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MAIL TRANSPORTATION BY REGULATED MOTOR CARRIER

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(Part II)

HEARING

BEFORE THE
SUBCOMMITTEE ON POSTAL OPERATIONS
OF THE
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
EIGHTY-NINTH CONGRESS



SECOND SESSION

ON

H.R. 13925

A BILL TO AMEND CHAPTER 95 OF TITLE 39,
UNITED STATES CODE

JULY 19, 1966

Printed for the use of the
Committee on Post Office and Civil Service



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MAIL TRANSPORTATION BY REGULATED
MOTOR CARRIER

(Part II)

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III

MAIL TRANSPORTATION BY REGULATED MOTOR CARRIER

TUESDAY, JULY 19, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS
OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 346 Cannon House Office Building, Hon. Thaddeus J. Dulski (chairman of the subcommittee) presiding.

Mr. DULSKI. The subcommittee will come to order.

Upon the conclusion of the hearings on H.R. 13925, concerning mail transportation by regulated motor carrier, a letter was sent to the Postmaster General asking for his views on the substitute measure which had been proposed by representatives of the Association of American Railroads on the last day of the hearings. The proposed draft appears in part I of the hearings starting on page 89.

Subsequently, the committee staff, at my request, prepared a new draft taking into consideration, to the extent possible, all of the recommendations presented during the hearings. A copy of this draft, committee print No. 2, is on each member's desk.

I then asked for the Postmaster General's comments on the draft. The Postmaster General has advised that the Assistant Postmaster General, Mr. Hartigan, will be available to assist the subcommittee in any way we desire.

(The committee print No. 2 mentioned above is as follows:)

COMMITTEE PRINT NO. 2, JULY 13, 1966

A BILL To amend chapter 95 of title 39, United States Code, with respect to the transportation of mail by railroad and motor carrier, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 95 of title 39, United States Code, is amended to read as follows:

“CHAPTER 95—TRANSPORTATION OF MAIL BY RAILROAD AND MOTOR CARRIER

“Sec.

“6201. Definitions.

“6202. Mail carrier service.

“6203. Statements of mail transportation service by Postmaster General.

“6204. Rates for transportation of mail and related services by carriers.

“6205. Equipment, services, and facilities to be provided by carriers.

“6206. Changes in service.

“6207. Evidence of service.

“6208. Fines and deductions.

“6209. Authority to distinguish between classes of mail.

“6210. Transportation of Department personnel.

“6211. Discrimination in transporting second class mail.

“6212. Statistical studies.

“6213. Special contracts.

“§ 6201. Definitions.

“As used in this chapter—

“(1) ‘carrier’ means a railroad, a freight forwarder, and a motor carrier;

“(2) ‘railroad’ means a railway common carrier, including an electric urban and interurban railway common carrier;

“(3) ‘motor carrier’ means any regulated motor carrier engaged in the transportation of property as authorized by a certificate of public convenience and necessity, a certificate of registration, or a permit issued by the Commission;

“(4) ‘mail’ includes equipment and supplies of the Department;

“(5) ‘freight forwarder’ means any regulated freight forwarder which holds itself out to the general public as a common carrier to transport or provide transportation of property as authorized by a permit issued by the Commission; and

“(6) ‘Commission’ means the Interstate Commerce Commission.

“§ 6202. Mail carrier service

“(a) The Postmaster General may—

“(1) establish routes for the transportation of mail by carrier;

“(2) authorize service for the transportation of mail thereon; and

“(3) designate the individual carrier, and the particular carrier schedules and routes, upon which the mail shall be transported.

“(b) With respect to mail required to be sorted in transit, the Postmaster General may direct a railroad to transport such mail in railway post office cars on any train the railroad operates and to furnish the necessary facilities and services in connection therewith. Such cars shall be placed in stations at such times before the departure of the trains as the Postmaster General may direct.

“(c) With respect to mail not required to be sorted in transit, the Postmaster General may direct that such mail be transported and that the necessary facilities and services in connection therewith be furnished—

“(1) by any carrier who has filed a tender of availability and who has not withdrawn such tender in accordance with this section;

“(2) by a carrier in accordance with the provisions of a special contract entered into pursuant to the provisions of section 6213 of this title; or

“(3) in accordance with the applicable provisions of any other law.

“(d) With respect to mail not required to be sorted in transit, any carrier may file, at any time, with the Postmaster General a tender of its availability to transport such mail over the route or routes or within the territory with respect to which it is authorized to operate. Each such tender of availability shall—

“(1) set forth the route or routes or territory over or within which the carrier is authorized to operate; and

“(2) identify the docket number of the carrier’s pertinent certificate or certificates or permits and the page number thereof at which a description of such authorized routes or territory are to be found.

“(e) The Postmaster General, within a reasonable time after receipt of a tender of availability, shall acknowledge receipt thereof to the carrier.

“(f) A carrier whose tender of availability has not been withdrawn as authorized by this section shall transport, with due speed, mail offered by the Postmaster General in the manner, under the conditions, and furnish the facilities and services required.

“(g) A carrier filing a tender of availability with the Postmaster General may withdraw its tender of availability, after reasonable notice, in accordance with such rules and regulations as the Postmaster General may prescribe.

“(h) At the request of the Postmaster General, the Commission shall certify whether any carrier filing a tender of availability holds a certificate of public convenience and necessity, a certificate of registration, or a permit authorizing it to transport property over the routes or within the territory described in the tender of availability, and whether the carrier is in substantial compliance with the provisions of the Interstate Commerce Act and the rules and regulations of the Commission.

“(i) The provisions of subsections (c), (d), (e), (f), (g), and (h) of this section shall not apply to mail required by the Postmaster General to be transported and sorted in transit.

“§ 6203. Statements of mail transportation service by Postmaster General

“(a) The Postmaster General may file with the Commission, from time to time, a statement or statements of mail transportation service, describing the services required of carriers with respect to mail transportation service by carriers under this chapter.

“(b) Each statement of service shall set forth—

- “(1) the requirements for mail transportation service by carriers;
- “(2) the units of service upon which rates or compensation shall be based;
- “(3) the rates or compensation which the Postmaster General deems to be fair and reasonable for the services required; and
- “(4) such other requirements and information with respect to such mail transportation and the establishment of rates or compensation therefor as the Postmaster General deems advisable.

“§ 6204. Rates for transportation of mail and related services by carriers

“(a) The Commission, after notice and hearing, shall determine and fix, from time to time, fair and reasonable rates or compensation for the transportation of mail and the facilities and services connected therewith furnished by a carrier. The Commission shall prescribe the method for computing such rates or compensation.

“(b) For the purpose of determining and fixing rates or compensation under this section, the Commission may make just and reasonable classifications of carriers and, where just and equitable, fix general rates applicable to carriers in the same classification.

“(c) In determining and fixing fair and reasonable rates under this section, the Commission shall consider the relation between the Government and the carriers as public service corporations, and the nature of public service as distinguished, if there is a distinction, from the ordinary transportation business of the carriers.

“(d) At any time after six months from the entry of the last final order by the Commission as provided in this section, the Postmaster General, a carrier, or a group of carriers may file with the Commission a petition requesting an investigation of the rates or compensation fixed by the Commission.

“(e) Upon the filing of such a petition pursuant to this section, and for good cause shown, the Commission shall promptly institute an investigation to determine whether the rates or compensation fixed pursuant to this section are fair and reasonable. After notice and hearing and completion of the investigation, the Commission shall publish an order setting forth its redetermination.

“(f) Rates or compensation for mail transportation service for which rates or compensation have not been fixed pursuant to subsection (a) of this section or pursuant to other provisions of law in effect immediately before the effective date of this section or now in effect, shall be negotiated by the Postmaster General and the carrier or the designated agent or agents of the carrier. The Postmaster General shall file with the Commission a statement of such negotiated rates or compensation and the services to which they are applicable. Such rates or compensation shall become effective on the thirtieth day after the filing of such statement and shall continue in effect after such thirtieth day until the date on which the Commission shall initiate proceedings under subsection (g) of this section.

“(g) The Commission shall, not earlier than the first day of the eighteenth month, nor later than the last day of the twenty-fourth month, following the date on which such rates or compensation under subsection (f) of this section become effective, initiate a proceeding, as authorized by subsection (a) of this section, to fix rates or compensation to supersede the rates or compensation negotiated under the provisions of subsection (f). Such rates or compensation shall become effective as of the date on which the Commission initiates the proceedings.

“(h) The Commission shall publish its orders stating its determinations or redeterminations under this section. Each such order shall become effective, as the case may be,—

“(1) on the date on which the Commission commences its determination to fix rates or compensation under subsection (a) of this section;

“(2) on the date of filing of a petition under subsection (d) of this section;

or

“(3) on the date on which the Commission initiates proceedings to fix rates or compensation as required by the provisions of subsection (g) of this section.

“§ 6205. Equipment, services, and facilities to be provided by carriers

“(a) A carrier engaged in the transportation of mail shall provide such equipment, facilities, and services as the Postmaster General may direct.

“(b) Railway post office cars or parts thereof used for mail transportation and distribution must be of such construction, style, length, and character, and must be equipped in such manner as the Postmaster General requires. They must be constructed, equipped, maintained, heated, lighted, and cleaned by and at the expense of the railroad. The Postmaster General may not pay for full and apartment railway post office car service unless the car furnished therefor is sound

in material and construction, equipped with sanitary drinking water containers and toilet facilities, and regularly and thoroughly cleaned. He may not accept or pay for service by a full railway post office car unless the car is constructed of steel, steel underframe, or equally indestructible material.

“§ 6206. Changes in service

“The Postmaster General may authorize, according to the need therefor, new or additional mail transportation service by carriers at the rates or compensation fixed pursuant to this chapter. He may reduce or discontinue service with pro rata reductions in compensation. The Postmaster General may not pay for additional service which he has not specifically authorized.

“§ 6207. Evidence of service

“A carrier shall submit evidence of its performance of mail transportation service, signed by an authorized official, in such form and at such times as the Postmaster General requires. Mail transportation service is considered that of the carrier performing it regardless of the ownership of the property used by the carrier.

“§ 6208. Fines and deductions

“(a) The Postmaster General may fine any carrier in an amount not to exceed \$500.00 for each day such carrier refuses to perform mail transportation service as required by the Postmaster General in accordance with the provisions of this chapter.

“(b) The Postmaster General may fine a carrier in an amount he deems reasonable for failure or refusal to transport mail, furnish equipment, or facilities, or for delinquencies in mail transportation or services as required by the Postmaster General in accordance with the provisions of this chapter.

“(c) The Postmaster General may make deductions from the compensation due any carrier for failure to perform mail transportation service under the conditions, and in the manner, required by the Postmaster General. If such failure is due to the fault of the carrier, he may deduct a sum not exceeding three times the compensation applying to such service.

“§ 6209. Authority to distinguish between classes of mail

“The Postmaster General may distinguish between several classes of mail and arrange for less frequent dispatches of mail, other than first class mail, when lower transportation rates or other economies may be secured without material detriment to the service.

“§ 6210. Transportation of Department personnel

“A carrier engaged in the transportation of mail shall transport on any train or motor vehicle it operates, upon exhibiting their credentials and without extra charge therefor, personnel of the Department while traveling on official business relating to the transportation of mail on such train or motor vehicle.

“§ 6211. Discrimination in transporting second class mail

“(a) The Postmaster General may not transport a publication by freight if this method of mail transportation results in unfair discrimination against the owner of the publication.

“(b) When the owner of a publication required by order of the Department to be transported by freight believes that this method of transportation unfairly discriminates against him, he may file a written application with the Department for a hearing. Thereafter he shall be given an opportunity for a hearing before the Department. Pending final determination no change may be made in the method of transportation of the publication as ordered by the Department.

“(c) Prior to the entry of an order stating the Department's determination, the Postmaster General shall cause the testimony in the hearing under this section to be reduced to writing and filed in the Department.

“(d) If the Department after the hearing determines by order that there is no unfair discrimination, the publisher may, within a period of twenty days after the date of the order, petition the United States Court of Appeals for the District of Columbia for review of the order, by filing in the court a written petition praying that the order be set aside. The clerk of the court shall transmit a copy of the petition to the Department and thereupon the Department shall file in the court the record as provided in section 2112 of title 28. Upon the filing of the petition the court shall have jurisdiction to examine, set aside or modify the order of the Department.

“(e) The jurisdiction of the United States Court of Appeals for the District of Columbia to affirm, set aside, or modify the orders of the Department is exclusive.

"(f) The United States Court of Appeals for the District of Columbia shall give precedence to proceedings under this section over other pending cases and they shall be expedited in every way.

"§ 6212. Statistical studies

"The Postmaster General may arrange for weighing and measuring mail transported on carrier routes and make other computations for statistical and administrative purposes to carry out the purposes of this chapter and pay the expense thereof out of appropriations available to the Department.

"§ 6213. Special contracts

"The Postmaster General may enter into special contracts with carriers for terms not to exceed four years for the transportation of mail and for facilities and services connected therewith without advertising for bids. He may contract to pay lower rates or compensation, or where in his judgment conditions warrant, higher rates or compensation, than those determined and fixed by the Commission, or he may contract to pay rates or compensation he deems fair and reasonable when rates or compensation have not been fixed by the Commission. A copy of any contract made pursuant to this section shall be filed by the Postmaster General with the Commission at least thirty days prior to the date upon which such contract shall take effect."

SEC. 2. The title of chapter 101 of title 39, United States Code, is amended to read as follows: "TRANSPORTATION OF MAIL OTHER THAN BY RAIL, AIR, HIGHWAY POST OFFICE, FREIGHT FORWARDER, OR REGULATED MOTOR CARRIER".

SEC. 3. Section 6402(a) of title 39, United States Code, is amended—

- (1) by striking out the word "and" at the end of clause (5);
- (2) by striking out "title." at the end of clause (6) and inserting in lieu thereof "title; and"; and
- (3) by adding a new clause to read as follows:

"(7) transportation of mail by regulated motor carrier, as defined in section 6201, shall be procured as provided in chapter 95, or as provided in this chapter."

SEC. 4. (a) Nothing contained in this Act shall prevent the Postmaster General from entering into star-route contracts under existing provisions of law nor shall anything herein impair or suspend contracts now in effect for the transportation of mail.

(b) Nothing contained in this Act shall modify or change any rate or compensation for the transportation of mail under chapter 95 of title 39, United States Code, as in effect immediately prior to the effective date of this Act, until appropriate action is taken in accordance with such chapter as amended by this Act.

SEC. 5. The table of contents of part VI of title 39, United States Code, is amended—

(1) by striking out "95. Transportation of Mail by Railroad" and inserting in lieu thereof "95. Transportation of Mail by Railroad and Motor Carrier"; and

(2) by striking out "101. Transportation of Mail Other Than by Rail, Air, or Highway Post Office" and inserting in lieu thereof "101. Transportation of Mail Other Than by Rail, Air, Highway Post Office, Freight Forwarder, or Regulated Motor Carrier".

SEC. 6. The provisions of this Act shall become effective on the first day of the sixth month after the date of its enactment.

STATEMENT OF HON. WILLIAM J. HARTIGAN, ASSISTANT POSTMASTER GENERAL, BUREAU OF TRANSPORTATION AND INTERNATIONAL SERVICES, ACCOMPANIED BY THOMAS F. MEAGHER, JR., ASSISTANT GENERAL COUNSEL, LITIGATION DIVISION, AND JAMES J. STAPLETON, SPECIAL AND CONFIDENTIAL ASSISTANT TO MR. HARTIGAN

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

I have a prepared statement which I will read, and then I shall be very happy to answer any questions any of the members may have.

H.R. 13925, a bill on which the Postmaster General submitted a favorable report, and which I personally supported with testimony in the course of subcommittee hearings, appeared to us to present, after unsuccessful proposals submitted during the past several years, a workable means by which the last remaining regulated mode of common carrier transportation would finally be made available to the Department for the transportation of mail. This would add to our flexibility in managing the complex problem of intercity mail movement.

During the course of the subcommittee hearings, the railroad industry disclosed its opposition to the bill on the ground that regulated motor carriers would, under this bill, obtain the advantages that railroads now enjoy in the carriage of mail, without becoming subject to corresponding burdens.

The committee staff has attempted to redraft H.R. 13925 in such a way as to accommodate the conflicting and diverse views reflected in the testimony given by various parties and groups in the course of the subcommittee hearings. Since those hearings terminated, I have been advised by representatives of the American Trucking Associations, Inc., that they have informed the subcommittee and its staff that they are willing to be subject to all of the burdens resulting from the carriage of mail claimed by railroads, which would appear to me to eliminate any rational objection by the railroad industry to legislation which would enable the Department to transport mail by regulated motor carrier. As proposed by American Trucking Associations, Inc., this result could be accomplished by a simple amendment to the relevant sections of chapter 95 of title 39, United States Code, to make such sections applicable to mail transportation by regulated motor carriers, as well as by railroads. Such action would meet the objections which the railroad industry directed to H.R. 13925, and would provide the Department with the flexibility in obtaining transportation which is so essential to continued improvement of postal service to the citizens and business houses of this country.

The staff revision of H.R. 13925, reproduced as committee print No. 2 of an unnumbered bill, cannot be supported by the Department, because it would repeal a number of provisions of law now contained in chapter 95 of title 39, United States Code. Chapter 95, for the most part, consists of the Railway Mail Pay Act of 1916. This comprehensive piece of legislation, enacted after study and numerous hearings, has been satisfactory to railroads for 50 years. It has also enabled the Department to move substantial volumes of surface mail in an expeditious manner.

I do not believe that the Department should agree, without adequate notice, and in the absence of a full and complete review of the subject law and related service, to a repeal of any part of the Railway Mail Pay Act simply because this is the only means by which legislation enabling regulated motor carriers to provide mail service can be obtained. While it may appear that a statute enacted 50 years ago is ripe for review by the Congress, and we would not oppose a considered and systematic review, the Department has been unaware, until the railroad industry testimony was presented in this proceeding, of any dissatisfaction with this law.

As I have already informed the subcommittee, the Department has been ready and willing to relieve any railroad of the responsibility for carrying mail, whenever such a request has been made. When railroads, in proceedings before State regulatory bodies or the Interstate Commerce Commission, seek permission to discontinue the operation of unprofitable passenger trains, the Department presents no objection, but begins planning alternative arrangements for the movement of the mail involved, so that service to patrons will not be interrupted or delayed.

In summary, it is the Department's position that the subcommittee should resolve conflicting reactions to H.R. 13925 by reporting an amended bill which would make equally applicable to regulated motor carriers those sections of chapter 95 of title 39, United States Code which presently apply to railroads. The Postmaster General has authorized me to inform you that, before the Department will agree to any repeal of portions of the Railway Mail Pay Act, without adequate study, it would strenuously oppose legislation effecting such result even though such legislation would at the same time enable the Department to obtain the services of regulated motor carriers.

Mr. Chairman, I have here with me my staff and General Counsel and would be happy to answer any questions the members may raise with reference to the Post Office position.

Mr. DULSKI. Mr. Hartigan, would the bill as introduced be acceptable?

Mr. HARTIGAN. Yes. Our statement with reference to equalization was merely submitted to remove any of the objections that the railroads raised with reference to the fact that they were subject to more burdens than the motor carriers. We felt that if the bill included the carriers in all these burdens, then the objections would be eliminated, thereby allowing the Post Office the objective it is looking for, namely, the flexibility of using these modes of transportation.

Mr. DULSKI. The railroads want the truckers to put up terminals as the railroads are providing terminals for the Post Office now.

Mr. HARTIGAN. Under the requirements and specifications of the Post Office Department, even today we have truckers that are required to provide us with terminal facilities. So this would not be anything new. We do that currently.

Mr. DULSKI. I felt when I introduced this legislation that some flexibility has to be given to the truckers so that they can participate. I have no further question.

Mr. Gross.

Mr. GROSS. Then the Department is here today approving a bill which would make applicable the act of 1916 to the trucking industry, is that correct, in all of its ramifications?

Mr. HARTIGAN. I do not know whether there is a bill currently before the committee that would just amend chapter 95 to include the truckers.

Mr. GROSS. There is no bill before the committee, but I am asking you for your position, Mr. Hartigan.

You would agree to legislation which applied the same requirements upon the trucking industry that are now required of the railroads, is that correct?

Mr. HARTIGAN. That is right.

If the committee decided that the truckers should be subject to all the requirements that the railroads are, we would be in favor of such a bill, yes, sir, so long as we were able to use the carriers. This is the main purpose of our testifying on the bill to start with. So it would be acceptable to the Post Office to put them on equal footing.

Mr. GROSS. This would require, for instance, that the truckers furnish motor vehicles in which mail can be sorted.

Mr. HARTIGAN. Anything that the Post Office Department, in its wisdom, would require of the railroads, we could equally require of the truckers.

Mr. GROSS. The furnishing of mail storage trucks?

Mr. HARTIGAN. Anything we would require of the railroads we could legally require of the truckers.

Mr. GROSS. Do you think this would work?

Mr. HARTIGAN. I think it would; yes.

Mr. GROSS. You think that the trucking industry could meet all the requirements that the railroads are presently performing?

Mr. HARTIGAN. In exercising the same judgment that we are exercising now in our demands on the railroads I think the answer is "Yes."

Mr. GROSS. I may have further questions, Mr. Chairman. I yield at this time.

Mr. GREEN. You are not coming here advocating that course of action, are you? You are coming here saying that the railroad has suggested certain amendments.

Mr. HARTIGAN. They raised objections to the bill that we originally testified in favor of. If these objections are the only things that are preventing us from using this extra mode of transportation we would see no objection.

Mr. GREEN. Rather than release the railroads you would rather bind the trucks?

Mr. HARTIGAN. Put them all under the same roof.

Mr. GREEN. You are not saying, "This is how I think you should enact this legislation?"

Mr. HARTIGAN. No, we testified in favor of the original bill.

Mr. GREEN. Thank you.

Mr. DANIELS. As I recall the testimony of the railroads, they objected to a number of particulars of this bill, H.R. 13925, in that various provisions of the law applicable to railroads would not apply to the truckers. You come here this morning and say H.R. 13925 is satisfactory. Do you really mean that?

Mr. HARTIGAN. Our testimony on the original bill was that we feel it is satisfactory to the Post Office Department to obtain its objective, to use this mode of transportation for mail—provisions of this bill that we agree the Department can live with.

Mr. DANIELS. But the railroads are objecting because of the fact that truckers had the option or discretion to make themselves available and would file a certificate of availability.

Mr. HARTIGAN. That is right.

Mr. DANIELS. The railroads feared that by doing so, the truckers would take all of the cream of the freight and leave the undesirable mail to the railroads.

Mr. HARTIGAN. That was their testimony with which I do not fully agree. If that is an objection, we would not object to an amended bill that would remove any of the fears of the railroads that truckers

would be favored, by putting them all under the same roof and still allow us to utilize the services of the trucks within our administrative judgment under the Railway Mail Pay Act.

Mr. DANIELS. We would need a new bill if we did that.

Mr. HARTIGAN. I think it would be a new bill amending chapter 95.

Mr. DANIELS. It is my understanding that the truckers have no objection to the law being amended so that this law that applies to the railroads would be equally applicable to regulated motor carriers.

Mr. HARTIGAN. This is the information I received. This was a proposal that the truckers made to the staff of the committee, that they would not object to being included if this was the only objection stated by the railroads to H.R. 13925. If the committee passed such legislation, they would not object to being included and made subject to the same restrictions as the railroads and the same obligations as the railroads.

Mr. DANIELS. Then we would only have to modify chapter 95; is that correct?

Mr. HARTIGAN. That is right; to include regulated motor carriers.

Mr. DANIELS. Off the record.

(Discussion off the record.)

Mr. HARTIGAN. Even currently under chapter 95, title 39, United States Code, the Post Office Department, if it wished to, could demand an awful lot more of the railroads than we are currently demanding under this law. But transportation intelligence dictates that it is not reasonable for us to request the railroads to perform these services even though we can legally make them do it because we find that, in the best interests of the Department, we can use other systems to transport the mail rather than demand that the railroads do it. The same situation would naturally apply if the truckers were included. We would be derelict in our duty if we demanded something of any carrier which it could not perform if we could obtain the service from some other mode. It is a matter of the judgment that the Post Office Department uses in requesting and purchasing transportation under the current law. So I think we would be derelict if we demanded of any carrier, even if we could legally do so, a service it could not physically perform. This would only destroy the postal system and our own objectives. We currently try to utilize good transportation judgment in asking a carrier to perform a service that we feel it can perform under the law.

Mr. GROSS. Mr. Chairman, if I may; Mr. Hartigan, if this committee sees fit to pass out legislation providing for the bringing of the trucking industry and its transportation facilities under the Railway Mail Pay Act of 1916, it is the purpose of the Department to deal evenhandedly with both the railroads and the trucking industry. Is that your statement?

Mr. HARTIGAN. No, my statement is that I would utilize my Office, under the law, to move the mail with the modes of transportation that are available to me. This legislation, if amended, would just expand existing law to include another mode that is not currently included in it. It would not be our purpose merely to make sure that each mode is treated equally. I think our purpose in life is to move the mail.

Mr. GROSS. I do not really mean equally. I mean evenhandedly, insofar as the application of the law is concerned.

Mr. HARTIGAN. I think what we would do is try to utilize the modes of transportation in keeping with what they were designed to do, as far as each mode is concerned. The railroads, by their very nature, can do certain things that trucks cannot do. Trucks can, by their very nature, do certain things that railroads cannot do. We would demand of these carriers, under the law, the services that they were designed to perform. But currently, we are not able to utilize the mode of regulated truckers the same as we can the railroads. We think we can apply the use of these modes to great advantage to the Post Office. But we would certainly not ask a mode of transportation designed to do one thing to get into another phase of transportation, because each one is designed to do a particular job.

Currently we are not able to utilize the motor carriers. We think that including them in chapter 95 may be a solution to the problem. However, we testified in favor of this original bill, H.R. 13925, as being a way that the Post Office Department can avail itself to the motor common carriers.

Mr. JOHNSON. Would the gentleman yield?

Mr. GROSS. I yield the floor.

Mr. JOHNSON. I realize what I am going to ask you is perhaps already in the record. How many mail trains, as such, do you utilize today?

Mr. HARTIGAN. There are a little under 1,000 available railroad trains in this country—around 900.

Mr. JOHNSON. How many mail trains were available to you 5 years ago, let us say?

Mr. HARTIGAN. Five years ago, I would say in the neighborhood of between 2,000 and 3,000.

Mr. JOHNSON. Then there has been a taking off of approximately 1,000 mail trains in 5 years?

Mr. HARTIGAN. In 1925 there were 10,000 mail-carrying trains. Today there are less than a thousand. I should say that in 1930 we had 10,000 mail-carrying trains. In 1956 there were 2,627. In July 1965, there were 998. So from 1930 to July 1, 1965, there has been a 90 percent reduction in mail-carrying trains available to the Post Office.

Mr. JOHNSON. You are saying in your testimony that when the railroads come before the ICC and want to take off a train you do not fight them, but you immediately try to find other ways of hauling the mail. What other ways do you generally resort to when a mail train is taken off?

Mr. HARTIGAN. Other surface modes; chiefly it is a change to star route carriers, which would be a truck form of transportation.

Mr. JOHNSON. You would resort mostly to the star route carrier provision of the law?

Mr. HARTIGAN. Currently.

There is another system we have also used where on some discontinuances the railroads, anxious to remove the trains, have agreed to use railroad trucks. These trucks can be used the same as railroad cars. But other regulated motor carriers, unless the law is changed, cannot be used that way. The railroads under the current law can utilize trucks.

Mr. JOHNSON. To what extent have the railroads discontinued railway cars and used trucks?

Mr. HARTIGAN. In many train discontinuances they have made a proposal to us that they would be willing to haul our mail by truck in lieu of train. In other words, putting it on tires instead of tracks.

Mr. JOHNSON. Have you accepted that?

Mr. HARTIGAN. Not too often recently, because we have found out that going out to the trucking industry or the star route carriers, for that matter, by bid in many instances, we have been more successful in getting better prices. We find out, however, that there are certain areas where in diverting we would have been better off had we been able to negotiate with the regulated motor carriers. We could have gotten a better rate and better service. This is the reason for our testifying in favor of the bill, because it is the only remaining mode of transportation that we cannot go out and freely utilize—the motor common carrier. We feel this would be helpful to us in many areas.

Mr. JOHNSON. In effect, when the railroads take over all these trains they leave you in the lurch, but they do offer, in some instances, to provide truck transportation in lieu of rail?

Mr. HARTIGAN. We can negotiate with them, but we cannot negotiate with any other truckers.

Mr. JOHNSON. Explain just what takes place on a mail train as such. What do these railway mail clerks do on a mail train?

Mr. HARTIGAN. If the train transportation we are purchasing includes distribution of mail in a railway car, then these clerks actually perform a distribution in the car of first-class and other preferential mail, the same as they would in a post office.

Mr. JOHNSON. And put it in separate bags for communities.

Mr. HARTIGAN. In separate bags and to be distributed as they go along. The other type of transportation we purchase from the railroad is what we call a closed pouch, or a baggage car type of loading where full carloads go from point to point without distribution.

Mr. JOHNSON. That sorting was done at the local post office?

Mr. HARTIGAN. That is right. At the point of origin it would be distributed to a railroad car going to a destination and at that destination it would be distributed to the various associated offices.

Mr. JOHNSON. If you contemplate that we give the truckers the right to come in and participate, what type of sorting of mail facility would be available to offer to the Post Office Department?

Mr. HARTIGAN. We may or may not ask them to do it.

Mr. JOHNSON. You could ask them?

Mr. HARTIGAN. We could ask them under the law.

The chances are we would not ask them to do it. We could under the law.

Mr. JOHNSON. Could you conceive of a truck terminal having a sorting substation where before the truck pulls out they sort it?

Mr. HARTIGAN. We have available to us the same type of distribution on the highway which is called the highway post office. This type of distribution is already available to us. Some of these vehicles are owned by railroads and some are owned by private industry. This en route distribution, like we have on the tracks, is available currently on the highway.

Mr. GROSS. Are none of those highway post offices owned by the Post Office Department?

Mr. HARTIGAN. No, sir, they are not owned by the Post Office.

Mr. GROSS. Would the gentleman yield for one other question?

Mr. JOHNSON. Yes.

Mr. GROSS. What happens, if we pass out legislation bringing the trucking industry under the Railway Mail Pay Act of 1916 to the star route carrier?

Mr. HARTIGAN. I hope that nothing happens because this would be very disastrous to the Post Office Department. If we lost the star route carrier system this would be a disastrous thing for the Post Office Department, and we in no way would ever encourage any legislation that would eliminate the use of star route carriers. This would be an absolute necessity, that this legislation have no effect whatsoever on the future of star route carriers, because we could not live without them. This would be an important factor. We should be guarding against anything that would destroy the star route carriers as far as the Post Office Department is concerned.

Mr. DULSKI. Are there any further questions?

Mr. JOHNSON. Yes, I have another.

I believe there is a proceeding right now in Pennsylvania to take one of the trains off, let us say, from Williamsport to Buffalo on the Buffalo Division of the Pennsylvania Railroad. That frequently comes up. Supposing that the ICC grants it—and there is a mail coach on that train, and I think it is a sorting-type of delivery—what would the Post Office Department do if the ICC grants the taking off of this train from Williamsport to Buffalo? If this truck bill passes, what would you do?

Mr. HARTIGAN. First of all we would evaluate the service that is being performed by the railroad currently so we would know exactly what we were losing. We would evaluate in the light of the number of pieces of mail being moved and the type of service being performed along the route. Then we would do a complete study on exactly the types of replacement services we could put into effect, cost and service being kept in mind as a primary factor. That may end up requiring that we put on a combination of replacements if we had this legislation. Maybe it would be a combination of star routes in addition to the use of regulated motor carriers. But currently, without the bill, we would have to reduce our replacement service to strictly star route contractors to replace the railroad, or possibly a combination, if it was desirable to maintain the service, and in some areas it is, including the use of an air taxi in some outlying areas where the truck could not maintain the service. Usually it is a combination of service.

Mr. JOHNSON. Do you have any projection in your office as to the probable number of mail trains that would be taken off in the next 5 years?

Mr. HARTIGAN. We have tried to maintain such a record, but it is very difficult inasmuch as all the discontinuances have to go through hearings either in State regulatory bodies or in the ICC. It is very difficult to anticipate. We have an idea of those trains that are weak, in our judgment, from a mail point of view. We also, in studying these, have an idea of the ones that we assume are weak as far as the railroads are concerned either by them telling us or by the fact they have initiated action in which no decision has been made. Just through these sources are we able to know which ones are in doubt, but it is very difficult to anticipate.

Mr. JOHNSON. Would you say 200 more trains would be taken off in the next 5 years?

Mr. HARTIGAN. I do not know. At this point I would not be in a position to answer that question.

Mr. JOHNSON. That is all.

Mr. DULSKI. Thank you, sir. From what I gather from all your testimony, Mr. Hartigan, the railroads recommended repeal of parts thereof of title 39, United States Code, sections 6202 to 6207, subsections (c) and (d) of section 6209, section 6210 and section 6211. I gather they do not want the legislation that is proposed now, but they would like legislation enacted that would remove these sections from the law.

Mr. HARTIGAN. That is correct, Congressman. However, our position on that particular proposed legislation, after a very, very thorough consultation with our General Counsel and others in the Post Office Department, is that we find it unacceptable. This chapter 95, title 39, is so important and of such detail that in such a short period of time for us to agree to deletion to any portion of it, I think, would be to our disadvantage. That is why we would certainly not object if the Congress decided to review chapter 95 at a future date. We would be very happy to cooperate with them in that review to find out if in this day and age it should be changed or modified. At this point we do not think enough study has been put into it for us to agree to anything being removed. I think we would be less than loyal to mail patrons if we did such a thing.

Mr. DULSKI. The truckers are willing to take the full responsibility and take in all the sections of the Railway Mail Pay Act of 1916 and are willing to live with it. I do not think that we should eliminate any parts or sections.

Mr. HARTIGAN. This is the position of the Post Office.

Mr. DULSKI. Are there any other questions?

Mr. DANIELS. Yes, Mr. Chairman.

Mr. Hartigan, you probably were here when Mr. Starr Thomas, general counsel of the Atchison, Topeka, & Santa Fe Railway, appeared as chairman of the railway mail transportation committee of the American Association of Railroads. He testified on June 8, 1966, before this committee, and he stated that, "if the legislation would in fact place the motor carriers on the same basis as the railroads, our industry would not be here today opposing H.R. 13925. The fact is that it would not." Then he proceeded to point out that only three provisions of chapter 95 apply to the regulated motor carriers, whereas seven sections of chapter 95 would not apply. He stated that of 10 sections of chapter 95, which actually govern the transportation of mail by railroad, the motor carriers have ignored all or part of 7 of these sections and have placed themselves on an equal footing with respect to only 3. In view of that testimony, would there be any objection to putting the motor carriers right in chapter 95 and have all 10 provisions or sections of chapter 95 applicable to the motor carriers?

Mr. HARTIGAN. That is exactly why we testified in favor of this proposed solution. The Post Office would accept it. Having read the same testimony you did, Congressman, we noted this was the only objection that the railroads had. This was the only objection that was preventing us from utilizing the remaining motor transportation. If that was the case, we would be in favor of the truckers being included, as you suggested, in chapter 95.

Mr. DANIELS. If we made chapter 95 applicable to motor carriers on an equal footing with the railroads, then how would you be able to negotiate a contract with the motor carriers without applying to the Interstate Commerce Commission to fix rates?

Mr. HARTIGAN. Right now, section 6215 of title 39 gives us the authority for special contracts with the railroads. We are currently operating under some of them right now. So we would have this right.

Mr. DANIELS. You would take advantage of section 6215 which applies to special contracts.

Mr. HARTIGAN. Section 6213 is limited to trucks in lieu of railroad service which we mentioned earlier.

Mr. DANIELS. You would, though, take advantage of section 6215, which applies to special contracts.

Mr. HARTIGAN. That is right. That is the same as we do with the railroads right now.

Mr. DANIELS. That is the point I was going to get to. You are doing exactly that today.

Mr. HARTIGAN. With the railroads.

Mr. DANIELS. Why do you need this legislation?

Mr. HARTIGAN. Because we cannot do it with the regulated motor carriers. This just applies to the railroads. If the special contracts were to include the motor carriers, then we could.

Mr. JOHNSON. In other words, you would be able to negotiate directly with a trucker like you would negotiate directly now with the railroads, if this passes?

Mr. HARTIGAN. That is right.

Mr. DANIELS. Would a trucker have to be certificated to haul mail? Some truckers are allowed to haul just household goods, some petroleum products. Would they all have to come before the ICC and show necessity and have their certificates amended so they could haul the mail?

Mr. HARTIGAN. No, he could haul it under the current certificate. That certificate would be sufficient to permit him to carry mail if we tendered it to him.

Mr. DANIELS. Yes; but quite a few have the right to haul property, but the latter-day ones only have a right to haul specific kinds of property.

Mr. HARTIGAN. That is right.

Mr. DANIELS. And they are named with particularity in the certificate.

Mr. HARTIGAN. That is right. Mail would be included in any carrier that was certificated by the ICC.

Mr. DANIELS. Provided he was allowed to haul property. If he was only allowed to haul petroleum products he could not haul mail.

Mr. HARTIGAN. If he was hauling petroleum the law would technically allow him to haul mail, but I do not think the Post Office would put mail in the tank. I think it would be a matter of administrative judgment how we decided what vehicles to use. We have this problem. We have to decide the type of vehicle, even within the star route carriers, that must be provided in order to haul the mail, be it a half ton truck, trailer truck, or a semitrailer truck. This decision has to be made by the Post Office as a specification in order for him to haul the mail. We would not go to a trucker, even though the bill may be

broad enough to include him, who did not have the equipment to do the job, and ask him to haul mail.

Mr. DANIELS. It would be a pretty easy thing for him to buy a mail truck.

Mr. HARTIGAN. It would be pretty easy for him to get other equipment if he wanted to. That is absolutely right.

Mr. MEAGHER. The railroads do not have certificates to carry mail. They are required to carry mail if it is tendered because of the provisions of the Railway Mail Pay Act. Star route carriers and highway post office operators do not have certificates either.

Mr. JOHNSON. No; but they bid on the right to haul.

Mr. MEAGHER. Some are common carriers. That means that they have a certificate from the Commission.

Mr. JOHNSON. Just a minute. You say star route carriers are common carriers and have a certificate?

Mr. MEAGHER. I say if there is a common carrier, he has some authority for his operation. As H.R. 13925 is drafted, and presumably as the trucking association proposal would be drafted, the statute which would be enacted would authorize a carrier, who has authority to transport property in common carriage, to carry mail when tendered by the Postmaster General. The only carriers I know of who do have mail certificates are common carriers under the Civil Aeronautics Act.

Mr. JOHNSON. Then what you are saying is that any certificated common carrier by motor vehicle, once you put the word motor vehicle in this act of 1916, then has the right and duty to haul the mail the same as the railroad?

Mr. MEAGHER. That is right, if we tender it.

Mr. JOHNSON. Then he would not have to go to the ICC and have his certificate amended. It would in effect be amending it by this statute.

Mr. MEAGHER. He has the certificate. He does not have to go to the ICC for another certificate.

Mr. JOHNSON. But to repeat, most certificates are very, very restrictive in the type of commodity that a trucker can haul.

Mr. MEAGHER. That is true as to the type of commodity he may haul as a common carrier. But it would not have any effect upon mail. He would be restricted to the limits of his certificate in transporting mail. If he were a regular route carrier, he could not go off on a side road with mail. He would be limited to the route specified in the certificate, although the certificate relates to carriage of property rather than mail.

Mr. JOHNSON. I guess you cleared it up, though I am not too sure.

Mr. HARTIGAN. I think if a trucker were certificated to carry just household goods, that household goods certificate still makes him available to carry mail. A trucker may be certificated just to haul dry produce. He, too, over his restricted routes, could haul mail. The individual certificate would have nothing to do with his legal right to haul the mail. But he would be restricted, under the rights he had, to operate under the specific commodity he was hauling.

Mr. JOHNSON. Then, to repeat, if he is a certificated common carrier, when you put the word motor vehicle in the act of 1916, that automatically gives him the right to haul the mail just like the railroad can haul the mail.

Mr. HARTIGAN. To say it another way, it gives us the right to expand the use of transportation by using him if we so desire.

Mr. GROSS. How about the cattle trucks that run from Iowa to Chicago and return empty?

Mr. HARTIGAN. I think we would avoid using those, Congressman, in the same light we would avoid using tank cars to carry mail. Technically you are right, legally they could haul it. We would exercise administrative judgment along those lines.

Mr. GROSS. I was being somewhat facetious in that question.

Mr. JOHNSON. No, it is a good point. They could haul the mail if you let them do it.

Mr. DANIELS. If the gentleman would yield. Mr. Hartigan, if we place regulated motor carriers under chapter 95 of title 39 of the U.S. Code on an equal footing with the railroads, is it the intention of the Post Office Department to take advantage of section 6215 which would permit you to enter into special contracts?

Mr. HARTIGAN. To the extent that we are now using section 6215 with the railroads, yes.

Mr. DANIELS. To the extent you are now using? How about section 6208, where the Interstate Commerce Commission has the right to fix rates? Would it be your intention then to have the Interstate Commerce Commission fix the rates?

Mr. HARTIGAN. The same as they do for the railroads.

Mr. DANIELS. The same as they would for the railroads?

Mr. HARTIGAN. Yes, sir.

Mr. DANIELS. How would that affect your special contract?

Mr. HARTIGAN. We are allowed under this chapter 95 to enter into special contracts with them.

Mr. DANIELS. Is it the intention of the Post Office Department, after you enter into these special contracts, to eventually have the ICC fix rates on the transportation of mail by motor carriers?

Mr. HARTIGAN. Under section 6215 of this chapter we are allowed—aside from the approach where the ICC could set rates for hauling of mail by rail—under that section to enter into special contracts with them.

Mr. DANIELS. I understand that. When you enter into this contract you are also going to establish the charge or cost that the carrier is going to receive for transporting this mail.

Mr. HARTIGAN. On a negotiated basis, yes.

Mr. DANIELS. I do not know if you would do that on a competitive basis or not. But assuming that you did enter into these special contracts and these special contracts existed for a year or two, would it be the intention of the Post Office Department to eventually have the ICC pass upon these rates, or would you continue to enter into special contracts in the future?

Mr. MEAGHER. Congressman Daniels, as the bill is written the Commission would fix the rates for all carriers. If the carrier desired to offer us his services, as railroads do, at a rate less than the ICC-prescribed rate, we enter into a special contract with him which is independent of the ICC-fixed rates. These contracts cannot have a longer term than 4 years.

Mr. DANIELS. That is the point I am getting at. Assuming that contract is in existence for 4 years, and you have a special rate, and that rate is less than the tariff established by the ICC, would it be

your intention, on a renegotiation of that contract, to have the ICC pass upon it?

Mr. HARTIGAN. No.

Mr. MEAGHER. No; they have no jurisdiction over it.

Mr. HARTIGAN. I think the point is that the ICC rates are fixed at the maximum we can pay, not the minimum.

In other words, the ICC states the maximum the Post Office Department can pay. We can negotiate downward, and we frequently do, even when it is on the tracks. We cannot pay above it. It is a re-restriction on the ceiling, rather than the base.

Mr. GROSS. How, in the absence of a finding by the ICC of what constitutes a fair and reasonable rate, does the Post Office Department establish a fair and reasonable rate?

Mr. HARTIGAN. Currently, through a thorough study of the rates we are paying for a comparable service with star route carriers and also the going rate in the industry in the area, we generally can agree on what is a fair and reasonable rate. Of course, the truckers have input into these negotiations and if it is acceptable between both parties it is generally a rate that is pretty much in keeping with what is going in the area.

Mr. GROSS. I will say to my friend from New Jersey this is the first time I knew that the Post Office Department was in the business of rate fixing. I thought this was the prerogative, the duty and obligation of the ICC to fix transportation rates.

Mr. HARTIGAN. I do not think it is rate fixing in that connotation. I think the ICC, once again for the protection of the Post Office or others, has established what they feel is a maximum that a regulated carrier should charge anybody—the Post Office, in this instance—for hauling mail. There are some special features in mail transportation.

Mr. GROSS. You do not have the benefit of that under the special rate.

Mr. HARTIGAN. We have the benefit of the fact that we know that a carrier cannot go above that. This is the maximum that anybody can charge or any railroad can charge. The point is that there are some features in transportation where one carrier can perform a service cheaper than others, and the maximum rate is not a factor with him. In these areas it allows us to negotiate. In some areas you might find a railroad is predominant in the area, he has his own facilities, he does not have to lease any more, he can enter into a better contract negotiated than carrier B. So we will take carrier A in that particular area. The flexibility is in the law that allows us to pay less than the maximum ICC rates if this happens to be the case with a particular carrier.

Usually the carriers are quite willing to go along because some of them have a bill of goods to sell better than others in their own home area.

Mr. MEAGHER. At the present time, Congressman Gross, there are rates prescribed by the Interstate Commerce Commission for all services performed by railroads in connection with mail; therefore, we can compare our contract rates against those. All of our 4-year contracts have a 30-day notice of termination clause in them. So that at any time that it appears that the contract price is unwarranted or uneconomic, we may give a 30-day notice that the contract is terminated. You cannot, at the beginning, compare trucks exactly with

railroads because the ICC will have to go through a case to fix trucking rates. But we do have data within the Department which would enable us to determine that, if we engage in a 4-year special agreement with a trucker, should this legislation become law, we would be able to determine that we had an economic agreement there.

Mr. JOHNSON. I notice, under the law, you can fix a rate higher than the Commission rate if you deem it necessary.

Mr. MEAGHER. Under special circumstances, yes; but to my knowledge this has never been done.

Mr. JOHNSON. In other words, in your present mail contracts with the railroads you have not gone above the ceiling put on by the Commission.

Mr. MEAGHER. Never above the ICC rates. They are always lower.

Mr. JOHNSON. That is just in the law to take care of a special circumstance so that the mail can go through.

Mr. HARTIGAN. If it should arise, there is some elbow room. But the situation has not arisen.

Mr. MEAGHER. I think back in the days when the alternatives to railroads were horses and wagons this provision was provided in case we needed some special service not covered by the ICC-prescribed rate. We could engage in a special contract to get it and pay a little more.

Mr. GROSS. I think you establish a special rate for some transportation of mail in some areas such as those within Alaska, do you not?

Mr. HARTIGAN. The area in Alaska is a star route operation. That was put out for bids. I believe a comparison will show that rate is still less than the ICC going rate would be to Alaska.

Mr. DULSKI. Gentlemen, I want to thank you for your presence here this morning. I am sure that the committee derived a great deal of benefit by calling for the Post Office Department's views on the amended proposals to this legislation. As long as the truckers are willing to be in the same category, and willing to be on an even footing with the railroads, I see no objections.

Mr. HARTIGAN. On behalf of the Post Office Department we appreciate the opportunity to come here and express our position which is not for or against the railroads or for or against the truckers. It is another mode that we can use, we think, to do a better job.

Mr. DULSKI. Thank you very much.

This will close the record now.

(Whereupon, at 11:30 a.m., the subcommittee adjourned.)

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The following is a list of the
 names of the persons who
 were present at the meeting
 held on the 15th day of
 the month of January, 1900,
 at the residence of Mr. J. H.
 Smith, in the town of
 Smith, County of Smith,
 State of New York.

SEP 21 1966
HAMILTON, KANSAS