will be established by the Interstate Commerce Commission. We feel obliged to take a position in opposition to this provision for several reasons.

As a point of beginning, we must admit that the interstate carrier is jusified in his objection to the mass of paperwork and redtape to which he is subjected in order to engage in multistate for-hire carriage. The conditions which exist are susceptible to improvement, but we question that section 1 of S. 2560 will provide the answer, for several reasons.

First, this provision deals only with the State requirements relating to the registration of authority and related filings such as proof of required insurance coverage. Based on reasonably reliable information at our disposal, we have determined that only 37 States impose such requirements. In dealing with the problem of the varied methods required by these States to make such filings, the Committee on Uniformity of the National Association of Railroad and Utilities Commissioners devised and recommended the adoption of a series of uniform forms for use by the States in receiving this information. These forms have been adopted and are now in use by Kentucky and a few other States. Most of the remaining 37 States requiring such filings have considered use of these forms and some have already made plans to do so.

It appears to us that this matter can best be handled through an association of the States, although we must admit that the individual States have been derelict in failing to accomplish uniformity in this respect sooner.

Our second observation concerns what we feel must be a natural outgrowth of the imposition of a Federal requirement of uniformity. Those States which have not undertaken regulation of interstate commerce would certainly be encouraged to do so. While we feel that some regulation of interstate commerce is necessary in the best interest of our State, the regulated carrier certainly does not seek regulation from those States who do not share Kentucky's views.

Third, and in our opinion most important, is the fact that the major problem faced by the regulated carrier is not solved by the legislative proposal we have undertaken to discuss. The problem is not one of registration of authority, but a question of compliance with the varying tax laws of our several States and the many administrative departments with which the regulated carrier is required to deal within a single State.

The problem of dissimilar tax laws has no ready solution. The motor vehicle tax requirements of the various States are radically different and no outsider or group of outsiders should undertake to tell any sovereign jurisdiction how it should solve its internal tax problems or meet its revenue needs. Topography, constitutional requirements and restrictions, and geographical location all play a part in determining what type tax and enforcement a State must employ to satisfy its needs.

However, the problems of administrative redtape and governmental "run around" are capable of at least partial solution, and, as an illustration, we point out what we have accomplished in Kentucky, which for lack of a better name we refer to as the Kentucky plan.

Action of the 1962 general assembly concentrated within the department of motor transportation authority and responsibility for all administrative duties relating to regulation and taxation of commercial motor vehicles to the extent that Kentucky law imposes additional or different requirements or taxes upon such vehicles. The duties of this single agency now include the issuance and control of intrastate motor carrier authority, regulation of interstate commerce, to the extent not preempted by the Federal Government, regulation of intrastate motor carrier rates and services, administration of for-hire motor carrier taxes, issuance of registration and weight plates for all motor vehicles, administration of motor carrier fuel use taxes, responsibility for enforcement of all the foregoing requirements and sole authority to negotiate and consummate reciprocal agreements on motor vehicle taxes.

We feel that we now have the means to control and regulate the interstate as well as the intrastate motor carrier and are confident that we may now do so effectively and with a minimum of paperwork and inconvenience to the operator of the commercial motor vehicle. Our regulation extends to the interstate as well as the intrastate carrier and includes the regulated, exempt, and private motor carrier. Our duties are specialized and our attention concentrated on the problems faced and evasions committed by the motor carrier. Readily available and at our disposal is all information resulting from the regulation and taxation of the foregoing groups. Most States have this information relating to the for-hire carrier, but few, if any, have established a regulatory procedure as has Kentucky which provides detailed data for private and exempt carriers.

This, we believe, is the proper approach to the problem. We feel that the legislative proposal we are discussing provides at best only a partial answer which will encourage additional States to enter the field of regulation of interstate carriers without getting to the heart of the problem, which is the administration of the varying tax laws of our many States.

Efforts being made to provide a solution to the varied problems connected with the regulation of the motor carrier have revealed interesting facts. One segment of the industry demands a tightening of control at the Federal level, whereas other portions plead for exemption from the Federal Motor Act. A portion of the carriers complain of the requirement that they register their interstate authority with State regulatory bodies, while at the same time demanding improved procedures and stricter enforcement practices to decrease the illegal and gray area carriage. It is my belief that requiring all carriers, private and for-hire, to register at the State level, thereby providing the State enforcement agencies with information as to the identity of the vehicle and the use to which it will be put, is the method which must be utilized by the States to accomplish effective regulation of the motor carrier industry. This Kentucky does. If the States will adopt a regulatory plan similar to that in Kentucky, the motor carrier industry will profit. While the registration re-

quirements under these circumstances would not be burdensome, the legitimate motor carrier will be guaranteed a substantial measure of protection from the competition of the illegal carrier.

The fact that legislation such as that included in section 1 of S. 2560 is under consideration indicates that a need exists for the standardization of our regulatory procedures. We concur in the existence of this need, but not in the necessity for Federal controls. The main problem was born of State taxation and regulation and can and should be solved at its source.

(The following correspondence was received by the committee for inclusion in the record:)

U.S. SENATE,
COMMITTEE ON COMMERCE,
March 28, 1962.

Hon. GEORGE A. SMATHERS,
Chairman, Surface Transportation,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR GEORGE: Enclosed please find seven letters from New Hampshire industries regarding S. 2560.

I respectfully request that they be made a part of the permanent record of the Transportation Subcommittee hearings on this legislation.

Thank you for your consideration in this matter.

Sincerely,

NORRIS COTTON, *U.S. Senator.*

(The same letters were also submitted for the record by Senator Maurice J. Murphy, Jr.)

HENNIKER CRUTCH CO., INC.,
Warner, N.H., March 22, 1962.

Hon. NORRIS COTTON,
U.S. Senate, Washington, D.C.

DEAR SENATOR COTTON: It has been brought to my attention that S. 2560 contains various amendments to the Interstate Commerce Act that would vitally effect cooperatives.

We are a member of the New Hampshire Shippers Cooperative, Inc., which has helped considerably in lowering our shipping costs.

We hope you will do everything in your power to see that this bill is not passed.

Thank you for anything you might be able to do on this.

Sincerely yours,

L. WALDO BIGELOW, Jr., *President.*

KINGSTON MANUFACTURING CO., INC.,
Newfields, N.H., March 26, 1962.

Hon. NORRIS COTTON,
U.S. Senate, Washington, D.C.

DEAR SENATOR COTTON: It has been brought to our attention that Senate bill 2560 dealing with various amendments to the Interstate Commerce Act contains provisions that will permit any district court of the United States to issue an ex parte injunction.

A considerable portion of our outbound shipments are handled by a shipper's cooperative. Also on infrequent occasions we send our own truck across the State line.

Should the privilege of this type of injunction become law it is quite possible that any common carrier could cause an injunction to be issued, without hearing, and thereby seriously interfere with our business.

We are strongly opposed to this portion of the bill and ask that you act accordingly on our behalf.

Very truly yours,

HERBERT A. GRANT, *Vice President.*

THE GENERAL TIRE & RUBBER CO.,
Newfields, N.H., March 23, 1962.

Hon. NORRIS COTTON,
U.S. Senate, Washington, D.C.

DEAR SENATOR COTTON: It has been brought to our attention that Senate bill 2560 dealing with various amendments to the Interstate Commerce Act contains provisions that will permit any district court of the United States to issue an ex parte injunction.

A considerable portion of our outbound shipments are handled by a shippers cooperative. Also on infrequent occasions we send our own truck across the State line.

Should the privilege of this type of injunction become law it is quite possible that any common carrier could cause an injunction to be issued, without hearing, and thereby seriously interfere with our business.

We are strongly opposed to this portion of the bill and ask that you act accordingly on our behalf.

Very truly yours,

LEONARD T. GRANT.

W. W. CROSS & CO.,
Jaffrey, N.H., March 26, 1962.

Senator NORRIS COTTON,
U.S. Senate, Washington, D.C.

DEAR SENATOR COTTON: We are vitally concerned over Senate bill 2560, which was entered in the U.S. Senate by Senator Smathers.

This bill contains various amendments to the Interstate Commerce Act, one part of which, if made law, may vitally affect the operation of shippers' cooperatives; in fact, this could mean cooperatives would be out of business.

Cooperatives are very essential to W. W. Cross & Co. and many other manufacturers in this and other areas. In the Northeast, in particular, we are at a disadvantage freightwise and need the speed and cost advantage which cooperatives offer.

We urge you to do all in your power to prevent this bill 2560 from being passed.

Yours very truly,

NORMAN C. HANSEN, *Manager.*

WARREN MANUFACTURING CORP.,
Newfields, N.H., March 23, 1962.

Hon. NORRIS COTTON,
U.S. Senate, Washington, D.C.

Dear SENATOR COTTON: It has been brought to our attention that Senate bill 2560 dealing with various amendments to the Interstate Commerce Act contains provisions that will permit any district court of the United States to issue an ex parte injunction.

A considerable portion of our outbound shipments are handled by a shippers' cooperative. Also on infrequent occasions we send our own truck across the State line.

Should the privilege of this type of injunction become law it is quite possible that any common carrier could cause an injunction to be issued, without hearing, and thereby seriously interfere with our business.

We are strongly opposed to this portion of the bill and ask that you act accordingly on our behalf.

Very truly yours,

OLIVER B. MERRILL, *President.*

HODGMAN RUBBER CO.,
Framingham, Mass., March 23, 1962.

Senator NORRIS COTTON,
Senate Commerce Committee,
Washington, D.C.

DEAR SIR: We wish to express our objections to the passage of Senate bill 2560 which could have an effect on the operation of cooperative shippers' associations.

We ship nationwide and only with the help of lower rates with the cooperatives are we able to combat foreign competition.

It would be a serious blow to our business if we could not enjoy the privileges of membership in these cooperatives.

Very truly yours,

JOHN M. SIMPSON, *Traffic Manager.*

CALLEY & CURRIER CO.,
Bristol, N.H., March 23, 1962.

Hon. NORRIS COTTON,
Senator from New Hampshire, Senate Office Building,
Washington, D.C.

DEAR SENATOR COTTON: We have been asked by the New Hampshire Shippers Cooperative, of which we are a member, to call your attention to Senate bill 2560 which might seriously affect the transportation of goods in New Hampshire.

If such is the case we certainly want to object to Senate bill 2560.

Very truly yours,

H. THOMAS URIE, *President.*

WEST HARTFORD, CONN., *April 7, 1962.*

Hon. GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee, Senate Commerce Committee,
Senate Office Building, Washington, D.C.:

The traffic executive committee of the Manufacturers Association of Connecticut wishes to go on record in opposition to any action at this time on S. 2560. Our view is that it would subject many of our members who are conducting private carrier operations legitimately in furtherance of their own business to harassment by excessive litigation. Also many of our members are banded together in legitimate nonprofit shippers' cooperative associations which would face the same type of action nor do we feel that it is legislatively sound for the Congress to let the Federal courts take jurisdiction over what has been an administrative task of the congressional arm, the ICC. We urge, therefore, that S. 2560 be shelved as not being in the public interest.

JOHN B. HEDGES,
Traffic Manager, Manufacturers Association of Connecticut, Inc.

AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION,
Denver, Colo., March 1, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: I am writing you with regard to Senate bill 2560 introduced by Senator Smathers amending the Interstate Commerce Act.

We have no objection to the bill as it has been amended, we understand, in committee hearings, which exception of section 4 which would amend section 226(a) of the Interstate Commerce Act.

Our opposition to the language proposed to be added to section 226(a) by S. 2560 is limited to the provision which would require motor carriers operating vehicles of three or more axles, generally, be required to render annual reports for each year to the Commission. We firmly believe that this is an unnecessary requirement and in most cases would cause hardship, particularly among those private and exempt carriers to register and file reports with the Commission such as is required with common carriers. This hardship would have the effect of adversely reflecting on the services provided livestock producers and feeders in the movement of livestock and thus, in turn, react unfavorably on our business.

We would sincerely appreciate your entering this letter into the record of proceedings on the legislation.

Respectfully submitted.

C. W. MCMILLAN.

JONES-OF-UTICA WAREHOUSES, INC.,
Utica, N.Y., February 26, 1962.

Hon. RALPH YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR SENATOR YARBOROUGH: Your acknowledgment of my correspondence is deeply appreciated. In the same mail that brought your reply, I also received a reply from Congressman Alexander Pirnie who represents our 34th District.

Congressman Pirnie is a friend and has been most cooperative in the many pieces of legislature on which I have cited my opinion. Hence, I took the liberty of writing him a long letter to clarify my opposition to that part of Senate bill S. 2560 which refers to "freight forwarders of used household goods."

I am sending you a copy of that letter.

I might comment that at a recent meeting of the board of directors of the New York State Warehousemen's Association, the board was 100 percent opposed to that part of S. 2560 dealing with regulation of freight forwarders of used household goods. As an officer and member of that association, I believe I may presume the same feelings are felt by most movers and warehousemen throughout the country.

Thank you again for your interest in my request.

Sincerely yours,

J. C. MILLER, *President.*

JONES-OF-UTICA WAREHOUSES, INC.,
Utica, N.Y., February 26, 1962.

Hon. ALEXANDER PIRNIE,
Member of Congress,
House Office Building, Washington, D.C.

DEAR MR. PIRNIE: Thank you for your acknowledgment of my telegram with reference to Senate bill S. 2560.

Those of us engaged in the warehousing and moving business operate our vans under the regulations of ICC and PSC.

However, as economic conditions change, we sometimes find it more expedient and more economical to ship a customer's household goods by motor freight, rail freight, or air freight. In such cases, the furniture is crated or boxed and we act as an unregulated freight forwarder in arranging for such movements. We would do the necessary packing and crating (which constitutes a significant portion of our everyday business) and upon completion of such crating, arrange to ship the household goods by one of the above mentioned methods rather than by van.

Prior to World War II and the development of the larger household goods vans, the movers frequently acted as freight forwarders to arrive at the most satisfactory method of shipping household goods. During the war with tire and gasoline rationing, such methods were quite common. Right now, in fact, we, in this company, are negotiating with a couple of different airlines for the forwarding of household goods. Under certain circumstances a customer will save money in the end by means of air shipment.

Our present volume of business, as a freight forwarder, would be insufficient for us to qualify under the proposed ICC regulations. This is also true with most firms engaged in the moving business. But in a year or two or five, perhaps, as highway tolls increase and as more and heavier taxes are placed on the owners of trucks, it is entirely possible that again we will be arranging shipments by freight rather than by van.

As I understand S. 2560, provisions will probably be made for those movers who have recently acted as forwarders to establish "grandfather rights." Such grandfather rights would do most of us very little good if offered now, because in recent years we haven't had occasion to act as a freight forwarder.

However, the major airlines and the railroads and the large motor freight haulers who have been shipping household goods for one mover or another throughout the country, could immediately avail themselves of their grandfather rights, become a "regulated freight forwarder of used household goods," employ their own packers, and eventually put small firms like ours (and probably 95 percent of all independently owned warehouses and moving companies) in direct competition with such giants as the New York Central, Associated Transport, and many of the large airlines such as Flying Tiger and others.

Experience has pretty well demonstrated that when such giants get their feet in the door, they have no compunction about squeezing out their less affluent competitors, and by the saving grace of being a regulated forwarder of household goods they can effectively block the smaller companies from becoming regulated.

I can give you an example at a local level. A few years ago a large distributor of appliances asked us to quote them on delivering new appliances to several surrounding communities. Our New York PSC certificate does not include the right to haul such items beyond the Utica commercial zone. The PSC advised us that since the service to those towns was adequately taken care of by those presently certified to carry new appliances, there was no need to certify us, too, as the public would not gain by so doing.

I am firmly convinced that once the giants became regulated forwarders, certified by the ICC, that we would receive an identical answer from that august body if we were, at some later date, to apply for such certification.

The pendulum has swung back and forth enough times in the past to make us believe the day may not be far away when we would be serving the public (our customer) best by acting as a freight forwarder of his personal household goods. If such forwarders remain unregulated, as they are now, we would be in position to serve the public best. If the forwarders became regulated, most of us would be disqualified and the big operators would be the only ones in a position to do exactly what we can do now.

You realize, of course, that whether the forwarders were regulated or not, the shipment would still go forth under rates established through the ICC or CAB. The public would not suffer through nonregulation of forwarders. The public would only lose its preference of calling on the moving firms and would have to do business with the few large transportation companies who would thus gain through regulation.

I apologize for the length of this letter. I do not have the happy faculty of making myself understood in the use of only a few words when the subject is somewhat complex. But from this, I am sure you can see why I am opposed to the regulation of freight forwarders of used household goods, and hence opposed to the passage of S. 2560.

Your help and understanding of our position are earnestly sought.

Sincerely yours,

J. C. MILLER, *President.*

VALLEY TRANSPORTATION & WAREHOUSE CO., INC.,
Scottsdale, Ariz., April 12, 1962.

Hon. BARRY GOLDWATER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR GOLDWATER: Reference to Senate bill 2560, introduced by Senator Smathers. This bill requires that freight forwarders of household goods become regulated under the Interstate Commerce Commission. We would like to urge you to support this particular bill.

Our company engages in the transportation of household goods throughout Arizona. We are based at Scottsdale. In addition, we work with a large national carrier to transport household goods all over the world. We and our national affiliated carrier are regulated under the Arizona Corporation Commission and the Interstate Commerce Commission.

Without required regulation, these freight forwarders are going into business overnight, charging any rates that suit them. They vary these rates from day to day, comduct business almost as the see fit, and can choose the better shipments and refuse to the public those shipments with which they do not want to bother. Since all other household goods carriers are regulated, this gives this type freight forwarder a tremendous competitive advantage over us. An advantage they have used against us quite often.

The application of regulation must apply to all of us not just a few. I wish to urge you again to support this legislation.

Sincerely yours.

THOMAS W. MOFFITT, *President.*

PRIVATE CARRIER CONFERENCE INC.,
Washington, D.C., May 8, 1962.

HON. GEORGE A. SMATHERS,
Chairman, Subcommittee on Surface Transportation, U.S. Senate Committee on Interstate Commerce, Washington, D.C.

MY DEAR SENATOR SMATHERS: At its third annual midyear meeting in San Francisco, on Tuesday, May 1, the Private Carrier Conference of American Trucking Associations, Inc., passed the attached resolution, directed toward testimony presented by Rupert L. Murphy, Chairman of the Interstate Commerce Commission on Senate bill 2560, on April 24, 1962, before the Senate Subcommittee on Surface Transportation.

The Private Carrier Conference has endorsed Senate bill 2560, in principle, as embodied in Committee Print No. 2. It is, however, unalterably opposed to Chairman Murphy's recommendation calling for private carriers to register in each State through which they operate, for reasons set forth in the attached resolution.

The conference also opposes recommendations made by the Regular Common Carrier Conference and the Association of American Railroads, asking for: (1) registration of private carriers with the Interstate Commerce Commission; (2) an amendment to section 203(c) of the Interstate Commerce Act, which would preclude private carriers from hauling exempt commodities; and (3) a prohibition against the payment of private carrier drivers on a per-mile basis.

The Private Carrier Conference is hopeful that the Senate subcommittee will not give favorable consideration to these above proposals, which are highly controversial, and that Senate bill 2560, as now drafted, will be enacted into law.

It is requested that this letter and the attached resolution be made a part of the printed record.

Very truly yours,

VINCENT L. O'DONNELL,
Managing Director.

RESOLUTION OF POLICY

Adopted by Private Carrier Conference, Inc., at 3d annual midyear meeting, San Francisco, May 1, 1962

The Private Carrier Conference has noted with great apprehension the efforts being made by many groups and in many areas to bring about the registration of private carriers. Heretofore registration has been proposed and urged with the Interstate Commerce Commission. Various types of Federal registration have been proposed. The staff report of the Senate Interstate Commerce Committee (for instance, the Doyle committee) has thus far proposed the most drastic type of registration which actually is tantamount to a certificate of convenience and necessity which would be required to be held by every private carrier and which would outline not only his current status but the routes over which he would be authorized to operate and such registration would be revokable.

The Private Carrier Conference has over a period of years opposed strenuously any type of registration inasmuch as it is the beginning of throttling economic regulation which would destroy private carriage in the final analysis.

The Private Carrier Conference now notes with profound shock and apprehension the recent proposals of the Chairman of the Interstate Commerce Commission in testimony before the Senate committee on S. 2560 in which he proposed a new and even more stringent type of registration with the various States through which they operate. It is purported that this would bring the private carriers within the "benefits" of this registration. We reject such benefits.

After a full and careful consideration of this matter, the Private Carrier Conference at its annual meeting at San Francisco concluded that this type of registration is even more inimical to the best interests of the private carrier than any type of registration thus far proposed.

The conference remains steadfast in its unalterable opposition to any type of registration and in doing so feels that it is serving the best interests of the whole transportation system in the United States.

Private carriage is essential to maintaining a balance in the otherwise uncontrolled operations for for-hire carriage both by rail and highway. It is essential that there be a freedom of choice in transportation in America and the Private Carrier Conference will steadfastly continue to maintain that great privilege.

The proposals brought forth by the Chairman create dangerous precedents and are loosely worded and would create a dangerous imbalance in Federal-State relations.

It is the firm belief of the PCC that if the ICC wishes to embark upon an organized program of Federal and State relations, that it might well concentrate its efforts on the establishment of uniform sizes and weights of vehicles which would be much more advantageous to all motor carriers in the United States.

Whereas the PCC, at its third annual midyear meeting, resolves to oppose this registration with the States, and directs that copies of this resolution of policy be forwarded to members of the Interstate Commerce Commission, to members of the Senate Interstate and Foreign Commerce Committee, and to all other interested parties.

GRANTS, N. MEX., *April 3, 1962.*

Hon. DENNIS CHAVEZ,
Senate Office Building, Washington, D.C.:

Re Senate bill 2560. As this bill directly affects our means of livelihood we are intensely interested in its final form if and when it is passed. We ask your study and support of our position as follows: (1) We oppose the exemption of household goods forwarders from the Interstate Commerce Act; (2) we think the present wording of Senate bill 2560 should be modified to provide an annual licensing procedure to any company or individual who proves fit, willing, and able to act as household goods forwarder; (3) we strongly support the National Furniture Warehouseman Association's position which we understand has been made known to Senator Smathers. Your support will be appreciated.

DOLPHE PLANCHE,
Manager, Lackey Transfer & Storage Co.; Agent, Allied Van Lines.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., March 20, 1962.

Hon. GEORGE SMATHERS,
Chairman, Surface Transportation Subcommittee,
Senate Committee on Commerce, Washington, D.C.

DEAR SENATOR SMATHERS: The Chamber of Commerce of the United States is pleased to note that your Surface Transportation Subcommittee shares our members' concern about the volume of nonlegal for-hire carriage.

This concern, on your part, was evidenced by your recent hearings on S. 2560 and S. 2764.

The national chamber is not in a position to support or oppose the specific provisions of these measures. But we sincerely hope your subcommittee will continue to study the problem with which they attempt to deal, and will adopt appropriate legislation to eliminate nonlegal carriers. Such action is necessary if we are to preserve our Nation's essential regulated system of transportation. At the same time, care should be exercised to make certain legal private carriers are not burdened by governmental requirements and regulations not truly necessary to deal effectively with the problem of nonlegal operators.

I would appreciate your making this letter a part of the record of your recent hearings on S. 2560 and S. 2764.

Sincerely yours,

THERON J. RICE,
Legislative Action, General Manager.

NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS,
Washington, D.C., April 27, 1962.

Re S. 2560—87th Congress.

Hon. GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee, Committee on Commerce,
Senate Office Building, Washington, D.C.

DEAR SENATOR SMATHERS: The National Association of Railroad and Utilities Commissioners is a voluntary organization embracing within its membership the members of the regulatory commissions and boards of the several States of the United States. These commissions and boards are among other things

responsible for regulation of motor carrier transportation within their respective jurisdictions. In the case of the State of Florida, for example, the Railroad and Public Utilities Commission of which Hon. Wilbur C. King is chairman, is a member of our association.

At a recent meeting of the executive committee of our association, the following resolution was duly adopted:

"RESOLUTION REGARDING S. 2560—87TH CONGRESS

"Whereas the National Association of Railroad and Utilities Commissioners, through its committee to promote uniformity in the regulation of motor carriers, has been actively engaged in studies and programs aimed at uniformity in State practices and procedures relating to the regulation of interstate motor carriers; and

"Whereas said committee in 1959 developed standard forms for use by the individual State commissions in registering authorizations issued by the Interstate Commerce Commission, in identifying vehicles of interstate carriers, and in filing policies of insurance; and

"Whereas the National Association of Railroad and Utilities Commissioners in 1959 approved these standard forms and recommended them for use by the individual State commissions; and

"Whereas a number of State commissions already have prescribed these standard forms for use in their respective jurisdictions; and

"Whereas the NARUC Committee to Promote Uniformity in the Regulation of Motor Carriers is actively and aggressively pursuing further acceptance and prescription of the aforesaid forms by other State regulatory commissions: Now, therefore, be it

"*Resolved*, That the executive committee of the National Association of Railroad and Utilities Commissioners hereby expresses its unalterable opposition to the enactment of section 1 of S. 2560, 87th Congress, and requests the Senate Subcommittee on Surface Transportation to amend the same so as to give the States further opportunity to proceed with the adoption of these uniform standards."

The State regulatory commissions would prefer an opportunity to move ahead on a voluntary basis with the standard forms program which they have developed, rather than have a program of uniformity developed on a compulsory basis under the aegis of the Interstate Commerce Commission. We earnestly solicit your support for such an approach.

It would be appreciated if the position of the association as stated in the above resolution could be included in the record of any hearings held on this legislation.

Sincerely yours,

AUSTIN L. ROBERTS, Jr.,
General Solicitor.

SEATTLE, WASH., *April 30, 1962.*

Subject: S. 2560. Legislation to curb gray area transportation. (Our file M–768.)

Senator GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee,
Committee on Commerce, Washington, D.C.

DEAR SENATOR SMATHERS: Thank you kindly for your letter of April 19 allowing me to file a prepared statement on S. 2560.

As earlier correspondence indicates, and as Senator Magnuson knows, this office represents several hundred shippers in the Pacific Northwest. We are very concerned about S. 2560 and related legislation.

To avoid unduly burdening the record, our position on this legislation is identical to that of the National Industrial Traffic League. We would adopt the statement of Mr. Sam H. Flint, chairman of the National Industrial Traffic League Legislative Committee, as the statement for our people as well. We are unalterably opposed to the harrassment of shippers that would be possible under injunctive remedies proposed by S. 2560, as well as to the registration of private trucks.

Any proposal that would now require shippers associations or private carriers to register with the Commission would be wholly inconsistent with the President's policy to deregulate transportation. Beyond that, it would create an impossible practical problem.

The Interstate Commerce Commission can't get a decision through now in a contested case in much less than a year and a half. Private business can't wait a year and a half for Commission decisions. The Interstate Commerce Commission is badly overloaded now. Their decisionmaking processes are under serious attack now from many angles. To heap this additional controversial workload on the Commission would be utterly myoptic. It can only result in a worse administrative "mess" than exists today.

Will you file this statement for the record in this very important matter?

Very truly yours,

FRED H. TOLAN.

AMERICAN RETAIL FEDERATION,
Washington, D.C., May 2, 1962.

Re S. 2560 and S. 2764.

Senator GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee,
Senate Committee on Commerce,
Washington, D.C.

DEAR SENATOR: The Transportation Committee of the American Retail Federation wishes to present to you and to your subcommittee a statement of its views on the above bills. It is understood that this statement will be incorporated into the hearing record and it is hoped that it will be of assistance to the subcommittee in its consideration of the bills.

The American Retail Federation is a federation of 32 national retail associations and 42 statewide associations of retailers. Through these member organizations the federation represents more than 800,000 retail establishmens of all kinds and sizes, employing about 5 million persons, and accounting for approximately 70 percent of the retail sales in the United States.

The transportation committee, in its discussions and deliberations on the various sections of S. 2560, expressly objected to the second provision in section 5(d) of Committee Print No. 1. (This is contained in section 5(g) of Committee Print No. 2.) The first provision of this section, which restates the present language of section 417(b) of the Interstate Commerce Act into section 417(b)(1) is unobjectionable (except for a typographical error on line 21, page 16 of Committee Print No. 2 wherein the word "Commissioner" should be "Commission"). However the provision adding section 417(b)(2) to the Interstate Commerce Act is definitely opposed for the reasons following and if eliminated, as we would hope, would not require any amendment to section 417(b).

As provided for in the subsection in question (Committee Print No. 1, p. 16, line 12, through p. 17, line 4 and Committee Print No. 2, p. 17, line 14, through p. 18, line 5) injunctive relief could be sought by any injured party in a district court of the United States for any clear and patent violation of section 410 of the Interstate Commerce Act. It is believed that this will create a situation in which small shipper associations and other similar groups, not otherwise regulated under the various provisions of the Interstate Commerce Act could be subjected to harassment from regulated freight forwarders and motor carriers. Although no one defends illegal freight forwarder operations in violation of section 410, perfectly proper and bona fide shippers' associations might be included in endless litigation, the very cost of which would require dissolution, regardless of the merits, because of the financial resources and legal talent available to the forwarders and motor carriers.

It may be suggested that this objection could be partially overcome by a protective addition providing for indemnification of any defendant for all expenses, damages, losses, or costs (including attorney's fees) sustained or suffered from any such suit instituted wrongly and covered by the filing of a surety bond at the time of application for a temporary or permanent injunction. This would appear to be of some protection. A further desirable amendment would be in confining the injunctive relief to actions brought by the Commission or the Attorney General, as in enforcements against freight forwarders, with no extension of such rights to injured parties. This would appear to be equitable.

However, it is noted that the Interstate Commerce Commission, in making a statement to your subcommittee on April 24, 1962, opposed enactment of this subsection on the grounds that it would have an adverse effect on the Commission's enforcement efforts. This was based on the same rationale and same

explanation as the objection to comparable provisions in section 2 of the bill adding a new section 222(b)(2) to part II of the act. It is submitted that there is event more emphasis to the objection to the enactment of a new section 417 (b)(2) to part IV of the act.

Unlike the situation applicable to motor carriers, there is presently no adequate basis on which to judge whether there is any violation of section 410, part IV of the act. As admitted by the witness appearing for the Freight Forwarders Institute (see statement of Mr. Giles Morrow, April 24, 1962, p. 8) it is hoped that pending proceedings will give some guidelines on unlawful forwarder operations. It should appear unreasonable to favor enactment of added enforcement provisions contrary to the recommendations of the enforcing agency and in a field where admittedly there are no guidelines distinguishing lawful and unlawful operations. The principal carrier supporters of S. 2560, the Association of American Railroads and the American Trucking Association, based on statements presented to your subcommittee on February 7, 1962, do not mention this portion of the bill or have no position. In the absence of any demonstrated need for such an enactment and in view of the objections, including ours, you are urged to strike this portion of S. 2560.

You may be interested in the conclusions of the transportation committee as to other portions of the bill, all of which are based on Committee Print No. 1 of S. 2560. No action was taken as to section 1 relating to the State registration of ICC permits or certificates; as to section 4, dealing with the section 203(b)(6) agricultural exemption; or as to the section 5, subsections a, b, and c, removing the exemption applying to freight forwarders of used household goods. It was recommended that no objection be registered to section 2 of the bill.

Support was approved for section 3 which permits the institution of civil actions by the ICC; increases the amount of fines; and extends enforcement to unregulated as well as regulated motor carriers. At the same time opposition was expressed to S. 2764 because it creates additional authority in the ICC to regulate private motor carriage and because added enforcement powers on safety violations are not needed.

As stated above, it is hoped that these views, coming from an important segment of the users of common carrier service, will be of assistance in your consideration of the proposed legislation.

Sincerely,

CHARLES A. WASHER,
Director, Transportation Division.

SEATRAIN LINES, INC.,
Edgewater, N.J., May 8, 1962.

Hon. GEORGE A. SMATHERS,
Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR SMATHERS: The purpose of this letter is to express my support of S. 2560, the bill which is concerned with the so-called gray area operations in the motor carrier field. I request that this letter be included in the record of the hearings on the bill.

I am president of Seatrain Lines, Inc., a common carrier by water operating between the ports of New York, Savannah, New Orleans, and Texas City, but this letter is also written in my capacity as a member of the executive committee for the Atlantic Region of the Common Carrier Conference of Domestic Water Carriers. This conference was organized to deal with the increasingly severe problems which threaten the existence of common water carriers. I realize that the provisions of S. 2560 are restricted in their application to the trucking field. The common carriers by water recognize that there are serious problems in the motor carrier field, and we endorse the enactment of this bill as a step in the right direction.

However, I wish to bring to your committee's attention the fact that common carriers by water, and particularly those in the coastwise trades with which I am most familiar, also are afflicted with critical problems arising out of unregulated carriage by contract carriers, private carriers and exempt transportation. It is our belief that the present extent of these nonregulated operations goes far beyond what was intended by Congress when water transportation was regulated by the Transportation Act of 1940.

In order to bring down the rates for movement of basic materials, big shippers engage in the operation of their own vessels to the extent that they have a regular flow of traffic, leaving the seasonal and directional surplus to the common carriers. No one denies the shippers the right to do this. Some big shippers, however, also take advantage of the bulk exemptions to engage in for-hire traffic to fill up the back hauls of their private vessels. In addition, the coastwise carriers encounter the competition of "pseudo-common" carriers owned for the purpose of driving down the rates on selected commodities in which the owner has an interest. All of these are activities which can be engaged in only by big shippers, and which are not available to the smaller shippers who must depend on the common carriers, now being driven to the wall by these and other competitive operations.

Thus, the common carriers by water endorse the principles of S. 2560 because it is a step in the right direction, even through it is addressed entirely to the trucking field. We do not seek to delay the enactment of S. 2560 in order to incorporate treatment of our problems, but we do wish to bring these problems to the attention of your committee in the hope that succeeding legislation may be enacted which would help preserve the ability of the common carriers by water to serve the general public.

Sincerely yours,

JOHN L. WELLER.

WATERWAYS BULK TRANSPORTATION COUNCIL, INC.,
New York, N.Y., May 8, 1962.

Re S. 2560.

Hon. GEORGE SMATHERS,
Chairman, Subcommittee on Surface Transportation,
Committee on Interstate and Foreign Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR SMATHERS: We appreciate the courtesy of the subcommittee in affording us time to examine the record of the hearings on S. 2560 and the opportunity to submit our comments. Since S. 2560, in terms, relates only to the trucking industry, we had not intended to participate in discussions of the bill until we learned that certain water carrier interests were making the hearings the occasion for an argument to extend regulation to private and exempt water carriers. Having now examined the transcript of their testimony, we should like to comment as follows:

As we read S. 2560, as revised in committee print No. 2, only two provisions have application to private or exempt motor carriers.

(1) Under the proposed new section 222(b)(2), any person injured by a clear and patent violation, by a private or exempt motor carrier, of certain sections of the act or of rules or regulations thereunder may apply for an injunction against such violation. This provision merely establishes an additional method of enforcement of existing law, besides other existing methods, such as Commission orders and criminal prosecution. It does not seek to limit the existing opportunities for private or exempt motor carriers to operate lawfully in conformity with the act.

(2) Under the proposed new section 266(a), certain motor carriers operating under the agricultural commodity exemption would be required to file statements with the Commission showing the name of the carrier, its address and the number of vehicles owned or operated. This requirement does not itself impose economic regulation on otherwise exempt motor carriers. Its extension to private or exempt water carriers would impose no requirements which are not already generally applicable to water carriers under other legislation.

Because, therefore, of the limited application of the bill to private and exempt motor carriers, as indicated, we do not feel it necessary to take any position on the legislation.

If, as implied by the representatives of the Common Carrier Conference, the bill had sought to amend or repeal any of the exemptions now available to motor carriers, we would, of course, be strongly opposed to its extension to water carriers, for such an extension would constitute another effort to repeal or restrict the existing exemptions from regulation in part III of the act—exemp-

tions which, we believe, have served the public interest and the water carrier industry well.

Again, may we express to you our thanks for the opportunity afforded us to submit our comment.

Very truly yours,

DAVID A. WRIGHT, *Chairman.*

(The comments from Government agencies follow:)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., October 5, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: We again refer to your letter of September 18, 1961, in which you requested our comments on S. 2560. This bill would amend part II of the Interstate Commerce Act to promote uniformity of State requirements for registration of interstate motor carriers and to strengthen existing regulatory provisions. The bill would also provide for the issuance of permits to freight forwarders of used household goods under the provision of part IV of the act.

The provisions of the bill relating to interstate motor common carrier procedural matters would not affect the functions of our Office. However, since the United States is a large user of services of all modes of transportation for the movement of used household goods, the provisions relating to the transportation of used household goods by freight forwarders would conceivably benefit the shipping agencies of the Government. As a whole, the legislative proposals contained in S. 2560 seem to us to be in the public interest and we have no objection to their favorable consideration by your committee.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, February 2, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: We refer again to your letter of January 24, 1962, in which you asked for our comments on S. 2560, as amended (Committee Print No. 1).

S. 2560, as originally introduced, was designed to amend part II of the Interstate Commerce Act with respect to State requirements for the registration of interstate motor carriers and existing regulatory provisions, and to amend part IV to provide for the issuance of permits to freight forwarders of used household goods. The bill was amended by striking all after the enacting clause and substituting language apparently designed to clarify and add to some of the original language. As we stated in our report of October 5, 1961, B–104930, B–135638, on the original bill, the procedural changes would not affect our functions. However, the provisions concerning the transportation of used household goods by freight forwarders should conceivably benefit the shipping agencies of the Government since the United States is a large shipper of used household goods by all modes of transportation. In general, we believe the legislative proposals in S. 2560, as amended, are in the public interest and we have no objection to their favorable consideration by your committee. We call your attention to what seems to be a printing error in line 23, page 11, and suggest insertion of the word "or" between "section" and "of."

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 2, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Reference is made to your request for a report on S. 2560, committee print "to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes."

The bill does not appear to relate to any matter within the jurisdiction of this Department or to affect any matter upon which the Department would be in a position to give helpful information or advice. Accordingly, we have no comment to offer with respect to the merit of the bill.

We welcome the opportunity to submit recommendations on any measure where possibly the activities of the Department may be involved, or where its experience may be of value.

Sincerely yours,

D. OTIS BEASLEY,
Assistant Secretary of the Interior.

FEDERAL AVIATION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., May 11, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of January 24, 1962, for this Agency's views on S. 2560, a bill to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes.

We have no comments to offer inasmuch as the bill relates to the authority of the Interstate Commerce Commission and does not appear in any way to affect the statutory functions and responsibilities of this Agency.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

N. E. HALABY, *Administrator.*

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., May 9, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of January 25, 1962, requests comments on S. 2560, Committee Print No. 1, a bill to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes.

This legislative proposal is an outgrowth of hearings before the Subcommittee on Surface Transportation of your committee, and is designed to improve present conditions in the field of motor carrier transportation.

Under its statute (63 Stat. 383; 40 U.S.C. 481), GSA is interested in transportation and traffic management on behalf of executive agencies from the viewpoint of a user of transportation services and in its statutory role of representation before regulatory bodies.

Accordingly, since S. 2560, Committee Print No. 1 constitutes broad policy determination more the concern of other agencies and departments, it is felt that the mission of GSA is not sufficiently affected to warrant an expression of opinion on the merits of this legislative proposal.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

BERNARD L. BOUTIN, *Administrator.*

GENERAL ACCOUNTING OFICE,
Washington, February 15, 1962.

B–120670.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate.

DEAR MR. CHAIRMAN: We refer again to your letter of February 1, 1962, in which you asked for our comments on S. 2764.

This bill, which you introduced at the request of the Interstate Commerce Commission, would implement legislative recommendation No. 4 of the Commission's 75th annual report. It proposes to amend section 222(h) of the Interstate Commerce Act, 49 U.S.C. 322(h), by extending the civil forfeiture provisions therein to unlawful operations and safety violations by motor carriers, by permitting the Commission to institute forfeiture actions directly in the appropriate courts, and by increasing the dollar amount of the forfeitures. The Commission believes that this will strengthen its ability to deal with and to combat unlawful operations and safety violations to a substantial degree. The possibility of a criminal action reportedly is not a sufficient deterrent to unlawful operations or to safety violations, since the mechanics of bringing a criminal charge and the quantum of proof necessary to sustain it complicate and retard successful prosecution.

The proposed legislation, if enacted into law, would not affect the functions or operations of our Office. S. 2764 seems to be in the public interest, and we see no objection to its receiving favorable consideration from your committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

APPENDIX A

Committee Prints Nos. 1, 2, 3, and 4 of S. 2560 follow:

[COMMITTEE PRINT NO. 1]

JANUARY 24, 1962

Calendar No.

87TH CONGRESS
2D SESSION

S. 2560

[Report No.]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1961

Mr. SMATHERS introduced the following bill; which was read twice and referred to the Committee on Commerce

JANUARY , 1962

Reported by Mr. ----------, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier operating in interstate or foreign commerce within the borders of that State—~~

~~"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, or (in the case of any other type of motor carrier operating in interstate or foreign commerce) to register and disclose its status;~~

~~"(2) to identify its vehicles;~~

~~"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or~~

~~"(4) to file other securities or agreements,~~

~~such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which might constitute a burden, financial, administrative or otherwise, on the operations of such carriers. In establishing such standards the Commission shall give recognition also to the differences which exist in the operations of such carriers as common carriers, contract carriers, private carriers, and carriers operating under exemptions provided for in section 203(b) of this part by promulgating different sets of such standards for each of~~

the classes of carriers. The Commission may consult with the regulatory bodies of the several States and with representatives of motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any State requirements respecting interstate operations which do not conform to the provisions of this paragraph shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier operating pursuant to a certificate, or permit issued by the Commission under the provisions of sections 206, 207, 208, and 209 of this part) operates in violation of any provisions of this part (except as to the reasonableness of rates, fares, or charges, and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder any person or the Commission or its duly authorized agent may apply to the district court of the United States for any district where such person operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirements of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States, the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

~~SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows:~~

~~"SEC. 226. (a) In order to insure that motor carriers operating vehicles pursuant to the provisions of section 203(b)(6) subject only to the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, have adequate knowledge of such rules and regulations, and to promote compliance therewith, each such carrier shall, on or before September 1 of each year, file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the number of vehicles owned or operated."~~

~~SEC. 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods."~~

~~(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:~~

~~"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."~~

~~(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:~~

~~"SEC. 410. (a)(4) FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS. If any person (or its predecessor in interest) was in bona fide operation on September 15, 1961, as a freight forwarder as that term is defined in section 402(a)(5) of used household goods in commerce between any place in the United States and any place in a territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on September 15, 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 such applicant or its predecessor in interest had no control, the Commission upon proof of such bona fide operations and after hearing shall issue a permit authorizing such operations without requiring further proof that the service is or will be consistent with the public interest, and without further proceedings. If application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date of the enactment of this subparagraph. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Any carrier which, on the date of the enactment of this subparagraph is engaged in operation as a freight forwarder (as defined in section 402(a)(5) of used household goods but was not engaged in such operation on September 15, 1961, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within one hundred and twenty days after the date of the enactment of this subparagraph, continue such operation without a permit pending the determination of such application in accordance with the provisions of section 410."~~

That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier subject to regulation by the Interstate Commerce Commission (other than regulation solely pursuant to the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment) operating in interstate or foreign commerce within the borders of that State—

"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission;

"(2) to identify its vehicles;

"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or

"(4) to file other securities or agreements,

such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of such motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State require-

ments which might constitute a burden, financial, administrative or otherwise, on the operations of such carriers. The Commission may consult with the regulatory bodies of the several States and with representatives of such motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any such State requirements which do not conform to the provisions of this paragraph shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier holding a certificate or permit issued by the Commission under the provisions of sections 206, 207, 208, 209, and 210a of this part) operates in clear and patent violation of any provisions of section 206, 207, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person operates, for the enforcement of such section, or of such rule, regulation, requirement, or order; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c), shall forfeit to the United States the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows:

"SEC. 226. (a) In order to insure that motor carriers operating vehicles of three or more axles pursuant to the provisions of section 203(b)(6) except carriers who engage in casual, occasional, or reciprocal transportation of commodities within the purview of that section, have adequate knowledge of the rules and reguiations of the Commission

respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and in order to promote compliance therewith, each such carrier shall, before commencing operations and on or before September 1 of each year thereafter file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the number of such vehicles owned or operated."

SEC. 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods".

(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:

"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."

(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:

"SEC. 410. (a)(4) FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS.—If any person (or its predecessor in interest) was in bona fide operation on August 15, 1962, as a freight forwarder as that term is defined in section 402(a)(5) of used household goods in interstate commerce between points in the United States or between any point in the United States and any point in a territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on August 15, 1962, 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 such applicant or its predecessor in interest had no control, the Commission upon proof of such bona fide operations and after hearing shall issue a permit authorizing such operations without requiring further proof that the service is or will be consistent with the public interest, and without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date of the enactment of this subparagraph. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful."

(d) Section 417(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any freight forwarder fails to comply with or operates in violation of any provision of this part, or any rule, regulation, requirement, or order thereunder, or of any term or condition of any permit, the Commissioner or the Attorney General of the United States (or, in case of such an order, any party injured by the failure to comply therewith or by the violation thereof) my apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this part or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such freight forwarder and any officer, agent, employee, or representative thereof from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition, and enjoining obedience thereto."

"(2) If any person (not including a freight forwarder holding a permit issued by the Commission under the provisions of section 410 of this part) operates in clear and patent violation of any provisions of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person operates, for the enforcement of such section, or of such rule, regulation, requirement, or order; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission."

[COMMITTEE PRINT NO. 2]

APRIL 20, 1962

Calendar No.

87TH CONGRESS
2D SESSION

S. 2560

[Report No.]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1961

Mr. SMATHERS introduced the following bill; which was read twice and referred to the Committee on Commerce

MAY , 1962

Reported by Mr. ----------, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier operating in interstate or foreign commerce within the borders of that State—~~

~~"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, or (in the case of any other type of motor carrier operating in interstate or foreign commerce) to register and disclose its status;~~

~~"(2) to identify its vehicles;~~

~~"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or~~

~~"(4) to file other securities or agreements,~~

~~such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which might constitute a burden, financial, administrative or otherwise, on the operations of such carriers. In establishing such standards the Commission shall give recognition also to the differences which exist in the operations of such carriers as common carriers, contract carriers, private carriers, and carriers operating under exemptions provided for in section 203(b) of this part by promulgating different sets of such standards for each of the classes of carriers. The Commission may consult with the regulatory bodies of the several States and with representatives of motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any State requirements respecting interstate operations which do not conform to the provisions of this paragraph shall be null and void."~~

~~SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:~~

~~"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United~~

States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier operating pursuant to a certificate, or permit issued by the Commission under the provisions of sections 206, 207, 208, and 209 of this part) operates in violation of any provisions of this part (except as to the reasonableness of rates, fares, or charges, and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder any person or the Commission or its duly authorized agent may apply to the district court of the United States for any district where such person operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirements of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission; as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(e) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States, the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows;

"SEC. 226. (a) In order to insure that motor carriers operating vehicles pursuant to the provisions of section 203(b)(6) subject only to the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, have adequate knowledge of such rules and regulations, and to promote compliance therewith, each such carrier shall, on or before September 1 of each year, file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the number of vehicles owned or operated."

SEC 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods."

(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows;

~~"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."~~

~~(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:~~

~~"SEC. 410. (a)(4) FREIGHT FORWARDERS OR USED HOUSEHOLD GOODS. If any person (or it predecessor in interest) was in bona fide operation on September 15, 1961, as a freight forwarder as that term is defined in section 402(a)(5) of used household goods in commerce between any place in the United States and any place in a territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on September 15, 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 such applicant or its predecessor in interest had no control, the Commission upon proof of such bona fide operations and after hearing shall issue a permit authorizing such operations without requiring further proof that the service is or will be consistent with the public interest, and without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date of the enactment of this subparagraph. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Any carrier which, on the date of the enactment of this subparagraph is engaged in operation as a freight forwarder (as defined in section 402(a)(5) of used household goods but was not engaged in such operation on September 15, 1961, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within one hundred and twenty days after the date of the enactment of this subparagraph, continue such operation without a permit pending the determination of such application in accordance with the provisions of section 410."~~

That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier subject to regulation by the Interstate Commerce Commission (other than regulation solely pursuant to the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment) operating in interstate or foreign commerce within the borders of that State—

"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission;

"(2) to identify its vehicles;

"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or

"(4) to file other securities or agreements,

such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of such motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which might constitute a burden, financial, administrative or otherwise, on the operations of such carriers. The Commission may consult with the regulatory bodies of the several States and with representatives of such motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any such State requirements which do not conform to the provisions of this paragraph shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly

authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier holding a certificate or permit issued by the Commission under the provisions of sections 206, 207, 208, 209, or 210a of this part) operates in clear and patent violation of any provisions of section 206, 207, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person operates, for the enforcement of such section, or of such rule, regulation, requirement, or order; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. Any application for relief shall be accompanied by a bond sufficient to protect the interests of the party or parties against whom any injunction or other process is issued should it later be proven unwarranted by the facts and circumstances. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c), shall forfeit to the United States not to exceed the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows:

"SEC. 226. (a) In order to insure that motor carriers operating trucks or other vehicles of three or more axles pursuant to the provisions of section 203(b)(6) except carriers who engage in casual, occasional, or reciprocal transportation of commodities within the purview of that section, have adequate knowledge of the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, and in order to promote compliance therewith, each such carrier shall, before commencing operations, file with the Commission, a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the number of such vehicles owned or operated. In the event the carrier shall cease to operate, or at the time any vehicle is acquired or disposed of, the carrier shall similarly notify the Commission."

SEC. 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods".

(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:

"(g) in the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."

(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:

"SEC. 410(a)(4). FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS.—Any person may apply for a permit to operate as a freight forwarder (as that term is defined in section 402(a)(5)) of used household goods in interstate and foreign commerce between points in the United States or between any points in the United States and any point outside of the continental United States and shall be granted such a permit if the Commission finds that he is fit, willing, and able properly to perform the service proposed. Permits granted under this subparagraph shall be renewed annually. Application for a permit and the annual renewal thereof shall be accompanied by a fee of $50. Application for permits under this paragraph shall be made to the Commission as provided in paragraph (b) of this section, except that notice to interested parties shall be by Federal Register.

(d) Section 410(c) of the Interstate Commerce Act, as amended, is amended by inserting the following new words immediately preceding the first word of the paragraph: "Except as provided under subparagraph 410(a)(4) of this section," and by inserting a comma and the following new words immediately following the word "Act" in the second sentence thereof: "except that a motor common carrier of household goods subject to part II of the Act may be issued a permit as a freight forwarder of used household goods upon qualifying therefor in accordance with paragraph (a)(4) of this section."

(e) Section 410(e) of the Interstate Commerce Act, as amended, is amended by inserting a comma and the following new words immediately after the first "and" in the first sentence thereof: "except for freight forwarders of used household goods issued permits under paragraph (a)(4) of this section."

(f) Section 411(c) is amended by striking the period at the end thereof and adding "nor shall it forbid a motor common carrier of household goods subject to part II of the Act, or a director, officer, employee, or agent of such carrier, from controlling or acquiring control of, or holding stock in, a freight forwarder of used household goods which is subject to section 410(a)(4)."

(g) Section 417(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any freight forwarder fails to comply with or operates in violation of any provision of this part, or any rule, regulation, requirement, or order thereunder, or of any term or condition of any permit, the Commissioner or the Attorney General of the United States (or, in case of such an order, any party injured by the failure to comply therewith or by the violation thereof) may apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this part or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such freight forwarder and any officer, agent, employee, or representative thereof from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition, and enjoining obedience thereto. Any application for relief shall be accompanied by a bond sufficient to protect the interests of the party or parties against whom any injunction or other process is issued should it later be proven unwarranted by the facts and circumstances."

"(2) If any person (not including a freight forwarder holding a permit issued by the Commission under the provisions of section 410 of this part) operates in clear and patent violation of any provisions of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person operates, for the enforcement of such section, or of such rule, regulation, requirement, or order; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section, or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission."

[COMMITTEE PRINT NO. 3]

MAY 29, 1962

Calendar No.

87TH CONGRESS
2D SESSION

S. 2560

[Report No.]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1961

Mr. SMATHERS introduced the following bill; which was read twice and referred to the Committee on Commerce

JUNE , 1962

Reported by Mr. ----------, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier operating in interstate or foreign commerce within the borders of that State—~~

~~"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, or (in the case of any other type of motor carrier operating in interstate or foreign commerce) to register and disclose its status;~~

~~"(2) to identify its vehicles;~~

~~"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or~~

~~"(4) to file other securities or agreements,~~

~~such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which might constitute a burden, financial, administrative or otherwise, on the operations of such carriers. In establishing such standards the Commission shall give recognition also to the differences which exist in the operations of such carriers as common carriers, contract carriers, private carriers, and carriers operating under exemptions provided for in section 203(b) of this part by promulgating different sets of such standards for each of the classes of carriers. The Commission may consult with the regulatory bodies of the several States and with representatives of motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any State requirements respecting interstate operations which do not conform to the provisions of this paragraph shall be null and void."~~

~~SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:~~

~~"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United~~

States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule- regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier operating pursuant to a certificate, or permit issued by the Commission under the provisions of sections 206, 207, 208, and 209 of this part) operates in violation of any provisions of this part (except as to the reasonableness of rates, fares, or charges, and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder any person or the Commission or its duly authorized agent may apply to the district court of the United States for any district where such person operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirements of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States, the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows:

"SEC. 226. (a) In order to insure that motor carriers operating vehicles pursuant to the provisions of section 203(b)(6) subject only to the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, have adequate knowledge of such rules and regulations, and to promote compliance therewith, each such carrier shall, on or before September 1 of each year, file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the number of vehicles owned or operated."

SEC 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods."

(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:

~~"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."~~

~~(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:~~

~~"SEC. 410. (a)(4) FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS. If any person (or it predecessor in interest) was in bona fide operation on September 15, 1961, as a freight forwarder as that term is defined in section 402(a)(5) of used household goods in commerce between any place in the United States and any place in a territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on September 15, 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 such applicant or its predecessor in interest had no control, the Commission upon proof of such bona fide operations and after hearing shall issue a permit authorizing such operations without requiring further proof that the service is or will be consistent with the public interest, and without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date of the enactment of this subparagraph. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Any carrier which, on the date of the enactment of this subparagraph is engaged in operation as a freight forwarder (as defined in section 402(a)(5)) of used household goods but was not engaged in such operation on September 15, 1961, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within one hundred and twenty days after the date of the enactment of this subparagraph, continue such operation without a permit pending the determination of such application in accordance with the provisions of section 410."~~

That section 202(b) of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following; "but if any State requires any motor carrier subject to regulation by the Interstate Commerce Commission (other than regulation solely pursuant to the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment) operating in interstate or foreign commerce within the borders of that State—

"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission;

"(2) to identify its vehicles;

"(3) to file policies of insurance, surety bonds, or qualifications as a self-insurer, or other securities or agreements for the protection of the public, or evidence thereof,

such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate, and such standards may differ for each of the classes of carriers as differences in their operations may warrant. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of such motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which in the opinion of the Commission might constitute an undue burden, financial, administrative, or otherwise, on the operations of such carriers. The Commission shall consult with the regulatory bodies of the several States and with representatives of such motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any such State requirements which do not conform to the standards established by the Commission pursuant to this paragraph shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) *If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any lawful rule, regulation, requirement, or order promulgated by the Commission, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply for the enforcement thereof to the district court of the United States for any district where such motor carrier or broker operates. In any proceeding instituted under the provisions of this subsection any person, or persons, acting in concert or participation with such carrier or broker in the commission of such violation may, without regard to his or their residence, be included, in addition to the motor carrier or broker, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience to any such provision of this part, or of such rule, regulation, requirement, order, term, or condition by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives, and such other person, or persons, acting in concert or participation with such carrier or broker, from further violation of such provision of this part, or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. Process in such proceedings may be served upon such motor carrier, or broker, or upon such person, or persons, acting in concert or participation therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted.*"

"(2) *If any person (not including a motor carrier holding a certificate, permit, or grant of temporary authority issued by the Commission under the provisions of section 206, 207, 208, 209, or 210a of this part) operates in clear and patent violation of any provisions of section 203(c), 206, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as a party on its own motion and as of right in any such action in support of the plaintiff or the defendant. The party who or which prevails in any such action shall recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances.*

SEC. 3. *Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:*

"(h) *Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative therof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c), 206(a)(1) or 209(a)(1) shall forfeit to the United States not to exceed the sum of $200 for each such offense, and, in the case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found.*"

SEC. 4. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods".

(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:

"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."

(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:

"SEC. 410(a)(4). FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS.—Any person may apply for a permit to operate as a freight forwarder (as that term is defined in section 402(a)(5)) of used household goods in interstate and foreign commerce between points in the United States or between any points in the United States and any point outside of the continental United States and shall be granted such a permit if the Commission finds that he is fit, willing, and able properly to perform the service proposed. Permits granted under this subparagraph shall be renewed annually. Application for a permit and the annual renewal thereof shall be accompanied by a fee of $50. Application for permits under this paragraph shall be made to the Commission as provided in paragraph (b) of this section, except that notice to interested parties shall be by Federal Register."

(d) Section 410(c) of the Interstate Commerce Act, as amended, is amended by inserting the following new words immediately preceding the first word of the paragraph: "Except as provided under subparagraph 410(a)(4) of this section," and by inserting a comma and the following new words immediately following the word "Act" in the second sentence thereof: "except that a motor common carrier of household goods subject to part II of the Act may be issued a permit as a freight forwarder of used household goods upon qualifying therefor in accordance with paragraph (a)(4) of this section."

(e) Section 410(e) of the Interstate Commerce Act, as amended, is amended by inserting a comma and the following new words immediately after the first "and" in the first sentence thereof: "except for freight forwarders of used household goods issued permits under paragraph (a)(4) of this section,".

(f) Section 411(c) is amended by striking the period at the end thereof and adding "nor shall it forbid a motor common carrier of household goods subject to part II of the Act, or a director, officer, employee, or agent of such carrier, from controlling or acquiring control of, or holding stock in, a freight forwarder of used household goods which is subject to section 410(a)(4)."

(g) Section 417(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any freight forwarder fails to comply with or operates in violation of any provision of this part, or any rule, regulation, requirement, or order thereunder, or of any term or condition of any permit, the Commission or the Attorney General of the United States (or, in case of such an order, any party injured by the failure to comply therewith or by the violation thereof) may apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this part or of such rule, regulation, requirement, order, term, or condition. In any proceeding instituted under the provisions of this subsection any person, or persons, acting in concert or participation with such freight forwarder in the commission of such violation may, without regard to his or their residence, be included, in addition to the freight forwarder, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such freight forwarder and any officer, agent, employee, or representative thereof from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition, and enjoining obedience thereto. Process in such proceedings may be served upon such freight forwarder, or upon such person, or persons, acting in concert or participation therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted. Any application for relief shall be accompanied by a bond sufficient to protect the interests of the party or parties against whom any injunction or other process is issued should it later be proven unwarranted by the facts and circumstances."

"(2) If any person (not including a freight forwarder holding a permit issued by the Commission under the provisions of section 410 of this part) operates in clear and patent violation of any provisions of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the

district court of the United States for any district where such person so violating operates, for the enforcement of the provisions of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section, or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as a party on its own motion and as of right in any such action in support of the plaintiff or the defendant. The party who or which prevails in any such action shall recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances."

SEC. 5. Section 205(f) of the Interstate Commerce Act is amended by inserting after the second sentence therein a new sentence reading as follows: "In addition, the Commission is authorized, notwithstanding section 222(d), to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation."

[COMMITTEE PRINT NO. 4]

JUNE 7, 1962

Calendar No.

87TH CONGRESS
2D SESSION

S. 2560

[Report No.]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1961

Mr. SMATHERS introduced the following bill; which was read twice and referred to the Committee on Commerce

JUNE , 1962

Reported by Mr. ----------, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That paragraph (b) of section 202 of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier operating in interstate or foreign commerce within the borders of that State—~~

~~"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, or (in the case of any other type of motor carrier operating in interstate or foreign commerce) to register and disclose its status;~~

~~"(2) to identify its vehicles;~~

~~"(3) to file policies of insurance, or surety bonds, or qualifications as a self-insurer; or~~

~~"(4) to file other securities or agreements,~~

~~such State shall within five years of the enactment of this paragraph conform such requirements to the uniform standards which the Commission is hereby directed to promulgate. In establishing such uniform standards the Commission~~

shall give due regard to the needs of the several States for information relating to the authority and operations of motor carriers engaged in interstate and foreign commerce while protecting such carriers from the need to file or otherwise comply with State requirements which might constitute a burden, financial, administrative or otherwise, on the operations of such carriers. In establishing such standards the Commission shall give recognition also to the differences which exist in the operations of such carriers as common carriers, contract carriers, private carriers, and carriers operating under exemptions provided for in section 203(b) of this part by promulgating different sets of such standards for each of the classes of carriers. The Commission may consult with the regulatory bodies of the several States and with representatives of motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any State requirements respecting interstate operations which do not conform to the provisions of this paragraph shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

"(2) If any person (not including a motor carrier operating pursuant to a certificate, or permit issued by the Commission under the provisions of sections 206, 207, 208, and 209 of this part) operates in violation of any provisions of this part (except as to the reasonableness of rates, fares, or charges, and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder any person or the Commission or its duly authorized agent may apply to the district court of the United States for any district where such person operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto."

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirements of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States, the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recover-

~~able in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found.~~"

~~SEC. 4. The Interstate Commerce Act, as amended, is amended by inserting after section 226 thereof a new section 226(a) as follows;~~

~~"SEC. 226. (a) In order to insure that motor carriers operating vehicles pursuant to the provisions of section 203(b)(6) subject only to the rules and regulations of the Commission respecting qualifications and maximum hours of service of employees and safety of operation and equipment, have adequate knowledge of such rules and regulations, and to promote compliance therewith, each such carrier shall, on or before September 1 of each year, file with the Commission a statement, in such manner as the Commission may prescribe, showing (1) the name of the carrier, (2) the location or principal address of the carrier, and (3) the number of vehicles owned or operated.~~"

~~SEC 5. (a) Section 402 of the Interstate Commerce Act, as amended, is amended, is amended by deleting from subsection (b) thereof the words "or used household goods.~~"

~~(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows;~~

~~"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable.~~"

~~(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:~~

~~"SEC. 410. (a)(4) FREIGHT FORWARDERS OF USED HOUSEHOLD GOODS. If any person (or it predecessor in interest) was in bona fide operation on September 15, 1961, as a freight forwarder as that term is defined in section 402(a)(5) of used household goods in commerce between any place in the United States and any place in a territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on September 15, 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 such applicant or its predecessor in interest had no control, the Commission upon proof of such bona fide operations and after hearing shall issue a permit authorizing such operations without requiring further proof that the service is or will be consistent with the public interest, and without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date of the enactment of this subparagraph. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Any carrier which, on the date of the enactment of this subparagraph is engaged in operation as a freight forwarder (as defined in section 402(a)(5) of used household goods but was not engaged in such operation on September 15, 1961, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within one hundred and twenty days after the date of the enactment of this subparagraph, continue such operation without a permit pending the determination of such application in accordance with the provisions of section 410.~~"

That section 202(b) of the Interstate Commerce Act, as amended, is amended by striking the period at the end thereof and inserting in lieu thereof a semicolon and the following: "but if any State requires any motor carrier subject to regulation by the Interstate Commerce Commission (other than regulation solely pursuant to the provisions of section 204 relative to qualifications and maximum hours of service of

employees and safety of operation or standards of equipment) operating in interstate or foreign commerce within the borders of that State—

"(1) to register its certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission;

"(2) to identify its vehicles;

"(3) to file policies of insurance, surety bonds, or qualifications as a self-insurer, or other securities or agreements for the protection of the public, or evidence thereof,

such State shall within five years after the enactment of this amendment to section 202(b) conform such requirements to the uniform standards which the Commission is hereby directed to promulgate, and such standards may differ for each of the classes of carriers as differences in their operations may warrant. In establishing such uniform standards the Commission shall give due regard to the needs of the several States for information relating to the authority and operations of such motor carriers engaged in interstate and foreign commerce while protecting such carriers from a duty to file or otherwise comply with State requirements that, in the opinion of the Commission, might constitute an undue burden, financial, administrative, or otherwise, on the operations of such carriers. The Commission shall consult with the regulatory bodies of the several States and with representatives of such motor carriers subject to regulation under this part. In order to facilitate and effectuate the purposes of this paragraph the Commission shall review from time to time the uniform standards established pursuant to this paragraph and may make such modifications, changes, or amendments thereto as the Commission may deem necessary. Any such State requirements which, after the expiration of five years following enactment of this amendment to section 202(b) are not in conformity with the standards established by the Commission pursuant to this paragraph, shall be null and void."

SEC. 2. Section 222(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any lawful rule, regulation, requirement, or order promulgated by the Commission, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply for the enforcement thereof to the district court of the United States for any district where such motor carrier or broker operates. In any proceeding instituted under the provisions of this subsection any person, or persons, acting in concert or participation with such carrier or broker in the commission of such violation may, without regard to his or their residence, be included, in addition to the motor carrier or broker, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience to any such provision of this part, or of such rule, regulation, requirement, order, term, or condition by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives, and such other person, or persons, acting in concert or participation with such carrier or broker, from further violation of such provision of this part, or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. Process in such proceedings may be served upon such motor carrier, or broker, or upon such person, or persons, acting in concert or participation therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted."

"(2) If any person (not including a motor carrier holding a certificate, permit, or grant of temporary authority issued by the Commission under the provisions of section 206, 207, 208, 209, or 210a of this part) operates in clear and patent violation of any provisions of section 203(c), 206, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service

shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances.

SEC. 3. Section 222(h) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(h) Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative hereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with the Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part; or who shall fail or refuse to comply with the provisions of section 203(c), section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirements, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States not to exceed the sum of $200 for each such offense, and, in case of a continuing violation not to exceed $100 for each additional day during which such failure or refusal shall continue after notice. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit by the Commission or its duly authorized agent, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by the Commission, or by this part, to engage in operation as such motor carrier; or broker, or in the district where such forfeiture may accrue; or in any district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found."

SEC. 4. (a) Section 402 of the Interstate Commerce Act, as amended, is amended by deleting from subsection (b) thereof the words "or used household goods".

(b) Section 406 of the Interstate Commerce Act, as amended, is amended by inserting at the end thereof a new subsection (g) as follows:

"(g) In the exercise of its power to prescribe just and reasonable regulations and practices of freight forwarders of used household goods, the Commission shall give due consideration to the similarities of service provided by motor carriers of household goods (in transporting used household goods) and such freight forwarders, and establish uniform regulations and practices insofar as practicable."

(c) Section 410 of the Interstate Commerce Act, as amended, is amended by adding at the end of subsection (a) thereof a new subparagraph as follows:

"SEC. 410(a)(4). Any person may apply for a permit to operate as a freight forwarder (as that term is defined in section 402(a)(5)) of used household goods in interstate and foreign commerce between points in the United States or between any points in the United States and any point outside of the United States and shall be granted such a permit if the Commission finds that he is fit, willing, and able properly to perform the service proposed. Permits granted under this subparagraph shall be for one year and shall be renewable annually. Application for a permit and the annual renewal thereof shall be accompanied by a fee of $50. Application for permits under this paragraph shall be made to the Commission as provided in paragraph (b) of this section."

(d) Section 410(c) of the Interstate Commerce Act, as amended, is amended by inserting the following new words immediately preceding the first word of the paragraph: "Except as provided under subparagraph 410(a)(4) of this section," and by inserting a comma and the following new words immediately following the word "Act" where it first appears in the second sentence thereof: "except that a motor common carrier of household goods subject to part II of the Act may be issued a permit as a freight forwarder of used household goods upon qualifying therefor in accordance with paragraph (a)(4) of this section."

(e) Section 410(e) of the Interstate Commerce Act, as amended, is amended by inserting a comma and the following new words immediately after the first "and" in the first sentence thereof: "except for freight forwarders of used household goods issued permits under paragraph (a)(4) of this section,".

(f) Section 411(c) is amended by striking the period at the end thereof and adding "nor shall it forbid a motor common carrier of household goods subject to part II of the Act, or a director, officer, employee, or agent of such carrier, from controlling or acquiring control of, or holding stock in, a freight forwarder of used household goods which is subject to section 410(a)(4)."

(g) Section 417(b) of the Interstate Commerce Act, as amended, is amended to read as follows:

"(b)(1) If any freight forwarder fails to comply with or operates in violation of any provision of this part, or of any rule, regulation, requirement, or order promulgated by the Commission, or of any term or condition of any permit, the Commission or its duly authorized agent may apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this part or of such rule, regulation, requirement, order, term, or condition. In any proceeding instituted under the provisions of this subsection any person, or persons, acting in concert or participation with such freight forwarder in the commission of such violation may, without regard to his or their residence, be included, in addition to the freight forwarder, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such freight forwarder and any officer, agent, employee, or representative thereof from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition, and enjoining obedience thereto. Process in such proceedings may be served upon such freight forwarder, or upon such person, or persons, acting in concert or participation therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted. Any application for relief shall be accompanied by security in such sum as the court deems proper to protect the interests of the party or parties against whom any injunction or other process is issued should it later be proven unwarranted by the facts and circumstances."

"(2) If any person (not including a freight forwarder holding a permit issued by the Commission under the provisions of section 410 of this part) operates in clear and patent violation of any provisions of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of the provisions of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section, or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances."

SEC. 5. Section 205(f) of the Interstate Commerce Act is amended by inserting after the second sentence therein a new sentence reading as follows: "In addition, the Commission is authorized, notwithstanding section 222(d), to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation."

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