Y 4
. C 73/2
89-74
GOVERNMENT
Storage
1041
Y4.C73/2:89-74

BUS CHARTER RIGHTS AND AGRICULTURAL COOPERATIVE TRANSPORTATION

HEARINGS

BEFORE THE

SURFACE TRANSPORTATION SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 2893

A BILL TO AMEND SECTION 208(c) OF THE INTERSTATE COMMERCE ACT TO PROVIDE THAT CERTIFICATES ISSUED IN THE FUTURE TO MOTOR COMMON CARRIERS OF PASSENGERS SHALL NOT CONFER, AS AN INCIDENT TO THE GRANT OF REGULAR ROUTE AUTHORITY, THE RIGHT TO ENGAGE IN SPECIAL OR CHARTER OPERATIONS

JUNE 30, 1966

S. 1729

A BILL TO AMEND SECTION 203(b)(5) OF THE INTERSTATE COMMERCE ACT TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF EXEMPTION UPON APPLICATION AND PROOF OF ELIGIBILITY, AND FOR OTHER PURPOSES

JULY 14, 15, 25, AND 26, 1966

Serial 89-74

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
67-566 WASHINGTON : 1966

KANSAS STATE UNIVERSITY LIBRARY NOV 29 1966 MANHATTAN, KANSAS
KSU LIBRARIES A11900 501232
AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
A. S. MIKE MONRONEY, Oklahoma
FRANK J. LAUSCHE, Ohio
E. L. BARTLETT, Alaska
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
DANIEL B. BREWSTER, Maryland
MAURINE B. NEUBERGER, Oregon
ROSS BASS, Tennessee
RUSSELL B. LONG, Louisiana

NORRIS COTTON, New Hampshire
THRUSTON B. MORTON, Kentucky
HUGH SCOTT, Pennsylvania
WINSTON L. PROUTY, Vermont
JAMES B. PEARSON, Kansas
PETER H. DOMINICK, Colorado

GERALD B. GRINSTEIN, *Chief Counsel*
EDWARD JARRETT, *Chief Clerk*
JEREMIAH J. KENNEY, Jr., *Assistant Chief Counsel*
RALPH W. HORTON, *Assistant Chief Clerk*
STANTON P. SENDER, *Staff Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

FRANK J. LAUSCHE, Ohio, *Chairman*

VANCE HARTKE, Indiana
HOWARD W. CANNON, Nevada
MAURINE B. NEUBERGER, Oregon
ROSS BASS, Tennessee
RUSSELL B. LONG, Louisiana

THRUSTON B. MORTON, Kentucky
JAMES B. PEARSON, Kansas
PETER H. DOMINICK, Colorado

CONTENTS

S. 1729

	Page
Text of S. 1729	21
Agency comments:	
Comptroller General of the United States, April 19, 1965	24
Department of Agriculture, July 8, 1966	24
Department of Justice, July 11, 1966	23
Interstate Commerce Commission	22

ALPHABETICAL LIST OF WITNESSES

Statement of—	
Bowling, Charles B., transportation consultant, National Grange, 1616 H Street NW., Washington, D.C	277
Breithaupt, Harry J., general attorney, Association of American Railroads, Transportation Building, Washington, D.C	112
Bush, Hon. John W., Chairman, Interstate Commerce Commission, Washington, D.C.; accompanied by Laurence K. Walrath, Commissioner; Bertram Stillwell, Director, Office of Proceedings; and Asa Merrill, Director, Bureau of Enforcement	25
Churchill, Richard T., secretary and general counsel, Agricultural Transportation Association of Texas, Fort Worth, Tex.; accompanied by Jack R. Cobb, general manager	249
Cobb, Jack R., general manager, Agricultural Transportation Association of Texas, Fort Worth, Tex	249
Cothren, T. W., executive vice president, Zero Refrigerated Lines, 815 Merida Street, San Antonio, Tex	121
Dice, George, Director, Transportation and Warehouse Division, Consumer and Marketing Service, Department of Agriculture, Washington, D.C.; accompanied by Morrison Neely, Office of General Counsel; and James Lauth, Assistant Chief, Transportation Services Branch, Transportation and Warehouse Division, Consumer and Marketing Service	147
Garstang, M. R., general counsel, National Milk Producers Federation, 30 F Street NW., Washington, D.C	270
Gibson, D. Jack, president, Midwest Coast Transport, Inc., 405½ East Eighth Street, Post Office Box 747, Sioux Falls, S. Dak	87
Grayson, Herbert N., president, Safeway Truck Lines, Inc., South Bend, Ind	89
Harmanson, L. James, Jr., general counsel, National Council of Farmer Cooperatives, 1200 17th Street NW., Washington, D.C	229
Holcomb, Monte S., vice president, Brady Motorfrate, Inc., Des Moines, Iowa	105
Kelley, Albert B., manager, transportation and communications department, U.S. Chamber of Commerce, 1615 H Street NW., Washington, D.C	140
Kinnaird, John M., Rea, Cross, Knebel & Kinnaird, 917 Munsey Building, Washington, D.C., executive secretary, Committee on Transportation Practices	107
McDonald, Angus, director of research, National Farmers Union, Suite 1200, 1012 14th Street, Washington, D.C. 20005	266
Merrill, Asa, Director, Bureau of Enforcement, Interstate Commerce Commission, Washington, D.C	68
Neely, Morrison, Office of General Counsel, Department of Agriculture, Washington, D.C	147
Olmsted, F. R., general counsel, Consumers Cooperative Association, Kansas City, Mo.; representing National Farm Lines, Post Office Box 804, Iowa Falls, Iowa	211

Statement of—Continued
Page
O'Rourke, Francis J., legislative counsel, National Tax Equality Association, Inc., 1000 Connecticut Avenue NW., Washington, D.C.---- 144
Pinkney, James F., chief counsel, public affairs, American Trucking Association, Inc., 1616 P Street NW., Washington, D.C. 20036---- 73
Ross, Harry, Cache Valley Dairy Association, 848 Warner Building, Washington, D.C---- 225
Smith, Frank A., vice president, research, Transportation Association of America, 1101 17th Street NW., Washington, D.C---- 133
Stillwell, Bertram, Director, Office of Proceedings, Interstate Commerce Commission, Washington, D.C---- 25
Stubbs, Stoney M., chairman of the board, Frozen Food Express, Inc., Dallas, Tex---- 93
Teagle, Winton, president, Refrigerated Transport Co., Inc., Atlanta, Ga---- 97
Triggs, Matt, assistant legislative director, American Farm Bureau Federation, 425 13th Street NW., Washington, D.C---- 217
Walrath, Laurence K., Commissioner, Interstate Commerce Commission, Washington, D.C---- 29
Watkins, William, president, Watkins Motor Lines, Inc., Thomasville, Ga---- 102
White, E. D., commerce counsel, Association of Western Railways, Union Station Building, Chicago, Ill---- 127
Zeddies, M. D., Midland Cooperatives, Inc., 739 Johnson Street NE., Minneapolis, Minn. 55413---- 202
Submitted for the record—
"Agricultural Cooperatives, A New Force in Transportation," by Harry J. Jordan---- 83
Appeal from the U.S. District Court for the District of Oregon—*Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, August 10, 1965---- 64
Barnes, Jack W., general manager, Michigan Milk Producers Association, 24270 West Seven Mile Road, Detroit, Mich., letter to Hon. Philip A. Hart and Hon. Robert P. Griffin, July 14, 1966---- 281
Bryant, Walter M., manager, Modern Milk Marketing Association, 1030 South Main Street, Cheshire, Conn., letter to Hon. Thomas J. Dodd, July 14, 1966---- 282
Bush, John W., Chairman, Interstate Commerce Commission, letter to Stanton P. Sender, August 4, 1966---- 290
Carlson, Clifford N., Jr., attorney for Northwest Agricultural Cooperative Association, Inc., King, Miller, Anderson, Nash & Yerke, American Bank Building, Portland, Oreg., telegram to Hon. Frank J. Lausche, July 24, 1966---- 283
Carlson, Clifford N., Jr., attorney for Northwest Agricultural Cooperative Association, Inc., King, Miller, Anderson, Nash & Yerke, American Bank Building, Portland, Oreg., statement and letter of July 20, 1966, to Stanton P. Sender---- 200
Clark, William R., chairman, Missouri Public Service Commission, Jefferson City, Mo., telegram to Hon. Warren G. Magnuson, August 5, 1966---- 291
Combs, Ben M., commissioner, Kentucky Department of Motor Transportation, Frankford, Ky., statement and letter to Hon. Warren G. Magnuson, August 9, 1966---- 295
Conner, Eugene, president, Alabama Public Service Commission, Montgomery, Ala., telegram to Hon. Warren G. Magnuson, August 3, 1966---- 290
Editorial, Distribution Age, "Render Unto Caesar" by Ronald G. Ray, editor---- 296
Frederick, Franklin E., general manager, Piggy-Back Shippers Association of Florida, Inc., 4471 North West 36th Street, Miami, Fla., letter to Hon. Frank J. Lausche, July 21, 1966---- 286
Grube, Charles H., president of board of directors; Donald E. Zehr, general manager, Central Ohio Cooperative Milk Producers, 519 East 11th Avenue, Columbus 11, Ohio, letter to Hon. Frank J. Lausche, July 20, 1966---- 284
Harris, M. C., attorney for Cache Valley Dairy Association, Logan, Utah, statement read by Harry Ross---- 225

Submitted for the record—Continued
Hooker, H. Lester, commissioner, Virginia State Corporation Commission, Richmond, Va., telegram to Hon. Warren G. Magnuson, August 4, 1966 — Page 291
ICC decision—*Machinery Haulers Association et al.* v. *Agricultural Commodity Service*, May 3, 1961 — 31
ICC decision—*Agricultural Transportation Association of Texas et al., Investigation of Operations*, October 23, 1964 — 50
ICC investigation—*Cache Valley Dairy Association Investigation of Operation*, served January 8, 1965 — 57
Jones, Merlin J., Clark County Dairymen, Inc., 805 South Fourth Street, Las Vegas, Nev., letter to Hon. Warren G. Magnuson and Hon. Frank J. Lausche, July 20, 1966 — 283
McCarthy, Frank L., chairman, Kentucky Railroad Commission, Lexington, Ky., telegram to Hon. Warren G. Magnuson, August 5, 1966 — 291
McDonald, Walter R., commissioner, Georgia Public Service Commission, 244 Washington Street SW., Atlanta, Ga., statement and letter to Hon. Frank J. Lausche, August 2, 1966 — 287
McDowell, Frank H., assistant general manager, Southeast Milk Sales Association, Inc., Bristol, Va., letter to Hon. Frank J. Lausche, July 13, 1966 — 281
Membership list of National Farm Lines — 215
"Motortruck Operating Costs of Farmer Cooperatives," Department of Agriculture, General Report 121, June 1964 — 149
"Motortruck Operations of Farmer Cooperatives," Department of Agriculture, General Report 109, February 1963 — 219
Pearson, Francis, chairman, Washington Utilities and Transportation Commission, Olympia, Wash., telegram to Hon. Warren G. Magnuson, August 11, 1966 — 296
Pinkney, James F., chief counsel—public affairs, American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C., letter to Hon. Frank J. Lausche, August 5, 1966 — 291
Reck, I. W., general manager, Sioux City Milk Producers Cooperative Association, Inc., 205 South Court, Sioux City, Iowa, letter to Hon. Frank J. Lausche, July 15, 1966 — 282
Texas Motor Transportation Association, 406 East 11th, Austin, Tex., resolution of June 23, 1966 — 96
Tillery, Carlton, transportation manager, Gulf Milk Association, Inc., Franklinton, La., telegram to Hon. Frank J. Lausche, July 23, 1966 — 287
Wagner, Gar, general manager, McDonald Cooperative Dairy Co., Post Office Box 469, Flint, Mich., letter to Hon. Frank J. Lausche, July 20, 1966 — 383
Witt, Dick A., chairman, B. J. Martin and F. B. Means, commissioners, Iowa State Commerce Commission, Des Moines, Iowa, telegram to Hon. Warren G. Magnuson, August 5, 1966 — 291
Young, Hon. Milton R., U.S. Senator from State of North Dakota, letter to Hon. Frank J. Lausche, July 22, 1966 — 287

INDEX OF ORGANIZATIONS AND GOVERNMENT AGENCIES

Agricultural Transportation Association of Texas — 249
Alabama Public Service Commission — 290
American Farm Bureau Federation — 217
American Trucking Association, Inc — 291
Association of American Railroads — 17
Association of Western Railways — 127
Brady Motorfrate, Inc — 105
Cache Valley Dairy Association — 225
Central Ohio Cooperative Milk Producers — 284
Clark County Dairymen, Inc — 283
Committee on Transportation Practices — 107
Consumers Cooperative Association — 211
Department of Agriculture — 147
Distribution Age — 296

Page

Frozen Food Express, Inc. 93
Georgia Public Service Commission 287
Interstate Commerce Commission 3
Iowa State Commerce Commission 291
Kentucky Department of Motor Transportation 291
Kentucky Railroad Commission 291
McDonald Cooperative Dairy Co 283
Michigan Milk Producers Association 281
Midland Cooperatives, Inc 202
Midwest Coast Transport, Inc 87
Missouri Public Service Commission 291
Modern Milk Marketing Association 282
National Council of Farmer Cooperatives 229
National Farm Lines 211
National Farmers Union 266
National Grange 277
National Milk Producers Federation 270
National Tax Equality Association, Inc 144
Northwest Agricultural Cooperative Association, Inc 200, 283
Piggy-Back Shippers Association of Florida, Inc 286
Refrigerated Transport Co., Inc 97
Safeway Truck Lines, Inc 89
Sioux City Milk Producers Cooperative Association, Inc 282
Southeast Milk Sales Association, Inc 281
Texas Motor Transportation Association 93
Transportation Association of America 13
U.S. Chamber of Commerce 140
Virginia State Corporation Commission 291
Watkins Motor Lines, Inc 102
Washington Utilities & Transportation Commission 296
Zero Refrigerated Lines 121

S. 2893

Text of S. 2893 1
Agency comments:
Comptroller General of the United States, February 28, 1966 2
Department of Justice, March 24, 1966 3
Interstate Commerce Commission 2

ALPHABETICAL LIST OF WITNESSES

Statement of—
Bush, Hon. John W., Chairman, Interstate Commerce Commission, Washington, D.C., accompanied by: Sheldon Silverman, Deputy Director, Office of Proceedings, and Chief, Section of Operating Rights, and George Chandler, Chairman, Operating Rights Review Board 3
Hammond, Harold, president, Transportation Association of America, 1101 17th Street NW., Washington, D.C.; accompanied by Frank Smith, vice president of research, TAA 13
Hutchinson, Everett, president, National Association of Motor Bus Owners, 839 17th Street, NW., Washington, D.C.; accompanied by R. J. Corber, counsel 7

STATEMENTS AND LETTERS SUBMITTED FOR THE RECORD

Chamber of Commerce of the United States of America, 1615 H Street NW., Washington, D.C., prepared by George H. Seal 18
Hamilton, W. Presley, president, Hamilton Motor Coaches, 549 West Third Street, Florence, N.J 18
Hoschek, John P., Jr., manager, Penn Valley Transit, 14 Highway 69, Pennington, N.J 18
Prince, Gregory S., executive vice president and general counsel, Association of American Railroads, Transportation Building, Washington, D.C 17
Tilton, George E., president, Travel Tours, Inc., 520 Ewingville Road, Trenton, N.J 19

INDEX OF ORGANIZATIONS

	Page
Association of American Railroads	17
Chamber of Commerce of the United States of America	18
Comptroller General of the United States	2
Department of Justice	3
Hamilton Motor Coaches	18
Interstate Commerce Commission	3
National Association of Motor Bus Owners	7
Penn Valley Transit	18
Transportation Association of America	13
Travel Tours, Inc	19

BUS CHARTER RIGHTS

THURSDAY, JUNE 30, 1966

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

The subcommittee met at 9 a.m., in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

Senator LAUSCHE. The meeting will come to order.

The hearing this morning is on S. 2893, legislation recommended by the Interstate Commerce Commission concerning incidental charter rights. The Commission recommended that section 208(c) of the Interstate Commerce Act be amended to provide that motor common carriers of passengers shall not engage in special or charter operations except to the extent that they are presently authorized to do so or to the extent that they may hereafter be expressly authorized to engage in such operations by a certificate of public convenience and necessity.

The hearing today is for the purpose of receiving testimony from the members of the Interstate Commerce Commission and its representatives and others interested in the measure.

At the conclusion of today's hearing, the record will be held open for 7 days to afford an opportunity for submission of statements on S. 2893 for the record.

At this point there will be inserted in the record a copy of the bill and the Commission's recommendation and statement of justification for this proposed measure. There will also be inserted in the record a copy of the comments on this bill by the Comptroller General and the Department of Justice.

(The material referred to follows:)

[S. 2893, 89th Cong., 2d sess.]

A BILL To amend section 208(c) of the Interstate Commerce Act to provide that certificates issued in the future to motor common carriers of passengers shall not confer, as an incident to the grant of regular route authority, the right to engage in special or charter operations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 208(c) of the Interstate Commerce Act is amended to read as follows:

"(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this part on or before January 1, 1967, or under any reissuance of the operating rights contained in such certificate, 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."

NOTE.—Staff counsel assigned to this hearing: Stanton P. Sender

Recommendation Concerning Incidental Charter Rights

We recommend that section 208(c) of the Interstate Commerce Act be amended to provide that motor common carriers of passengers shall not engage in special or charter operations except to the extent they are presently authorized to do so, or to the extent they may hereafter be expressly authorized to engage in such operations by a certificate of public convenience and necessity.

Justification

The purpose of the attached draft bill is to require future applicants to the Interstate Commerce Commission for motor common carrier passenger operating authority to show a need for the transportation of special or chartered parties, instead of conferring the right to perform such transportation as an incident to obtaining a certificate to transport passengers over a regular route or routes.

At present, section 208(c) of the Interstate Commerce Act permits any regular route common carrier of passengers by motor vehicle to transport, under a certificate issued pursuant to the provisions of part II of the act, special or chartered parties from any point on an authorized route "to any place" as a destination point. The phrase "to any place" has been interpreted by the Commission to mean "to any place in the United States." Ex Parte No. MC–29, *Regulations Governing Special or Chartered Party Service*, 29 M.C.C. 25, 48. Consequently, any regular route common carrier of passengers has an unlimited number of destination points for charter service.

In 1935 when the Motor Carrier Act was passed, charter services were only a small part of common carrier operations. Since 1935, charter operations have increased greatly and have accounted for an increasingly larger share of passenger motor bus revenues. For example, in 1935 charter operations accounted for approximately 3 percent of the revenues of Class I motor carriers. In 1964, however, charter operations accounted for 10 percent of the revenues of Class I motor carriers. They accounted for nearly 26 percent of the revenues of Class II and Class III motor carriers in 1963, the latest year for which these figures are available.

Today many motor bus carriers are able to render regularly scheduled service essential to thousands of communities because revenues from charter service offset operating losses incurred on certain inter-city schedules. In some instances regular route passenger bus service would be discontinued were it not for charter revenues.

In recent years abuses have been observed respecting "incidental charter operations." Carriers have frequently applied for the right to transport passengers over a short regular route solely for the purpose of obtaining the incidental charter rights from points on such routes to all points in the United States. Some carriers conduct only token operations over their authorized routes in order to retain the right to engage in transportation of charter parties throughout the country. Usually such operations are in the vicinity of a metropolitan area which provides access to a large charter service market which already is served adequately by existing charter operations. For example, some carriers have been known to operate a single station wagon as their only regular route passenger service, while utilizing buses in the performance of charter service to points and places throughout the United States.

The proposed amendment would in no way affect the operations of presently authorized carriers. It would require future applicants for motor common carrier passenger authority to show a need for the service of transporting special or charter parties instead of, as today, automatically obtaining such rights as an incident to a grant of regular route authority.

For the reasons set forth above, the Commission recommends early consideration and enactment by the Congress of this proposed measure.

Comptroller General of the United States,
Washington, D.C., February 28, 1966.

B–131011.

Hon. Warren G. Magnuson,
Chairman, Committee on Commerce,
U.S. Senate.

Dear Mr. Chairman: We have your letter of February 9, 1966, in which you asked for our comments on S. 2893.

S. 2893, which you introduced to give effect to one of the Interstate Commerce Commission's current legislative recommendations, would amend section 208(c) of the Interstate Commerce Act, 49 U.S.C. 308(c), in such a way that future applicants for motor common carrier passenger certificates would be required to seek rights to engage in charter service and show a public need for such service. Substantially similar proposals have been introduced in prior Congresses: S. 1459, 85th Congress, and S. 1802, 86th Congress, were sponsored by the Interstate Commerce Commission; S. 3057, 87th Congress, and S. 1037, 88th Congress, were introduced at the request of the National Association of Motor Bus Owners. S. 1459 passed the Senate but was not acted upon by the House of Representatives; the Congress took no action on the other bills.

At present, certificated motor common carriers of passengers automatically acquire the right to perform special and charter service. Both the Interstate Commerce Commission and the National Association of Motor Bus Owners report that operators secure certificates solely for the purpose of acquiring the right to engage in lucrative special and charter service; having obtained the rights, they maintain only minimal regular service over the routes specified in their certificates. Since the business of regularly scheduled operators has fallen off, they urge that in order to maintain the service required by the public, the charter business is essential to their financial stability. We note that the Interstate Commerce Commission specifically recommended remedial legislation in its annual reports for recent years.

Conceivably, enactment of S. 2893 might affect the Government as a user of charter passenger service; however, it would not directly affect the functions and operations of our Office. S. 2893 seems to us to be in the public interest and we have no objection to its favorable consideration by your Committee.

Sincerely yours,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 24, 1966.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2893, a bill "To amend section 208(c) of the Interstate Commerce Act to provide that certificates issued in the future to motor common carriers of passengers shall not confer, as an incident to the grant of regular route authority, the right to engage in special or charter operations."

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

Senator LAUSCHE. Mr. Bush, we will be glad to have your testimony.

STATEMENT OF HON. JOHN W. BUSH, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY MR. SHELDON SILVERMAN, DEPUTY DIRECTOR, OFFICE OF PROCEEDINGS, AND CHIEF, SECTION OF OPERATING RIGHTS; AND MR. GEORGE CHANDLER, CHAIRMAN, OPERATING RIGHTS REVIEW BOARD

Mr. BUSH. Mr. Chairman, I have with me Mr. Sheldon Silverman, Deputy Director, Office of Proceedings, and Chief, Section of Operating Rights; and Mr. George Chandler, Chairman, Operating Rights Review Board.

My name is John W. Bush. I am the Chairman of the Interstate Commerce Commission. I have served in that capacity since January 1, 1966.

I appreciate this opportunity to testify in behalf of the Commission on S. 2893, introduced by Chairman Magnuson, a bill to amend section 208(c) of the Interstate Commerce Act to provide that certificates issued in the future to motor common carriers of passengers shall not confer, as an incident to the grant of regular route authority, the right to engage in special or charter operations. S. 2893 implements a recommendation adopted by the Commission and transmitted to the Congress on February 1 of this year.

The purpose of S. 2893 is to require further applicants to the Interstate Commerce Commission for motor common carrier passenger operating authority to show a need for the transportation of special or chartered parties, instead of conferring the right to perform such transportation as an incident to obtaining a certificate to transport passengers over a regular route or routes.

At present, section 208(c) of the Interstate Commerce Act permits any regular route common carrier of passengers by motor vehicle to transport, under a certificate issued pursuant to the provisions of part II of the act, special or chartered parties from any point on an authorized route "to any place" as a destination point. The phrase "to any place" has been interpreted by the Commission to mean "to any place in the United States" (*Ex parte No. MC–29*, Regulations Governing Special or Chartered Party Service, 29 M.C.C. 25, 48). Consequently, any regular route common carrier of passengers has an unlimited number of destination points for charter service.

In 1935 when the Motor Carrier Act was passed, charter services were only a small part of common carrier operations. Since 1935, charter operations have increased greatly and have accounted for an increasingly larger share of passenger motor bus revenues. For example, in 1935 charter operations accounted for approximately 3 percent of the revenues of class I motor carriers. In 1965, however, charter operations accounted for approximately 11 percent of the revenues of class I motor carriers. They accounted for nearly 26 percent of the revenues of class II and class III motor carriers in 1963, the latest year for which these figures are available to us. Class II and III did not report to us.

Today many motor bus carriers are able to render regularly scheduled service essential to thousands of communities because revenues from charter service offset operating losses incurred on certain intercity schedules. In some instances regular route passenger bus service would be discontinued were it not for charter revenues.

In recent years abuses have been observed respecting "incidental charter operations." Carriers have frequently applied for the right to transport passengers over a short regular route solely for the purpose of obtaining the incidental charter rights from points on such routes to all points in the United States. Some carriers conduct only token operations over their authorized routes in order to retain the right to engage in transportation of charter parties throughout the country. Usually such operations are in the vicinity of a metropolitan area which provides access to a large charter service market which already is served adequately by existing charter operations. For example, some carriers have been known to operate a single station wagon as their only regular route passenger service, while utilizing buses in the performance of charter service to points and places throughout the United States.

While the Commission is unalterably in favor of improving rail passenger service, it is also cognizant that any improvement in rail service to result from such things as the current high speed eastern corridor plan will undoubtedly cause a large segment of the traveling public to switch from bus to rail service. This possible diversion will place further strains on the revenue and profits of the motor bus industry, and in turn require greater dependence on charter operations to assure profitable operating results. Thus, it becomes increasingly apparent that any further dilution of charter revenues could have a severe effect on future operations of the motor bus industry.

The proposed amendment would in no way affect the operations of presently authorized carriers. It would require future applicants for motor common carrier passenger authority to show a need for the service of transporting special or charter parties instead of, as today, automatically obtaining such rights as an incident to a grant of regular route authority.

The Commission strongly recommends enactment of S. 2893.

Senator LAUSCHE. Thanks very much.

You state in recent years abuses have been observed respecting incidental charter operations.

Mr. BUSH. Yes.

Senator LAUSCHE. In relation to that statement, I put to you the question, Do the certificates which you issue, by the language they contain, give this incidental right to operate on a charter basis?

Mr. BUSH. Yes, Senator, they do presently give that right.

Senator LAUSCHE. And it is the understanding of the Commission that when you find the need of a service and issue a certificate, that certificate carries with it not only the obligation to provide the local needed service but also gives the incidental right of providing charter service anywhere in the United States?

Mr. BUSH. Correct; yes, sir.

Senator LAUSCHE. Does the carrier in order to provide charter service have to come to the Commission to get authority in addition to that which is granted in the original certificate?

Mr. BUSH. No, sir; at present he doesn't and that is what we seek to correct. If he can come to the Commission and show a need, then he would probably get the authority.

Senator LAUSCHE. You state, for example, 1935 charter operations accounted for approximately 3 percent of the revenues of class I motor carriers. Will you define for the record what a class I motor carrier is?

Mr. BUSH. Yes, sir, a class I motor carrier is a carrier that has a $200,000 gross operating revenue or over. A class II carrier has $50,000 to $200,000 and a class III has less than $50,000 gross operating revenue.

Senator LAUSCHE. The differentiation is dependent then solely upon the difference in the revenues?

Mr. BUSH. Yes.

Senator LAUSCHE. Mr. Sender suggests a question. How will this legislation correct the abuses which you have described inasmuch as the legislation will only apply to future applicants?

Mr. BUSH. We can hardly take away from present holders their authority. We would not in the first place have the personnel or the ability to determine all over the whole United States if somebody was

abusing and who was and who was not. It will not be the perfect answer, but it is as near a good answer as we could find to stop it now and then maybe take care of it in the future.

Senator LAUSCHE. Why could not the Commission correct these abuses in the rulemaking power granted to it by section 208(c)? Did you explore your power to curb the abuses by regulation?

Mr. BUSH. The answer to that, Senator, is that the Commission has ever since it started these cases, has considered "any place" to mean any place in the United States. We do not believe we could or should just suddenly reverse that long interpretation without the passage of this bill.

Senator LAUSCHE. That is in the past, the interpretation of your counsel has been that under the language of the certificates, there is granted the specific authority to serve a specific route and also the authority to provide charter service anywhere in the United States providing you initiate, I suppose, in the certificated area?

Mr. BUSH. Yes, and that is such a well established interpretation, that we could not reverse ourselves now, according to our legal counsel.

Senator LAUSCHE. How extensive an investigation did you make in order to come to the judgment that the abuses were of sufficient frequency to warrant a change in the law?

Mr. BUSH. I don't know exactly how to say it in specific terms, but we made a very extensive investigation over a long period of time. The Commission has felt for a number of years that this should be corrected and so the amount of investigation has been extended over several years.

Senator LAUSCHE. Under your regulations or under the law, are these carriers required to report to you the charter service business they do?

Mr. BUSH. The class I carriers report to us and the class II and III carriers do not report.

Senator LAUSCHE. The figures that the revenues of the class II and class III motor carriers in 1963 reached the high level of 26 percent through charter service, were those figures obtained through an investigation or through required forms that are filed with you?

Mr. BUSH. Through an investigation.

Senator LAUSCHE. Are there any questions you have?

Mr. SENDER. Just one question. In connection with the abuses, that you refer to in your statement, could you supply further information concerning them?

Mr. SILVERMAN. We have had complaints, I think, of one in the New England area, a formal complaint of a carrier cutting down its regular route scheduled service to a minimum, in which another carrier filed a complaint against this operator. But, of course, under our complaint procedures, before the regular route certificate could be taken away from the carrier, the Commission has to issue an order to allow them to institute reasonable service. And if the operation is a valuable one, the carrier will comply and put in more service if the Commission says that what he is doing is not a reasonable service.

Senator LAUSCHE. The question, however, is can you provide the identity of the carrier?

Mr. SILVERMAN. Of the example that is given here? At this time I don't know the name of the carrier.

Mr. BUSH. I'm sure we can provide the specifics.

Senator LAUSCHE. If you can, I request you to do so.

Mr. BUSH. All right, sir.

Senator LAUSCHE. Thank you very much.

The next witness is Mr. Everett Hutchinson, president, National Association of Motor Bus Owners.

STATEMENT OF EVERETT HUTCHINSON, PRESIDENT, NATIONAL ASSOCIATION OF MOTOR BUS OWNERS, ACCOMPANIED BY R. J. CORBER, COUNSEL

Mr. HUTCHINSON. Mr. Chairman and members of the subcommittee, my name is Everett Hutchinson. I am president of the National Association of Motor Bus Owners, often referred to as NAMBO. Our offices are located at 839 17th Street NW., Washington, D.C. Before becoming president of NAMBO a little over a year ago, I had the privilege of serving for 10 years as a member of the Interstate Commerce Commission and served as its Chairman in 1961. I appear before your subcommittee to present the views of the bus industry on the bill, S. 2893.

The National Association of Motor Bus Owners is the trade association for the intercity motor bus industry. It serves as spokesman for nearly 1,000 carriers which provide well over three-fourths of the intercity motor bus transportation in the United States. These include Greyhound Lines, companies affiliated with the National Trailways Bus System, and numerous carriers not affiliated with either system. In addition to furnishing the only means of transportation, other than by automobile, in thousands of communities, the industry provides extensive and expeditious package express and first-class pouch mail services closely coordinated with its regular passenger operations.

The intercity bus industry earnestly supports S. 2893 which would amend section 208(c) of the Interstate Commerce Act to eliminate the existing provision for automatic rights to transport charter parties as an incident to regular route certificates granted under the act for the transportation of passengers by motor vehicle. The effect of the proposed amendment would be to make proof of need a prerequisite to future authorizations of charter operations. At the same time it would not affect existing operating rights, under which a regular route common carrier of passengers by motor vehicle is permitted to transport special or charter parties from any point on its authorized routes to any place in the United States.

The existence of widespread abuse of the present provision of section 208(c) of the act relating to charter operations has been widely recognized for more than a decade and was described by the Interstate Commerce Commission in its 72d Annual Report (1958), as follows:

> * * * Carriers have frequently sought authority to perform passenger service over short regular routes solely for the purpose of obtaining the incidental charter rights. In addition, some carriers engage in the practice of conducting only token operations over their authorized routes in order to retain the right to perform such nationwide charter service. These and other abuses have resulted in a surplus of charter operators, all to the detriment of sound conditions in this segment of the motor carrier industry (p. 136).

Recognition of these problems was reflected also in the fact that a bill, essentially identical to S. 2893, was passed by the Senate in the 85th Congress.

Numerous recent specific cases make it evident that these conclusions of the Commission have lost none of their validity, a fact which is emphasized by the action of the Commission in recommending enactment of S. 2893 in this session of the Congress.

Senator LAUSCHE. Let me interrupt at this point. It was passed by the Senate. What caused it to die?

Mr. HUTCHINSON. No action on it in the House. It was passed by the Senate. Typical examples of abuses are summarized in appendix 1, attached to my statement, Mr. Chairman. Problems resulting from such abuses are becoming increasingly serious.

Revenues from charter operations are of great importance to established carriers providing essential service over the somewhat shorter regular routes which typically keep thousands of communities from becoming entirely dependent on the private automobile for passenger transportation. A study conducted in Virginia in 1965 showed 313 identifiable communities with an aggregate population of 276,437 that have no public passenger service other than bus. Approximately a fourth of these communities have populations under 50. Similar studies for other States are not available but would undoubtedly make an equally strong showing of the extent to which bus service is available in remote places of the country. The Official Motor Bus Guide lists approximately 18,000 bus terminals in communities of all sizes, and there are thousands of intermediate points to which service is provided despite insufficient traffic volume to support even a small terminal.

Difficulties facing these carriers result in large part from the fact that much scheduled service particularly over short routes tends to be unprofitable, and a very significant portion of it is actually provided at a loss to the carriers. Revenues from charter business have in many cases made it possible to avoid discontinuing or curtailing essential regular route services. For example, class I intercity carriers of passengers in the eastern district with annual revenues of less than $1 million, reported overall operating expenses for the year 1965, not including income taxes, averaging 50.5 cents per bus mile, or 94 percent of total revenues which averaged 53.8 cents per bus mile.

Revenues from passenger fares on regular route schedules averaged 42.2 cents per bus mile operated on such routes, obviously insufficient to cover expenses. Even including revenues from transportation of package express and the other nonpassenger services, the average per mile for this important segment of passenger transportation was only 48.5 cents, or still well under the cost (50.5 cents per mile as noted above) of providing the service. It was the operation of charter service which made possible the small but highly essential margin of net revenue.

In addition to providing frequent and reliable service, around the clock, day in and day out, on routes throughout the country, the carriers operating scheduled service must and do maintain the capability for operating varying numbers of extra buses to handle greater volumes of travel on weekends and holidays. At times, such additional requirements reach enormous proportions.

For instance, regularly scheduled service operated by the Greyhound and Trailways systems between Washington, D.C., and New

York City during 1965 provided about 4,000 passenger seats daily in each direction, but travel volume on 1 peak day during the year, January 3, required 9,000 passenger seats in each direction, or well over double the regular daily service. The flexibility necessary for handling such large variations in demand is achieved largely because of the ability to use substantial numbers of buses interchangeably in regular route service and charter operations.

It is obvious from the foregoing that loss to established carriers of any substantial proportion of charter revenues is certain to jeopardize regular route services on many routes and to many communities. Enactment of S. 2893 will go a long way toward correcting this situation by preventing the destructive competition for charter business by carriers who do not operate, or even intend to operate, the regular route service for which they apply merely as a means of securing charter rights.

Charter services were only a small part of common carrier passenger operations at the time section 208(c) of the act was passed. They were then truly incidental to regular route operations. Accordingly, proof of need for regular route authority was a sufficient safeguard to protect the public from the destructive consequences of overcrowding in the charter field. For that reason, the provisions of section 208(c) granting charter rights as an incident to regular route authority were sufficient to assure the integrity of the principles contained in the national transportation policy for orderly development of an adequate transportation system.

However, the situation has undergone a radical change since that time. The demand for charter service has increased very substantially and revenue from charter service has become essential as a support for regular route operations. Charter service has become such an important part of our transportation system that it is no longer merely incidental to regular route services.

Despite the importance of charter services, there has not been orderly development in charter operations such as we have had for regular route operations. The result is that the field is tremendously overcrowded. A wasteful duplication of charter facilities exists which has led to destructive competition for charter business contrary to the basic purposes of the Interstate Commerce Act. We believe the proposed amendment of section 208(c) would close a loophole in the act and tend to correct this situation.

In view of the present importance of charter services, they should not be authorized except upon proof of need in the same way that a need must be shown for regular route authority. The proposed amendment would accomplish this objective. It is timely, constructive legislation. It is in the public interest. The amendment would reduce the existing effects of overcrowding in the field without affecting existing operating rights and would not hamper bonafide future applicants for charter service operating rights.

S. 2893 is identical, Mr. Chairman, to S. 1459 which passed the Senate in the 85th Congress except for revision of the effective date and inclusion of language in the current proposal intended to make it clear that "grandfather" charter rights under section 208(c) would be retained in reissued or amended certificates authorizing regular route operations, without change from corresponding charter rights provided under certificates issued prior to the date specified in the bill.

67-566—66——2

This added phrase, which reads, "* * * or under any reissuance of the operating rights contained in such certificate * * *" is, in our opinion, highly desirable and would leave no doubt regarding the intent of the bill not to affect existing charter rights when the regular route certificate upon which such "incidental" rights are based is reissued, amended, or transferred.

We respectfully urge early enactment of the amendment embodied in S. 2893.

Mr. Chairman, I appreciate the opportunity to appear before the subcommittee to present the views of the bus industry on this measure and I will be glad to answer any questions you may have concerning the bill.

(The appendix follows:)

APPENDIX 1

ABUSES OF AUTOMATIC CHARTER RIGHTS UNDER PRESENT LAW

Summarized below are representative cases involving abuses of automatic charter rights occuring under Section 208(c) of the Interstate Commerce Act.

In some instances the real motive of the applicant to obtain charter rights through token regular authority is cleverly concealed; in others it is ingenuously conceded. In the latter category are the proceedings in *Tri State Tours*, MC–12655 (Sub No. 1) where the applicant was operating a stationwagon between Platteville, Wisconsin and the Savanna Ordnance Depot Proving Ground at Savanna, Illinois pursuant to authority granted in MC–112711 (Sub No. 1). The following colloquy occurred between applicant's witness and counsel for a protestant:

"Q. And how many passengers would you say you handle a day in that operation?

A. Around five. It varies. It goes up and down very little.

Q. Why did you want to keep that alive?

A. *Because of the charter rights involved.*

Q. So, on the basis of handling five passengers a day you want to be in a position to perform charter operations from Joe Daviess County and other Wisconsin points to the entire United States?

A. *That is correct.*" [Emphasis added, Tr. pp. 80–81, *Tri State Tours*, MC–12655 (Sub 1).]

Examples of cases in which authority for short regular routes were sought with the effect of gaining nationwide charter rights are *Sheridan-Indianapolis Bus Line, Inc.*, MC–113105 (Sub Nos. 1, 2 and 3), and *Franklin Interurban Company*, MC–113062. In the former interstate authority was requested between Sheridan and Indianapolis, a distance less than 30 miles, to add to intrastate authority between the same points and in the latter the applicant requested reinstatement of a certificate revoked for dormancy which covered regular route authority in the Nashville, Tennessee area. In both cases applicants admitted directly or indirectly that the real objective was nationwide charter authority. In both cases strong protests were filed by competing regular route carriers because of the charter rights involved.

In some cases the situation is reversed—competing carriers object to the regular route sought by the applicant as a basis for charter authority and would have no objection to charter rights limited to the actual need the carrier seeks to serve. Thus, in *Gary Intercity Lines, Inc.*, MC–8159 (Sub No. 6), the applicant applied for regular route authority between Gary, Indiana and Chicago, Illinois when its real objective was to obtain charter rights between the Bethlehem Steel Plant on the regular route described in the application and points in Illinois and Wisconsin. When all the parties were advised of the true interests of each, applicant amended its application to eliminate all authority except charter rights between the Bethlehem Steel Plant and points in the states of Illinois and Wisconsin, and the protesting carriers who had no objection to these limited charter rights withdrew their protests. In this case the time and trouble of the protests would have been saved had the applicant limited its original request to the charter authority truly desired. Such a saving of Commission time and energies, not to mention the carriers, would be a realistic probability if automatic charter rights were eliminated for the future.

Senator LAUSCHE. I just want to analyze your statement which begins with these words:

> For example, Class I intercity carriers of passengers in the Eastern District with annual revenues of less than $1,000,000, reported over-all operating expenses for the year 1965, not including income taxes, averaging 50.5 cents per bus mile.

Mr. HUTCHINSON. Yes, sir.

Senator LAUSCHE. That is the cost of operating for 1 bus mile; it costs 50.5 cents?

Mr. HUTCHINSON. That is correct, Mr. Chairman.

Senator LAUSCHE. Continuing your statement: "* * * or 94 percent of total revenues which averaged 53.8 cents per bus mile."

Mr. HUTCHINSON. That is correct.

Senator LAUSCHE. You then pass into a discussion of the subject of revenues, is that correct?

Mr. HUTCHINSON. That is correct, Mr. Chairman.

Senator LAUSCHE. And you say:

> Revenues from passenger fares on regular route schedules averaged 42.2 cents per bus mile operated on such routes, obviously insufficient to cover expenses.

Am I correct in my understanding that by that statement you mean it costs you 50.5 cents on an average to operate the bus, but on your passenger service, you only had a revenue of 42.2 cents per bus mile?

Mr. HUTCHINSON. You are correct, Mr. Chairman.

Senator LAUSCHE. That would mean that on that mandatory passenger service, you were losing 8.3 cents per mile, the difference between 50.5 and 42.2. You are losing 8.3 cents per mile?

Mr. HUTCHINSON. That is correct.

Senator LAUSCHE. Then you pass into your revenues derived from passenger service and from transportation of package express and the other nonpassenger services?

Mr. HUTCHINSON. That is correct.

Senator LAUSCHE. The average per mile for this important segment of passenger transportation was only 48.5 cents. That would mean that taking your passenger revenues and your package express revenues, you would be losing 2 cents a mile, the difference between 50.5 and 48.5?

Mr. HUTCHINSON. That is correct.

Senator LAUSCHE. How do you exist?

Mr. HUTCHINSON. The revenues from charter operations make up the difference and mean the difference between a loss of 2 cents per bus mile and a small profit for this class of carrier.

Senator LAUSCHE. Mr. Sender.

Mr. SENDER. Mr. Hutchinson, for the record, so the legislative intent will be clear, what does the phrase "issued under this part on or before January 1, 1967" mean? At what stage of the Commission proceedings would the word "issued" mean?

Mr. HUTCHINSON. Any certificate issued, if I understand your question correctly, on or prior to that date, January 1, 1967.

Mr. SENDER. That would mean that the applicant would have had to comply with the tariff filing and other necessary requirements following the Commission's decision and order?

Mr. HUTCHINSON. Yes, he would have to show a need for the service and meet all of the formal requirements of the Commission in order to render charter service.

Mr. SENDER. So if a case were in process before the Commission on December 31, then——

Senator LAUSCHE. You mean January 1, 1967, then he would not automatically be conferred the rights?

Mr. HUTCHINSON. That would be my interpretation, yes.

Senator LAUSCHE. That is, your interpretation of the word "issued" means that the certificate must have been issued and by that issuance, full authority granted to operate?

Mr. HUTCHINSON. Yes, sir; the certificate would have to have been issued.

Senator LAUSCHE The pendency of the proceedings of the application would not be construed to mean the issuance?

Mr HUTCHINSON I would not think so, Mr Chairman.

Mr. SENDER. I have two other questions to make the record clear. In connection with the phrase "reissuance," does this mean these rights could be severed in a transfer following the passage of the act? You say, "* * * the rights reissued, amended or transferred." Does that mean in your opinion they could be severed?

Mr. HUTCHINSON. One who holds operating authority can transfer any portion he desires to, provided the Commission permits him to do it. I think he could do this, but he could not sever the incidental charter rights from the basic regular route authority granted by the Commission.

Mr. SENDER. Could he sever the incidental charter rights portion as you interpret the phrase?

Mr. HUTCHINSON. I wouldn't think so because of the manner in which those incidental charter rights are granted or rather have been granted by the Congress itself, to wit, section 208(c). The Commission cannot alter, change, or modify a right which the Congress has granted, and I think that is the situation that we have here. These incidental charter rights are rights that the Congress has granted.

Senator LAUSCHE. That is they exist as a unit and they cannot be sold separately, is that it?

Mr. HUTCHINSON. I would think that would be correct, they could not be severed from the basic regular route authority upon which they rest.

Senator LAUSCHE. Under your interpretation of this language and you consult with your counsel now, would it be within the power of of the Commission when a transfer is made for the Commission to say we approve the transfer only in part and deny it in part? We approve it only on the major certification and not the incidental rights to operate charter service?

Mr. HUTCHINSON. Mr. Chairman, I do not think the Commission could do that for the reason I mentioned a moment ago. The incidental charter rights granted under 208(c) are rights given by the Congress and the Commission cannot alter, change, or modify a right granted by the Congress.

Senator LAUSCHE. We will file a report and state in that report what the interpretation is of this language.

Mr. SENDER. In the future, how would an applicant obtain charter service operating rights? Would he file a certificate application under section 207 of the Interstate Commerce Act?

Mr. HUTCHINSON. Under 207(a) I believe, Mr. Sender. There are some decisions by the Commission granting charter rights only, that

is, charter rights without any accompanying regular route authority and I believe those spring from the authority given the Commission in section 207(a) of the act. I will not try to cite the case because it might be wrong, but I think the *Red Star Line* case is an example.

Mr. SENDER. The purpose of my question was to develop that if in the future a need developed in a community for such charter operation service, that an applicant could apply for it and the Commission, if it found it was needed, could grant it. This would not be a bar to future grants.

Mr. HUTCHINSON. It would not bar or handicap in any way future bona fide applicants for charter service authority.

Senator LAUSCHE. Are there two sections under which applications are filed: one for general certification and another section for charter service alone? Or, are applications for those rights filed under one and the same statute?

Mr. HUTCHINSON. It is the same statute, Mr. Chairman, I believe, but two sections.

Mr. SENDER. I want to read into the record from *Red Star Lines, Incorporated*, 27 MCC 617:

> Regular route carriers receiving certificates under sections 206(a) and 207(a) have certain incidental special and charter rights under section 208(c) and at the same time section 207(a) contemplates the issuance of a certificate when warranted covering special or charter operations not incidental to any regular route operation.

Mr. HUTCHINSON. That is the proceeding I referred to earlier.

Senator LAUSCHE. Thanks very much, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, sir.

Senator LAUSCHE. The next witness is Harold F. Hammond, president, Transportation Association of America.

STATEMENT OF HAROLD F. HAMMOND, PRESIDENT, TRANSPORTATION ASSOCIATION OF AMERICA, ACCOMPANIED BY FRANK SMITH, VICE PRESIDENT OF RESEARCH, TAA

Mr. HAMMOND. Mr. Chairman, I will make my statement very brief.

Senator LAUSCHE. You can put your whole statement in the record and summarize it, if you so desire.

Mr. HAMMOND. Fine, I will do just that. I have with me Frank Smith, who is the vice president of research, TAA.

I think I can summarize it by pointing out that the statement first shows broad support for this legislation. In other words, we are in support of the bill. The broad support comes from the railroads, the trucking industry, the freight forwarders, the users of transportation, in fact, practically all of our groups support it and none oppose this legislation.

Senator LAUSCHE. Will you identify the economic segments that are represented in your association?

Mr. HAMMOND. Economic segments cover all of the business interests. We have no labor groups in TAA. We do have the farm groups represented in TAA. We have had no opposition to this legislation expressed by any of those groups. This covers banks, insurance companies, manufacturing companies of all kinds, food processors——

Senator LAUSCHE. Manufacturers, shippers?

Mr. HAMMOND. Yes, all kinds, even a company like General Mills, which has no interest in transportation except as a shipper, is an active member and is represented on the TAA board of directors. It supports this legislation through its director member.

Senator LAUSCHE. Is there any other association or organization in the country that embraces a membership with overall cross section——

Mr. HAMMOND. Yes, I would say the U.S. Chamber of Commerce, which may, I believe, have put in a statement. They were going to put in a statement to support this legislation. TAA, however, is the only across-the-board organization that deals exclusively with national transportation policy issues.

Senator LAUSCHE. The point you are trying to make is that your membership consists of practically every segment of the economy?

Mr. HAMMOND. That is correct.

Senator LAUSCHE. You may proceed.

Mr. HAMMOND. The second part of my statement tries to point out the importance of bus service being maintained for the low-income groups of this country. In other words, there are some 45 million people, I believe, that are members of families that do not own automobiles in this country that thus depend on bus transportation to a large degree for their short-haul intercity movements. Therefore, if we are going to maintain good bus service, we have got to, of course, see that they can be kept alive and profitably kept alive. If they can't, then these poor people suffer.

There is one figure in here I just want to call your attention to before I reach my conclusions and that is that one on top of page 4. Let me simply say that far more people than most of us realize, rely on the bus for their intercity travel needs. Intercity buses carried 459 million passengers, which is considerably more than the combined totals of 318 million carried by rail and 74 million carried by the airlines. Of course, I'm only talking about the number of passengers in this case and not passenger-miles. But, this is rather significant to us, that the bus is so important as part of our everyday transportation system between cities. We, therefore, think it is most important that the bus industry remain healthy and, of course, if charter bus service continues to grow out of proportion to its need, this is going to cut into the regulated bus companies earnings and affect their ability to provide scheduled regular-route service.

Therefore, we think that the legislation as designed would help to correct not only a loophole that exists in the law, but would help to strengthen both our existing and future bus system.

Let me just then read the conclusion. In summary, we believe passage of S. 2893 is definitely in the public interest. It will close a loophole in present law that threatens to drain essential revenues from charter operations needed to help maintain scheduled intercity bus service to the maximum number of points throughout the country. It will not affect the rights of any existing buslines, including those now providing charter services. It will permit parties seeking bus charter rights to obtain them through purchase of existing certificates or by application to the ICC. It will help assure low-cost intercity public passenger service to millions of people who must continue to rely on it because of their income status or because they do not own a private automobile. Overall, it should help to assure better and

more stable intercity bus transportation service for the general public.

For these reasons, we urge favorable consideration of S. 2893 by your subcommittee.

(The full text follows:)

STATEMENT OF HAROLD F. HAMMOND, PRESIDENT, TRANSPORTATION ASSOCIATION OF AMERICA

My name is Harold F. Hammond. I am President of the Transportation Association of America, which is headquartered in Washington, D.C. I am appearing today on behalf of the TAA Board of Directors in support of S. 2893, a bill to provide that future motor bus certificates issued by the Interstate Commerce Commission shall not confer, as an incident to the grant of regular-route authority, the right to engage in charter operations.

TAA, for the record, is a national transportation policy organization made up of transport users of all kinds, investors, and carriers of all modes who work together to help develop sound national policies that will assure the strongest possible transport system under private enterprise principles. In developing policy positions, the 115-member TAA Board has the assistance of eight permanent committees, or Panels, on which serve over 300 top executives of transport groups and interests of all kinds. These eight Panels—User, Investor, and Air, Freight Forwarder, Highway, Pipe Line, Rail, and Water—consider policy proposals and, after taking individual positions on them, seek to iron out any differences prior to making final recommendations to the TAA Board.

This Panel-review procedure was followed in developing a TAA position in support of S. 2893. When the TAA Board adopted a position at its May 10, 1966, meeting to support this legislation, it was advised that the TAA User, Freight Forwarder, Highway, Rail, and Domestic Water Carrier Panels took positions specifically in support of it. The other three Panels—Air, Investor, and Pipe Line—said they were not opposed to such legislation. Thus, it can be seen that a good cross-section of transportation interests favor such legislation and none has indicated to us its opposition.

WHAT WOULD S. 2893 DO?

S. 2893 would, by a simple amendment to Section 208(c) of the Interstate Commerce Act, close a loophole in the existing language that permits persons that obtain certificates to engage in motor common carrier bus service also to perform, as "incidental" operating rights, charter services between points on such certificates and any other points in the United States. Passage of S. 2893 would, therefore, require that any person seeking ICC authorization to perform bus charter service in the future would have to justify a need for such service.

WHAT WOULD S. 2893 NOT DO?

It should be stressed that passage of S. 2893 would in no manner affect the operating rights, including charter rights, of persons now holding intercity bus certificates. It also would not affect the operating rights of persons who may purchase such certificates in the future, nor prevent parties from seeking charter operating rights from the ICC.

WHY A NEED FOR S. 2893?

The ICC, which has recommended passage of such legislation on several occasions and is the sponsor of S. 2893, has stressed the need to close the present loophole in the statutes that has "resulted in a surplus of charter operations" and has been abused to the extent that it is detrimental to sound conditions in the intercity bus industry.

We agree with the ICC on the need for passage of S. 2893, which should help to maintain adequate publicly regulated, scheduled intercity bus service to as many points throughout the United States as possible and still permit the carriers performing such essential service to operate at a reasonable profit. Such a step will clearly be in the interest of the general public.

Largely because of sharp competition from the private automobile, both railroads and bus lines have found it very difficult to maintain adequate regular-route, scheduled intercity passenger service. As rail passenger services have

been discontinued, especially to out-of-the-way points, bus lines have been called upon to continue some reasonable degree of common carrier service. In many instances, the bus has become the only means of publicly scheduled passenger transportation, as is the case in about 300 communities in the State of Virginia alone.

It is quite obvious that scheduled bus service to most off-the-main-route points is either unprofitable or marginal, which means that its continuance depends on the carriers' ability to offset any such losses from revenues derived from other services. This is a characteristic of common carrier service and one of the major justifications for public regulation.

Revenues from charter operations constitute one means of helping an intercity bus company maintain reasonable service to a maximum number of points along his authorized routes. The approximately 1,300 Class II and III intercity bus lines currently obtain over 25 percent of their total revenues from charter services. Even the 160 larger Class I carriers rely heavily on charter revenues, which account for over 10 percent of their over-all revenues. Since charter operations are more profitable than scheduled operations, the former help to offset any losses from the latter.

Since passage of S. 2893 would not affect the present operating rights of any of these existing bus lines, its immediate effect would not be pronounced. In a relatively short time, however, it should have a definite beneficial impact. By producing greater stability in the bus industry, the general traveling public will be assured of getting far better intercity bus service than it would under present conditions.

WHO DEPEND ON INTERCITY BUS SERVICE?

Why is it so important to help improve the present climate so that the nation's intercity bus industry will be in a better position to provide adequate service in the future? One reason is that far more people than most of us realize rely on the bus for their intercity travel needs. To illustrate, in 1964, a total of 459 million passengers were carried by intercity buses, which is considerably more than the combined totals of 318 million carried by rail and 74 million carried by the airlines. In other words, from the standpoint of numbers of passengers only—as compared to passenger-miles usually cited when comparing modes of transport—the intercity bus is the most frequently used public carrier by far.

Intercity bus service is also the cheapest form of passenger service from the standpoint of fares—costing about 2.74 cents a passenger-mile compared to 2.99 cents for rail coach and 5.58 cents for air coach. The average bus rider is more "cost conscience" and is apt to be hurt more personally by higher fares that could result from loss of needed bus charter revenues. This is borne out by the National Travel Survey of the 1963 Census of Transportation, which shows that 92 percent of travel by bus is for personal reasons and thus must come out of the bus riders' own pockets.

The need for keeping scheduled intercity bus fares at the lowest possible level is also important because of the fact that the lower income groups are the ones that must rely on such service to the greatest extent. This is due to their having less money to spend and thus having to use the cheapest mode, and also because they are the ones least likely to own automobiles. These relationships are illustrated by the following figures:

Family income before taxes	Percent of total spending units [1] with no car, 1965	Percent distribution of trips by bus in 1963 [2]
Under $1,000	65	12
$1,000 to $1,999	57	9
$2,000 to $2,999	42	12
$3,000 to $3,999	39	10
$4,000 to $4,999	24	12
$5,000 to $5,999	18	6
$6,000 to $7,499	11	11
$7,500 to $9,999	7	8
$10,000 and over	5	10

[1] A spending unit constitutes all persons living together who pool their expenses. University of Michigan survey.

[2] Census of Transport. 10 percent of persons did not report income.

The figures at the right of the table clearly show the heavy reliance on intercity buses by the lower income groups, with 55 percent of the total trips by bus being taken by persons that are members of families with incomes of less than $5,000 a year.

The figures in the middle column show the direct relationship between automobile ownership and family income and illustrate why low-cost public passenger transportation is so important to a large share of the general public. Since, on an over-all basis, 24 percent of the nation's total Spending Units (see definition in footnote of table) do not own an automobile for one reason or another, they must rely on one form of public transportation or another. Since each Spending Unit represents approximately 3 persons, this means that over 45 million people do not have access to an automobile for travel purposes.

The above relationships are particularly significant to the relatively short-haul intercity bus industry because it is the one faced with the sharpest competitive impact of the private automobile. Census of Transport figures show that the auto accounts for 90 percent of all trips up to 200 miles, but then drops off sharply to 72 percent for trips 200 to 499 miles and only 47 percent for trips over 500 miles. In other words, for short trips the intercity bus is rapidly becoming, with some exceptions, the only means of public passenger transportation for the person who doesn't have access to a car.

CONCLUSION

In summary, we believe passage of S. 2893 is definitely in the public interest. It will close a loophole in present law that threatens to drain essential revenues from charter operations needed to help maintain scheduled intercity bus service to the maximum number of points throughout the country. It will not affect the rights of any existing bus lines, including those now providing charter services. It will permit parties seeking bus charter rights to obtain them through purchase of existing certificates or by application to the ICC. It will help assure low-cost intercity public passenger service to millions of people who must continue to rely on it because of their income status or because they do not own a private automobile. Over-all, it should help to assure better and more stable intercity bus transportation service for the general public.

For these reasons we urge favorable consideration of S. 2893 by your Subcommittee.

Senator LAUSCHE. I have no questions. Thanks very much for your testimony, Mr. Hammond.

I want to repeat the statement I made earlier this morning. The record will be kept open for 7 days to afford an opportunity to anyone else wishing to submit a statement on S. 2893 for the record.

With that, the meeting will be adjourned.

(Whereupon, at 9:50 a.m., the subcommittee was adjourned.)

(The following statements and letters were received by the committee for inclusion in the record:)

ASSOCIATION OF AMERICAN RAILROADS, LAW DEPARTMENT,
Washington, D.C., July 5, 1966.

Hon. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: We are advised that the Surface Transportation Subcommittee of the Senate Committee on Commerce is considering S. 2893 (89th Congress), a bill introduced by Senator Magnuson (by request) on February 8, 1966, "to amend section 208(c) of the Interstate Commerce Act to provide that certificates issued in the future to motor common carriers of passengers shall not confer, as an incident to the grant of regular route authority, the right to engage in special or charter operations".

This bill reflects a legislative recommendation made by the Interstate Commerce Commission. Its recommendation and statement of justification were published in the Congressional Record of February 8, 1966 (pp. 2411–12), following Senator Magnuson's remarks upon introduction of the measure.

While S. 2893 is not itself of substantial importance to the railroad industry, the principle involved appears to be sound; and, on the basis of the Commission's explanation, the Association of American Railroads supports the bill as one consistent with a sound national transportation policy.

It is requested that this letter be incorporated in the record of the Surface Transportation Subcommittee's hearings on S. 2893.

Respectfully yours,

GREGORY S. PRINCE,
Executive Vice President and General Counsel.

STATEMENT ON S. 2893 AS PREPARED BY GEORGE H. SEAL [1] ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

In the interest of consistency in the federal regulatory process and a sound national transportation system, it is essential that S. 2893, now pending before the Congress, be promptly enacted. S. 2893 would amend Section 208(c) of the Interstate Commerce Act to eliminate the automatic acquisition of nationwide charter bus operating rights concurrent with the receipt from the Interstate Commerce Commission of certificates of public convenience and necessity for regular route bus operations.

This legislation is needed to correct an inequitable and confusing situation in which motor bus operators apply for insignificant regular route authority solely to obtain so-called "incidental" charter rights. The present wording of Section 208 of the Interstate Commerce Act permits holders of regular route authority to perform charter service to any point in the continental United States regardless of the scope of that authority.

S. 2893 would bring order and consistency to the granting of motor bus operating rights by making future applicants show that public convenience and necessity require the granting of charter rights, and that existing charter service is not adequate to serve the public need. This is the time-proven test applied to the granting of all other motor carrier operating authority under the Interstate Commerce Act.

This important amendment to Part II of the Interstate Commerce Act has been one of the legislative recommendations of the Commission for several years. The Chamber of Commerce of the United States urges favorable action on S. 2893 as necessary and desirable in the public interest.

HAMILTON MOTOR COACHES,
Florence, N.J., July 5, 1966.

Hon. FRANK LAUSCHE,
Chairman of Subcommittee on Surface Transportation, Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: I would like to take this opportunity to voice my objection to S. 2893, which would amend Section 208C of the Interstate Commerce Act. It seems to me, to pass this piece of legislation would eliminate forever the opportunity for any small bus company to come into existence where regular route service might be needed.

As you know, the population of our country is expanding in leaps and bounds, and along with this there is no doubt that there will be need for additional regular route bus service. As has been stated by some of the larger bus companies, charter service is one of the things needed to help support regular route service.

Again let me say that I feel it would be unwise at this time to pass S. 2893.

Very truly yours,

W. PRESLEY HAMILTON, *President.*

PENN VALLEY TRANSIT,
Pennington, New Jersey, July 1, 1966.

Hon. FRANK LAUSCHE,
Chairman, Subcommittee on Surface Transportation,
Senate Commerce Committee, United States Senate,
Washington, D.C.

DEAR SENATOR LAUSCHE: This company would like to protest the proposed legislation concerning the elimination of incidental charter rights to regular route bus lines.

[1] George H. Seal is Chairman and Chief Executive Officer of C. H. Sprague & Son Company, Boston, Massachusetts. Mr. Seal also is Chairman of the Transportation and Communication Committee of the Chamber of Commerce of the United States and a member of the National Chamber's Board of Directors.

Charter service is to a bus line what advertising is to a newspaper. No one could possibly afford to print a newspaper on subscriptions alone—the advertising is what keeps the business alive.

Many bus lines go into business as regular route carriers and use their buses on charters on days or at times they are not needed for the regular route. To eliminate charter service from being an incidental advantage of a regular route would certainly BE DETRIMENTAL TO THE PUBLIC INTEREST. The Public presently enjoys many bus services because the carrier makes a little extra money doing charter work. No one would possibly think of starting a new bus line knowing that he couldn't use the bus for anything else. This would deprive many future regular-route riders from a much needed service.

Furthermore, there are a number of types of charters that the BIG carriers can't handle and the little bus operator provides this service. Big carriers don't want charters on busy holiday weekends, nor do they want charters of a short nature that would tie up expensive equipment for little rate. Small carriers fill in this way. Many small carriers are also located in towns miles and miles rom equipment points of the large carriers.

It is imperative that incidental charter rights remain an incentive to those carriers wishing to apply for regular route service.

Sincerely,

JOHN P. HOSCHEK, JR., *Manager.*

TRAVEL TOURS, INC.,
Trenton, N.J., July 7, 1966.

Hon. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee,
U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: The bill known as S. 2893, dealing with transportation, creates the possibility of a monopoly in favor of The Trailways and The Greyhound Bus Companies. The U.S. Government frowns on monopolies or the concentration of business power, because of the possibility of the extermination of us small business people. They (Greyhound and Trailways) could never under any circumstances supply the personal service and convenience we little people supply. It would be virtually impossible for these two big companies to place garages and adequate equipment to perform the same services that we, the small operators, now provide throughout the United States.

When we apply for a much needed franchise right, our only hope for financial survival is the charter business we hope to get from these rights, to supplement the loss that ninety per cent of franchise lines is characteristic of inflicting.

The public is in dire need of franchise operation, but to have this, we the small business people, must have this added income and the protection of the existing bill known as 208–C.

The bill S. 2893 breaks down the free enterprise and the fields of competition that are much needed for the public interest.

The objection that we are voicing stems from direct, personal experience, viz.:

At one time, I applied to the Federal Government, through Representative Thompson, for aid because of a disaster. At the time I held five different kinds of Local and U.S. Government contracts. But I was turned down.

I was told that we met all the qualifications for the loan, but that the Government did not have the money under the Small Business Administrations Fund. At the time the U.S. Government was paying all kinds of subsidies to transportation in general. So, you can see how much chance we, as small business operators, would have between big business and the U.S. Government for aid to supplement any franchise operation because of inadequate financial support.

This is an added thought. If the power were vested only in these large companies, and in the event of a strike, the transportation problem could be enormous—if there are not little companies to take care of the charter business.

The comments and opinions set forth in this letter are not only mine but it is a general opinions amongst all of us small charter bus business operators. Other operators of small businesses may give different opinions, but it all amounts to the conclusion of eventually closing out all of us small operators.

Very truly yours,

GEORGE E. TILTON, SR., *President.*

AGRICULTURAL COOPERATIVE TRANSPORTATION

THURSDAY JULY 14, 1966

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

The subcommittee met at 9 a.m. in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

Senator LAUSCHE. The meeting will come to order.

The hearing this morning is on S. 1729, a proposed amendment to the Interstate Commerce Act, recommended by the Interstate Commerce Commission.

S. 1729 proposes to amend two sections of the Interstate Commerce Act. First, this bill proposes to amend section 203(b)(5) to provide that agriculture cooperatives shall be entitled to exempt status thereunder only upon application and proof of eligibility.

Second, this bill proposes to amend section 220 to permit the Interstate Commerce Commission or its duly authorized agents to inspect the books, records, and other documents kept or maintained by such cooperatives.

Hearings today and tomorrow are reserved to permit the Interstate Commerce Commission and other proponents of this proposed legislation to testify. Further hearings have been scheduled for July 25 and 26 to permit opponents to testify.

There will be incorporated in the record following this statement a copy of the proposed legislation and the Interstate Commerce Commission's statement of justification for its enactment.

There will also be incorporated in the record a copy of the comments of the Department of Agriculture dated July 8, 1966, a copy of the comments of the Comptroller General dated April 19, 1965, and a copy of the comments of the Department of Justice dated July 11, 1966.

(The documents follow:)

[S. 1729, 89th Cong., 1st sess.]

A BILL To amend section 203(b)(5) of the Interstate Commerce Act to provide for the issuance of certificates of exemption upon application and proof of eligibility, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203(b)(5) of the Interstate Commerce Act is amended by changing the semicolon to a colon and by adding immediately before "or" at the end thereof the following: "*Provided,* That, except as otherwise provided in section 204(a)(4b) of this part, such cooperative association or federation has obtained and holds a certificate of exemption issued by the Commission pursuant to the provisions of that section.".

SEC. 2. Section 204(a) of the Interstate Commerce Act is amended by inserting after subparagraph (4a) thereof the following new subparagraph:

NOTE.—Staff counsel assigned to this hearing: Stanton P. Sender.

"(4b) To determine, upon its own motion, or upon application by any person or persons claiming to be engaged in transportation under the partial exemption provided in section 203(b)(5) of this part, whether such person or persons constitute, in fact, a cooperative association (as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended), or a federation of such cooperative associations as described therein, and whether the transportation activities engaged in by such person or persons are within the meaning and scope of section 203(b)(5). Upon so finding, the Commission shall issue a certificate of exemption to the cooperative association or federation of associations, and such cooperative association or federation shall be entitled to operate under the partial exemption contained in section 203(b)(5) as long as such certificate remains in effect and unrevoked. At any time after the issuance of a certificate of exemption under the provisions hereof the Commission may by order revoke such certificate if it finds that the holder thereof is no longer a cooperative association or a federation of such associations, or that the transportation activities engaged in by such association or federation are no longer within the meaning and scope of the partial exemption provided by section 203(b)(5). Any cooperative association or federation of cooperative associations controlling or operating motor vehicles under the partial exemption provided in section 203(b)(5) on the date of enactment of this subparagraph, or during the year 1964, may continue to engage in transportation activities under such partial exemption for a period of one hundred and twenty days after the date of enactment without a certificate of exemption, and, if application for such certificate is made to the Commission within such period, may continue to engage in such transportation activities pending a determination of such application unless otherwise ordered by the Commission in that or any other proceeding. Applications for certificates of exemption under this subparagraph shall be made in writing to the Commission, and shall be in such form and contain such information and be accompanied by proof of service upon such interested persons as the Commission shall, by regulation, require. No certificate of exemption shall be denied and no order of revocation shall be issued, under this subparagraph, except after reasonable opportunity for hearing.".

SEC. 3. Section 220(d) of the Interstate Commerce Act is amended by changing the third sentence thereof to read as follows: "The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings, or equipment of motor carriers, brokers, and lessors; and shall have authority to inspect and copy any and all accounts, books, records, memorandums, correspondence, and other documents of such carriers, brokers, lessors, associations (as defined in this section), and cooperative associations or federations of cooperative associations holding a certificate of exemption issued pursuant to section 204(a)(4b) of this part, and such accounts, books, records, memorandums, correspondence, and other documents, of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier."

JUSTIFICATION

The purpose of the attached draft bill is to enable the Interstate Commerce Commission to cope more effectively with the unlawful activities of various groups and organizations which are syphoning off substantial amounts of traffic from authorized carriers by performing general transportation services under the guise of exempt agricultural cooperatives. This would be accomplished by the establishment of a procedure whereby agricultural cooperatives would be required to show, in the first instance, that they are entitled to exempt status under section 203(b)(5) of the act and by granting the Commission specific authority to examine the books and records of such cooperatives and associations.

For some time the Interstate Commerce Commission has been concerned with the relative decline of the nation's common carrier industry. Several traffic studies clearly reveal that common carriers have lost considerable traffic which they formerly handled and, at the same time, have been unable to share proportionately in the additional traffic generated by the nation's expanding economy. One such study, for example, showed a decline in the common carrier's share of total intercity ton-miles from 75.4 percent which they enjoyed in 1939 to only 67.5 percent in 1959. Projecting this trend to 1970, a further decline to between 60.8 and 63.8 percent was forecast.

This decline is essentially a result of the growth of unregulated private and exempt carriage. It is also attributable, however, to the growth of unauthorized and illegal carriage inimical to the public interest. The Commission has recom-

mended in its annual reports to the Congress and in testimony before a subcommittee of the Senate several courses of action, including the instant proposal, designed to halt this steady rise in the volume of traffic handled by illegitimate private and exempt carriers to the detriment of the authorized carriers.

Under section 203(b)(5) of the act motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives, are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141). This exemption is, in our judgment, a breeding ground for multifarious schemes to avoid the obligations which must be assumed by for-hire carriers subject to the Commission's economic regulation.

While the number of groups and organizations claiming exemption as agricultural cooperatives has grown considerably in the last 10–15 years, the Commission is not presently equipped with authority effective enough to weed out those which are not entitled to the exemption or to prevent other such persons from commencing operations. It is only after such operations have been initiated that the Commission, on its own motion or upon complaint, may now institute an investigation to determine whether the operations are, in fact, lawful. In such an investigation, the Commission has the duty and responsibility of assembling and analyzing all facts pertaining to the respondent's operations. Although the information necessary to discharge this responsibility is often available only from the respondent's records, the Commission has no specific authority to inspect them. Thus, if the Commission is unable to gain access to the records, the investigation becomes futile, unless, through indirect and cumbersome means, scraps of information relating to the respondent's operations can be uncovered elsewhere.

It should be noted also that in some cases operators, upon being investigated and pressed as to their status under the exemptions, have merely suspended the questionable operation and resumed service under a somewhat changed *modus operandi* and usually a different name. The same result frequently occurs after the Commission has issued a cease and desist order.

These factors have made it extremely difficult for the Commission to police effectively operations commenced under the agricultural cooperative exemption.

Under the proposed legislation the applicant would have the burden of showing his eligibility for exemption. This, it is felt, would serve as a deterrent to the institution of operations by unqualified organizations. The certificate issued to a qualified agricultural cooperative would be revocable if the holder thereof ceased to be a cooperative association as defined in the Agricultural Marketing Act of 1929 or the transportation activities in which it engaged were no longer within the meaning and scope of section 203(b)(5). Any organization operating under this exemption on the date of enactment of the proposal, or during the year 1964, would be permitted to continue its operations thereunder without a certificate for one hundred and twenty days after the date of enactment, and, if application for a certificate is made within such period, it could continue to operate pending a determination of the application unless otherwise ordered by the Commission.

It is not the purpose of the proposed measure to interfere in any way with the legitimate operations of bona fide agricultural cooperatives under the exemption provided in the Interstate Commerce Act. It is, however, designed to enable the Commission to cope more effectively with groups and organizations using this exemption as a device to engage in unlawful transportation activities.

It is therefore recommended that this proposal be given early and favorable consideration by the Congress.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 11, 1966.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill S. 1729, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to provide for the issuance of certificates of exemption upon application and proof of eligibility, and for other purposes."

Section 203(b)(5) of the Interstate Commerce Act, as amended (49 U.S.C. 303(b)(5)), exempts from the Interstate Commerce Commission's regulatory jurisdiction, motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act of 1929, as amended (12 U.S.C. 1141j). The latter Act declares it to be the policy of Congress to promote the effective merchandising of agricultural commodities "by encouraging the organiza-

tion of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associatlons and other agencies." (12 U.S.C. 1141(a)(3)).

The bill would amend section 203(b)(5) by adding a proviso that the exemption shall apply provided the cooperative association or federation holds a certificate of exemption issued by the Commission. Also, it would amend section 204(a) of the Interstate Commerce Act, as amended (49 U.S.C. 304(a)), so as to require cooperatives to establish that they are in fact cooperatives within the meaning and scope of section 203(b)(5). Upon a finding by the Commission that such is the case, the Commission shall issue a certificate of exemption authorizing the cooperative to operate under the exemption as long as the certificate remains in effect. The bill would amend section 220(d) of the Interstate Commerce Act, as amended (49 U.S.C. 320(d)), by broadening it to include authority for the Commission to inspect and copy books and records of cooperatives.

The bill would, in effect, shift from the Commission to a cooperative association or federation the burden of establishing an exempt status and would establish a procedure requiring such a showing before a certificate of exemption could be obtained. This requirement could give rise to lengthy administrative proceedings with opposition by common carriers intent on preventing competing transport services. The bill might have substantial adverse competitive impact upon cooperatives which operate their own transport services at lower cost than at common carrier rates. Thus, the Congressional purpose expressed in the Agricultural Marketing Act and in the Interstate Commerce Act of affording to farmers the advantages of low cost, efficient transportation, might be substantially thwarted.

In view of the above considerations, the Department of Justice is unable to recommend enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 19, 1965.

B–130900.

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

DEAR MR. CHAIRMAN: Reference is made to your letter of April 7, 1965, requesting our comments on S. 1729.

This bill would implement legislative recommendation No. 23 shown on page 76 of the 78th Annual Report of the Interstate Commerce Commission and is designed to enable the Commission to cope more effectively with unauthorized and illegal activities of various groups and organizations that are presently claiming exemptions from the Commission's economic regulations by virtue of section 203(b)(5) of the Interstate Commerce Act. See *Cache Valley Dairy Association Investigation of Operation,* 96 M.C.C. 616 (1964).

The enactment of S. 1729 would not directly affect the functions and operations of our Office, nor the interests of the United States as a shipper. However, the proposed legislation appears to be in the public interest and accordingly, we have no objection to its favorable consideration by your Committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 8, 1966.

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

DEAR MR. CHAIRMAN: This will reply to your letter of April 7, 1965, asking for our comments on S. 1729, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to provide for the issuance of certificates of exemption upon application and proof of eligibility, and for other purposes."

This bill would require farmer cooperative associations or federations thereof, as defined in the Agricultural Marketing Act of 1929, as amended, to obtain from the Interstate Commerce Commission, after proof of eligibility, a certificate entitling them to the exemption from economic regulations contained in section 203(b)(5) of the Interstate Commerce Act. It would also authorize the Interstate Commerce Commission, or its duly authorized agents, to inspect or examine any and all properties of the cooperative association, including the right to copy accounts, books, records, memorandums, or correspondence.

The Department does not recommend passage of this bill.

We can see no need for subjecting cooperatives to the expense and delay of obtaining certificates from Interstate Commerce Commission. The amount of over-the-road business of farmer cooperatives is microscopic compared to the United States total truck mileage and is far too small to have significantly affected the activities of common carriers.

This Department issued General Report 109, "*Motortruck Operations of Farmer Cooperatives*," in February 1963 as a result of a research study. The report indicated that as of January 1961 the 9,294 farmer cooperatives in the United States owned or leased an estimated 33,000 trucks. Of the 6,171 cooperatives reporting in the study, 56 percent, or 3,469, reported that they owned or leased, trucks. Based upon 3,217 cooperatives who reported truck mileage operated the total truck mileage of all farmer cooperatives was estimated at 660 million miles for both over-the-road and local trucking. This was about one-half of one percent of the United States total of 126.4 billion truck miles over both rural and urban roads that year. The 3,217 farmer cooperatives reported 72 percent of the total mileage operated was in local pick-up and delivery, and movements from fields to local concentration points, as compared to only 28 percent over-the-road truck mileage.

Over-the-road farmer cooperative business then, in 1961, constituted fourteen hundredths of one percent of United States truck mileage. We can see, therefore, no significant need for this bill.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN A. SCHNITTKER,
Acting Secretary.

Senator LAUSCHE. The first witness this morning will be Mr. John W. Bush, Chairman of the Interstate Commerce Commission.

You will proceed to give your testimony, Mr. Bush.

STATEMENT OF JOHN W. BUSH, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY LAURENCE K. WALRATH, COMMISSIONER, INTERSTATE COMMERCE COMMISSION; BERTRAM STILLWELL, DIRECTOR OF THE OFFICE OF PROCEEDINGS, INTERSTATE COMMERCE COMMISSION; AND ASA MERRILL, DIRECTOR OF THE BUREAU OF ENFORCEMENT, INTERSTATE COMMERCE COMMISSION

Mr. BUSH. Thank you, Mr. Chairman. And I have asked to accompany me here Commissioner Laurence Walrath, former Chairman of the Commission; and Mr. Asa Merrill, the Director of our Bureau of Enforcement; and Mr. Bertram Stillwell, Director of our Office of Proceedings.

I consider this one of the two most important transportation bills before this session of Congress. I think these three men have had as much, or more, to deal with the problems that we face, because of the situation that we will discuss, and, for that reason, I have asked them to accompany me and may ask them for comments, if I may.

With that, I will read our brief statement, Mr. Chairman.

67-566—66——3

Mr. Chairman, members of the committee, my name is John W. Bush. I am the Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1966.

On behalf of the Commission I want to thank you for this opportunity to express our views on S. 1729, introduced by Senator Magnuson—

to amend Section 203(b)(5) of the Interstate Commerce Act to provide for the issuance of certificates of exemption upon application and proof of eligibility, and for other purposes.

The purpose of S. 1729 is to enable the Interstate Commerce Commission to cope more effectively with the activities of various groups and organizations which are siphoning off substantial amounts of traffic from authorized carriers by performing general transportation service. This would be accomplished by the establishment of a procedure whereby agricultural cooperatives would be required to show, in the first instance, that they are entitled to exempt status under section 203(b)(5) of the act, and by granting the Commission specific authority to examine the books and records of such cooperatives and associations.

Under section 203(b)(5) of the act, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141). The number of groups and organizations claiming exemption as agricultural cooperatives has grown considerably in the last 10 to 15 years. The Commission is not presently equipped with adequate authority to effectively limit the exemption to those carriers which are bona fide agricultural co-ops whose transportation activities are within the scope of section 203(b)(5). It is only after such operations have been initiated that the Commission, on its own motion or upon complaint, may now institute an investigation to determine whether the operations are, in fact, lawful. In such an investigation, the Commission has the duty and responsibility of assembling and analyzing all facts pertaining to the respondent's operations. Although the information necessary to discharge this responsibility is often available only from the respondent's records, the Commission has no specific authority to inspect them. Thus, if the Commission is unable to gain access to the records, the investigation becomes futile, unless, through indirect and cumbersome means, scraps of information relating to the respondent's operations can be uncovered elsewhere.

It should be noted also that in some cases operators, upon being investigated and pressed as to their status under the exemptions, have merely suspended the questionable operation and resumed service, sometimes under a different name. The same result frequently occurs after the Commission has issued a cease and desist order.

These factors have made it extremely difficult for the Commission to police effectively operations commenced under the agricultural cooperative exemption.

Under the proposed legislation the applicant would have the burden of showing his eligibility for exemption. This, it is felt, would serve as a deterrent to the institution of operations by unqualified organizations. The certificate issued to a qualified agricultural cooperative would be revocable if the holder thereof ceased to be a cooperative association as defined in the Agricultural Marketing Act of 1929 or

the transportation activities in which it engaged were no longer within the meaning and scope of section 203(b)(5). Any organization operating under this exemption on the date of enactment of the proposal would be permitted to continue its operations thereunder without a certificate for 120 days after the date of enactment, and, if the application for a certificate is made within such period, it could continue to operate pending a determination of the application unless otherwise ordered by the Commission.

Up to this point, Mr. Chairman, the justification has been presented before in our earlier attempts to gain passage of the bill. We have a new problem now, and the rest of my testimony deals with that.

At the time the Commission adopted the recommendation which is implemented by S. 1729, it was our considered judgment that S. 1729 would furnish the Commission with the tools necessary to check abuses which were occurring under certain pseudoexempt cooperative operations. However, the situation has been altered by a recent decision by the U.S. Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), certiorari denied, 382 U.S. 1011 (1966).

Perhaps a brief explanation of the Commission's interpretation of the scope of the exemption in section 203(b)(5) would be helpful in understanding the full impact of the *Northwest* case. As far back as the early 1960's we were receiving complaints from carriers and shippers from almost every section of the country concerning the expanding operations of allegedly bona fide agricultural co-ops. It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily we attempted to deal with the problem by laying down broad guidelines. In a lead case in 1961, the Commission held in the *Machinery Haulers Association* v. *Agricultural Commodity Service* (86 M.C.C. 5), that a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act must meet the following tests:

(1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.

(2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.

(3) Its membership must be limited to those who were in fact producers of agricultural commodities.

(4) It may not perform transportation services functionally unrelated to its members' farming activities.

In that case, the 86 M.C.C. 5 case, the cooperative was not in fact controlled by its members through its board of directors but its operations were those of an entrepreneur who accepted in the co-op anyone who wanted the benefit of exempt transportation. For example, some of the members were merchandising firms such as hardware stores, canning plants, and even insurance agents. In addition, the permanent truck fleet of the co-op was relatively small and most of the traffic was being moved under trip-lease arrangements.

The guidelines established in this case were left undisturbed by the courts. Although the illegal operations of the pseudocooperative ceased, participants in that case reinstated similar operations in other parts of the country. These operations have been under investigation since that time.

From this encouraging beginning other similar investigations were being pressed toward conclusion, essentially finding that the privileges given co-ops under the law to move a limited amount of freight for nonmembers must be restricted to farm-related commodities. We felt progress was being made, though slowly, because of the implicit handicaps mentioned above, and this prompted our recommendation to the Congress now pending as S. 1729.

It was at this point in history that the *Northwest* case was decided by the lower court in accordance with the Commission's views, but was appealed by the respondents to the circuit court of appeals for the ninth circuit, which reversed the lower court's decision, and suddenly all progress ground to a halt.

In the *Northwest* case the circuit court reversed the lower court and held:

> * * * On the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The Commission had contended that a cooperative association may not deal at all in nonfarm products, supplies, or business services, but the court concluded—

> (1) that a cooperative will retain its exemption so long as it remains in essential character a "cooperative association" as defined in the Agricultural Marketing Act of 1929, and
>
> (2) that the ". . . return hauls enjoined are connected with farm operations, for they are incidental and necessary to the effective performance of Northwest's . . . trucking operation (which), viewed as a whole, is a farm service performed jointly by Northwest's members for themselves," and ". . . therefore did not deprive Northwest of its essential character as a cooperative association under the Agricultural Marketing Act.

The Commission was joined by the Solicitor General in petitioning the Supreme Court for certiorari. The petition was denied.

As a result of this apparently established law, our initial recommendation represented by S. 1729, while adequate when first recommended, falls short of meeting the current crisis. The Commission believes that a specific amendment to section 203(b)(5) is necessary in light of the *Northwest* case. We suggest the following very simple language be added at the end of present section 203(b)(5):

> but only when those motor vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

That corresponds to the language of the Agriculture Act.

Such an amendment would not unduly limit the scope of the exemption, and would reestablish what we believe to be the intent of Congress in enacting section 203(b)(5).

In summary, Mr. Chairman, in the formal statement, the Commission supports its original recommendation represented by S. 1729. In addition, we strongly urge that section 203(b)(5) be amended to meet the new problem presented by the *Northwest* case.

I would like, if I may, to add just a little more to my formal statement. I said that I considered this to be one of the two most important transportation bills coming before this session of Congress.

We have tried hard, and Congress has helped us try hard, to identify the gray area problems.

We realize that the trucking industry, as such, the regulated contract and common carriers have many and varied problems. All in all, I think they are generally pretty well satisfied with the Commission's position as arbitrator or reviewer of their problems.

Back in 1935, when the trucking industry was an infant industry, they were struggling for survival, and the people who were then in the industry, and the people who were financing it, realized that some realistic, but not too much regulation, would be necessary, if they were to survive. And they came to Congress, the financial people who were backing them and the trucking industry themselves, principally, came to Congress, and asked that they be regulated by the Interstate Commerce Commission, so that some orderly procedures could be carried out.

And, as I say, since that time, the gray area has been one of our big problems. To me, this almost is like legalizing the gray area and turning the clock back on us in our efforts to support and maintain regulated contracting and common carrier trucking operations.

I would like, if I may, to ask our former chairman, Commissioner Walrath, if he has a statement to make?

Senator LAUSCHE. Mr. Walrath?

Mr. WALRATH. Mr. Chairman, I appreaciate this chance to be with Chairman Bush and to try to be helpful to the committee in the understanding of this problem.

Our chairman is correct that, even back under my chairmanship, and prior thereto, this was a growing problem.

Senator LAUSCHE. For the record, identify those years.

Mr. WALRATH. Yes, sir. I was Chairman of the Commission in 1963, but I think perhaps of equal significance I was Chairman of division 1 in 1961, when many of these problems were coming to a head.

It was in 1961 that we decided the first—you might call it the Landmark case, in this area. We had had agricultural cooperatives ever since 1935, and since 1929, as a matter of fact, but they had created no problem, at least none that the Commission was aware of for regulated transportation, until the late 1950's.

Director Stillwell, I think, can check me on this, but, in the late 1950's, and by 1960, we were receiving reports from all over the country and our own agents were finding it to be true that serious diversions of commercial traffic from regulated carriers were occurring due to the successful solicitation by the allegedly bona fide cooperatives.

I would add one thing to what the chairman said: This is a problem not just for regulated trucks, but it is of equal importance, I think, to the railroad systems of our country, and indeed, to the water systems, so it is of nationwide interest, and industry wide interest, if we are to maintain and establish sound national transportation systems.

We did not believe, after reading history and studying it carefully, that Congress intended that this bona fide exemption, an effort to help farm producers, was ever intended to be a competitive factor in industrial and commercial freight areas. But it has become so. And by 1961, we had completed our first major investigation. On May 3

of 1961, we decided the ACS case that the chairman referred to, with the four ground rules laid down. Those, Mr. Chairman, were not disturbed by court decision. Apparently they were accepted by industry and by the cooperatives and everyone concerned. But, as indicated, the problem was just beginning.

Following that——

Senator LAUSCHE. Just let me interrupt here. You are now speaking of Machinery Haulers Association versus Agricultural Commodities Services?

Mr. WALRATH. That is right, sir.

Senator LAUSCHE. And the four guidelines laid down were pronouncements of the Commission?

Mr. WALRATH. Yes, sir; they were first pronouncements by division 1, later affirmed by the Commission and were not altered by court decision. They were left standing.

Senator LAUSCHE. Was the *Machinery Haulers Association* v. *Agricultural Commodities Service* taken to the courts by the losing party?

Mr. MERRILL. Yes, sir, Mr. Chairman. They filed a suit in court and then apparently had a problem of taxation for vehicles, because a new year was coming, and they applied to the court for an injunction restraining the Commission order, which the court denied. They thereupon dismissed the action. So, while it went to court, there was no decision by the court.

Senator LAUSCHE. How long did that continue to be the law under which the Commission operated?

Mr. WALRATH. Until this most unfortunate decision in the *Northwest Agricultural Coop* case in 1965.

Senator LAUSCHE. August 10, 1965?

Mr. WALRATH. Yes, sir; until then we continued to consider the ACS case to be the basic law. Of course, item 4 of the ACS case is the one that changed with the 1965 decision. Oddly enough, as the Chairman mentioned in his testimony, frequently, either during investigation or immediately after, we had finished one and issued a cease and desist order, a similar type of operation would spring up in another part of the country, often even by the same people involved in the prior case.

Senator LAUSCHE. Now, you just mentioned that guideline No. 4 was the important one that was reversed by the court in August of 1965?

Mr. WALRATH. It essence, that is correct. That guideline was: "It may not perform transportation services functionally unrelated to its members' farming activities."

Senator LAUSCHE. Now then, under the court decision, may it now perform the services for other than the members of the cooperative?

Mr. WALRATH. Oh, yes, sir, and we don't question that, Mr. Chairman; that is part of the Agricultural Marketing Act, but it is broader than that.

Under this decision, they could not only perform for other members—and we don't question that up to a certain percentage, as long as the primary business is for members, but, beyond that, under the *Northwest* decision, they can solicit manufactured articles, steel, or anything they care to—any type of commodity. That is where the diversion of traffic begins to become important.

1 They can go out and solicit anything under this new decision, so ong as it doesn't exceed, or approach, 50 percent of their total business.

Senator LAUSCHE. Proceed.

Mr. WALRATH. Now, the next development in our slow but steady progress is revealed by the Division's report of October 23, 1964, concerning the Agricultural Transportation Association of Texas. This stemmed from an investigation of operations that began the minute the cease and desist order in the ACS case was made effective. Some of the participants in the ACS case, the very day they ceased operations as ACS, began operations in Texas as ATA of Texas.

Now, they purported to conform——

Senator LAUSCHE. The ACS case, for others than us who know all, that is the case in which you laid down the guidelines?

Mr. WALRATH. In 1961; yes, sir.

So, in 1964, we found on the record—and it was not disputed—that some of the same people involved in ACS in 1961, the minute ACS ceased operations, began operations under a different name and adopted a form of operations that would purport to conform to the guidelines of the earlier case.

About that same time, we had finished an investigation of Cache Valley Dairy Association, and the findings therein were served on January 8, 1965.

I think it would be helpful for your record, Mr. Chairman, if we could offer copies of these decisions, which show the evolution of the law up to the point when it was changed by the court in the *Northwest* case. We would like to do that.

Senator LAUSCHE. They will be received and printed in the record in their chronological order.

(The documents referred to follow:)

M–10356

INTERSTATE COMMERCE COMMISSION

No. MC–C–2488 [1]

MACHINERY HAULERS ASSOCIATION ET AL. v. AGRICULTURAL COMMODITY SERVICE

Decided May 3, 1961

1. In Nos. MC–C–2488, MC–C–2488 (Sub-No. 1), and MC–C–2576, Agricultural Commodity Service, Robert Crawford, and certain other named defendants and respondents found to have engaged in the transportation of property, in interstate or foreign commerce, as for-hire carriers by motor vehicle in violation of the provisions of section 206(a) or 209(a) of the Interstate Commerce Act. Cease and desist order entered as to named defendants and respondents, and complaints as to remaining defendants and respondents dismissed.

2. Upon investigation in No. MC–C–2576, certain shipper-respondents interested in or affected by said unlawful practices found to have participated in concert with said for-hire carriers in the described operations. Cease and desist order entered as to such respondents, and proceeding discontinued as to all other respondents.

Charles W. Singer and *Charles F. Riddle* for complainants in the title proceeding.

Donald L. Stern and *Marshall D. Becker* for complainants in No. MC–C–2488 (Sub-No. 1).

Harry F. Horak, Ellis V. Gregory, and *Robert S. Turkington* for the Bureau of Inquiry and Compliance, Interstate Commerce Commission.

Joseph E. Quin, Earl W. Love, Charles W. Bucey, and *Raymond J. Mischler* for the Secretary of Agriculture of the United States.

[1] This report also embraces No. MC–C–2488 (Sub-No. 1), Midwest Coast Transport, Inc., et al. *v* Agricultural Commodity Service, and No. MC–C–2576, Agricultural Commodity Service et al. Investigation of Operations.

R. Garrett Phillips, James E. Wilson, David C. Venable, J. F. Edel, William J. O'Brien, Jr., Peter T. Beardsley, R. Edwin Brady, F. Daniel Welsch, James L. Graham, Jr., Edward M. Meredith, and *Walter F. Jones, Jr.,* for interveners on behalf of complainants or as their interests may appear.

Mack Stephenson, Melvin Routman, Robert T. Lawley, Clayton H. Shrout, L. R. Brodkey, John H. Lashley, Robert A. Mace, and *Harry E. Witherell* for respondents and defendants in one or more to the proceedings.

Report of the Commission

Division 1, Commissioners Walrath, Webb, and Tucker

By Division 1:

The three cases involve related issues, were heard on a consolidated record, were the subject of a single report and recommended order by an examiner, and will be disposed of here in a single report. Exceptions to the order recommended by the examiner were filed by this Commission's Bureau of Inquiry and Compliance (hereinafter called the Bureau) and the Secretary of Agriculture of the United States; by complainants, an intervener in behalf of complainants; and by defendant-respondent, Agricultural Commodity Service, hereinafter sometimes called ACS, and its named agents. ACS, it agents, and a shipper-respondent replied to the exceptions of complainants and the Bureau, and the latter and certain interveners replied to those of ACS and the Secretary of Agriculture. The Secretary of Agriculture moved to strike portions of certain of the replies; but inasmuch as the matters complained of therein involve interpretations of law which are hereinafter discussed, the motion is hereby denied. Our conclusions differ somewhat from those recommended by the examiner.

This is the first instance in which we have been directly concerned with the scope of the so-called agricultural cooperative exemption of section 203(b)(5) of the Interstate Commerce Act in its fullest perspective; and, because of the dearth of authoritative treatment of the subject, these proceedings have generated considerable interest throughout the transportation industry generally. The two complaints were filed by established motor carriers operating in the areas involved herein, the investigation proceeding was instituted by order of division 1, and the specifications of each are set forth in appendix A hereto. The Bureau intervened in support of complainants in the complaint proceedings; and the complainants, the Florida Railroad and Public Utilities Commission, and the Public Service Commission of Indiana intervened in behalf of this Commission in the investigation proceeding. Illinois Commerce Commission, Illinois Intrastate Motor Carrier Rate and Tariff Bureau, Inc., Middlewest Motor Freight Bureau, the American Trucking Associations, Inc., the Regular Common Carrier Conference of the American Trucking Associations, Inc., the Common Carrier Conference—Irregular Route, of American Trucking Associations, Inc., and 16 motor carriers intervened in all 3 proceedings, either in support of the complainants and the Commission or as their interests might appear. The Secretary of Agriculture also intervened in these proceedings as his interests may appear.

The facts of record are set forth in detail in the examiner's report. The exceptions are varied in scope and applicability and will be discussed under the appropriate matters with which they deal. Except to the extent required for a clear understanding of the problems presented, we shall not repeat the underlying factual details set forth in the examiner's report; rather, in the interest of brevity and wherever deemed feasible, only the essential substance of the facts stated therein will be used in this report. To supply any resulting deficiency, the examiner's report is hereby referred to and made a part hereof.

The primary question presented here is whether the operations of ACS and its agents are within the scope of the partial exemption of section 203(b)(5) of the Interstate Commerce Act relating to "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act." To alleviate certain transportation difficulties theretofore experienced by shippers of registered cattle, ACS was organized under the Illinois Agricultural Cooperative Act [2] on August 17, 1956. While an officer of the Black Angus Breeders Associa-

[2] Ill. Rev. Stat. Chapter 32, Sections 440-472, inclusive. As here pertinent, section 441 of this act provides that such an organization must be one "in which substantially all of the issued and outstanding shares are owned, held, and controlled directly or indirectly by producers of agricultural products." Section 446 provides that "Under the terms and conditions prescribed in the bylaws adopted by it, an association may admit as members (or issue common stock to) only persons engaged in the production or agricultural products and/or cooperative associations * * *." And section 441(a) states that "The term agricultural products' shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and farm products and fur-bearing animals raised in captivity and their products."

tion and a number of other farmers apparently conceived the idea of creating ACS as an agricultural cooperative, certain truckers, including Wendell Reeves, Roy Zehr, and Ed Pyles, each of whom had performed transportation as agents of similar associations in the past, participated in the organization of ACS from its very inception, became either officers or directors of the association, and actively promoted the operations here under consideration. ACS maintains an office at Bloomington, Ill., from which it carries on its activities. It does not operate in the manner usually associated with the businesses of farm cooperatives in serving a local group of farmers; rather its primary function admittedly is the performance of for-hire transportation by motor vehicle. It does not own any motor vehicles, and the transportation is rendered with equipment ostensibly leased by ACS from certain truckers, also defendant-respondents herein, who purportedly act as its agents at various points in Illinois, Iowa, Texas, and California. Between October 1957 and September 1958, transportation was performed in behalf of ACS by nine such agents, three of whom (Gordon Hinrichs, Sidney Tennant, and Vincent Reed) are no longer employed by it.

The motor vehicles utilized in the questioned operation are either owned or leased from owner-operators thereof by the so-called hauling agents who also solicit the traffic and collect the freight charges thereon, remitting a specified percentage thereof to ACS. In this respect, the activities and operations of defendant-respondent Robert Crawford, of Council Bluffs, Iowa, are typical. Crawford has been engaged in motor-carrier operations as agent of ACS since May 1958. Presently, he holds intrastate authority in Iowa, maintains offices at Council Bluffs, Forth Worth, Tex., and Los Angeles, Calif., and operates approximately 65 refrigerated tractor-trailer units, most of which are leased from owner-operators thereof. All drivers are supervised by Crawford or by his dispatchers and are required to report to one of the three offices daily. Crawford maintains separate accounts at a local bank in Council Bluffs, one in his own name and the other in the name of ACS. All transportation revenues are deposited in the ACS account, and only certain of Crawford's employees may authorize the withdrawal of such funds. Owner-operators are paid 85 percent of the revenue, and from 1 to 2 percent of the remaining income is remitted to ACS at Bloomington. When the transportation is performed by vehicles owned by Crawford, however, 85 percent of the revenue derived therefrom is transferred from the ACS account to Crawford's account from which is drivers are then paid. Generally, the owner-operators pay all vehicle maintenance costs, fuel taxes, and State license fees, as well as certain claims for shortages in, or damages to lading. A number of the owner-operators also solicit return loads for themselves, and/or lease equipment to certificated motor carriers.

At the end of each month, freight bills are forwarded by Crawford to the Bloomington office of ACS together with statements indicating the quantities of member, nonmember, and "exempt" hauling which they represent. Insurance reports and other documents relating to safety of operations also are sent to ACS. Robert Crawford or his dispatchers,without conferring with any officer or director of ACS, determine the rates to be charged for particular shipments, such rates, in many instances, being substantially less than those of authorized motor carriers. Crawford and his dispatchers continuously solicit new business and members for ACS.

Westbound taffic handled by Crawford consists mainly of fresh meat from the plant of the Crawford County Packing Company at Denison, Iowa, to the Los Angeles plant of respondent Coast Packing Company. Approximately 49 percent of his total gross revenue is derived from such transportation performed for Coast Packing Company. He also transports packinghouse products from points in Texas to points in California; and meat from Denison and Sioux City, Iowa, to points in Texas for Crawford County Packing and Sioux City Dressed Pork, respectively. Eastbound, Crawford handles mixed shipments of fresh soap and candy, chiefly for Safeway Stores (not a member of ACS) from points in California to Kansas City, Mo., and Omaha, Nebr. Texas members of ACS which are served by Crawford include Samuels Packing Company, Dallas, Peyton Canning Company, El Paso, Rosenthal Packing Company, Fort Worth, George W. Reeves Company, Dallas, Vernon Calhoun Packing Company, Palestine, Texas Meat Company, San Antonio, and Fort Worth Wholesale Produce Company, Fort Worth. Rosenthal Packing Company, Peyton Canning Company and Texas Meat Company ship to California; while Vernon Calhoun Packing Company ships its products to Minnesota and Illinois. Packinghouse products are also transported by Crawford from points in California, Oregon, and Washington to Dallas. The activities and operations of the other defendant-respondent agents, as well as those of the shipper-respondents, are summarized in appendix B hereto.

FINDINGS OF THE EXAMINER

The examiner found that the considered transportation by ACS and its named agents constitutes for-hire transportation by motor vehicle which is not subject to the exemption provisions of section 203(b)(5). He recommended, therefore, that a cease and desist order be entered against ACS and its agents, but that the proceedings as to the shipper-respondents should be discontinued for the reason that issuance of a cease and desist order against the parties actually operating unlawfully as for-hire carriers should result in the discontinuance of the unlawful practices found to exist by him.

POSITIONS OF THE PARTIES

The positions of the parties have remained constant throughout these proceedings, on brief as well as in their respective pleadings filed subsequent to service of the examiner's report and recommended order. The arguments advanced in connection with such positions are exhaustive and were submitted, generally speaking, by three groups: (1) defendants and respondents, (2) the complainants, the interveners in support of complainants, and the Bureau, and (3) the Secretary of Agriculture. Despite the voluminous data presented during the lengthy hearings, no exception is taken to any material statement of fact embraced in the examiner's report; and the parties generally devoted themselves to the pressing of various legal arguments for or against the adoption of the examiner's recommendations. The following discussion, together with that elsewhere in this report, sets forth the positions of the parties and reflects their principal contentions. Other arguments are advanced, but a detailed recital thereof is not deemed necessary to the disposition of these proceedings.

ACS and its named agents, defendants and respondents herein jointly assert that no authority is required for the considered motor-carrier operations, inasmuch as such transportation is within the purview of the partial exemption embraced in section 203(b)(5); that the examiner's findings as to the scope of the "agricultural cooperative" exemption are unduly restrictive, are not in accordance with the legislative purpose of the exemption, and are contrary to the liberal interpretation adopted by the courts in *Interstate Commerce Commission* v. *Jamestown Farmers Union Federated Cooperative Transp. Assn.*, 151 F. (2d) 403, hereinafter called the *Jamestown* case; that, contrary to the unsupported inference of the examiner, respondent Coast Packing Company, from which ACS obtained more than 50 percent of its gross revenue during 1959, is eligible for membership in an agricultural cooperative regardless of its corporate status; and that assuming, *arguendo*, that certain transportation performed by ACS and its agents is not within the ambit of the Agricultural Marketing Act, the status of ACS for the purpose of the "agricultural cooperative" exemption of section 203(b)(5) remains unchanged.

The Bureau, complainants, and interveners in support of complainants generally aver that the operations here in question are not subject to the partial exemption provided by section 203(b)(5) of the act (*a*) because ACS does not qualify as an agricultural cooperative association within the meaning of the Agricultural Marketing Act, and (*b*) because ACS does not "control and operate" the motor vehicles utilized in the challenged operations. Specifically, the Bureau argues (1) that the organization and *modus operandi* of ACS were and are mere subterfuges to evade and defeat regulations, (2) that the membership in a professed cooperative association of commercial firms, not primarily engaged in the production of agricultural products, causes that association to lose its status as a bona fide farm cooperative, (3) that in excess of 80 percent of the transportation performed by ACS and its agents is conducted on behalf of nonmembers, contrary to the express provisions of the Agricultural Marketing Act, (4) that the transportation service performed by ACS, to the extent that it does not connect either at origin or destination with a farm or an agricultural cooperative, is not a "farm business service" and, therefore, is not entitled to the partial exemption provided by section 203(b)(5), and (5) that the evidence abundantly establishes that the alleged agents of ACS are, in fact, conducting their own independent trucking operations without appropriate authority therefor.

Complainants collectively contend that Coast Packing Company and certain other apparent members of ACS are not farmers and cannot qualify as bona fide members of an agricultural cooperative association; that a cooperative claiming the benefits of the partial exemption cannot furnish transportation which is not a farm business service; that most of the assailed transportation is not a such farm

business service as is contemplated by the statutory definition because it is not performed for a farmer or an association of farmers; that because ACS is not operating in conformity with its charter and the State statute under which it is organized, it is not entitled to the partial exemption embraced in section 203(b)(5); and that the agents of ACS, rather than the cooperative itself, operate and control the vehicles used in providing the transportation in question.

The American Trucking Associations, Inc., its Regular Common Carrier Conference, and its Irregular Route Common Carrier Conference generally assert (1) that the "agricultural cooperative" exemption should be strictly construed so as to effectuate the policies of both the Interstate Commerce Act and the Agricultural Marketing Act, (2) that the purpose of these two acts was not to foster the economic benefit of large corporate shippers, primarily engaged in non-agricultural pursuits, at the expense of a regulated system of transportation, (3) that in order to be exempt from the certificate and permit requirements of the act, transportation performed by a cooperative association, whether for members or nonmembers, must be incidental to, and in furtherance of, the legitimate business of the cooperative, and (4) that ACS is not entitled to invoke the exemption because it is not a cooperative association as defined in the Agricultural Marketing Act, and because it does not control or operate the vehicles involved.

The Secretary of Agriculture takes no position with respect to the examiner's ultimate conclusion that the defendants are engaged in, and must cease and desist from, unlawful transportation activities. Rather, he largely takes issue with the reasons underlying that decision, contending that the applicability of the partial exemption claimed by defendants cannot be decided properly by a mere consideration of the types of commodities being transported or their origins and destinations. The Secretary maintains that a cooperative association as defined in the Agricultural Marketing Act must be an association in which member-farmers act together for their mutual benefit as producers of agricultural products or purchasers of farm supplies; that such an association must be substantially owned and controlled by producers of agricultural products; that a corporate producer may qualify as a member with respect to those farm products which it actually produces, or with respect to those farm supplies which are used in the conduct of its farm operations; that when these standards are met, a cooperative may haul for nonmembers within the volume limits established in the Agricultural Marketing Act provided that such transportation is reasonably incidental to the cooperative's proper purposes; and that the transportation of farm products, farm supplies, or other commodities encompassed by the furnishing of a farm business service may be engaged in by a cooperative even though the points of origin or destination may not be a farm or cooperative, and even if some of the purchasers of these commodities are not farmers.

Finally, the motor-carrier complaints, Middlewest Motor Freight Bureau, and the Bureau assert that the proceedings should not be discontinued as to the shippers named in the investigation proceeding. They argue that the shipper-respondents have participated in the unlawful transportation activities actually performed by ACS and its agents; that they retain the ability to reinstate or continue such participation with other similar carriers or cooperatives; that because of their past involvement in unlawful operations, they pose a continuing threat to the operations of authorized carriers; and that only an all-embracing order can prevent the widespread growth of this form of unlawful transportation. In reply, ACS avers that the recommended discontinuance of the proceedings as to the shipper-respondents is justified, because the lawfulness of the contested operations presents an intricate legal question which shippers should not be forced to solve at their peril. Keystone Steel & Wire Company, a shipper-respondent, asserts that it had good reason to believe that the operations of ACS were lawful, and contends that the responsibility of deciding the legality of such operations would be an intolerable burden for individual shippers to carry.

THE SUBSIDIARY ISSUES

The so-called "agricultural cooperative" exemption provided by section 203(b)(5) of the act[3] reads as follows:

"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 * * * (5) motor vehicles

[3] This exemption was not part of the original bill as reported out by the House Subcommittee of the Interstate and Foreign Commerce Committee. It was first proposed by Congressman Jones of Texas on the floor of the House, and was later enacted as section 203(b)(4)(b) of the act. It was thereafter changed to section 203(b)(5).

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;"

In view of its specific language, and from the foregoing discussion of the positions taken by the respective parties, it is obvious that the answer to the primary question presented herein ultimately depends upon our determination of a number of subsidiary issues, which may be stated generally as follows:

1. What are the criteria which must be met by an association in order to qualify as a "cooperative association" entitled to the partial exemption here under consideration?

2. Are the transportation services of an agricultural cooperative association exempt from economic regulation regardless of the commodities handled or the origins and destinations of the traffic?

3. What standards are to be utilized in determining whether the motor vehicles in question are, in fact, "controlled and operated" by the cooperative association claiming the statutory exemption?

The proper disposition of these questions in the proceedings here before us is extremely important, not only from the viewpoint of this Commission and the carriers which it regulates, but also from the standpoint of bona fide agricultural cooperatives and the farmers who rely upon the services lawfully afforded by such cooperative associations. Accordingly, in answering the questions here presented, we must consider the congressional purposes and policies underlying both the Interstate Commerce Act and the partial exemption thereto.

Congress has entrusted to this Commission the duty of administering, interpreting, and enforcing the provisions of the Interstate Commerce Act, including the partial exemption here in issue, in accordance with and in furtherance of the national transportation policy, the provisions of which are reproduced below:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

In enacting section 203(b)(5) of the act, however, Congress excused from economic regulation the transportation activities of legitimate farmer cooperatives in order to foster the growth and development of such cooperatives in the public interest and in accordance with the announced purposes of the Agricultural Marketing Act (12 U.S.C.A. 1141 et seq.) set forth in section 1141 thereof:

Declaration of Policy—(a) It is hereby declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign commerce, so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products—

(1) By minimizing speculation.

(2) By preventing inefficient and wasteful methods of distribution.

(3) By encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system or producer-owned and producer-controlled cooperative associations and other agencies.

(4) By aiding in preventing and controlling surpluses in any agricultural commodity, through orderly production and distribution so as to maintain advantageous domestic markets and prevent such surpluses from causing undue and excessive fluctuations or depressions in prices for the commodity.

At the same time, the legislative history of section 203(b)(5) abundantly establishes that Congress did not intend to allow agricultural cooperatives to engage,

indiscriminately and without restriction, in the general trucking business at the expense of authorized motor carriers. In this regard, the following excerpts from the Congressional Record of July 31, 1935, (79 Cong. Rec. 12218–12220) are informative:

"Mr. JONES * * * Now I hope I may not be interrupted until I explain the reason for offering this cooperative amendment. This exemption is consistent with the purpose of the act to regulate the use of highways by persons and corporations who use them regularly as places of business and as the primary means of gaining a livelihood. *Cooperative organizations do not act as moneymakers in transportation. The hauling is done as a means of reducing the marketing expenses of their members.*

Especially in highly roganized communities it is almost essential they do some hauling for nonmembers. Otherwise certain farmers who are only temporarily in the community and in some instances tenants might be left without transportation facilities. *In some instances it reduces the expense of handling to combine some hauling for nonmembers. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition.*"

* * * * * * *

"*This will not open the gate for a lot of men to go into the trucking business and thus escape,* because the moment they haul more for outside people than they haul for their own members they will be out of the window so far as the exemption is concerned.

"Mr. TERRY. Does not the gentlemen feel that while it may be proper for the cooperatives to haul their own products and those of the membership, that whenever they go into the general trucking business they should be subject to these regulations?

"Mr. JONES. *If they go into the general trucking business, most assuredly they should be subject to the regulations. My amendment will not prevent that.*" [Italics supplied.]

After the House adopted a number of amendments to S. 1629 (The Motor Carrier Act of 1935) including then section 203(b)(4)(b), Joseph D. Eastman, Federal Coordinator of Transportation, wrote, on July 27, 1935, to Senator Wheeler commenting in detail on each of the amendments adopted by the House. With respect to this section, he said:

"Amendment 4(b), exempting vehicles controlled and operated by a cooperative association as defined in the Marketing Act, 1929, also is not objectionable. The cooperative marketing of farm products is something which Congress has encouraged for many years. Trucking is a vital function of many of the cooperatives. Regulation of rates in this instance would, in fact, accomplish little, as all profits and losses on the completed transactions of the cooperatives are shared by the members. *While the definition referred to permits the cooperatives to deal in and transport the products of nonmembers, restrictions in the definition and practical considerations make it impossible for cooperatives to engage in outside trucking to a degree that would injure regular, for-hire motor carriers.* For these reasons, the amendment should be accepted." [Italics supplied.]

The three subsidiary questions posed above will next be considered and discussed in the light of the foregoing purposes and policies as they are ultimately expressed in the partial exemption embraced in section 203(b)(5) of the act. Our conclusions with respect to these general questions will then be applied to the basic issue concerning the motor-carrier operations of ACS and its agents.

1. Qualifying criteria of a bona fide cooperative association

Since the partial exemption is available only to "cooperative associations as defined in the Agricultural Marketing Act" or to federations of such associations, an essential phase of our inquiry must be directed to a determination of the criteria to be met by an association before it may qualify for the privileges conferred by section 203(b)(5). The definition of a cooperative association as set forth in section 15(a) of the Agricultural Marketing Act of 1929, as amended, 12 U.S.C.A. 1141j, is as follows:

"As used in this subchapter, 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 much 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 becasue 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 per centum 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 non-members 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 non-member business transacted by such association."

The plain language of the statute makes clear (1) that a cooperative association meeting this definition must be an association in which member-farmers act together for their mutual benefit as producers of agricultural products or purchasers of farm supplies in "processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and * * * in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services," (2) that such an association may not handle nonmembership business greater in value than the total amount of business transacted by it with or for its own members, and (3) that a bona fide cooperative either must limit member's voting power to a single vote or it must not pay dividends in excess of 8 percent a year. The voting and dividend limitations do not require extensive discussion; and for our purposes, it is sufficient to note that ACS conforms to at least one of these alternative requirements, inasmuch as no dividends, either stock or patronage, are paid by it to its members.

The interpretative problems with respect to the remaining aspects of the statutory definition relate to the qualifications for membership in a cooperative association, the ownership and/or control of such an association, and the relationship between member and nonmember business. These matters are interrelated, but, to the extent possible, they will be discussed separately in the order presented.

Before proceeding to a consideration of these problems, however, a preliminary issue raised by the parties merits discussion. A cooperative association is not created or organized under Federal statutes, but rather, it is established and chartered pursuant to the laws of the State in which it is domiciled. As a result, complainants and supporting interveners assert that a cooperative association must operate in conformity with the State statute under which it is chartered in order to receive the benefits of the Agricultural Marketing Act and in order to be eligible for the partial exemption here under consideration. While we agree, in principle, that an agricultural cooperative should not violate the terms of the State laws pursuant to which it is organized, the language of the partial exemption of section 203(b)(5) of the Interstate Commerce Act, neither expressly not by implication, imposes upon this Commission the duty of interpreting and administering such State laws or determining whether the operations are conducted in conformity therewith. That is a matter within the exclusive province of the State authorities charged with the enforcement of those statutes, and our function here is that of ascertaining whether the cooperative meets the definition embraced in the Agricultural Marketing Act.

Qualifications for membership.—A cooperative association as defined in the Agricultural Marketing Act, as noted above, must be an organization in which *member farmers* act together for their mutual benefit as producers of farm products or as purchasers of farm supplies and farm business services. As used in the statutory definition, the term "farmers" includes not only individuals, but also may include corporations, partnerships, and other business entities. Compare *United States* v. *Maryland & Virginia Milk Pro. Assn.*, 167 F. Supp. 45, reversed on other grounds, 362 U.S. 458. Obviously, however, such persons, whether natural or corporate, must be engaged, to some extent at least, in a common pursuit—farming—in order to qualify for membership in a lawfully constituted cooperative. In other words, farming is the denominator which binds such persons together in a common purpose, and those not engaged in agrarian activities, and having no agricultural production whatever, clearly are not eligible for membership even though farm products may be utilized by such persons as raw materials in their manufacturing processes. As stated by the court in *Industrial Commission* v. *United Fruit Growers Assn.*, 106 Colo. 223, 103 P. 2d 15:

"The basic conception of an agricultural cooperative association is that of a group of farmers who reside in the same vicinity acting together, for their mutual benefit in the cultivating, harvesting and marketing of their agricultural products, and the association itself, with the special powers and limitations conferred by statute, is merely a convenient instrumentality in the hands of the farmers for carrying on such activities."

* * * * * * *

"Accordingly, because of the peculiar relationship between the cooperative association and its members, it would seem evident that such of the purely agricultural activities of the producer members as are incidental to his ordinary farming operations remain so whether they are performed by him on his farm or for him through the medium of his cooperative marketing association. By the circumstance that the expense of marketing is apportioned on a pro-rata basis among the members of the members of the cooperative, the farmer member just as directly pays the wages for all labor involved in the marketing service as if he had paid his individual employees for doing the same work. In either case the labor incident thereto is "agricultural labor" and that is what the statute exempts * * * *a different result might attain where farm crops are marketed by a commercial "profit corporation" * * * or are not marketed in an unmanufactured state.*" [Italics added.]

Neither the express wording of the Marketing Act nor the legislative history thereof justifies the conclusion that persons who market or distribute products manufactured from farm products, such as meat packinghouses, canneries, and the like, may qualify for membership in a cooperative association on that basis alone. To the contrary, in order to be eligible for membership in a cooperative association as defined in the Agricultural Marketing Act, we believe that such persons must be engaged in some respect in farming operations, for otherwise all persons engaged in handling or processing food products at any intermediate step between farmer and ultimate consumer might qualify for such membership, and there would then be virtually no limitation upon those who may become members. A similar result should also apply to manufacturers, distributors, and dealers of farm implements or farm supplies. In our opinion, such persons cannot qualify as members of a farmers' cooperative on the tenuous grounds that the products which they sell may be used on a farm or by a farmer. Any other conclusion in this respect would result in the untenable position that any supplier of consumer goods might become a member of an agricultural cooperative since their products conceivably could be purchased and used by a farmer.

Much controversy has arisen herein concerning the extent to which a person must engage in farm operations in order to qualify as a member of a bona fide cooperative association. With respect to those who can qualify as farmers in some degree, but who have other activities which, in many instances, constitute the principal business in which they are engaged, defendants and the Secretary of Agriculture generally take the position that such persons are "farmers" within the meaning of the Agricultural Marketing Act, and that they, therefore, may become lawful members of a cooperative association. Complainants and the Bureau, on the other hand, say that a person must be primarily engaged in farming operations in order to be eligible for membership.

Insofar as qualifications for membership are concerned, we agree with defendants and the Secretary of Agriculture that persons engaged in farming may qualify as members of a cooperative association even though such farm activities may not constitute the primary business in which such persons are engaged. This position is generally in consonance with the legislative purposes of the Agricultural Marketing Act discussed above, and is further supported by the following excerpt from the court's opinion in *United States* v. *Maryland & Virginia Milk Pro. Assn., supra,* involving the construction of similar provisions embraced in the Capper-Volstead Act (7 U.S.C.A. 291):

"It is urged by the Government that the words 'dairymen' and 'farmers' should be restricted to natural persons who personally work on dairy farms and who derive the major portion of their income from the farms. The court sees no basis for such restricted definition * * * *the owner of a farm may be regarded as a farmer even though he devotes the major portion of his activities to other pursuits.* When Congress desired to put a more circumscribed definition on the term 'farmer' it did so expressly, as is true of the Bankruptcy Act * * *. The Court, therefore, is of the opinion that it is immaterial whether every member of the association personally works on his farm or whether every member of the association is a natural person or a corporation." [Italics added.]

We see no reason, either in the express language of the Marketing Act or in the legislative history thereof, to depart from this interpretation. Accordingly, we conclude that individuals, partnerships, corporations, and other business entities engaged in farming operations, either as actual producers of agricultural products or as farm owners, may qualify for membership in a cooperative association as defined above, even though such farming operations may not constitute the primary business in which they are engaged.

Several other problems concerning qualifications for membership in a farmers' cooperative remain to be considered. As indicated, corporations engaged in farming operations in the manner described above are eligible for membership in a legitimate cooperative association. It does not follow, however, that other persons, whether corporate or natural, affiliated with or in control of such qualifying corporations may become, by virtue of such affiiliation or control, eligible members in that cooperative. Corporate entities may be disregarded where they are, in reality, a scheme for avoiding the legislative purposes of the act, but not be so disregarded where those in control have deliberately adopted the corporate form in order to secure its advantages and where no violence to the statute is done by considering the corporate entity as a separate legal person. Compare *Schenley Distillers Corp.* v. *United States*, 326 U.S. 432. We conclude, therefore, that in situations where one or more of a number of affiiliated persons, corporate or otherwise, qualify as "farmers" within the meaning of the Agricultural Marketing Act, only those persons so qualifying are eligible for membership in a cooperative association; and that affiliated or controlling corporate or natural persons not so qualifying may not become lawful members in the association on the basis of such affiliation or control alone.

Finally, the Agricultural Marketing Act clearly contemplates a cooperative effort by farmer members acting together for their mutual benefit. Obviously, such cooperation can be accomplished only by a contractual relationship or understanding between the association and its members. Compare *Sun-Maid Raisin Growers of California* v. *K. Arakelian, Inc.*, 90 Cal. App. 10, 265 P. 832; and *Constructors' Assn. of Western Pennsylvania* v. *Furman*, 165 Pa. Super. 268, 67 A. 2d 590. At the very least the members of a cooperative should be aware of their membership, and have an opportunity to participate in the affairs of the association. The inclusion on the cooperative's membership rolls of the names of persons having no knowledge of their ostensible membership represents an obvious device or scheme to circumvent the requirements of the act, and cannot be condoned.

Ownership and control of the association.—While only those engaged in farm operations as described above may qualify as members in a farm cooperative, there remains for consideration the proper status to be accorded an association whose membership includes persons not so qualifying, that is, nonfarmers. The Bureau avers that the membership of nonfarmers in a purported cooperative association causes that organization automatically to lose its status as a bona fide cooperative under the Agricultural Marketing Act. We do not agree. While the term "cooperative association" is defined by statute as an organization in which member-farmers act together for their mutual benefits in furtherance of certain stated purposes, it does not follow that the inclusion of nonfarmers on its membership rolls necessarily alters the status of such an association.

The Marketing Act is administered by the Farm Credit Administration, and the statutory definition of a cooperative association, quoted above, constitutes the standard employed by that agency to determine whether an organization is eligible to borrow money from the Banks for Cooperatives. As a result, the interpretations placed by the Farm Credit Administration upon that statute and the regulations promulgated thereunder should be given considerable weight in ascertaining whether or not a particular association is within the definition embraced in the Agricultural Marketing Act. Compare *Harrill* v. *Davis*, 168 Fed. 187, 198. In determining eligibility for loans under the Marketing Act, that agency has prescribed the following regulation:

6 CFR 70.1 *Nonproducer ownership of voting media in cooperative associations.* Loans may not be made to a cooperative association, except a mutual fire insurance company, unless at least 90 percent of the voting media are held by either producers (individuals, partnerships, or corporations), or cooperative associations as defined in the Agricultural Marketing Act, as amended (see sec. 15, 46 Stat. 18 as amended: 12 U.S.C. 1141j).

In determining eligibility, all business transacted with members that are neither producers, nor cooperative associations as defined in the Agricultural Marketing Act, as amended, shall be deemed to be nonmember business.

This regulation reflects the time-tested administrative practice of the Farm Credit Administration to the effect that an organization must be substantially owned and controlled by farmers, as defined above, in order to qualify as a cooperative association as defined by the Agricultural Marketing Act. As stated by the lower court in *United States* v. *Elm Springs Farm Cooperative* (D.C. Mass.), 38 F. Supp. 508, at page 510, order modified 127 F. (2d) 920:

Merely naming an association a cooperative one cannot effect [sic] its real character. Its makeup and purpose are the real criteria.

If persons not qualifying as "farmers" own or control a purported cooperative association, it follows that such an association is not one in which member farmers act together for their mutual benefit either as producers of agricultural products or as purchasers of farm supplies and farm business services. Rather, such an organization may be said to have as its primary purpose the betterment of the interests of the nonfarmers contrary to the declared policy of the Marketing Act—

"to promote the effective merchandising of agricultural commodities * * * so that the industry of agriculture will be placed on a basis of economic equality with other industries, * * * by encouraging the organization of *producers* into effective associations or corporations under their *own* control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of *producer-owned* and *producer-controlled* cooperative associations." [Italics supplied.]

At the same time, however, the Agricultural Marketing Act should not be interpreted so literally or applied so strictly as to preclude cooperatives from retaining on their membership rolls, for informational or promotional purposes, retired farmers, administrators of estates, and other similarly situated nonfarmers. Although such persons are not eligible for true membership in a cooperative association and should not be admitted as new members therein, the presence of their names on the association's membership roster, in our opinion, does not automatically cause that association to lose its status as a legitimate farm cooperative. A contrary conclusion would place upon an association, founded and operated in good faith, the onerous burden of frequently reviewing and investigating its membership lists for the purpose of purging the names of those persons not then qualifying for membership. In the circumstances, we conclude that the apparent membership in a cooperative association of persons who may not qualify as "farmers" within the meaning of the Agricultural Marketing Act does not automatically change the status of such association, provided that the association continues to be *substantially* owned and controlled by qualifying members as previously defined herein.

Member vs. *nonmember business*.—The Agricultural Marketing Act further provides, in effect, that the value of business handled by a cooperative association for or with nonmembers (excluding business conducted "for or on behalf of the United States or any agency or instrumentality thereof") shall not exceed that transacted by such association for or with its eligible members, as defined above. This requirement pertains not only to all transportation services rendered by a cooperative (whether or not such transportation is exempt from economic regulation under some other provision [4] of the Interstate Commerce Act), but, in addition, to all farm products, farm supplies, and farm business services dealth in by the association. Hence, a preponderance of a cooperative's transportation activities might be performed for nonmembers without altering the association's status, provided that the value thereof is offset by the value of other types of business which it handles for or with members.

It should be noted, however, that the proportion which member business bears to that handled for or with nonmembers logically cannot be derived from a limited investigation of the coperative's activities as of some isolated moment in time. Rather, in order for the association to be a legitimate farm cooperative, the evidence must establish that such association, *as a general and continuing practice*, does not conduct nonmember business greater in value than that performed as agent for its own members. This can only be accomplished by an examination of the total business activities of the cooperatives covering a period of time sufficient in duration to establsh the normal and usual ratio obtaining between the member and nonmember business of the association.

[4] For example, the transportation of so-called exempt agricultural commodities under section 203(b)(6) of the Interstate Commerce Act, when performed for a nonmember, clearly must be treated as nonmember business.

2. Nature of service

Having determined the essential attributes which must be possessed by a cooperative association as defined by the Agricultural Marketing Act, we come next to the problems regarding the nature and extent of the transportation services which lawfully may be provided by such an association pursuant to both the Marketing Act and the Interstate Commerce Act. Under the latter statute, both cooperative associations and federations thereof, operating within the limits imposed by the Marketing Act, rightfully may engage in interstate transportation by motor vehicle without obtaining authority therefor. See the *Jamestown* case, *supra.* Stated otherwise, a motor vehicle operated in interstate commerce by a farmers' cooperative for a purpose not within the contemplation of Congress in enacting the Agricultural Marketing Act is not exempt from the certificate or permit requirements of the Interstate Commerce Act. It follows, therefore, that the sole question to be considered and resolved at this point pertains to the nature of the operations in which an agricultural cooperative rightfully may engage.

With respect to this problem, complainants, interveners in support of complainants, and the Bureau generally contend that in order to be a legitimate activity of a cooperative, transportation must constitute a "farm business service," and, as such, must connect either at origin or destination with a farm or a farmers' cooperative. ACS and its agents argue, on the other hand, that if the evidence establishes that a cooperative meets the definition of the Marketing Act, all transportation service rendered by such association is exempt from economic regulation so long as its nonmember business is not greater in value than the total business transacted by it with its members. The position of the Secretary of Agriculture lies somewhere between these two extremes. He asserts that a lawfully constituted cooperative may engage in for-hire transportation for nonmembers where such transportation is reasonably incidental to the cooperative's proper corporate purposes; and that a cooperative may transport farm products, farm supplies, or other commodities encompassed by the furnishing of a farm business service even though they do not originate at and are not destined to a farm or a cooperative, and even if some of the purchasers of these commodities may not be farmers.

In support of their respective positions, the parties place great reliance upon varying and somewhat conflicting interpretations of the court's opinion in the *Jamestown case, supra.* In that case, the Eighth Circuit Court of Appeals ruled against this Commission's contention that transportation service performed under the partial exemption by a federation of cooperative associations for or in behalf of its members must connect either at origin or destination with a farm. In so doing, the court stated, at page 405 of its opinion:

"That the economical and efficient transportation of farm products to market and of farm supplies to farmers is a necessary farm business service can not be doubted. To require that such transportation must originate or end in every case at a farm is to deny to the farmer one of the farm services which the Agricultural Marketing Act was intended to make available to him through the operation of farmer cooperatives. Nothing in the Act either expressly or by implication justifies a holding that the farmer cooperatives may not transport to market farm products which its member farmers have transported and delivered to the cooperative; nor that the trucks of the cooperatives used in such transportation may not on return transport farm supplies for delivery to the cooperatives for resale."

The court also rejected the argument that the defendant in that case, a federation of cooperative associations, was not entitled to the partial exemption provided by section 203(b)(5) inasmuch as between 3 and 14 percent of the farm supplies and merchandise which it transported inbound to its member cooperatives was purchased by nonfarmers. The court stated, at page 405:

"And since a cooperative association is expressly permitted by the Agricultural Marketing Act to transport farm supplies and to render farm service to or for others than its members, the fact that some of the farm supplies carried in its westbound traffic may be sold to others than farmers is of no significance, so long as the proportion of such sales and services is not greater than that permitted by the Act."

Neither the express language of the act nor the legislative history thereof, discussed above, warrants the conclusion that Congress intended to allow agricultural cooperatives to become general transportation companies by performing for-hire transpotation for anyone or for any purpose. Compare *Farmer's Union Co-op. Elev. Co., of Spencer, Ext.—S. Dak.*, 34 M.C.C. 1. To the contrary,

transportation rendered by a cooperative association must be assessed in the light of the essential relationship between the association and its members in their capacities as producers of farm products and purchasers of farm supplies and/or farm business services; and, in order to come within the so-called agricultural cooperative exemption, such transportation, whether performed for members or nonmembers, must be designed to benefit directly, or be functionally related to its members' activities as such producers and purchasers. With respect to the second passage quoted above, the court, in effect, was merely recognizing that cooperatives engaged in the retail business of furnishing farm supplies to their members are confronted with certain practical problems, and *necessarily* must be permitted to sell goods to customers who may not be members or even farmers. This view is also substantiated by the opinion of the lower court in that case. See 57 F. Supp. 749, 753. The court did not consider the problems with which we are faced herein, and obviously did not intend that this principle be extended in such a manner as to bring within the partial exemption all transportation performed by an agricultural cooperative regardless of the essential character thereof. In the circumstances, the application of this rule will be limited to the facts upon which it was founded.

Thus, transportation rendered by a farmers' cooperative, which transportation is essential to, and in furtherance of, the lawful purposes of the cooperative as defined in the Marketing Act, is entitled to the benefits of the partial exemption. Stated differently, if such operations are, in fact, merely incidental to, and necessary for the performance of the farming activities of its member farmers, the association does not lose its status as a cooperative association, and the transportation is exempt from economic regulation by this Commission. It follows, therefore, that in order to be exempt from economic regulation, transportation by a cooperative for or on behalf of a person who may qualify as a member, but who has other business activities not connected with farming, must be functionally related to that person's operations as a "farmer" as defined above. A contrary conclusion would allow, for example, a cooperative association to transport, without proof of public need, automobiles for a large automotive manufacturer merely because such manufacturer also owns a farm or is engaged in limited farming activities. This was not the intent of Congress in enacting the statutory provisions here under consideration; and inasmuch as the production and marketing of automobiles is completely beyond the manufacturer's activities as a producer or purchaser within the meaning of the Agricultural Marketing Act, such transportation is not a lawful activity in which a cooperative may engage.

Since a cooperative may not perform transportation services functionally unrelated to its members' farming activities as described above, it also follows that the performance of backhauls, without restriction, is not within the purview of the partial exemption of section 203(b)(5). Although the income derived from such return transportation undoubtedly will indirectly benefit the association's member farmers by reducing their total cost of transportation, such return movements are not exempt from economic regulation unless directly essential to the activities of the members of the cooperative in their capacities as producer of farm products, or as purchasers of farm supplies and farm business service. Any other interpretation, if carried to its logical conclusion, would allow a cooperative to engage in the general business of for-hire transportation merely for the sake of the profits to be gained therefrom, contrary to the intentions and policies of Congress discussed above. We conclude that a cooperative association may perform, without obtaining authority from this Commission, transportation services which are functionally related to the farming operations of its member farmers regardless of the type of commodities so transported and the origins or destinations thereof. Any other transportation for compensation in which an agricultural cooperative desires to engage requires appropriate authority from this Commission unless exempted from the provisions of part II of the act under some other provision thereof. And if at the time of investigation into a cooperative's activities, it has already performed transportation of this character, the revenues derived therefrom must be treated as nonmember business for the purposes of determining compliance with the third proviso of section 1141j of the Agricultural Marketing Act.

OPERATION AND CONTROL OF MOTOR VEHICLES

The partial exemption afforded by section 203(b)(5) of the act extends only to "motor vehicles controlled and operated by a cooperative association * * * or by a federation of such cooperative associations," and our concern here is directed to the construction that should be accorded the quoted phrase. At the outset, it should be noted that this statutory exemption, unlike section 203(c) of the

act, contemplates for-hire motor carriage; and that in order to be exempt from the certificate and permit requirements of the act, the motor vehicles utilized in such transportation must be "controlled and operated" by a farmers' cooperative or by a federation of such cooperatives. In this respect, the considered exemption differs from that conferred by section 203(b)(6) of the act upon "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 * * *." In short, the partial exemption embraced in section 203(b)(5) requires that the equipment utilized in performing the considered transportation be controlled and operated by an agricultural cooperative, while the so-called "agricultural commodities" exemption of section 203(b)(6) places no such limitation upon the control and operation of the vehicles so used. This equipment limitation, being an integral part of the express language of the exemption here in issue, must be interpreted in harmony with the purpose of the act and be held to extend only to those plainly within its terms. *Farmer's Nonstock Coop. Transport Assn. Contr. Car. Applic.*, 43 M.C.C. 934 (not printed in full), 4 Fed. Car. Cas. 30789.

Concerning this problem of the control and operation of motor vehicles by a cooperative association, this Commission's Bureau of Motor Carriers, in Administrative Ruling No. 91, dated July 17, 1940, stated:

"The vehicles must be controlled and operated by the cooperative association. That is to say, the association, as distinguished from its members, or from any subordinate corporation or other entity, must own, or have the legal right of possession of the vehicle and direction and control of its operations and the person who operates it must be one who is an employee of the associaton."

This statement reflects the well-established concept that there may be only one motor carrier with respect to a particular transportation service; and it rules, in effect, that, in order to come within the so-called agricultural cooperative exemption, the association claiming the partical exemption must be the motor carrier with respect to the challenged operations.

Whether any person other than the farmers' cooperative is engaged, in substance, in for-hire motor carriage subject to regulation under part II of the Interstate Commerce Act can be determined only after consideration of all the facts and circumstances of each particular case. No single element standing alone is conclusive. It is the economic reality behind the arrangements, and not their form, which is crucial in determining the status of motor-carrier operations. *United States* v. *La Tuff Transfer Service, Inc.*, 95 F. Supp. 375 (D. Minn.). Obviously, the purposes of economic regulation cannot be frustrated by the creation of an arrangement, wherein one or a number of persons become, in form, a shipper's agent whose principal duty is to perform, without authority, a transportation service which, in effect, is one for which authority is required. Compare *Movers Conference of America—Declaratory Order*, 82 M.C.C. 437, 444; and *Allen—Investigation of Operations and Practices*, 79 M.C.C. 727, 737, affirmed *Allen* v. *United States*, 187 F. Supp. 625. Where the purpose of the paper agency arrangement is to have the purported agent assume the cooperative association's function with respect to the accomplishment of transportation in interstate commerce, it is the so-called agent, and not the cooperative, which bears the essential risks of engaging in the transportation business and which is actually engaged in for-hire transportation in interstate commerce. As such, the purported agent must obtain operating authority from this Commission. To hold otherwise would enable a cooperative association, by mere paper arrangements, to confer upon another person a license to operate as a for-hire motor carrier in interstate or foreign commerce, and to receive in return a royalty for the use of its name and the partial exemption to which it alone is entitled. Such a device or scheme is contrary to the congressional policies and intentions underlying thepartial exemption of section 203(b)(5), and will not be allowed.

Accordingly, in order to be controlled and operated solely by a cooperative association within the meaning of the exemption, we believe that the motor vehicles by which the transportation is performed either must be owned by the cooperative itself or must be in the lawful possession thereof and be operated and used in the same manner as if owned by such association (as they would be, for example, if operated pursuant to a long-term lease).[5] In addition, and although

[5] We recognize that section 204(f)(1) of the act prevents us from regulating the duration of any lease, contract, or other arrangement for the use of any motor vehicle, with driver, "where the motor vehicle so to be used is that of * * * a cooperative association." It is our opinion, however, that this provision is effective only after it is established that the motor vehicle is owned by the cooperative association or that it is in the lawful possession of the cooperative and operated and used in the same manner as if owned by such association.

the statute itself speaks only in terms of control and operation of the motor vehicles, it is obvious that, absent a direct, bona fide employer-employee relationship between the cooperative and the drivers of such vehicles, the association cannot, in fact, *exclusively* control and direct the operation of the motor vehicles. Stated differently, in order to qualify for the partial exemption of section 203(b)(5), the cooperative association alone must control and direct the two significant instrumentalities of commerce: the equipment by which the transportation is accomplished, and the driver thereof. Even the presence of a legitimate employer-employee relationship between the association and the driver, however, may not, in all circumstances, be sufficient to confer upon the former the exclusive direction and control of the motor vehicle. This is particularly true where the driver has certain duties, obligations, responsibilities, or interests which are inconsistent with his obligations to his employer, and which thereby effectively nullify any nominal control which the employer might be thought to possess.

In summary, we conclude that, in order for the motor vehicles to be controlled, and operated by a cooperative association within the meaning of the partial exemption of section 203(b)(5):

(1) The motor vehicle either must be owned by the cooperative association, or it must be in the lawful possession thereof and be used and operated by such association as if it were, in fact, owned by the cooperative; and

(2) The driver of the vehicle must be a bona fide employee of the cooperative association, and must possess no duties, obligations, responsibilities, or interests inconsistent with its obligations to that association.

In assessing whether these standards are met by the association claiming the partial exemption, paper agency arrangements will be disregarded where the purpose of such arrangements is the assumption by the purported agent of the cooperative's functions with respect to the accomplishment of for-hire transportation in interstate or foreign commerce.

OPERATIONS OF ACS AND ITS AGENTS

Applying the above-stated general principles to the facts presented in the instant proceedings, we are of the opinion that the motor-carrier operations of ACS and its agents are not within the scope of the partial exemption here in question. We are unable to find in the organization and activities of ACS the requisite conformity to the statutory definition of an agricultural cooperative. Although the association originally may have been conceived by farmers acting together for their mutual benefit, it is clear that ACS, from the very date it was founded, was designed to benefit, and has primarily benefited, the motor-carrier activities of its agents. Such agents played an active part in the establishment of ACS, and came into effective control of that association. They became its officers and directors and omitted, or failed, to notify the members of general membership meetings which might have limited their control over the activities of ACS. Moreover, a number of persons whose names appear on the membership lists of ACS disclaim any knowledge of their ostensible membership in the association. In the absence of any effective supervision of the activities of ACS and of its agents by the membership of the association, it is clear that the farmer members were brought into the picture to give the association the color of a legitimate farmer cooperative, and that ACS is not substantially owned and controlled by its qualified members. ACS, therefore does not possess all of the essential attributes of a cooperative association as defined in the Agricultural Marketing Act.

In addition, while the association's membership lists contain a number of "farmers" as that term has been previously defined herein, many of the principal shippers which use the services of ACS to meet their transportation needs have little or no connection with farming. They consist of large manufacturers of farm machinery and equipment, meatpacking concerns, commercial canning companies, and large shippers of dairy products. Some of these shippers are engaged in farming operations, either as actual producers of agricultural products or as owners of farms, and properly may become members of an agricultural cooperative in order to obtain transportation services functionally related to their farm activities. The evidence conclusively establishes, however, that most of the transportation rendered for them by ACS and its agents does not benefit directly, and is not essential to, the operations of such shippers in their capacities as producers of agricultural products and as purchasers of farm supplies and/or farm business services. Moreover, past transportation performed by ACS for these shippers, insofar as it was not functionally related to shippers' operation as such producers and purchasers, obviously cannot now be regarded as membership business. In

view of the tremendous volume of this type of traffic handled by ACS, primarily in behalf of Coast Packing Company, it is clear that ACS has violated the percentage requirements set forth in the third proviso to the Marketing Act's definition of a farmers' cooperative. In short, ACS and its agents, in rendering such transportation, have exceeded the scope of the activities in which a cooperative association lawfully may engage under the Agricultural Marketing Act; and as such, they are operating as for-hire motor carriers in interstate or foreign commerce without appropriate authority.

Finally, the evidence is convincing that ACS does not exclusively control and operate the motor vehicles by which the assailed transportation is performed. In essence, the purported agents of ACS are conducting their own transportation business, with ACS exercising no more control over such operations than it would over those of authorized carriers whose services it might utilize. The drivers are not directly employed by the association, and the motor vehicles are neither owned by ACS nor used by it as if they were so owned. Each agent solicits his own business, decides the rates to be charged, and collects the transportation charges. ACS has no greater duty or responsibility than that of serving as a clearing house for paperwork and receiving in return a small percentage of the transportation fees collected. In fact, ACS does not have any knowledge of the shipments handled by its agents until it receives the freight bills at the end of each month. In the circumstances, we conclude that ACS does not control and operate the motor vehicles involved herein; and that its named agents, acting on concert with ACS, actually are conducting motor-carrier operations, for compensation, without appropriate authority therefor.

OTHER RELATED MATTERS

Transportation performed by ACS and its agents under the cloak of the "agricultural cooperation" exemption being thus found to be unlawful, a cease and desist order will be entered herein embracing all defendant-respondents still engaged in such transportation at the time of the hearing herein. Tennant and Hinrichs, having withdrawn from their association with ACS, will not be included in the order; and the proceedings will be discontinued as to them. We reject, however, the contention that the shipper-respondents should not be charged with the duty to refrain from participating in concert with defendents in the unlawful operations described herein. Such shippers are placed on notice that defendants' practices do not fall within the exemption claimed for them; the character of the operations being performed unlawfully is fully disclosed herein; and it is difficult to conceive of legitimate doubt on the part of the shippers concerning any future operations attempted to be conducted by defendants. Accordingly, our order will extend to those respondent shippers who have been shown to have acted in concert with defendants, or some of them, in the operations found herein to be unlawful. These shippers include Coast Packing Company, National Dairy Products Company, Milford Canning Company, Interlocking Fence Company, Sperry Rand Corporation, and Keystone Steel and Wire Company. Since the evidence does not show New Idea Farm Equipment Company to have been a culpable participant in the described operations, no order will be directed against that shipper.

The participation of shippers Illinois Canning Company, Chris Hoerr & Company, and Kewannee Machinery, and Conveyor Manufacturing Company in the described unlawful operations has not been overlooked, but inasmuch as these shippers were not respondents at the origin of the investigation, no order will be directed against them. They are admonished, however, to refrain from future participation with said defendant-respondents in all unlawful operations of the character described in this report.

Although our order may only be directed against those defendants and respondents made parties to these proceedings, it is our purpose that this decision serve as a guide by which similarly situated orginizations and shippers may measure the lawfulness of their transportation activities.

FINDINGS

In Nos. MC–C–2488, MC–C–2488 (Sub-No. 1), and MC–C–2576, we find that defendant-respondent Agricultural Commodity Service is not a cooperative association as defined in the Agricultural Marketing Act; that defendants and respondents Howard Baer and Albert Schmied, doing business as Baer & Schmied, Robert

Crawford, Ed Pyles, doing business as Ed Pyles Trucking, Charles Reeves and Wendell Reeves, doing business as Reeves Trucking, and Roy Zehr and Orrie Zehr, doing business as Zehr Bros., and defendant-respondent Agricultural Commodity Service, acting in concert with such defendants and respondents, have been and are engaged in the transportation of property, in interstate or foreign commerce, for compensation, in the manner described in this report, without appropriate authority from this Commission; that such operations are subject to the provisions of section 206(a) or 209(a) of the Interstate Commerce Act and in violation thereof; that an order should be entered requiring said defendants and respondents to cease and desist from the performance of such unauthorized operations and thereafter to refrain from such operations unless and until appropriate authority to engage therein is obtained; and that as to defendant-respondents Sidney Tennant and Gordon Hinrichs the proceedings should be dismissed.

In No. MC–C–2576, we further find that respondents Coast Packing Company, National Dairy Products Corporation, Milford Canning Company, Interlocking Fence Company, Keystone Steel & Wire Company, and Sperry Rand Corporation are or have been participating in concert with said defendants and respondents in said violations; that an order should be entered requiring the respondents named to cease and desist forthwith, and hereafter to abstain, from participating with said defendants and respondents in any operation, in interstate or foreign commerce, of the character found in this report to be unlawful; and that as to respondents J. D. Roszell Company and New Idea Farm Equipment Company the proceeding should be discontinued.

An appropriate order will be entered.

Appendix A

No. MC–C–2488

By complaint filed December 2, 1958, as amended, Machinery Haulers Association et al.[6] allege that defendant, Agricultural Commodity Service, is holding itself out to transport, has transported, and is transporting property in interstate or foreign commerce from, to, and between various points in the United States; that defendants Howard Baer and Albert Schmied, doing business as Baer & Schmied, Robert Crawford, an individual, Ed Pyles, doing business as Ed Pyles Trucking, Charles and Wendell Reeves, doing business as Reeves Trucking, Roy Zehr, doing business as Zehr Bros., Sidney Tennant, an individual, and Gordon Hinrichs, and individual, have been or are now acting as agents for ACS and in concert therewith, have been or are now engaged in the transportation of property in interstate or foreign commerce for compensation; that such transportation of property by defendant (other than the transportation of ordinary livestock and agricultural commodities as considered in the partial exemption of section 203(b)(6) of the Interstate Commerce Act), is unlawful and in violation of sections 206 and 209 of the act; that said transportation by defendants has caused, is causing, and will continue to cause injury to complainant Machinery Haulers Association and to its individual member-complainants by reason of diversion of traffic to defendants which complainants are ready, willing, and able to transport to the extent of their respective authorities; and that an appropriate cease and desist order should be entered.

No. MC–C–2488 (Sub-No. 1)

By complaint filed December 15, 1958, Midwest Coast Transport, Inc., Colonial & Pacific Frigidways, Inc., and Little Audrey's Transportation Company, Inc., allege that defendants ACS and Robert Crawford are holding themselves out to transport, have transported, and are transporting certain commodities as more fully described in appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Denison, Iowa, to points in California; that such transportation is injurious to complainants by reason of diversion of traffic which they are ready, willing, and able to transport to the extent to which they are authorized; and that an appropriate cease and desist order should be entered.

[6] Ace Lines, Inc., Arco Auto Carriers, Inc., Barnes Truck Service, Inc., Central States Express, Crouch Bros., Inc., Dallas & Mavis Forwarding Co., Donaldson Transfer Company, Phillip J. Groetken, Home Transportation Company, Inc., International Transport, Inc., H. J. Jeffries Trucking Line, Inc., Bob Jenkins Truck Line, K & K Truck Lines, Inc., Ringle Truck Lines, Inc., and Willers Heavy Hauling.

No. MC–C–2576

By order dated April 8, 1959, division 1 instituted an investigation on its own motion, under the provisions of section 204(c) of the Interstate Commerce Act and section 2 of the Elkins Act, into and concerning the practices of the above-named defendants, to determine whether said parties have been and are engaged in the transportation of property, in interstate of foreign commerce, for compensation, as a common or contract carrier by motor vehicle in violation of section 206(a) or 209(a) of the Interstate Commerce Act; whether Coast Packing Company, J. D. Roszell Company, National Dairy Products Corporation, doing business as Sealtest, Milford Canning Company, New Idea, Inc., Interlocking Fence Company, Keystone Steel and Wire Company, and Sperry Rand Corporation, in concert with the said defendants (except Tennant and Hinrichs), have participated in such violations; and whether the entry of an order or the taking of other and further action is warranted by the facts and circumstances.

Appendix B

Operations and activities of remaining defendants and respondents

Defendent-respondent Wendell Reeves, of Milford, Ill., is the general manager of the Charles W. Reeves Grain Company, and general manager of ACS. In the latter capacity, and as partner of defendant Charles Reeves, doing business as Reeves Trucking, he solicits traffic and transports canned goods for Illinois Canning Company from Hoopeston, Ill., to points in Alabama, Florida, Georgia, Louisiana, Mississippi, Tennessee, Kentucky, Texas, Ohio, Pennsylvania, and West Virginia. Sugar is carried to Hoopeston from Philadelphia and New Orleans. Reeves also transports canned goods for Milford Canning Company outbound and certain raw materials and supplies inbound for that shipper.

Defendants-respondents Howard Baer and Albert Schmied, doing business as Baer & Schmied, of Morton, Ill., lease five tractors and eight trailers to ACS, and transport dairy products and supplies from the Sealtest plant at Peoria, Ill., to Sealtest branch houses at St. Louis, Mo., and at points in Wisconsin, Indiana, Tennessee, and Missouri. New containers are picked up at Clinton, Iowa, for movement into Peoria, and a few loads of beer have been transported from St. Louis to Peoria for Chris Hoerr and Company, a wholesale grocer. York Bros., of Morton, and Sinn Bros., of Tremont, Ill., both members of ACS, have been served in the movement of large quantities of turkeys to St. Louis.

Defendant-respondent Ed Pyles, of Deer Creek, Ill., has transported livestock, grain, fertilizer, and farm machinery as an agent for ACS for 4 years prior to the hearing herein. He holds no intrastate or interstate operating authority, but formerly operated as agent for Agricultural Transportation Association and Farmers Field Facility. He operates five tractors and eight trailers, all of which are leased to ACS. Farm machinery is transported for New Holland Machine Co., New Idea, Inc., and Meyer Manufacturing to dealers in Iowa, Nebraska, Minnesota, Ohio, Pennsylvania, and New York. Black Angus livestock is transported from farms and other points in Illinois to points in numerous States, and ordinary livestock is moved to packinghouses in eastern markets. Grain originates at farms and elevators and fertilizer moves to Illinois, Iowa, and Indiana points, 40 percent to dealers and 60 percent direct to farms. Pyles has also transported a few loads of canned goods for Illinois Canning Company and Milford Canning Company which were solicited by Wendell Reeves and shipments for Keystone Steel and Wire Company which were obtained through Zehr Bros. About 60 percent of the time Pyles returns empty.

Defendant-respondents Roy Zehr and Orrie Zehr, doing business as Zehr Bros., of Morton, lease vehicles to ACS and solicit memberships in the cooperative association. Previously Roy Zehr was affiliated with Agricultural Transportation Association and with Farmers Field Facility, cooperative associations which performed transportation services for their members. Zehr Bros. transports livestock from farm to market, but also, in the service of ACS, handles canned goods for Illinois Canning Company destined for warehouses in Georgia and Tennessee. It has also been transporting materials for Interlocking Fence Company both to farmers and to company stores, and the products of Keystone Steel & Wire Company. Grain elevators and hay conditioners have been transported for Meyer Manufacturing Company to implement dealers in numerous States, balers from New Holland Machine Company, and other farm machinery from New Idea Farm Equipment Company.

Defendant-respondents Sidney E. Tennant of Orion, Ill., and Gordon Hinrichs of Battle Creek, Iowa, are former agents of ACS whose operations were conducted in much the same manner as those already described. Tennant transported agricultural implements for such shippers as New Holland, J. I. Case, and Kewanne Machinery and Conveyor. Hinrichs served the same shippers and hauled in addition such commodities as feed, seed, fertilizer, chemicals, twine, and baling wire. Tennant remains in the transportation business, operating in his own name under authority issued by the Illinois Commerce Commission. Hinrichs is no longer occupied in transportation but is employed as a hog buyer for High Grade Food Products Corporation.

Respondent Coast Packing Company maintains a meatpacking plant in Los Angeles and distributes its products in California, Nevada, and Arizona. Although it is closely affiliated with Pico Feeding Company, a hog ranch, Sudan Livestock and Feeding Company, Feeders Grain Corporation, and Davidson-Reider Livestock Company, it purchases most of the meat it processes at Los Angeles from other concerns. About 90 percent of the animals purchased are slaughtered at the plant of Crawford County Packing Company, Denison, Iowa. Hogs are purchased from farmers and members of Consumers Cooperative Association in the Denison area, and after being slaughtered are shipped to Los Angeles by Robert Crawford acting for ACS. Coast Packing Company arranges the transportation, pays the charges therefor, and contributes approximately half the dollar volume of business classified by ACS as membership hauling.

Respondent J. D. Roszell Company, of Peoria, ceased doing business on or about January 1, 1956, and no evidence was adduced as to its participation in the activities under investigation.

Sealtest Foods, a division of respondent National Dairy Products Company, ships dairy products from Peoria to St. Louis and receives milk cartons at Peoria from Clinton, Iowa. The transportation is performed by Baer & Schmied as agent for ACS, and the total volume is handled in about six or seven trips a week in each direction.

Respondent Milford Canning Company processes corn and asparagus purchased mostly from local farmers. A small fraction of its production is raised on 200 acres owned by respondent's president and 300 acres leased by respondent. After processing and canning, the production is sold to wholesale grocery houses in a number of States and is transported to such consignees by ACS through the agency of Wendell Reeves. Occasional return loads of empty cans and corrugated cases are brought in from Hoopeston, Ill., and Terre Haute, Ind. ACS does not handle any shipments from the farm to respondent's plant.

Respondent Interlocking Fence Company, of Morton, manufactures farm fencing and barbed wire. Its affiliate, Meyer Manufacturing Company, also of Morton, manufactures farm equipment such as grain elevators and hay conditioners. Both companies are members of ACS, through agent Zehr Bros., and utilize defendant's service to ship these commodities to points in numerous States and to receive inbound shipments of raw materials. ACS handles 10 precent of Interlocking Fence's outbound traffic and 80 percent of Meyer's. Merchandise sold through Intrelocking Fence's company-owned stores is transported directly from factory to farmer. Most of the elevators made by Meyer are for the particular need of an individual farmer, but at least half of its hay conditioners would normally be destined to a farm implement dealer or a feed dealer.

New Holland Machine Company, a division of respondent Sperry Rand Corporation, manufactures farm machinery for distribution directly to farm equipment dealers. It is not a member of ACS but has used the service of the association, through agents Pyles, Reeves, and Zehr Bros., to transport its products from four plants in Pennsylvania to dealers in Illinois and Wisconsin. It also has used the service of another cooperative, Agricultural Transportation Association, and finds ACS's operations to be similar.

Respondent Keystone Steel and Wire Company, of Peoria, manufactures steel from which wire and wire products are produced and shipped to dealers, including dealers in farm supplies, other manufacturers, and contractors located throughout the middle Atlantic States and southeastern United States. Less than 1 percent of its traffic moves directly to farms and ranches. Respondent is not a member of ACS but has used its transportation services to a limited extent through agents Reeves, Pyles, and Zehr Bros. for a small percentage of outbound movements originating at Bartonville, Ill. It has relied on information supplied by ACS with respect to the legality of the operation.

Respondent New Idea, Inc., of Coldwater, Ohio, is now New Idea Farm Equipment Company Division of Avco Corporation. It is engaged in the manu-

facture of farm implements and their distribution to dealers. A small volume of this freight has been handled by ACS when dealers have requested such carriage and paid the charges, but respondent has not otherwise tendered ACS any traffic. Although respondent's name appears on the ACS membership list, it has never in fact attempted to become a member of the association.

Illinois Canning Company, of Hooperston, Ill., not a respondent herein, produces canned corn, asparagus, tomatoes, and beans from raw materials supplied partially by its own acreage and partially from contract farmers, elevators, and dealers. This shipper contracts for several thousand acres of growing land and often harvests its own crops but does not regularly plant, cultivate, and fertilize them. Normally those functions are performed by the owners of the land, and the shipper participates in the harvest only because of labor problems. It is a member of ACS and utilizes agents Reeves and Zehr Bros. for the transportation of its products to wholesale grocers and chain warehouses in six States.

Chris Hoerr & Son Company, of Peoria, is a wholesale grocer and beer distributor, and was not named a respondent herein. Through agent Baer & Schmied it has used ACS for a considerable period to transport beer from St. Louis to Peoria. It has made no investigation to determine whether Baer & Schmied may lawfully perform the service in question without appropriate authority from the Commission.

Oscar Mayer and Company, of Madison, Wis., is a meatpacking firm which has used the services of ACS in the transportation of livestock. It is not a member of the association, has never tendered ACS any meat or meat products for transportation, and has not been named a respondent herein.

Kewanee Machinery and Conveyor Manufacturing Company makes farm implements, elevators, discs, and wagons which it has shipped to dealers in six States through Gordon Hinrichs and Sidney Tennant while the latter were active agents of ACS. This shipper was never a member of ACS and discontinued use of the association's transportation service when Tennant and Hinrichs ceased to be authorized agents. It has not been made a respondent in this investigation.

The Bettendorf Works of J. I. Case Company manufactures harvesting machinery, combines, balers, cornpickers, and foragers. Its traffic was solicited in March 1958 by Gordon Hinrichs, a former agent of ACS, but the services of the association have never been used except for orders on which the freight charges were paid by the consignee. This shipper is not a respondent herein.

[*Served Oct. 29, 1964*]

(M–11162)

INTERSTATE COMMERCE COMMISSION

No. MC–C–4028

AGRICULTURAL TRANSPORTATION ASSOCIATION OF TEXAS ET AL. INVESTIGATION OF OPERATIONS

Decided October 23, 1964

Respondents found to have participated in the transportation of property in interstate or foreign commerce as a for-hire carrier by motor vehicle in violation of the provisions of section 206(a) or 209(a) of the Interstate Commerce Act. Cease and desist order entered.

William W. Guild and *William T. Collingsworth* for the Bureau of Inquiry and Compliance, Interstate Commerce Commission.

Richard T. Churchill, Daniel C. Lee, Howard C. Harpham, and *William F. Trent* for one or more respondents.

Charles W. Bucy, Joseph E. Quin, Karl C. Grannan, L. James Harmonson, Jr., Ed White, James W. Nisbet, and *Richard H. Champlain* for interveners as their interests may appear.

M. Ward Bailey, T. W. Cothren, Charles R. Dunford, Leroy Hallman, Charles D. Mathews, Hugh T. Matthews, and *Haywood Stephens* for interveners in behalf of the Bureau of Inquiry and Compliance.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS HUTCHINSON, BUSH, AND BROWN

BUSH, *Commissioner:*

Separate exceptions were filed by respondents, by the Commission's Bureau of Inquiry and Compliance, hereinafter called the Bureau, and by various interveners, and replies were filed by the parties to the respective pleadings.

By order dated January 25, 1963, the Commission, by its Vice Chairman, instituted an investigation on its own motion, under the provisions of section 204(c) of the Interstate Commerce Act and section 2 of the Elkins Act, into the motor carrier operations and practices of Agricultural Transportation Association of Texas, hereinafter called ATA, to determine whether it has been and is engaged in the transportation of property in interstate commerce, for compensation, as a common or contract carrier by motor vehicle, in violation of section 206(a) or 209(a) of the act, or any requirements established pursuant thereto, and whether Jack R. Cobb, Tom T. Trotter, Richard Churchill, Raymond Waters, Floyd Kuhn, Iowa Beef Packers, Inc., City Packing Company, Estes Packing Company, Pet Milk Company, Neuhoff Bros. Packers, Inc., Melton Provision Co., Inc., Libby, McNeil & Libby, Topoc Associates, Inc., and Safeway Stores, Inc., in concert with said ATA, have participated in said violations, and to determine what orders should be entered to remove any unlawfulness found to exist and for such other action as the facts and circumstances may appear to warrant. The order also directs participation in this proceeding by the Bureau.

This proceeding is concerned with the lawfulness of ATA's operations as a for-hire carrier without authority from this Commission, and specifically with whether ATA is a bona fide Agricultural Cooperative Association within the meaning of the Agricultural Marketing Act of 1929, as amended, and thus "exempt" from economic regulation by this Commission pursuant to the provisions of section 203(b)(5) of the Interstate Commerce Act.

The examiner concluded that ATA does not qualify as an agricultural co-operating association within the meaning of the Agricultural Marketing Act; that, consequently, ATA's operations are not exempt from the certificate and permit provisions of the Interstate Commerce Act; that ATA and the other respondents who are officers, employees, and shippers of ATA have been unlawfully participating in unauthorized transportation as a for-hire carrier; and that they should be ordered to cease and desist therefrom.

Nine sets of pleadings have been filed.[1] In their exceptions, respondents advance several particulars in which they claim that the examiner's statement of facts is in error, and they argue that the proposed cease and desist order should not be entered. In its exceptions, the Bureau states that it is unwilling to rest its case solely upon the disqualification of ATA as an agricultural cooperative association; that ATA is merely a continuation of the defunct Agricultural Commodity Service whose operations were found unlawful in *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5; that ATA was not organized as a farmers' cooperative but was organized by nonfarmers solely in order to profit from its transportation activities; and that in any event it is not operated for the mutual benefit of its members as farmers as required by the Agricultural Marketing Act.

In their pertinent exceptions the intervening motor carriers also argue that ATA has been organized by and is operated for the benefit of ATA's nonfarmer president, Jack R. Cobb, and that ATA's method of operation is merely a "gimmick" similar to the unlawful operations of "buy-and-sell" carriers and fictitious truck leasing operations.

The Secretary of Agriculture and the National Council of Farmer Cooperatives filed separate exceptions in which they take no position with respect to the lawfulness of ATA's activities. They are concerned instead with the reasoning underlying the examiner's recommendations and particularly with the examiner's

[1] The pleadings consist of (1) exceptions by respondents, (2) exceptions by the Bureau, (3) exceptions by Western Truck Lines, Ltd., Gillette Motor Transport, Inc., Voss Truck Lines, Inc., Zero Refrigerated Lines, and Frozen Food Express, Inc., hereinafter called the intervener motor carriers, (4) exceptions by intervener, Orville L. Freeman, Secretary of Agriculture of the United States, (5) exceptions by intervener, National Council of Farmers Cooperatives, (6) reply by carriers to the exceptions of respondents, (7) reply by intervener motor carriers the exceptions of the Secretary of Agriculture and National Council of Farmer Cooperatives, (8) reply by intervening railroads to exceptions of respondents, Secretary of Agriculture, and National Council of Farmer Cooperatives, and (9) reply by respondents to the exceptions of the Bureau and the intervener motor carriers. An embraced request by respondents for oral argument has been handled separately and arguments and pleadings solely addressed to that issue will not be discussed here.

statement that the transportation of commodities "functionally unrelated" to farm activities of members disqualifies ATA as an exempt agricultural association. These interveners would prefer the test to be whether the transportation performed is "incidental to and necessary for" the farming activities of member farmers. In addition, the Council objects to the examiner's determination that members who commingle purchased farm products with those which they produce must be considered as acting beyond the provisions of the Agricultural Marketing Act.

Respondents replied to the exceptions of the Bureau and intervening motor carriers arguing generally that their exceptions are not well taken. In their replies to respondents' exceptions and to those of the Secretary of Agriculture and the National Council of Farmer Cooperatives, the intervening motor carriers contend that the examiner's recommendations are correct and that this case should be decided by the entire Commission in order to avoid further delay in obtaining a final determination. In their separate reply, the railroad interveners join in this request.

The evidence, the examiner's recommendations, the exceptions and the replies thereto have been considered. We find the examiner's statement of facts to be correct in all respects materially affecting the outcome of this proceeding, and, as modified herein, we adopt it as our own. No justification has been shown for referring this proceeding to the entire Commission. Therefore, interveners' request for such action is hereby denied.

ATA's questioned transportation activities have been performed under the claim that they are those of an agricultural cooperative association and exempt from economic regulation by this Commission pursuant to the provision of section 203(b)(5) of the Interstate Commerce Act and of the Agricultural Marketing Act. Section 203(b)(5) of the Interstate Commerce Act provides:

"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 * * * (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 posesses no greater powers or purposes than cooperative associations so defined;"

The Agricultural Marketing Act (12 U.S.C. 1141j) defines a "cooperative association" as follows:

"As used in this sub chapter, 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."

In *Interstate Commerce Commission* v. *Jamestown Farmers Union Federated Cooperative Transp. Assn.*, 151 F2d 403, the court held that the economical and efficient transportation of farm products to market and of farm supplies to farmers is a necessary farm service. It also held that transportation supplied by agricultural cooperative associations need not originate or end in every case at a farm but may properly include transportation of farm products to market which member farmers have transported and delivered to a cooperative, and return transportation of farm supplies to member cooperatives for resale. The *Jamestown* decision did not attempt to define the outer limits of the legitimate operations of farmer cooperatives but was limited to the specific problems at issue therein. Nevertheless, it is evident that in enacting this agricultural cooperative exemption.

Congress did not intend to allow agricultural cooperative associations to engage indiscriminately and without restriction in the general trucking business at the expense of motor carriers subject to our jurisdiction. As pertinent in this proceeding, in order to meet the statutory definition of an agricultural cooperative and thus qualify for the exemption, an association (1) must be composed of member farmers acting together for their mutual benefit as producers of farm products in processing, preparing for market, handling, or marketing the farm products of "persons so engaged," or of farmers acting together in purchasing, testing, grading, processing, distributing, or furnishing farm supplies, or farm business services, and (2) must not deal in farm products, farm supplies, and farm business services for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members.

In the *Machinery Haulers* case, where the scope of the agricultural cooperative exemption was examined at length, division 1, held that the term "farmers" includes not only individuals but also corporations, partnerships, and other business entities which are engaged in farming operations; that their participation in farming operations may be either as actual producers of agricultural products or as owners of farms citing *United States* v. *Maryland & Virginia Milk Pro. Assn.*, 167 F. Supp. 45; and that persons not engaged in farming and having no agricultural activities whatever clearly are not eligible for membership even though farm products may be used by such persons as raw materials in their manufacturing processes. The division stated that the inclusion of a minority of nonfarmers in a farm cooperative does not automatically cause an association to lose its status as a bona fide agricultural cooperative provided it is substanitally owned and controlled by farmers and noted that the Farm Credit Administration in administering its responsibilities under the Agricultural Market Act looks to whether 90 percent of the voting media of a cooperative is held by either farmers or agricultural cooperative associations (6 CFR 70.5).[2]

The *Machinery Haulers* case further held that transportation rendered by an agricultural cooperative association must be assessed in the light of the essential relationship between the association and its member farmers in their capacities as producers of farm products and purchasers of farm supplies and farm business services and that in order to come within the agricultural cooperative exemption, such transportation, whether performed for members or nonmembers must be designed to benefit directly or be functionally related to its members activities as such producers and purchasers. The division stated in 86 M.C.C. at page 24:

"In order to be exempt from economic regulation, transportation by a cooperative for or on behalf of a person who may qualify as a member, but who has other business activities not connected with farming, must be functionally related to that person's operations as a 'farmer' as defined above. A contrary conclusion would allow, for example, a cooperative association to transport, without proof of public need, automobiles for a large automotive manufacturer merely because such manufacturer also owns a farm or is engaged in limited farming activities. This was not the intent of Congress in enacting the statutory provisions here under consideration; and inasmuch as the production and marketing of automobiles is completely beyond the manufacturer's activities as a producer or purchaser within the meaning of the Agricultural Marketing Act, such transportation is not a lawful activity in which a cooperative may engage."

Certain parties to this proceeding argue that the test of member traffic should be whether the transportation considered is incidental to and necessary for the farming activities of member farmers rather than whether they are functionally related to such farming activities as determined in *Machinery Haulers*. We consider that the expression "functionally related" correctly describes the relationship which must exist between the farmer and the traffic transported for him. Moreover, the services contemplated by the Agricultural Marketing Act are *farm* services and must by their very nature be functionally related to the farming activities of a cooperative's members. To hold otherwise would be to ignore the purpose of that act, which is to assist cooperatives in providing farm services for farmers. We believe that the distinction which would be made here is largely one of semantics.

[2] As seen, section 203(b)(5) exempts only cooperative associations as defined in the Agricultural Marketing Act and federations of such cooperative associations, and there is no specific provision for mixed associations in which both cooperative associations and individual farmers are members. The Farm Credit Administration's ruling appears to have the effect of treating an Agricultural Cooperative Association as a "farmer" in associations in which both farmers and cooperative associations are members. We agree that such treatment is consistent with the purposes of these statutes and that any effort to deny agricultural cooperative associa- status as "farmers" in mixed associations would be incorrect.

As far as the status of such functionally unrelated business is concerned, *Machinery Haulers* held that if at the time of investigation into a cooperative's activities, the cooperative has already performed transportation functionally unrelated to the farming activities of its member farmers, the revenues derived therefrom must be treated as nonmember business for the purpose of determining compliance with the third proviso of section 1141j of the Agricultural Marketing Act. The method of treating functionally unrelated shipments has its origin in the requirement of the Farm Credit Administration at 6 CFR 70.9 that in determining eligibility for loans under the Agricultural Marketing Act all business transacted with members that are neither producers nor cooperative associations shall be deemed to be nonmember business and in the decision in the *Jamestown* case wherein the Court equated nonmember business with services and supplies sold to nonfarmers.

ATA's organization follows closely the form of an agricultural cooperative, and it has been incorporated as such under the laws of Texas. Its chief promoter is Jack R. Cobb, its president. Cobb previously operated as an "agent" for Agricultural Commodity Service, hereinafter sometimes called ACS whose motor carrier activities were found unlawful in the *Machinery Haulers* case. ACS ceased operations of February 18, 1962, and ATA commenced operations the next day.

By letter of February 19, 1962, ATA advised a number of ACS shippers that ACS has discontinued operations; that "Jack R. Cobb and all the staff of Jack R. Cobb, Agent" together with the equipment formerly operated from his Fort Worth, Tex., and Council Bluffs, Iowa, offices would be associated with ATA; and that information respecting membership in ATA and its schedules and tariffs could be obtained upon inquiry.

Cobb and certain of his employees moved from Cobb's ACS operation to ATA. In addition, office facilities at Fort Worth formerly leased by Cobb to ACS were leased to ATA. Cobb lent ATA $5,000 and borrowed $15,000 for ATA which was secured by motor vehicle equipment owned by Cobb. His salary as president is $20,000 a year and he leases to ATA part of the motor vehicle equipment used by it. Cobb is the active manager of ATA's operations. However, ATA adheres strictly to the form of a cooperative association. It has 47 members each of which has one vote. It has regular directors' and membership meetings at which business affecting ATA is transacted, and it has distributed deferred patronage refund certificates representing $25,000 in surplus revenues to its members and nonmembers on a pro rate basis.

The *Machinery Haulers* case holds that in order for an association to be a legitimate farm cooperative, the evidence must establish that, as a general and continuing practice, it does not conduct nonmember business greater in value than that performed as agent for its own members and that this can only be accomplished by an examination of the total business activities of the association covering a period of time sufficient in duration to establish the normal and usual ratio between the member and nonmember business of the association.

Three surveys of ATA traffic were offered into evidence as tending to show the ratio of ATA's member business to its nonmember business. These were: (1) a survey covering the 3-month period June, July, and August 1962, showing transportation for members yielding revenues of $203,065 and nonmembers $188,506 (52 percent member traffic); (2) a survey covering the period February 19, 1962, to January 31, 1963, inclusive, showing revenues from members of $768,139 and nonmembers $836,147; (48 percent member traffic); and (3) a survey covering the period February 19, 1962, through May 31, 1963, showing member traffic $1,340,342 and nonmember traffic $1,190,011 (55 percent member traffic). In each of these surveys, traffic both of members and nonmembers consigned to the United States has been excluded, but the ratio between member and nonmember business would remain about the same had such traffic been counted.

It is observed that the third survey described above includes several months between the institution of the investigation and the opening of the hearing, and it would appear that ATA was spurred by the commencement of the investigation to conduct its operations between that time and the opening of the hearing so as to show a more favorable ratio of members to nonmembers than had persisted up to that time. Nevertheless, this third survey covers the longest period, and we shall consider it the best available for determining the normal and usual ratio between ATA's member and nonmember business. This survey discloses that 55 percent of ATA's revenues are derived from ATA's members. We must, therefore, look to ATA's members to determine whether their traffic can validly be considered as members' traffic within the meaning of the Agricultural Marketing Act.

Of the 47 ATA members at the time of the hearing 22 were engaged in the packing or fabricating of meat and meat products. These packers obtain part of this livestock requirements from feedlots on which cattle are kept and fed until they reach a size and age when they are ready for marketing. The livestock obtained from such proprietary farming activities varies from 1 percent to 95 percent [3] of the livestock which they slaughter and subsequently tender for transportation. In most cases a majority of the livestock is purchased from outside sources. In at least one instance, that of Estes Packing Company, the meat packers obtained its "proprietary" supplies from feedlots operated by certain of its stockholders rather than from feedlots which it owned or operated itself, and, thus, this packer cannot be considered an eligible member. Three of the 22 meat packers, although members, have not used ATA's services and no evidence was adduced concerning their activities, and 2 of the 22 operate facilities which are not inspected by the Department of Agriculture. Thus, they cannot ship meat packed by them in interstate commerce, ATA's pertinent services being supplied solely in the transportation of supplemental supplies of meat purchased by them from other packers.

Six of ATA's members have used ATA's services solely for the transportation of fresh potatoes and livestock from their own farms and feedlots. ATA's participation in the transportation of such unprocessed agricultural commodities on behalf of its members is limited.

Five of ATA's members, Oxnard Frozen Food Cooperative, Naturipe Berry Growers, Western Idaho Potato Growers, and Ventura Coastal Lemon Co., are agricultural cooperative associations and another cooperative, Orinda Growers, Inc., was at the time of the hearing about to acquire the assets of a company which processed its olives and which was a member of and made shipments by ATA. Ventura, although it made no shipments itself, has a subsidiary processing company which is also an ATA member and uses ATA's services. Another member, United Packers, Inc., is a marketing association composed of seven food processors, three of which are themselves agricultural cooperative associations, but the record does not disclose that United is an agricultural cooperative association within the meaning of the Agricultural Marketing Act.

One member, Topco Associates, Inc., is a cooperative wholesale food distributor whose members are food retailers. Topco does not own or operate any farms, although some of its members own farms. It closely supervises the production of certain crops under grower contracts. Five other ATA members do not own or operate farms but obtain all or part of their requirements under grower contracts. These grower contracts vary in their terms, but in general under such arrangements a food processor will contract with a farmer for his crops, will stipulate that certain planting procedures will be followed by the farmer, and will undertake to make certain inspections of the crop. In addition, the processors may provide some supplies such as seed and fertilizer, and may even contract with third parties for the harvesting of the crop along with the crops of other farmers. ATA's other members are food processors which own or operate farms to some extent. They vary from enterprises which grow up to 70 percent of the food processed by them to organizations which farm only a few acres in commodities which are completely different from the commodities which they process and market. Except for those few members which are farmer cooperatives, it does not appear that any of its members which have used ATA for the transportation of processed food products obtain all of their requirements from farms which are directly owned and operated by them. Services performed by ATA are similar to those provided for members, ATA's nonmember shippers are principally wholesalers and retailers. ATA's largest nonmember shipper is Safeway Stores, Inc.

It is clear that in setting up ATA Cobb and his associates made a substantial effort to bring their previously unlawful activities within the framework of the *Machinery Haulers* case and thereby obtain a cloak of legality. They have organized ATA in the form of a lawful cooperative association. Almost all of its members own or operate farms. It has maintained a close relationship between the value of business transacted with shippers who are members of ATA and that which it hauls for shippers who are not members, and even though the value of such nonmember business exceeded "member" business for a period, ATA was able to alter its operations so as to change this picture in the 4 months between institution of the investigation and the opening of the hearing.

[3] The hearing examiner in his report averaged the percentages of proprietary farming activities for 18 meat packing houses and concluded that the percentage of livestock produced by them on their own feedlots averages 34 percent. This factual conclusion is, of course, invalid and will not be needed here since it uses a statistical method which is itself invalid, that is, the averaging of unweighted percentages.

Unfortunately, ATA's adherence to matters of form has not been extended to matters of substance. Although many of its members have farms, the transportation which it has provided them has seldom been functionally related to their farming activities. ATA's members fall into four categories: (1) About five agricultural cooperative associations which because of their close association with farming can be considered "farmers" within the meaning of the Agricultural Marketing Act. (2) Six members who operate farms and feedlots and have tendered only unprocessed agricultural commodities to ATA for transportation. The volume of traffic tendered by these six members and by the cooperative has been comparatively small. (3) A few members which do not own or operate farms but claim to have qualifying farming activities because they closely supervise the raising of crops which they purchase under grower contracts with farmers. (4) Those members whose feedlots and farms provide a part, but by no means all, of the livestock and produce which are processed by these members and subsequently tendered to ATA. By far the largest part of ATA's traffic is transported on behalf of this last group.

The validity of the status as members of the five agricultural cooperatives and of the six shippers who have tendered only unprocessed agricultural commodities is not questioned. However, the status of the remaining members is subject to question. First of all, we do not consider that those members supervising the raising of crops they puchcase under grower contracts are enough to qualify as farmers. They are food processors who do not own or operate farms. We recognize that under such contracts food processors may employ technicians who closely supervise the various growing techniques; that they may provide supplies such as seed and fertilizer; and that they may even contract for certain services used by the farmers such as services performed in harvesting crops. However, we consider that the actual ownership or operation of farms is a prerequisite to qualify an individual or organization as a farmer. Although in the *Machinery Haulers* case emphasis was placed upon the fact that a member must participate "to some extent at least" in farming, division 1 did not hold that "farming" includes activities which fall short of the ownership or operation of a farm. Those having no agricultural production whatever clearly are not eligible for membership. See 86 M.C.C. at page 17. Consequently, a grower contract, since it does not provide for actual ownership or operation of the farm by the food processor, does not make it a farmer so as properly to qualify it for membership.

Finally, transportation for a farmer who has some limited farming activities in products not related to those which are transported cannot be considered functionally related to his operations as a farmer and must be treated as nonmember business. Similarly, where a food processor as a part of its processing operation, commingles agricultural commodities produced on his own farm or feedlot with those purchased elsewhere, such commodities lose any identifiable relationship to the processor's operations and must be treated as nonmember business, and transportation provided therein cannot be considered a farm business service. Therefore, all of ATA's transportation on behalf of "member" food processors, other than the five agricultural cooperatives, must be considered as not functionally related to their farming activities and must be treated as nonmember business.

It is clear that only an inconsequential part of ATA's revenues have been derived from transportation performed on behalf of its members and that, as a consequence, ATA is not lawfully constituted as an agricultural cooperative pursuant to the requirements of the Agricultural Marketing Act. ATA, therefore, will be ordered to cease and desist from its unlawful operations. The other respondents have benefited from these unlawful operations either as employees, members, or nonmember shippers, and they too will be ordered to cease and desist from participation in ATA's unlawful operations.

Although the order herein may be directed only against those respondents which have heretofore been made parties to this proceeding, ATA's nonrespondent members and shippers are admonished to refrain from participation in any future unlawful operations by ATA.

We find that respondent Agricultural Transportation Association of Texas is not a cooperative association as defined in the Agricultural Marketing Act; that respondents, Jack R. Cobb, Tom T. Trotter, Richard Churchill, Raymond Waters, Floyd Kuhn, Iowa Beef Packers, Inc., City Packing Company, Estes Packing Company, Pet Milk Company, Neuhoff Bros. Packers Inc., Melton Provision Co., Inc., Libby, McNeil & Libby, Topco Associates, Inc., and Safeway Stores Inc.,

have participated in concert with said Agricultural Transportation Association of Texas in the transportation of property, in interstate or foreign commerce, for compensation, in the manner described in this report, without appropriate authority from this Commission, in violation of the provisions of sections 206(a) or 209(a) of the Interstate Commerce Act; that an order should be entered requiring the said respondents to cease and desist from participating in such unauthorized operations and thereafter to refrain therefrom unless and until appropriate authority to engage therein is obtained by the said Agricultural Transportation Association of Texas.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 23rd day of October A.D. 1964.

No. MC–C–4028

AGRICULTURAL TRANSPORTATION ASSOCIATION OF TEXAS, ET AL, INVESTIGATION OF OPERATIONS

This proceeding having been duly instituted and full investigation of the matters and things involved having been made, and the said division on the date hereof having made and filed a report herein containing its findings of fact and conclusions thereon which report is hereby referred to and made a part hereof:

It is ordered, That respondents Agricultural Transportation Association of Texas, Jack R. Cobb, Tom T. Trotter, Richard Churchill, Raymond Waters, Floyd Kuhn, Iowa Beef Packers, Inc., City Packing Company, Estes Packing Company, Pet Milk Company, Neuhoff Bros. Packers, Inc., Melton Provision Co., Inc., Libby, McNeil & Libby, Topoc Associates, Inc., and Safeway Stores, Inc., be and they are hereby notified and required to cease and desist, and thereafter to refrain and abstain, from the practices relating to transportation in interstate or foreign commerce of the character found to be unlawful in the findings in said report.

And it is further ordered, That the statutory effective and compliance date of this order, be, and it is hereby fixed as December 8, 1964.

By the Commission, division 1.

[SEAL] HAROLD D. MCCOY,
Secretary.

[Served January 8, 1965]

(M–11203)

INTERSTATE COMMERCE COMMISSION

No. MC–C–3876

CACHE VALLEY DAIRY ASSOCIATION INVESTIGATION OF OPERATION

Decided December 23, 1964

Respondent Cache Valley Dairy Association and certain other named respondents found to have engaged or participated in the transportation of property, in interstate or foreign commerce, by motor vehicle, for compensation, in violation of the provisions of section 203(c), 206(a), or 209(a) of the Interstate Commerce Act. Cease and desist order entered as to named respondents.

Harry F. Horak for the Bureau of Inquiry and Compliance, Interstate Commerce Commission.

Charles W. Bucy, Karl C. Grannan, and *Joseph E. Quin* for the Secretary of Agriculture of the United States.

Peter T. Beardsley, Donald E. Cross, Harry J. Jordan, and *Ed White* for interveners in support of the Bureau.

M. C. Harris and *Harry D. Pugsley* for a respondent.

James Harmanson, Jr., and *V. W. Harnach* for interveners on behalf of respondents.

67–566—66——5

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS HUTCHINSON, BUSH, AND BROWN

BROWN, *Commissioner:*

Separate exceptions to the order recommended by the examiner were filed by the Secretary of Agriculture of the United States, respondent Cache Valley Dairy Association, Cooperative Grange League Federation Exchange, Inc., and National Council of Farmer Cooperatives. This Commission's Bureau of Inquiry and Compliance, American Trucking Associations, Inc., National Motor Freight Traffic Association, Inc., Regular Common Carrier Conference and the Common Carrier Conference-Irregular Route, and certain railroads filed separate replies.

By order dated July 13, 1962, the Commission instituted an investigation on its own motion, under section 204(c) of the Interstate Commerce Act and section 2 of the Elkins Act, into and concerning the motor carrier operations of Cache Valley Dairy Association, to determine whether it has been and is engaged in the transportation of property in interstate or foreign commerce for compensation as a for-hire, common or contract carrier by motor vehicle in violation of the provisions of section 203(c), 206(a), or 209(a) of the act, between points in California, Colorado, Idaho, New Mexico, and Utah, and whether (1) Anderson Coach Co., (2) Cantwell Bros. Lumber Co., (3) Colorado Fuel & Iron Corporation, (4) Dixon Paper Co., (5) Gates Rubber Company, (6) Gresham Roofing Co., (7) E. N. Harrington, doing business as Harrington & Company, (8) Mayfair Markets, Inc., and (9) Strevell Patterson Co. have participated in said violations, and to issue such orders and take such other and further action as the facts and circumstances may appear to warrant. Cache Valley and the nine other concerns identified above were named respondents, and the Bureau of Inquiry and Compliance was directed to participate as a party in the proceeding. Subsequent to the hearing the Secretary of Agriculture, Cooperative Grange League Federation Exchange, Inc., and National Council of Farmer Cooperatives intervened on behalf of respondents. American Trucking Associations, Inc., Regular Common Carrier Conference and the Common Carrier Conference-Irregular Route, and The Atchison, Topeka and Santa Fe Railway Company, The Denver and Rio Grande Western Railroad Company, and Union Pacific Railroad Company intervened in support of the Bureau. All parties will be referred to by short titles.

The examiner found that Cache Valley is a bond fide cooperative association but that respondents have been and are engaged or participating in the transportation of property in violation of the act and recommended that a cease and desist order be entered. The principal contentions on exceptions are that this Commission is bound by the clear and unambiguous wording of section 203(b)(5) of the act and that the examiner erred in reading into the exemption, of that section a restriction limiting a cooperative association's transportation activities to the handling of farm products, farm supplies, or those products or commodities which are a legitimate part of a farm business. Exceptants argue that the Agricultural Marketing Act, referred to in section 203(b)(5), is a remedial statute to be liberally construed and that one of the expressed purposes of the Marketing Act is to prevent inefficient and wasteful transportation. It is maintained that the backhauling of non-farm-related commodities for nonmembers reduces the marketing expenses for association members and that it is a function reasonably incidental to a cooperative association's primary activities as long as the revenue derived from such transportation amounts to less than 50 percent of the value of all business transacted for its members. They assert that the exemption of part (5) runs to the motor vehicles, and that as long as such vehicles are controlled and operated by a bona fide cooperative association, they may be used for any purpose. Lastly they contend that as this association's revenue from the considered backhaul traffic amounts to only 2 percent of its total revenue, it cannot be found to be in the general trucking business. In reply the Bureau, and the interveners in support thereof, take issue with these contentions and urge that the examiner's report and recommended order be affirmed.

The evidence, the examiner's recommendations, and the pleadings have been considered. We find the examiner's statement of facts and conclusions to be accurate in all material respects, and we adopt them as our own. Certain facts necessary for clarity of discussion will be summarized below. Because we believe the examiner's report should receive wider publication it is set out, in part, in appendix A hereto.

Factual Background

The facts are stipulated. Cache Valley is an agricultural cooperative association organized in 1935, under the laws of Utah. Its 1,400 members are producers of milk and dairy products and operate a processing facility at Smithfield, Utah. An average of 75,000,000 pounds of milk and butter fat is processed into various dairy products and distributed to customers each year by means of motor vehicles owned and operated by the association. For the fiscal year ended June 30, 1960, the association had an annual revenue of $7,138,000. With the exception of $165,000, which represents revenue from backhaul transportation for nonmembers, all the revenue was derived from the processing and marketing of dairy products and the handling of various products for the association or its members. During 14 months, covering the period between January 1, 1961, and February 28, 1962, the association transported as backhauls and for compensation a total of 626 truckloads in interstate commerce for nonmembers, of which 447 loads involved commodities not directly used by members of the association as producers of milk and dairy products. During that period there were also 12 backhauls with commodities for the association's own business, and there were 641 empty return movements to Smithfield. The association's movements of dairy products for these 14 months total 51,763,500 pounds, and the backhaul traffic totaled 25,120,000 pounds. Of the latter, about 6,670,000 pounds represented transportation of products hauled for members and 18,550,000 represented the questioned backhaul for nonmembers. A description of the 447 truckload shipments included in the investigation made by the district supervisor of the Bureau of Motor Carriers of this Commission is set forth in appendix B.

Discussion and Conclusions

We are faced here with the issue of whether the respondent association's transportation of non-farm-related commodities for nonmembers falls within the partial exemption provisions of section 203(b)(5) of the Interstate Commerce Act. As pertinent, this section provides that—

"Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety or operation or standards of equipment shall be construed to include * * *; 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 * * *."

Contrary to the urging of the exceptants, we are not persuaded that the language of section 203(b)(5) is so clear and unambiguous that it should not be subject to interpretation by this Commission. Both the Commission and the courts previously have found it necessary to examine this section of the act, see *Interstate Commerce Commission* v. *Jamestown Farmers*, 57 F. Supp. 749(1944), and 151 F. 2d 403 (1945), *Interstate Commerce Commission* v. *Nelson Cooperative Marketing Assn.*, 209 F. Supp. 697 (1962), *Interstate Commerce Commission* v. *Northwest Agricultural Cooperative Assn.*, 234 F. Supp. 496 (1964), *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5, and *Agricultural Transp. Assn. of Tex. Investigation*, 96 M.C.C. 293.

The examiner concluded, and the parties do not dispute the fact, that respondent Cache Valley is a bona fide cooperative association within the meaning of the Agricultural Marketing Act. It does not necessarily follow, however, that operations of the type here under consideration are exempt from our regulations merely because they are conducted by a bona fide agricultural cooperative. The pertinent portions of section 1141j of the Marketing Act are as follows:

"(a) As used in this subchapter, 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:"

* * * * * * *

"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."

Clearly, the Marketing Act is concerned with farming and farm-related functions. However, it was never intended that a bona fide cooperative association under the Marketing Act might indiscriminately engage in the transportation on nonfarm commodities for nonmembers and use section 203(b)(5) as a shield against our regulations pertinent to for-hire transportation of otherwise nonexempt commodities. For example, if we were to agree with the exceptants' contention that vehicles under an association's control are not subject to our economic regulation when used for the transportation of nonmembers', non-farm-related commodities, we would be placed in the untenable position of having such traffic not subject to the limitation of the third part of section 1141j when, conversely, an association's transportation of farm products, farm supplies, and products relating to farm business services for nonmembers would be controlled by the restriction therein. In other words, the value amount of business would be restricted when the traffic was comprised of farm supplies, et cetera, but would be unrestricted if the traffic was of non-farm-related items. Thus, in considering the overall content of the statute, we believe that the limitation of the third part of section 1141j implies an affirmative corollary; namely, than an association's dealings with nonmembers shall be limited to farm products, farm supplies, and farm business services. See also the examiner's discussion and conclusions set forth in appendix A.

The pertinent legislative history, discussed in depth at pages 13 through 15 of the *Machinery Haulers* case, *supra*, further demonstrates that Congress did not intend to sanction an association's unregulated and indiscriminate participation in for-hire transportation in open competition with regulated rail and motor carriers. Clearly, Congress did not intend to allow agricultural cooperatives to become general transportation companies by performing for-hire transportation for anyone or for any purpose.

It is argued that the considered backhauling reduces the marketing expenses of association members, avoids inefficient and wasteful methods of distribution, and thus is a function reasonably incidental to a bona fide associations' primary activities as long as such revenue amounts to less than 50 percent of the value of all business transacted for members. Respondent admits that nonmember trasnportation revenues of over 50 percent of the associations' business would destroy the exemption. Because the transportation revenues here amount to only 2 percent, it considers itself not to be in the general transportation business. We are not persuaded that a percentage of revenue theory is applicable to our determination here. During a representative period, the association transported 51,736,500 pounds of traffic of which 18,450,000 pounds, over 35 percent, represented backhauling of nonfarm items for nonmembers. Regardless of the percentage of revenue involved, it can be seen that a significant amount of tonnage, which might add to the balance and efficiency of the operations of authorized for-hire carriers, has been subject to diversion. It is apparent that the actual revenue from backhauling can probably be held at less than 50 percent merely by lowering the rate that is charged. This revenue has no direct relationship to the amount of traffic handled. And, because the purpose behind such backhauling is said to be the reduction of the cost of empty return movements, it need not have any relation to the actual cost of providing the service.

In summation, we conclude that the transportation activities of a cooperative association partially excluded by section 203(b)(5) of the act are limited to that transportation which is designed to benefit directly or be functionally related to its member's activities as producers of farm products and purchasers of farm supplies and/or farm business services. In the content of the specific issue here before us, a cooperative association's transportation activities for nonmembers must be limited to the handling of farm products, farm supplies, or those products or commodities which are a legitimate part of a farm business. We conclude that the backhaul transportation by the association of non-farm-related commodities for nonmembers is a service functionally unrelated to the association's farming activities and it is not an operation in which a cooperative association properly may engage within the meaning of the partial exemption of section 203(b)(5).

Findings

We find that respondent Cache Valley Dairy Association is a cooperative association as defined in the Agricultural Marketing Act; that respondents Dixon Paper Co., Anderson Coach Co., Cantwell Bros., Lumber Co., Colorado. Fuel & Iron Corporation, Gates Rubber Company, Graham Roofing Co., E. N. Harrington, doing business as Harrington & Company, Mayfair Markets, Inc., and Strevell Patterson Co., and Cache Valley Dairy Association, acting in concert with such respondents, have been and are engaged in the transportation of property, in interstate or foreign commerce, for compensation, in the manner described in this report, without appropriate authority from this Commission; that such operations are subject to the provisions of section 203(c), 206(a), or 209(a) of the Interstate Commerce Act and in violation thereof; and that an order should be entered requiring said respondents to cease and desist from the performance of or participation in such unauthorized operations and thereafter to refrain from engaging or participating in such operations unless and until appropriate authority to engage therein is obtained from this Commission.

An appropriate order will be entered.

Appendix A

Discussion and conclusions from the examiner's report

As previously noted, Cache Valley has interpreted section 1141j of the Marketing Act as dividing the cooperatives into at last two different types, if falling under the category of a marketing association. It takes the position that the latter type is not restricted by the Marketing Act (Insofar as transportation is involved) to the performance of a farm business service. In view thereof, it contends that any and all operations conducted in vehicles owned, operated, and controlled by the association are exempt under section 203(b)(5). The examiner cannot agree that the Marketing Act does or was intended to favor one type of association over the other, or that it was the intent of Congress to establish a specific class of farm cooperatives, one of which would have greater authority in connection with transportation. Section 1141j must be considered as a whole, otherwise a so-called marketing association would not have sanction under the Marketing Act to handle or transport farm supplies on return movement for its members and nonmembers. It is also noted that no reference is made in that portion of the act which specifically authorizes transportation services involving the movement or handling of any backhaul traffic. He finds no merit in the contention advanced by Cache Valley, and no further discussion on that issue is deemed necessary.

It is true, as alleged by Cache Valley, that the issue before the examiner is one which has never been directly before the Commission. Matters relating to the transportation services which may be performed by bona fide cooperatives were discussed to a limited extent by the Commission in the *Commodity Service* case.[1] Also matters relating to the functions and duties of a cooperative have been considered in the past by the Commission and the courts. Although any conclusions and findings which might have been reached by both with respect to transportation of the type involved in this proceeding may be dicta as alleged by the association, the examiner does not agree that such cases must be disregarded as being of no importance in reaching a decision here. It is of particular interest to note that in prior decisions of the Commission and the courts references have been made that associations are made up of groups of farmers, and that their transportation services involve the movement of farm products for member and nonmember, the handling of farm supplies, and the performance of a farm business service. The division in the *Commodity Service* case stated that an association could perform a transportation service which was functionally related to the farming operations of the members. Likewise, the division in discussing the latter transportation indicated that backhauls, without restriction, are not within the purview of the partial exemption of section 203(b)(5). Such cases serve as a guide, important in the examiner's opinion to a proper interpretation of the particular sections of the acts involved.

Before considering the legality of the transportation services being performed by Cache Valley, it must first be determined whether that association has fully met the provisions and requirements of the Marketing Act. If it has failed

[1] Cited as *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5, in the body of the report herein.

to qualify as a bona fide association, then under no circumstances does it have any rights or privileges under the exemption of section 203(b)(5). As previously noted, Cache Valley was duly organized some years ago under the statutes of Utah, and it is made up of about 1,400 farmer members, all of which deal in dairy products. The association has cheese and other processing plants at Smithfield, and the involved farmers act together for the purpose of processing and marketing their dairy products. Cache Valley owns motor carrier equipment, and its principal transportation business is the movement of milk from the farms to the processing plants, and the outbound movement of the finished products from its place of business to the purchaser or consumer. There is no member that has more than one vote, no dividends are paid which are in excess of 8 per centum per annum, and the association serves a limited number of nonmembers. Consequently, services for the latter are far below bounds or restriction contained in the third part of section 1141j of the Marketing Act. The Bureau did not challenge the association's status under the Marketing Act, and in fact it conceded that the concern is a bona fide cooperative association. Based upon the evidence submitted, the examiner concludes that Cache Valley is a bona fide cooperative within the meaning of the Marketing Act.

Although Cache Valley is a bona fide cooperative, its powers and duties under the Marketing Act must be determined before a decision can be reached with respect to the transportation services which may be performed under the exemption of section 203(b)(5). In other words, it can perform no greater transportation functions than are authorized and are necessary for the performance of the farm services or business for which it was established. As previously stated, the declared purpose of the Marketing Act is to promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products. Considering the Marketing Act as a whole, and especially section 1141j, it is clear that a cooperative association is one in which farmers, having the mutual interest, act together in processing, preparing for market, and marketing products of persons engaged in farming or in which farmers act together for the purpose of purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services. Since cooperatives are created for and are to be operated for the benefit of farmers in the development and promotion of the agricultural industry, it is difficult to believe that one can read into this act a specific authorization to perform, in addition to prescribed duties relating to agriculture, services for nonmembers which have no interest whatever in farming or in a farm business.

The examiner concludes that an association's rights, privileges, and activities are limited under the provisions of the Marketing Act to those which are agricultural in nature or in furtherance of a fam business, and that its transportation activities must carry the same limitation if the exemption of section 203(b)(5) is to apply. In other words, under the exemption such an association cannot transport for *nonmembers* [2] commodities not related to or an actual part of an agricultural or a farm business. To be more specific, the *nonmember* transportation activities of a cooperative association, in order to take advantage of the exemption under section 203(b)(5), must be limited to the handling of farm products, farm supplies, or those products or commodities which are a legitimate part of a farm business. A contrary holding would leave the door open for any agricultural cooperative to engage indiscriminately and without restriction (commoditywise), in the general truck business at the expense of authorized motor carriers contrary to the intent of Congress.

Cache Valley has been conducting operations in interstate commerce which may not be lawfully performed under the exemption provided in section 203(b)(5). The transportation in interstate commerce of the commodities described in appendix B require authority from the Commission. Each of the other respondents are or have been participating in this unlawful transportation, and although respondents Colorado Fuel & Iron Corporation, Gates Rubber Company, Strevell Patterson Co., and Anderson Coach Co. had discontinued using the services of Cache Valley prior to the hearing, they were made parties to the stipulation in which the latter and the Bureau are a part. In view thereof, the recommended cease and desist order herein will involve all 10 respondents.

[2] These clarifying words have been added to the examiner's statement. 96 M.C.C.

APPENDIX B

Interstate traffic handled for nonmembers

The commodities were handled during a 14-month period (from January 1, 1961, to February 28, 1962). The following involve a total of 447 truckloads which moved in interstate commerce.

Thirteen loads of steel from Colorado Fuel & Iron Corporation, steel article manufacturer and distributor, of Pueblo, Colo., to Colorado Fuel & Iron Corporation, Salt Lake City, Utah.

Twenty loads of steel from Colorado Fuel & Iron Corporation, Pueblo, Colo., to and for Strevell Patterson Co., wholesale distributor of hardware, Salt Lake City, Utah.

Two shipments of lumber from Frank Paxton Lumber Co., Denver, Colo., to and for Anderson Coach Co., mobile home manufacturer, Logan, Utah.

Twenty-four loads of tires and rubber products from Gates Rubber Company, rubber manufacturer and distributor, Denver, Colo., to Gates Rubber Company, Salt Lake City, Utah.

Eight loads of roofing from Ruberoid Co., Denver, Colo., to and from Gresham Roofing Co., roofing supplier and job roofer, Ogden, Utah.

Two hundred and ten loads of roofing from Ruberoid Co., Denver, Colo., to and for Harrington & Company, roofing supplier, Salt, Lake City, Utah.

Three loads of roofing from Ruberoid Co., Denver, Colo., to and for Cantwell Bros. Lumber Co., retail and wholesale building material supplier, Smithfield, Utah.

One hundred and thirty-one loads of grocery store merchandise from various suppliers in Los Angeles and San Francisco, Calif., areas to and for American Food Stores, wholesale division, of Mayfair Markets, Inc., Ogden, Utah.

Nine loads of paper products from Dixon Paper Co., paper products converter and distributor, Denver, Colo., to its warehouse in Salt Lake City, Utah.

One load of beer from Denver, Colo., to and for Big 4 Distributing Co., beer distributor, Provo, Utah.

Four loads of insulation from Denver, Colo., to and for Teeples Insulation Co., insulation contractor, Logan, Utah.

Eleven loads of wire products, steel, nails, and ties from Pueblo, Colo., to and for Salt Lake Hardware, general hardware business, Salt Lake City, Utah.

One load of clothes hangers from and for Cleaners Hanger Co., hanger manufacturer, Minnequa, Colo., to Salt Lake City, Utah.

Three loads of steel from Pueblo, Colo., to and for Walton Feed Co., general feeds, Montpelier, Idaho.

One load of tile from Denver, Colo., to and from Masons Supply Co., building supplies, Logan, Utah.

One load of pipe from Denver, Colo., to and for Standard Plumbing Supply Co., plumbing supplier, Ogden, Utah.

One load of clay brick from Denver, Colo., to and for Jack Whitlock, construction contractor, Logan, Utah.

One load of flue pipe from Denver, Colo., to and for Gladding McBean Co., building material supplier, Salt Lake City, Utah.

Two loads of bakers' supplies from Denver, Colo., to and for W. H., Bintz Co., bakery goods supplier, Salt Lake City, Utah.

One load of lumber from Denver, Colo., to and for Ace Hill & Fixture Co., fixture and lumber supplier, Logan, Utah.

NOTE: The shippers and receivers of the above described shipments are not members of the association, nor are they engaged in agricultural production or the production of milk. In each instance transportation charges were assessed by the association, and payments were made by respondents on those shipments which they were parties thereto.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 23rd day of December A.D. 1964.

No. MC–C–3876

CACHE VALLEY DAIRY ASSOCIATION INVESTIGATION OF OPERATIONS

This proceeding having been duly instituted, and full investigation of the matters and things involved having been made, and the said division, on the date

hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That Cache Valley Dairy Association, Dixon Paper Co., Anderson Coach Co., Cantwell Bros. Lumber Co., Colorado Fuel & Iron Corporation, Gates Rubber Company, Graham Roofing Co., E. N. Harrington, doing business as Harrington & Company, Mayfair Markets, Inc., and Strevell Patterson Co., jointly and severally, cease and desist forthwith and thereafter refrain and abstain from all operations or participation in interstate or foreign commerce, of the character found in said report to be unauthorized and in violation of the said act unless authorization for such operations is obtained.

And it is further ordered, That the statutory effective and compliance date of this order be, and it is hereby, fixed as February 8, 1965.

By the Commission, division 1.

[SEAL] HAROLD D. MCCOY,
Secretary.

United States Court of Appeals for the Ninth Circuit

(No. 19,700)

NORTHWEST AGRICULTURAL COOPERATIVE ASSOCIATION, INC., A CORPORATION, APPELLANT, *v.* INTERSTATE COMMERCE COMMISSION, APPELLEE

[August 10, 1965]

Appeal from the United States District Court for the District of Oregon

---

Before: MADDEN, Judge of the Court of Claims and HAMLEY and BROWNING, Circuit Judges

---

BROWNING, Circuit Judge:

The Northwest Agricultural Cooperative Association seeks review of an injunction prohibiting it from engaging in certain trucking operations without authorization by the Interstate Commerce Commission.[1]

The following facts were established by stipulation and by the uncontradicted affidavit of Northwest's president. Northwest is a cooperative composed exclusively of farmers. It was organized to transport the farm products of members to market at less than it would cost if each member arranged separate transportation. The volume of farm supplies brought back from the market areas for members does not equal the volume of farm products shipped to those areas. Consequently, Northwest back-hauls non-farm commodities. This is the traffic enjoined. In a four-month period this traffic produced $41,000 in revenues out of a total of $230,375. If Northwest is denied this income, its cost of transporting farm products to market will exceed the cost of available common carriage, and Northwest will be forced to discontinue its trucking operation.

Northwest contends that its trucking operation is exempted from Commission economic regulation by section 203(b)(5) of the Interstate Commerce Act (49 U.S.C.A. § 303(b)(5)), which excludes from such regulation "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act. * * * "[2] We agree.

I

Section 203(b)(5) was added to the Interstate Commerce Act by floor amendment. The legislative history consists of a brief discussion in the House.[3] The

[1] The district court's opinion is reported in 234 F. Supp. 496 (D. Or. 1964).

[2] Sec. 203(b) of the Interstate Commerce Act (49 U.S.C.A. § 303(b) reads in part as follows:

(b) Nothing in this chapter, except the provisions of section 304 of this title 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 when used in the transportation of his agricultural (including horticultural) 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 (6) 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 * * * (emphasis added).

[3] 79 Cong. Rec. 1218–21 (1935).

statements made during the short debate indicate that Congress intended to accomplish the result which the statutory language plainly states: that is, to exempt from economic regulation under the Interstate Commerce Act trucking operations conducted by organizations which satisfy the definition of a "cooperative association" in the Agricultural Marketing Act.[4] As Congressman Jones said in introducing the amendment which became section 203(b)(5) of the Interstate Commerce Act, "it would exempt cooperative associations [which] comply with the" Agricultural Marketing Act.[5] Nothing in the debate suggests that Congress intended to limit the type of commodity hauled or otherwise condition the exemption granted any organization which qualified as an Agricultural Marketing Act "cooperative association."

The absence of a commodity limitation in section 203(b)(5) is made conspicuous by the presence of such limitations in the exemption provisions which precede and follow section 203(b)(5). See note 2. The conclusion that this difference was deliberate is strengthened by the fact that the exemption provisions in section 203(b)(4a) and section 203(b)(5) were initially stated as clauses in a single sentence.[6]

Subsequent to the enactment of section 203(b)(5), bills were introduced in Congress at the request of the Commission to condition the section 203(b)(5) exemption upon the nature of the transportation activities involved.[7] Congress took no action on these proposals.[8]

For these reasons we conclude that if Northwest's transportation activities are to be limited in the manner suggested by the Commission, the limitation cannot be based upon section 203(b)(5) of the Interstate Commerce Act, but must be found in the definition of a cooperative association in the Agricultural Marketing Act.

II

The Agricultural Marketing Act defines a cooperative association as "any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged" or "in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services." See note 4. Transporting farm products and farm supplies, which is Northwest's primary activity, falls within the statutory definition. Moreover, the parties agree that a cooperative does not lose its status by engaging in activities other than its primary statutory activity, so long as they are incidental to the primary activity and necessary to its effective performance.[9] This would appear to end the case, since on the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation

[4] The pertinent provision of the Agricultural Marketing Act (12 U.S.C.A. § 1141j(a)) reads as follows:

(a) As used in this subchapter, 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 per centum 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.

[5] 79 Cong. Rec. 12218 (1935).

[6] 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 farms; or motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act. . . . (79 Cong. Rec. 12218 (1935)).

[7] S. 677, 88th Cong., 1st Sess. (1963); H.R. 3770, 88th Cong. 1st Sess. (1963).

[8] 78th Annual Report of the Interstate Commerce Commission 76–77 (1964).

[9] I.C.C. v. Jamestown Farmers Union, 57 F. Supp. 749, 753 (D. Minn. 1944), *aff'd* 151 F. 2d 403 (8th Cir. 1945) ("But if the cooperative is predominantly engaged in one or more of the activities specified in the Agricultural Marketing Act, and if its business with nonmembers is in an amount not greater in value than the total amount of the business that it transacts with its own members, such association does not lose its fundamental character as a cooperative. In other words, if such activities are merely incidental to, and necessary for the effectuation of the cooperative's principal activities as embraced within the Act, the status of the cooperative remains unimpaired"); Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 24 (1961) ("Thus, transportation rendered by a farmers' cooperative, which transportation is essential to, and in furtherance of, the lawful purposes of the cooperative as defined in the Marketing Act, is entitled to the benefits of the partial exemption").

This is also the Secretary of Agriculture's administrative interpretation of the Act. 6 C.F.R. § 70.3.

both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The Commission advances two arguments against this conclusion, the first based upon certain language of the Agricultural Marketing Act, the second upon material in the legislative history.

1. The Commission relies upon the provision in the Agricultural Marketing Act that a cooperative association "shall not deal in farm products, farm supplies, and farm business services with or for non-members in an amount greater in value that the total amount of such business transacted by it with or for members." See note 4. The Commission contends that this express limitation necessarily implies a further limitation that a cooperative association may not deal at all in *non*-farm products, supplies, or business services.

The Commission's reading of the statutory language is unjustifiably strict. Reading the word "farm" this narrowly would exclude even incidental and necessary non-farm business. The Commission overlooks the obvious purpose of the provision to require simply that the cooperative association conduct at least half of its business with members. By statutory definition, a cooperative association's business is that of dealing in "farm products, farm business services, and farm supplies." See note 4. Thus the phrase relied on by the Commission simply describes the primary business of any cooperative association. It should not be interpreted as excluding particular transactions which, though not directly farm-related, are an incidental and necessary part of the cooperative association's general business, any more than should the description of permissible cooperative association activities in the first sentence of the statutory definition.

The Commission argues that unless the transportation of non-farm products and supplies is absolutely prohibited, it cannot be limited at all. Farm business with non-members is limited to fifty per cent of a cooperative association's total business; but, argues the Commission, this limitation applies *only* to "farm" business, and therefore unless non-farm business is totally prohibited, the cooperative might engage in non-farm business with non-members without any limit at all. The argument rests on a faulty premise. A cooperative will retain its exemption only so long as it remains in essential character a "cooperative association" described in the statutory definition. Thus the activities in which it engages must be such that the cooperative can be fairly described as a farmer organization primarily engaged in marketing farm products for farmers or purchasing, testing, or furnishing farm supplies or farm services for farmers and operating for the benefit of the members of the cooperative in their capacity as producers of farm products or purchasers of farm supplies or farm business services. A cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and in no conceivable circumstances could non-farm related business approach fifty per cent of the total and remain incidental and necessary to that which was farm-related.

We are satisfied that the language of the Agricultural Marketing Act does not support the limitation for which the Commission argues.

2. The legislative history upon which the Commission relies consists of statements of members of Congress that cooperative associations qualifying under the Agricultural Marketing Act should not be permitted to enter "any line of business," but "only those connected with farm operations"; that they should furnish business services "not for any others," but "for themselves"; [10] and, more specifically, that they should not "go into the general trucking business." [11]

There is nothing in these or any other relevant legislative materials suggesting that Congress intended to impose an *absolute* prohibition upon transportation by an exempt cooperative association of commodities not intended for use in farm operations, without regard to whether such transportation was necessary and incidental to the performance of a primary activity of transporting farm products and supplies.

Northwest is not engaged in a "general trucking business." Its trucking operation, viewed as a whole, is a farm service performed jointly by Northwest's members "for themselves." The return hauls enjoined are "connected with farm

[10] Transcript of Hearing, Committee on Banking & Currency, 74th Cong. 1st Sess., S. 1384, Part 2, pp. 63–64.

[11] 79 Cong. Rec. 12219 (1935).

operations," for they are incidental and necessary to the effective performance of Northwest's farm service. This return haul transportation therefore did not deprive Northwest of its essential character as a "cooperative association" under the Agricultural Marketing Act. Since it retained this character it retained its right to exemption under section 203(b)(5) of the Interstate Commerce Act.[12]

III

The meaning which we ascribe to the term "cooperative association" accords with the general purpose of the Agricultural Marketing Act. The Act was intended to encourage the organization and operation of farm cooperatives;[13] its terms are to be liberally construed to effectuate that purpose.[14] It would defeat the purpose of the Act to construe the term "cooperative association" in such a way as to deny a cooperative the right to engage in incidental activities which, as a practical matter, are necessary to the performance of an activity authorized by that Act.

The Agricultural Marketing Act was not drawn with the regulation of transportation in mind, and its terms cannot be given one meaning for that purpose and another for the Act's purpose of encouraging agricultural cooperatives. The construction which we give the term does not open the door to unrestricted competition by exempt cooperatives with regulated carriers. If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status as a "cooperative association" and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act.

If the reach of the Agricultural Marketing Act is to be narrowed to serve the policies underlying the Interstate Commerce Act at the expense of those upon which the Agricultural Marketing Act is based, the readjustment must be made by Congress. And Congress, it may be pertinent to note, has repeatedly rejected past efforts to induce it to alter the present balance.[15]

Reversed.

Mr. WALRATH. And then, as our Chairman has said, we had many other investigations going, and thought we were really making progress.

At the same time; we felt, and I think our decisions here will reveal that we were not being supertechnical about the privileges that co-ops actually do enjoy under the Agricultural Marketing Act. We were simply trying to keep such operations within the context of what we believe the Congress intended when it permitted the section 203(b), exemption to come into effect.

But, judges in the circuit court of appeals took exactly the opposite view as revealed by their opinion issued in August of 1965—August 10, 1965.

It was not until January of 1966, that the Supreme Court refused to review it, by denying certiorari, and, so, it is only this year that the real crisis that we mentioned has come to a head.

I agree with our Chairman, this is one of the most serious problems we face in the enforcement area, if we are to continue to try to follow the mandate of the national transportation policy to develop and encourage and promote a sound, strong national transportation system.

Here is a new competitive factor, not certificated, under no obligation to file tariffs, able to quote any rate it wants, to take a truckload, or any other quantity of freight, away from the normal commercial channels in which railroads, certificated trucks, common carrier water carriers compete.

---

[12] I.C.C. v. Jamestown Farmers Union, 151 F. 2d 403, 404–05 (8th Cir. 1945), is in accord. Three to 14 per cent of the commodities transported on return hauls were sold to non-farmers. 151 F. 2d at 404.

[13] 12 U.C.S.A. § 1141(a) provides: "It is declared to be the policy of Congress to promote the effective merchandising of agricultural commodities. . . . (3) by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies."

[14] *I.C.C.* v. *Jamestown Farmers Union*, 151 F. 2d 403, 404 (8th Cir. 1945).

[15] See generally, Linnenberg, 25 Law & Contemp. Prob. 139 (1960); Fulda, 11 Vand. L. Rev. 543 (1958); Fulda, 43 Va. L. Rev. 677 (1957). See notes 7 and 8, supra.

There is also no limit on how large these operations can grow. The only practical limit is that, to the extent they can develop member-related traffic, they can up to 50 percent of their total, solicit commercial traffic for hire at any price they want to quote.

Perhaps I have said enough to prompt questions. Perhaps I don't want to make too much of a speech about it.

Senator LAUSCHE. Mr. Bush?

Mr. BUSH. I would like to add one final statement, Mr. Chairman, as a nonlawyer, and just a layman, who is beginning to learn something about transportation, I see a grave danger in this, an immeasurable danger in the decision which the circuit court reached, and that, specifically, I see the danger in the fact the court said:

> If you aren't making enough money on your normal haul, I think, as a co-op why you can just go out and pick up some more business on your return trip, so that you can make money.

Every trucker and everybody in transportation has some of that same sort of a problem, and why one group should be suddenly launched into the transportation basis with a free ride like that, I just couldn't understand it, and I can see the possibility of vast expansion, not measurable, as of right now, but how many may spring into being utilizing the co-op title, but really getting themselves into the transportation business. I can see the possibility in private carriage, which we support, where every private industry feels they want, and they potentially at least can get out and solicit under the general theory of "let them break even regardless of what they haul."

That is my final summary statement, Mr. Chairman.

Senator LAUSCHE. Any further statements?

Mr. BUSH. Mr. Merrill, as the Director of our Enforcement Bureau, has had the unenviable position of trying to run down blind alleys and trying to find answers to these questions, and when he sometimes did assemble enough information for a case, then they just scatter to the winds and start out somewhere else.

Senator LAUSCHE. Mr. Merrill, Mr. Bush made the statement:

> The Commission is not presently equipped with adequate authority to effectively limit the exemption to those carriers which are bona fide agriculture co-ops, whose transportation activities are within the scope of section 203(b)(5).

Why are you not equipped to adequately cope with the problem that is created by the activities just described by the Chairman?

Mr. MERRILL. Because we have no power to inspect the records of either the shipper or the consignee, unless they agree, nor of the person performing the transportation. And, if they close their doors, we have no power to get the transportation records, unless we can get a prima facie case establishing that they are in fact unlawful, and then we can use the subpena power. But, until we have the justification for the subpena, we have no right to inspect. And that is the reason the Commission's asking for additional power.

Senator LAUSCHE. Do you, under existing law, have the power to subpena the records of a certificated carrier for the purpose of determining whether there is unlawful activity?

Mr. MERRILL. We have the power to inspect their records regardless of our reason.

Of course, not for personal reasons, but any official reason, we have the power to inspect without telling them why.

Senator LAUSCHE. And which methods of transportation come within this general power that you just described?

Mr. MERRILL. All railroads, all certificated motor carriers, buslines, contract carriers, by motor vehicle, water carriers.

Senator LAUSCHE. Inland?

Mr. MERRILL. Yes, sir; inland water carriers, freight forwarders, any organization that is subject to the act. We have no power to inspect the records of people who claim to be within the exemption, unless we can prove that they are not, in fact, within the exemption.

Senator LAUSCHE. And the proposal which is made in this bill contemplates placing these carriers into the same realm of supervision and jurisdiction as you now have over the other carriers that you just identified?

Mr. MERRILL. So far as the inspection of records is concerned, and that is all. That is all that does.

Senator LAUSCHE. I think, for the purposes of the record, we ought to here read the national transportation policy:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantage of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Will you define what you call or described to be the "gray area," Mr. Bush?

Mr. BUSH. I would like to ask Mr. Walrath.

Mr. WALRATH. I think, Mr. Chairman, most any of us could.

Actually, the gray area has been said to be a misnomer, but certainly it means what we all understand it to mean, that is the murky area where an operation appears to fall within the alleged protection of some form recognized service, like certificated carrier, or exempt carrier, but where their fringe operations raise questions about whether it is legal or not. Because it was so hard to pin down, for some of the reasons that Director Merrill has mentioned, we have adopted the convenient phase of "gray area."

Once the law is established, then it is either legal or unlawful, but it is that "in between area" we are talking about here. Where the law continues to be fuzzy that we call, the "gray area." We need to get it clarified in order to put it on the side of lawfulness or unlawfulness.

Senator LAUSCHE. The national transportation policy contemplated primarily the maintenance of a sound transportation system by way of inland waters, trucks on the highway, railroads on their roadbeds, and, although it is not included in here, I assume air transportation and pipeline transportation.

Mr. WALRATH. And related services like freight forwarding, and express, along with the others.

Senator LAUSCHE. Yes, sir.

Now, in order to insure that adequate system of transportation, the Interstate Commerce Act required those who wanted to engage in the business to obtain a right to engage in that business from the Federal Government.

Mr. WALRATH. That is correct, sir, which is both a privilege and a protection to the carrier, both.

Senator LAUSCHE. Now, when the applicant did obtain the certificate or the right, did he obligate himself to render certain services at regular intervals between regularly estbalished points?

Mr. WALRATH. Yes, sir; the common carrier, who seeks and accepts a certificate, whether it be railroad, truck or other, is obligated to render reasonable service without undue discrimination among those who seeks its services. It is the traffic these carriers live on, that they are entitled to have, to make them economically sound, which is being diverted from them.

Their ability to continue to render that service is being weakened and that is what disturbs us, when we see this erosion. This weakening of the common carrier structure convinces us this is one of the most important problems we have faced in recent years.

Senator LAUSCHE. When a certificated carrier finds himself suffering daily losses, is he allowed, on his own volition, without approval by the Interstate Commerce Commission, to abandon those services?

Mr. WALRATH. No, sir. He is not, and, if he does, he risks heavy sanctions and heavy penalties.

Senator LAUSCHE. Is it fair to say in substance that, when an operation is contemplated, where the application is filed and the certificate granted, in effect it is stated:

> The United States Government will grant you the right to be a carrier, certificated carrier, in this region. But, in return for that right, you agree absolutely that you will render the services as you go on and until such time as we permit you to discontinue.

Mr. WALRATH. That is an accurate statement, Mr. Chairman.

Senator LAUSCHE. Now then, the point of this bill is to protect the carrier in the rights that were conferred upon him and in the ability to finance the obligations which he undertook. Is that correct?

Mr. WALRATH. That is correct, sir.

Now I don't want to leave the impression, I am sure the Commission does not, that we are against those operations which were not brought under Federal control. We recognize their proper role. We recognize private carriage. There is no suggestion that we ought to regulate that, in order to give more to the railroads or trucks. We recognize, that is, until the Congress might change its policy, we recognize that agricultural co-ops are entitled to operate in farm-related products, supplies, and services, but what you say is eminently correct, that the commercial, industrial traffic that carriers are obligated to carry, without discrimination, certainly that ought to be protected against unlawful inroads.

Senator LAUSCHE. Now, Mr. Walrath, I have been on the committee now for 9½ years. Could you tell me whether or not the Commission in the last 9½ years has made recommendations about the need of adopting legislation to curb operations in the gray area?

Mr. WALRATH. Yes, sir. This is only one. There have been many, Mr. Chairman, as you suggest, and you have helped us from time to time. This part, however, of this is a very new problem.

Senator LAUSCHE. Do you know whether the Doyle report dealt at all with the gray area?

Mr. WALRATH. It certainly set out for all transportation students to see the basic factors involved in gray area operations. We, of course, cooperated with that investigation.

Mr. BUSH. Mr. Chairman, I would like to add on the point of the gray area. One of the most tempting things to regulated carriers who have an authority from A, to B, to C, for certain commodities, and that is all spelled out, is to say, well, I could give a little better rate on those, if I could pick up some sugar down here, that is not on my authority and bring it back, and it is these backhauls—they say I can make a little more money, or I can make a little better rate than my competitor, if I just sneak these things back. And that is a real gray area factor, and in substance to me, as I say, as a layman, that is exactly what that case seems to be legalizing.

You aren't making quite enough money on your haul of what you are authorized to haul, so just go out and solicit anything and bring it back.

Senator LAUSCHE. Has this subject been discussed by the Commission with the farm cooperatives? Will they testify here?

Mr. SENDER. Yes, sir.

Mr. WALRATH. Let's say we have had informal conversations with their spokesman, Mr. Harmenson, and I have, through the years, talked to them, and although we don't always agree, Mr. Chairman, we have friendly conversations.

Senator LAUSCHE. Well, we will hear what they have to say about it. I will want to hear them before final judgment is reached.

Are there any questions on the legal aspects of the bill, Mr. Sender?

Mr. SENDER. Just one, Mr. Chairman.

Under the amendments suggested at the end of your statement, Mr. Chairman, would the Commission apply under S. 1729 in determining whether the transportation activities engaged in by persons claiming to be exempt are in fact those of an agricultural association, the language proposed to be added under 203(b)(5)?

Mr. BUSH. Yes, sir.

Mr. SENDER. And the agriculture cooperative would have the burden of proving that its vehicles are used in transportation of farm products, farm supplies, or other farm-related traffic, in order to obtain a certificate of exemption?

Mr. BUSH. Yes, sir; that is correct, and their records, if we are allowed to see them, would reveal it. If they are conforming to the law, I can see no reason why we couldn't see it, and, if we saw it and saw they were conforming to the law, we would have nothing further to say to them.

Mr. MERRILL. I would like to make one additional comment, Mr. Chairman.

Senator LAUSCHE. Mr. Merrill?

Mr. MERRILL. The examination of these records can be a very disturbing thing, and I appreciate it. The Congress has afforded protection by making it a crime for any disclosure of information secured through such examination, without a court authorization or Commission authorization.

Mr. BUSH. That is for protection of the peoples whose records we are investigating, of course.

Senator LAUSCHE. Mr. Walrath, if the change that you propose and which was just read by Mr. Sender is adopted, what will be its impact on the fourth guideline that you set down in the initial case dealing with this subject, and that is the agriculture cooperative association may not perform transportation services functionally unrelated to its members farming activities.

Mr. WALRATH. I think, Mr. Chairman, it is entirely consistent with that guideline, even though a little different language is used. In our decision in that case, we stated a general principle, whereas in our proposed amendment, we have lifted the first two phrases from the Marketing Act itself—it uses the phrase, "farm products," "farm supplies," and then there is a third one, "farm services," but, since we are dealing only with transportation, we did not include the phrase of "farm services."

We are saying here exactly what the Agriculture Marketing Act says, and then we are adding, "and other farm-related traffic." From our earlier decisions, this has become a familiar phrase. We have bent over backwards to be fair about a category of traffic, and tried to avoid becoming too technical. Our language would have a sufficient breadth to not destroy their ability to move, we will say, fertilizers for nonmembers, because it was of interest to the farming community to have it moved.

So we use the phrase, "farm-related traffic." That is our phrase, but the other two are right from the statute.

Senator LAUSCHE. Take the specific instance, under guideline No. 4, "The cooperative may not perform transportation services functionally unrelated to its members' farming activities."

Let's assume that the cooperative on a return trip brought back farming material not for the cooperative but for some individual or company outside of the cooperative. Would he be permitted to do so?

Mr. WALRATH. Yes, sir. You see, in that first case, we were dealing with transportation of such things as automobiles for members of the co-op, or even machinery for retail sales, so our guideline No. 4, in the context of ACS case, was directed at the so-called member transportation. They were transporting things that had no relationship to their operation of farm production.

Now, when we come to the statutory definition, we want to make it broad enough to include transportation for nonmembers for hire, but farm-related. This percentage (up to 50 percent for nonmembers) is not in our act, but in the Agriculture Marketing Act, which permits the movement of commodities for nonmembers up to, but not in excess of, half of their total operations.

Senator LAUSCHE. One word further. How many members are on the Commission?

Mr. BUSH. Eleven.

Senator LAUSCHE. How many agreed with this recommendation?

Mr. BUSH. All of them.

Senator LAUSCHE. No dissent?

Mr. BUSH. No dissent.

Senator LAUSCHE. The next witness will be Mr. James F. Pinkney, chief counsel, public affairs, American Trucking Associations.

Mr. Pinkney, you may proceed. And may I suggest that you can proceed to read your paper or you can place it in the record, where it will be printed fully, and then give the highlights of what you would

like to say to the committee. You can choose either course, Mr. Pinkney.

STATEMENT OF JAMES P. PINKNEY, CHIEF COUNSEL, PUBLIC AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC., 1616 P STREET NW., WASHINGTON, D.C.

Mr. PINKNEY. Thank you, Mr. Chairman. Actually, what I shall do, I shall read part of my statement; other parts of it, such as discussion of the cases as was already covered amply by Commissioner Walrath I will omit, so I will do a little of both, sir.

We appear in support of the position stated by Chairman Bush of the Interstate Commerce Commission.

We agree that agricultural transportation cooperatives—or agricultural cooperatives incidentally engaging in for-hire transportation—should be monitored and policed by some agency of Government to insure that its transportation service is within the proper scope of section 203(b)(5), the so-called agricultural cooperative exemption. That, sir, deals with the first problem mentioned by the Commission.

We also agree that the exemption should be more precisely defined so as to limit any for-hire transportation by farmer cooperatives to the transportation for nonmember farmers of agricultural products or of farm supplies used directly in agricultural production.

Our concern is that section 203(b)(5) has become a refuge for illegal carriers and is now becoming an unhealthy backdoor entrance into for-hire transportation of general commodities for the general public. We would like to see the exemption returned to the place we believe Congress intended it to have when it passed the Motor Carrier Act in 1935.

We believe the problems outlined by the Chairman of the ICC are extremely serious and, unless corrected by legislation, will rapidly lead to the growth of a substantial unregulated general commodity transportation system. This will damage America's great public transportation system and in our judgment will not be in the public interest. Witnesses who are to follow me will bring to your attention the facts supporting these statements I have just made.

We have, sir, a number of operators who have personal knowledge of what is transpiring in this general area who will speak briefly and factually following my testimony.

Now, at the outset, we want to recognize that agriculture in the United States has long been a fundamental concern of Congress. The farm problem is as old as the Nation, I suppose. National farm policy is such a highly complex and specialized ingredient of national policy that we would not dare even to discuss it, beyond recognizing its vibrant and complex nature. The many special considerations which the farm problem requires of Government we have accepted—even in the field of transportation.

But when the question at issue is whether the farmer (or his cooperative) should be allowed to become a privileged carrier of general commodities in interstate commerce without qualifying under the standards established by this Congress through the ICC for other carriers, then we object.

That, Mr. Chairman, is where we commence the rationale of our testimony today.

67-566—66——6

Because of the special problems inherent in farm marketing—broad geographic distribution of production and processing, sharp variations in climate, differing seasons of harvest, the nature of the commodities, etc.—farmers have historically been given consideration by the Congress which are not available to the rest of the economy, and sometimes even to the damage of other segments of the economy.

The Capper-Volstead Act, for example, exempts associations of farmers, when the operate along normal business lines, from the Federal antitrust statutes.

As heretofore pointed out, the Motor Carrier Act of 1935 exempts motor trucks controlled and operated by farmer cooperatives or federations of such cooperatives (as defined in the Agricultural Marketing Act of 1929, as amended) from economic regulation by the ICC of (1) the transportation by motor truck of their own produce and supplies or that of their members, or (2) the transportation for-hire of like property of others, if the volume of such business does not exceed that done for their own members (Government traffic excepted).

Another example is section 203(b)(6) which exempts vehicles used in transporting unmanufactured agricultural commodities.

Let's take a look at farm conditions in 1935. According to the U.S. Department of Agriculture there were then 10,500 legitimate farmer cooperatives which did a gross business of $1,840 million. Total membership was 3,660,000. ("Statistics of Farmer Cooperatives," Farmer Cooperative Service, USDA. General Report, July 1965 pp. 74–76.)

In 1963–64, latest figures available, there were only about 8,800 cooperatives, but they did a gross business of $19,264 million. Net, with intercooperative business out, was $14,378 million. These cooperatives had a total of 7,079,500 memberships. Net marketing business was $11,234 million; farm supply volume, net basis, was $2,832 million, and income from farm services was $313 million. ("News for Cooperatives," Farmer Cooperative Service, USDA. April 1966.)

Unfortunately, data as to the number of trucks operated by cooperatives or the transportation business done by them in 1935 are lacking. However, the USDA estimated, from a study made by them, that on January 1, 1961, farmer cooperatives owned or leased 33,000 trucks. (A previous study revealed an estimated 28,000 trucks in 1951.)

In 1960, farmer cooperatives' trucks were estimated to have covered 660 million miles. ("Motor Truck Operations of Farmer Cooperatives," Farmer Cooperative Service, USDA. General Report 109, February 1963, p. 4, "Highlight.") Of this total, 28 percent, or about 185 million miles was over the road.

A 1962 study by the USDA of 20 cooperatives gives a few more significant facts: 19 of the 20 reported total transportation expenses of over $100 million. Of this, 12 percent was for their own trucks and an estimated 12 percent was paid to for-hire motor carriers, and 76 percent to railroads. ("Motor Truck Operating Costs of Farmer Cooperative Service," USDA General Report 121, June 1964, pp. VI–1–2.)

This, then, is the picture of the size and growth of the farmer cooperative industry and a glimpse of its transportation activities. In

the period since the Motor Carrier Act of 1935 was passed, cooperatives have grown in size and power, yet the so-called cooperative exemption, 203(b)(5), designed to help meet 1935 conditions, instead of being restricted as cooperatives grew in power, has been widened, by the Northwest decision, to give them even more leeway to engage in for-hire transportation without ICC economic controls or direction.

This is not, we submit, in line with congressional intent and it poses a new major risk for motor carriers. Congressional intent may be seen by examining the record of the discussion of this subject in the Congress in 1935.

The cooperative exemption was not contained in the transportation bill as it left committee but was introduced on the floor of the House by Representative Marvin Jones.

Throughout the discussion on the bill, statements by Representative Jones were to the effect that the purpose of the amendment was not to permit cooperatives to engage in forhire transportation but rather to permit them, by occasional hauling of nonmember farmer's goods, to cut the cost of carrying on the principal business of the cooperative. This theme was perhaps best stated by Representative Jones when he said:

> Now, I hope I may not be interrupted until I explain the reason for offering this cooperative amendment. This exemption is consistent with the purpose of the act to regulate the use of highways by persons and corporations who use them regularly as places of business and as the primary means of gaining a livelihood. Cooperative organizations do not act as money-makers in transportation. The hauling is done as a means of reducing the marketing expenses of their members.
>
> Especially in highly organized communities it is almost essential they do some hauling for non-members. Otherwise certain farmers who are only temporarily in the community and in some instances tenants might be left without transportation facilities. In some instances it reduces the expense of handling to combine some hauling for non-members. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members . . . it is a practical proposition. (Vol. 79, Part 11, Congressional Record (1935), pp. 11218–22.)

Mr. Chairman, there was more discussion which serves to emphasize that Representative Jones had in mind the needs of tenants and transient farmers when he made reference to nonmembers—not America's largest corporations.

Senator LAUSCHE. Mr. Pinkney in the examination of the record of the proceedings in 1935, was this the outer limit to which the discussion pointed as the extent of the exemption that would be granted?

Mr. PINKNEY. Yes, sir.

Senator LAUSCHE. There were no words in the record that went beyond what Mr. Jones said?

Mr. PINKNEY. That is correct, sir. He was the only man, incidentally, to discuss this matter. It was passed by the House following further discussion along this line, of what I have given you, and there was no discussion on the Senate floor. The Senate had accepted the bill as it came over from the House, as passed by the House.

Senator LAUSCHE. Proceed.

Mr. PINKNEY. Now, interestingly, Representative Jones also offered as a reason for the exemption of some nonmember carriage that fact that without the exemption "if they accepted any outside business they would become common carriers, and would be required to accept all commodities tendered to them." There was no floor discussion of the exemption in the Senate.

In other words, he was pointing out that they were not trying to get themselves placed in the position where they would become carriers of general commodities, subject to obligations of a common carrier. He was careful to avoid that.

Now, over the years most of the legitimate farmer cooperatives have been circumspect in their transportation activities. There has just been a handful that have gotten over into transportation. And I am referring to the legitimate co-ops, but that number is increasing. Volume of nonmember forhire business has been kept within the limitation and up until very recently practically all of such traffic at least has been of farm-related goods.

However, in recent years there has been a tremendous growth in forhire transportation by farmer cooperatives—some of it clearly illegal, it seems to me, and far beyond the scope intended by the exemption. We are talking about a type of traffic which is being carried on, in our opinion, in contravention of the intent of Congress. To correct it, new legislation is called for by this Congress.

Let us take a look, first, at the "phony co-ops"—the illegal operations. First, the case of Agricultural Commodity Service (ACS), a so-called farmer cooperative incorporated in Illinois. In 1958, complaints were filed with the ICC by a number of motor carriers charging the ACS with transporting property in interstate commerce without appropriate authority. Shortly thereafter, the Commission ordered an investigation of the operations of the ACS's services. (It might be noted here that ACS was transporting a wide variety of freight, ranging from steel and hardware goods to groceries, machinery, tires, tubes and accessories. All being transported by an alleged "farm cooperative.") The primary question presented was whether the operations of ACS and its agents were within the scope of the partial exemption of section 203(b)(5) of the Interstate Commerce Act, relating to "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act."

The proceedings culminated in a report and order by Division 1 (*Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5 (1961)), in which it found that defendant-respondent ACS was not a cooperative association as defined in the Agricultural Marketing Act and that ACS and specified individuals were transporting property in interstate commerce for compensation without property authority. It also found that the respondent shippers were or had been participating in concert with the ACS and the other parties in such violations. The defendants and respondents were ordered to cease and desist from further violations—four years from the time of complaints and 6 years from date of incorporation.

Second, the case of Agricultural Transportation Association of Texas.

By order dated January 25, 1963, the Commission instituted an investigation, into the motor carrier operations and practices of this association to determine whether it was engaged in the transportation of property, in interstate commerce, for compensation without authority from the Commission.

The chief promoter and president of the association is Jack R. Cobb who previously operated as an ACS "agent." ACS ceased operations on February 18, 1962, and the association commenced operations the next day.

Division 1 served a report and order, titled Agricultural Transportation Association of Texas Investigation (96 M.C.C. 293 (1964)), wherein it found the operations of the association to be nothing more than a continuation of the unlawful operations of ACS. It ordered the association and its shippers to cease and desist from participating further in such unlawful operations.

On June 2, 1965, a petition was filed by the association for reconsideration, further hearing, and oral argument. A petition for reconsideration was also filed on June 2, 1965, by the Secretary of Agriculture, and the National Council of Farmer Cooperatives. The Bureau and the motor carrier and railroad intervenors replied to the petitions. By order served October 19, 1965, the Commission reopened the proceeding for reconsideration on the present record. No further action has been taken by the ICC on this case. Four years since incorporation, 3 years since investigation started.

There is no doubt in our minds that ACS and ATA of Texas were, as found by Division 1 of the ICC, illegal operations. It is regrettable that the ICC has not seen fit to render a final decision in the ATA of Texas case. But, even if the Commission were to render a decision outlawing the ATA of Texas, it might be only a matter of hours until it were reborn, just as the ACS was transfigured into the ATA of Texas.

Nor, it would seem that the type of transportation we have been talking about, the type of organization, such as the ACS and the ATA of Texas, might easily be eradicated. But even if they were, and were not reincarnated, we would still have the problem of legitimate farmer cooperatives acting as common carriers of motor freight interstate.

The *Cache Valley* and *Northwest Agricultural Cooperative Association* cases are clearly in point. Let's take a look at these cases:

The Cache Valley Dairy Association is a dairy cooperative incorporated in Utah. It has been and is engaged in for-hire, interstate transportation, without operating authority from the Commission, of commodities which are not farm products, farm supplies, or products related to a farm business for companies which are not engaged in agricultural pursuits. It controls and operates all the motor vehicles involved. The legality of the co-op is not questioned.

The issue presented here is one of statutory construction: Is the for-hire transportation of non-farm-related commodities by an agricultural cooperative association, as defined in the Marketing Act, for nonmembers (who are neither farmers nor engaged in agriculture), in order to balance transportation services performed primarily for the cooperative's farmer members, transportation within the partial exemption of section 203(b)(5) of the Interstate Commerce Act? Division 1 of the Cmomission answered the question in the negative.

In its report, Division 1 found that the transportation activities of a cooperative association partially exempted by section 203(b)(5) are limited to transportation which is designed to benefit directly, or be functionally related to, its members' activities as producers for farm products and farm business services. In other words, a cooperative association's transportation activities for nonmembers must be limited to the handling of farm products, farm supplies, or those products or commodities which are a legitimate part of a farm business. Since the backhaul by Cache Valley of non-farm-related commodities for

nonmembers is a service functionally unrelated to the association's farming activity, Division 1 concluded that it is not an operation in which a cooperative association properly may engage within the meaning of the partial exemption of section 203(b)(5). Accordingly, the Commission ordered Cache Valley and the nine correspondent shippers to cease and desist from the backhaul operations which it found to be beyond the partial exemption of section 203(b)(5).

Cache Valley, the National Council of Farmer Cooperatives, and the Department of Agriculture filed petitions with the Commission seeking a finding that this proceeding involves an issue of general transportation importance. The Commission, agreeing with petitioners, granted them leave to file petitions for reconsideration.

Of greater significance at this time is the *Northwest Agricultural Cooperative Association* case (350 F. 2d 352 (1965)). Northwest is a cooperative composed exclusively of farmer cooperatives for the purpose of transportation. Northwest backhauls nonfarm commodities—furnaces, air conditioners, roofing materials, machinery, hardware, yarn, wire springs from California, New Jersey, and New York and other points. Upon investigation by the ICC and subsequent action in the District Court of Oregon on September 1, 1964 (234 F. Supp. 496 D. Cr. (1964)), the transportation of this traffic was enjoined.

The issue presented was whether Northwest's trucking operation for nonmembers was exempted from economic regulation by the Commission under section 203(b)(5) of the act.

The court of appeals for the ninth circuit on August 10, 1965, reversing the decision of the district court, stated that if Northwest's transportation activities are to be limited (commoditywise) in the manner suggested by the Commission, the limitation cannot be based upon section 203(b)(5) of the act, but must be found in the definition of a cooperative association in the Agricultural Marketing Act.

The court further found that the Agricultural Marketing Act permits cooperative associations to engage in "incidental" activities which, as a practical matter, are necessary to the performance of an activity authorized by the act. Consequently, under this court's ruling any farmer cooperative may engage in the forhire transportation of regular commercial freight for merchants and manufacturers so long as such transportation is "incidental and necessary" to its farm-related transportation. The Supreme Court of the United States refused to grant a writ of certiorari.

Now, Mr. Chairman, what is the consequence of this decision—of this brief history of cases which I have outlined?

An obvious consequence is that farmer cooperatives are now enabled to engage in common carriage without having to go through the requirement set up for others desiring to engage in such business. Since the nonmember limit (50 percent) provided in the Agricultural Marketing Act of 1929 does not, according to the Agricultural Marketing Act, apply to Government business, this can mean a tremendous business for transportation cooperatives. As we have seen, the section 203(b)(5) exemption applies to motor vehicles, without express limitation as to the type of transportation in which they are employed, so long as they are controlled and operated by a legitimate cooperative association as defined by the Agricultural Marketing Act. What common carrier would not cherish that kind of authority. I am sure Mr. Watkins here—or Mr. Stubbs, Mr. Teagle, or any of the others

here who have labored through the years and spent fortunes in legal fees to obtain limited rights to engage in interstate motor transportation would give a great deal for the kind of authorities which the courts have ruled the farm cooperatives now have.

There does not appear to be administrative remedies available to us in this situation. So long as the *Northwest* decision stands, there can be no limit on the type of commodities handled by the cooperatives. And there is no indication that the Commission will do anything about the two major cases now on its docket—Cache Valley and the ATA of Texas.

Thus, Mr. Chairman, we are faced with the urgent need for new legislation—a law that will clarify the status of farmer cooperatives, and limit the types and amounts of freight which cooperatives can handle. The bill now before this committee has this general objective, but it approaches its goal by a route which has met with overwhelming objection by farm organizations. Farmer organizations say S. 1729 would in fact amount to ICC economic regulation. It is, at the very least, they say, a foot-in-the-door approach to eventual full economic regulation by ICC. They say that it would seriously erode, if not destroy, the agricultural exemptions. This we do not seek. In fact, we in American Trucking Associations, Inc., have tried to come up with a compromise—it certainly seems that this is the time and place for a compromise bill which will preserve the originally intended scope of the farmer cooperative exemption and at the same time enable the Commission to weed out the illegal operators.

Let me add this point, we are not in conflict with the objectives of the Interstate Commerce Commission, we are suggesting another approach, which is in tune with the approach suggested by the Commission. But the Commission's approach, I want to make it clear, is not an unacceptable approach as far as we are concerned.

As we pointed out earlier, we recognize the vagaries of farm marketing. We know it is important that farmers have flexible, efficient, rapid, and more or less unlimited motor truck transportation available at varying seasons, over widespread areas, and in all kinds of weather. Thus, some kinds of exemptions from economic regulation are called for. We have supported "reasonable" agricultural exemptions in the past, and still do. We have no objection to the legitimate farmer's cooperative—or a federation of such cooperatives—engaging in the transportation of freight belonging to its members. Nor do we object to the farmer cooperative engaging in the transportation of nonmember farmer's freight for-hire—providing the commodities hauled are farm products or are related to the farm enterprise; the same position taken by the Commission, sir. However, we do object to a situation under which, (1) an ACS can masquerade, illegally, as a qualified cooperative and continue operating for years before the ICC and/or the courts exercise final judgment; and (2) there is no limitation on the commodities that a cooperative can transport for nonmembers.

Senator LAUSCHE. Is there a limitation under the proposal made by the Commission of the amount that the cooperative can transport for nonmembers?

Mr. PINKNEY. At the present time, sir, the law limits the volume that can be transported for nonmembers. The Agricultural Marketing Act gives them the right to transport an equal amount for nonmembers, an amount for nonmembers equal to the amount of business

done for the cooperatives and for its members. And we, as I will point out in a moment, think that even that may be too broad. I believe the Commission doesn't quarrel with that particular concept and we do not quarrel with the concept of some business for nonmembers. We do quarrel with the concept of an unlimited amount for nonmembers, and as I pointed out a few minutes ago, under the law as written, in figuring whether the amount for nonmembers, Government traffic doesn't count, and consequently as will be brought out by subsequent testimony here, we find the farmer cooperative now going out after Government business in unlimited quantities, quartermaster supplies, for example, which covers almost the gamut of general commodities.

Senator LAUSCHE. Further dealing with the answer to the question I just put, in the Northwest Agricultural Cooperative Association case, the court said as follows: "Among other things that the association 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 its members."

Mr. PINKNEY. That is the law.

Senator LAUSCHE. Go ahead.

Mr. PINKNEY. As I have stated, we have supported reasonable exemptions. The bill we propose would provide accurate identification of qualified cooperatives by an official agency (USDA) familiar with and sympathetic to farmer cooperatives and their needs, and would clearly define the kind of traffic which farmer cooperatives may handle on a for-hire basis for nonmembers. Our bill is designed to keep phony cooperatives from coming into existence, and to keep the nonmember business of cooperatives within reasonable bounds. This, sir, would be a substitution for the present section 203(b)(5).

The bill we propose reads as follows:

To clarify the exemption contained in subsection 203(b)(5) of the Interstate Commerce Act relating to agricultural cooperatives

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the language contained in subsection 203(b)(5) is stricken and the following new language is substituted therefore:

(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, when the name of such cooperative association or federation of such associations appear on a list of such cooperative associations or federation of such associations which the Department of Agriculture should submit to the Commission as qualifying under the terms of the Agricultural Marketing Act, approved June 15, 1929, as amended, following a determination by the Secretary of Agriculture as to the bona fides of such federations or associations. Such approved list shall be submitted by the Department of Agriculture to the Commission annually. Any cooperative association or federation of such cooperative associations not on the approved list is not entitled to the exemption contained herein. Any cooperative association or federation of such cooperative associations not on the approved list is not entitled to the exemption contained herein. Any cooperative association or federation of such cooperative associations whose name is contained on the approved list may engage in the for-hire transportation of farm products, as described in (6) of this section, and farm supplies used directly by the consignee in agricultural production, for nonmember farms in an amount not to exceed 50 percent of the value of transportation service rendered by such cooperative association or federation for itself or its members. If any such cooperative intends to engage in such for-hire transportation for nonmembers, it shall file with the Commission a notice so to

engage. The Commission, from time to time, may review the books or otherwise examine the operations of such cooperative association or federation of such cooperative associations to determine whether the value of such transportation service rendered to nonmembers does in fact not exceed 50 percent and that such transportation service rendered to nonmember farmers is limited to the transportation of farm products or farm supplies, as specified above.

We add this—

Notwithstanding any provision of the Agricultural Marketing Act, transportation on behalf of the United States or any agency or instrumentality thereof shall be included in determining the volume of transportation performed for members or nonmembers.

In essence, this brief amendment would do the following:

First, it would require the Department of Agriculture to maintain a list of qualified farmer cooperatives—it would be the agency to determine the bona fides of such cooperatives, at least in the first instance.

Senator LAUSCHE. Stop at this point. That is this first provision would create a prima facie right in the cooperative to be exempted from the Commerce Act if and when the Secretary of Agriculture certified that it was a bona fide agricultural cooperative?

Mr. PINKNEY. Yes, sir.

Senator LAUSCHE. Would this provision eliminate the argument that it is sought to place the cooperatives under the jurisdiction and control of the Commerce Commission?

Mr. PINKNEY. I think it should, sir, because you will note from further reading there, that the only people that the Commission will be able to look at will be those who notify the Commission that they intend to engage in transportation business for persons other than their own members and their own cooperative.

Senator LAUSCHE. Thus a cooperative that wanted to engage in this business would go to the Department of Agriculture instead of the Interstate Commerce Commission to obtain its initial rights?

Mr. PINKNEY. Yes, sir.

Senator LAUSCHE. All right, proceed.

Mr. PINKNEY. Second, this bill would provide that any farmer cooperative desiring to engage in interstate for-hire transportation of nonmember farmer freight file a notice of intent with the Commission so to do:

Note there that the average co-op, those other co-ops who are engaged only in transportation for themselves or their members, those co-ops who aren't in the transportation business, would have no obligation to do anything.

Third, it would give the ICC the right to examine the records of the cooperative to see if it were complying with the law, and

Fourth, it identifies the type of commodities the cooperative may transport for nonmember farmers in interstate commerce.

Now, Mr. Chairman, in offering this amendment—this simple effort at clarification of a serious problem—we sincerely hope it will be accepted without serious opposition. That may be a vain hope, but we can hope it.

And I have several more very pertinent questions that might be offered at this time: How can any legitimate farmer cooperative object to the Department of Agriculture maintaining a record of its bona fides? The Department is equipped to perform such a service.

The Farm Cooperative Service is an excellent agency staffed with intimately knowledgeable people, with some notable experts in the field of transportation.

How can any legitimate farmer cooperative object to having the U.S. Department of Agriculture furnish to the Commission a list of farmer cooperatives for transportation purposes? If a cooperative desires to engage in interstate commerce on a for-hire basis with nonmembers, should there be any objection to notifying the Commission of such intention? Or of the ICC's right to examine the records to ascertain compliance with the law?

Can a farmer cooperative honestly object to its nonmember for-hire transportation being limited as to the commodities hauled?

What is the other side of the coin? If the farmer cooperative objects to this bill, then what they are in fact demanding is the right to engage in common carriage without a show of public convenience and necessity. Failure to accept this bill is a clear admission that what the cooperatives want is a special privilege the like of which exists nowhere else in society—that is, the right to enter into large scale competition on an all commodities basis with the common motor carrier who is required to live under a complicated system of regulation while the cooperative enjoys freedom from regulation are, indeed, freedom from a large measure of responsibility now incumbent upon the common carrier, I might say all of the responsibilities now encumbent on the common carriers.

Finally let me make this point. The transportation of the commercial traffic of this country can be (like Gaul) divided into three parts. One part moves by private and contract carriage, another by the exempt for-hire carriers, the third by the regulated common carriers.

Of these three entities, only the regulated common carriers have the obligation to serve the public generally.

Down through the years the portion handled by the common carriers has been subject to a process of erosion. I refer to court decisions, such as the *Frozen Food Express* decision in 1956 (351 U.S. 49) and the *Northwest* decision this year.

Some part of the damage done by the *Frozen Food Express* decision was remedied by the Congress in 1958, when you spelled out the commodities the transportation of which would be considered to be exempt. We feel that similar action is now called for in the case of farmer cooperatives. We cannot believe that Congress intended for farmer cooperatives, who assume no responsibility for serving the public generally, to cut into the already diminished share of those common carriers who do assume responsibility for serving the public.

Mr. Chairman, we urge your favorable consideration of the proposed bill which I have just recommended.

May I at this point call attention to a copy of an article by one of our attorneys which appeared in the ICC Practitioners' Journal for April 1966. It is, "Agricultural Cooperatives: A New Force In Transportation," by Harry J. Jordan. That article deals with the legal and other aspects of my statement. I have a copy here and would like to have it introduced into the record, as an appendix to my statement.

Senator LAUSCHE. It will be so done.

Mr. PINKNEY. May I conclude Mr. Chairman, by going pack to the national transportation policy. It seems to me that if we follow on the national transportation policy, it becomes absolutely necessary that this particular situation, which definitely will affect the competence and the ability of the common carriers of this country to do their duty, this situation should be corrected.

I thank you very much, sir.

Senator LAUSCHE. Mr. Sender, do you have any questions?

Mr. SENDER. Just one question.

Mr. Pinkney, if the Department of Agriculture refused to place the name of an agricultural cooperative on its list, would the agricultural cooperative, under the requirements of the Administrative Procedure Act, be afforded the opportunity of a hearing before the Department of Agriculture?

Mr. PINKNEY. There is no provision made in the legislation as I have drafted it, but I am satisfied that—I will be happy to look into it—I would be satisfied that he would be afforded some redress. He would be afforded an opportunity of hearing, and I think under the law as it now stands, but I am not certain, Mr. Sender.

Senator LAUSCHE. At least, it is your position that the rights afforded by the Administrative Procedures Act should be accorded to it.

Mr. PINKNEY. Every stage of the proceeding; yes, sir.

Senator LAUSCHE. All right, thanks very much.

AGRICULTURAL COOPERATIVES, A NEW FORCE IN TRANSPORTATION

By Harry J. Jordan*

When Congress passed the Motor Carrier Act in 1935, it saw fit to exempt from economic regulation [1] by the Interstate Commerce Commission "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act. . . ." This exemption is expressed in Section 203(b)(5) of the Act [2] and the reason given for it was to aid cooperative associations in performing their agricultural functions by engaging in transportation of farm-related commodities without being dependent upon commercial carriers.[3]

Generally, in the past the only problem regarding the exemption has been whether, in a given fact situation, the operations of a group of individuals organized as an agricultural cooperative in fact met the definition of such an association under the Marketing Act.[4] Recently, however, a unique and far-reaching question respecting the scope of the exemption of Section 203(b)(5) presented itself: Whether the exemption of that section extends to for-hire transportation by a bona fide agricultural cooperative of non-farm-related products for non-members of the cooperative association? This issue occurred in two cases, one before the Commission and one in the courts.

*Mr. Jordan is a general attorney on the staff of the American Trucking Associations, Inc. A former attorney advisor with the Interstate Commerce Commission, he is a 1958 graduate of the University of Pittsburgh School of Law and a member of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

[1] There are two broad fields of regulation under the Interstate Commerce Act—safety and economic. Safety regulation deals with qualifications and maximum hours of service of employees and standards of equipment. Economic regulation covers, to name only a few areas, such matters as who may engage in motor carriage-for-hire, the routes or areas to be served, and the rates to be charged. See Taff, *Commercial Motor Transportation*, 514–17 (3rd ed. 1961).

[2] Section 203(b)(5), 49 U.S.C. § 303(b)(5), provides as here pertinent:

> 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 . . . 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 . . .

[3] 79 Cong. Rec. 12218–12220 (1935).

[4] *Cf., I.C.C.* v. *Nelson Cooperative Marketing Ass'n*, 209 F. Supp. 697 (W.D. Okla. 1962); *I.C.C.* v. *Iowa Cooperative Association*, 236 F. Supp. 873 (S.D. Iowa 1964); *Machinery Haulers Association* v. *Agricultural Commodity Service*, 86 M.C.C. 5 (1961); *Agricultural Transportation Association of Texas—Investigation of Operations*, 96 M.C.C. 293 (1964)—petition for reconsideration pending.

In the Commission proceeding, *Cache Valley Dairy Association Investigation Of Operation*,[5] division 1 found non-farm-related transportation operations by the cooperative to be beyond the exemption of Section 203(b)(5) and ordered the respondents in that case to cease and desist from such transportation activities. This case is now pending before the Commission, on reconsideration.

The court case, *I.C.C.* v. *Northwest Agricultural Cooperative Ass'n., Inc.*,[6] is a significant proceeding and could be one of the most important decisions handed down in the field of transportation in some time. It was instituted by a Commission complaint filed in a United States District Court in Oregon to enjoin Northwest from hauling general commodities throughout the United States, for non-member merchants and manufacturers, without a certificate of public convenience and necessity as required by Section 203(c) of the Interstate Commerce Act.[7]

Northwest is a non-profit corporation organized under the Idaho Marketing Act for the purpose of enabling its members collectively and economically to transport their agricultural products to markets. It is solely engaged in transportation activities and operates a fleet of long haul trucks for this purpose. On return trips from market places, Northwest transports farm supplies back to its members. However, the volume of these supplies does not equal the amount of farm products shipped outbound and, consequently, Northwest has empty space in its trucks. To make use of this space Northwest nade a practice of back-hauling non-farm-related commodities for non-members of the association. For example, it transported for non-members such things as furnaces, air conditioners, and water heaters from California to Idaho; machinery from Minnesota to Idaho; hardware from New Jersey to Oregon; wire springs from Illinois to Oregon; yarn from Oregon to Idaho; door hanger parts from New York to Oregon; and roofing materials from California to Idaho. From November 13, 1963, to March 19, 1964, Northwest received approximately $230,375 for transportation services. Approximately $41,000, or about 16 percent of that sum, was derived from the transportation of non-farm commodities for non-members. It was this latter type of transportation which the Commission sought to have stopped.

In support of its complaint, the Commission contended that transportation activities of agricultural cooperatives are not completely exempt under Section 203(b) (5) from its economic regulation. It pointed out in this respect that an agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products, . . . farm supplies and/or farm business services.[8] It admitted that transportation services performed for members of the association directly or functionally related to their agricultural activities, were exempt from its economic regulation. But, it argued that for-hire transportation of non-exempt commodities for non-members of an association is not exempt, and thus Northwest's transportation of such commodities without a certificate of public convenience and necessity violated the Act.[9]

Northwest's defense to the suit was that the transportation was exempt under Section 203(b) (5). It pointed out that its for-hire transportation of non-exempt commodities for non-members produced much less revenue than it received from transporting member products, and that the income from such activities inured to the benefit of members of the association by economizing their marketing expenses.[10]

The district court (Judge Solomon) agreed with the Commission's reading of Section 203(b) (5) and permanently enjoined Northwest from engaging in for-hire transportation unless "such transportation is directly beneficial or func-

[5] 96 M.C.C. 616 (1964).

[6] 234 F. Supp. 496 (D. Ore. 1964).

[7] Section 203(c), 49 U.S.C. § 303(c), provides that "no person shall engage in any for-hire transportation business by motor vehicle, in interstate or foreign commerce, on any public highway . . . unless there is in force with respect to such person a certificate or a permit issued by the Commission authorizing such transportation. . . ."

[8] Section 1141j of the Agricultural Marketing Act, 12 U.S.C. § 1141j, provides, in relevant part:

(a) As used in this subchapter, 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 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. . . .

[9] 234 F. Supp. at 498.

[10] *Ibid.*

tionally related to farming activities of [the Association's] members." In his opinion, Judge Solomon stated:

> Though Congress intended to exempt agricultural cooperatives from regulation under the Act in the transportation of their goods to market and their necessary supplies and services on return, I do not read the statute as granting these associations an exemption to enter the general transportation business. Undoubtedly the Association's practice affords economies to its members, but these are economies not intended to be conferred by the Act.[11]

But on appeal by Northwest to the Ninth Circuit Court of Appeals, the district court's decision was reversed.[12] The court of appeals first held that, since the agricultural cooperative exemption of the Interstate Commerce Act broadly applies to "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act," the limitation upon Northwest's transportation activities urged by the Commission "must be found in the definition of a cooperative association in the Agricultural Marketing Act." [13] The court then held that "a cooperative does not lose its status by engaging in activities other than its primary statutory activity so long as they are incidental and necessary to its effective performance [as an agricultural cooperative]," and that "Northwest's transportation of non-farm products and supplies was incidental and necessary" to the effective performance of Northwest's farm service within this test.[14] In thus finding all of Northwest's transportation activities to be exempt, the court stressed that Northwest's transportation of non-farm products was limited to backhauls, was small in relationship to its overall transportation operations, and "it is not economically feasible to operate the trucks empty on return trips." [15] The court added, however, that "A cooperative will retain its exemption only so long as it remains in essential character a 'cooperative association.'" "A cooperative would not be of this character," it went on to warn, "if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and it is difficult," said the court, "to imagine circumstances under which non-farm related business could approach fifty percent of the total and still remain incidental and necessary to farm-related business." [16] A petition for a writ of certiorari [17] from the Supreme Court was sought by the Solicitor General on behalf of the Commission,[18] but it was denied.[19]

To stake out the boundaries of the court of appeal's decision: the court has held that a bona fide agricultural cooperative may transport non-farm-related commodities for non-members of the cooperative and still be exempt from economic regulation by the Interstate Commerce Commission, provided such transportation does not approach too closely fifty percent [20] of the cooperative's total transportation business. Stated more bluntly, it has held that agricultural cooperatives are free, subject of course to the percentage of business limitation, to engage in general trucking.

The potential impact of the *Northwest* case upon the operations of regulated carriers is significant. In according a sweeping exemption from economic regulation by the Commission to the transportation activities of agricultural cooperatives, it permits such cooperatives to engage in extensive unregulated transportation of non-farm-related commodities in competition with the operations of regulated rail and motor carriers. And the cooperatives are at a decided advantage because their rates are not subject to control by the Commission, as are the rates of regulated carriers. Thus agricultural cooperatives may charge rates as low as they deem necessary for the purpose of attracting traffic.[21] to fill empty backhauls. Obviously these rates are going to be below those of the regulated carriers with the result that such carriers are going to lose traffic.

Furthermore, even though the *Northwest* case involved only the backhauling of non-farm-related commodities, the principle of the case would appear to apply

---

[11] *Ibid.*
[12] *Northwest Agri. Coop. Ass'n.* v. *Interstate Com. Com'n.*, 350 F. 2d 252 (1965).
[13] *Id.* at 255.
[14] *Ibid.*
[15] *Ibid.*
[16] *Id.* at 256.
[17] No. 807, October Term, 1965, *Interstate Commerce Commission* v. *Northwest Agricultural Cooperative Association, Inc.*
[18] The Department of Agriculture supported the decision of the court of appeals, and its position in this respect was noted in the petition (Petition, p. 8).
[19] 34 LW 3255 (January 25, 1966).
[20] Inasmuch as the court failed to indicate at what point short of fifty percent a cooperative's transportation operation would cease to be "incidental and necessary" to its primary business function as a farm cooperative, the precise line of demarcation between what is exempt and what is not exempt must await further court action.
[21] The record in this case illustrates the range of commodities which would be subject to diversion.

to transportation of any commodities deemed "necessary and incidental" to a cooperative's farm-related activities. Thus, for example, a cooperative with trucks idle might, on the basis of this decision, use them to transport for-hire, at rates below those of regulated carriers, the products of a nearby steel or textile mill. Again traffic and revenues would be lost by the regulated carriers serving such plants. And there would be nothing to prevent an agricultural cooperative from transporting non-farm-related commodities outbound from the cooperative when going to a member's farm to pick up his products for movement back to the cooperative for further processing or sale.

The extent to which agricultural cooperatives will be able to divert traffic from regulated carriers plainly bears a direct relationship to the number of cooperatives and the amount of equipment they operate. Unfortunately there does not appear to be a great deal of information available regarding the transportation activities of agricultural cooperatives. But what data is available shows that, on January 1, 1961, the 9,294 farm cooperatives of the United States owned or leased an estimated 33,000 trucks (power units).[23] A study of 19 such cooperatives showed total expenditures for transportation in excess of $100,000,000 in 1962, including $12,411,364 for transportation in their own trucks. At that time, 18 of these cooperatives had backhauls for 46,627 trips, or 21.8 percent of the 213,606 trips their 603 trucks made in 1962. Of these backhauls, almost 93 percent carried the cooperatives' own goods, and less than one percent appears to involve transportation not functionally related to farming. However, the report from which this data is taken concludes that "Lack of backhaul tonnage is a limiting factor in cooperative truck operations."[24] The decision of the court of appeals now holds out the clear prospect that cooperatives will, in the future, be able to obtain that backhaul tonnage by diverting non-farm-related commodities from regulated motor and rail carriers.

It is clear that the *Northwest* case is going to benefit agricultural cooperatives by enabling them to better utilize their motor equipment. In turn non-farm-related transportation activities by cooperatives seems certain to increase and, correspondingly, the amount of traffic diverted from regulated carriers. In fact, the potential growth in transportation of non-farm-related commodities by cooperatives appears limited only by the percentage figure alluded to by the court of appeals as being the point at which a cooperative would lose its exemption, and the cooperative's own initiative.

Moreover, besides encouraging new competition from legitimate agricultural cooperatives, the *Northwest* case will also give added impetus to "gray area" operators to adopt the form of an agricultural cooperative in order to avoid federal regulation. In this respect it is worth noting that even now substantial amounts of traffic are being diverted from authorized motor and rail carriers by various groups and organizations performing general transportation service under the guise of exempt agricultural cooperatives.[25] And the decision by the court of appeals, so far as the regulated carriers are concerned, should make a bad situation worse.

To conclude, it is impossible to forecast at this time what tonnage and revenues will be lost by regulated carriers to agricultural cooperatives because of the *Northwest* case. Nonetheless, it appears safe to predict that a substantial amount of high-rated traffic will be diverted from regulated carriers and that the economic impact of this loss upon such carriers, particularly the smaller ones, is not going to be good. It is equally safe to predict that, unless the *Northwest* case is overruled by the Supreme Court,[26] or changed by legislative enactment, in the near future, the operations of agricultural cooperatives are going to grow substantially, and that they are going to be a significant new force to be reckoned with in the transportation industry.

Senator LAUSCHE. Mr. D. J. Gibson, president of the Midwest Coast Transport, Inc., Sioux Falls, S. Dak. You may proceed.

[23] *Bowser, Motortruck Operations of Farmer Cooperatives*, General Report 109, Farmer Cooperative Service, U.S.D.A., February, 1963.

[24] Camp, *Motortruck Operating Costs of Farmer Cooperatives*, General Report No. 121, Farmer Cooperative Service, U.S.D.A., June, 1964.

[25] See footnote 4 *supra*.

[26] It has been held by the Supreme Court that its denial of certiorari imports no expression of opinion on the merits of the case and does not indicate approval of the decision of the court below. *Brown* v. *Allen*, 344 U.S. 443 (1953); *U.S.* v. *Carver*, *260* U.S. 482 (1923). It is also well-settled that the decision of one circuit court of appeals does not bind the others. *Cf. C.I.R.* v. *Hansen*, 360 U.S. 446 (1959); *Flora* v. *U.S.*, 357 U.S. 63 (1958). Thus if another circuit court should render a decision contrary to the *Northwest* case and if review by the Supreme Court is sought and granted, the law could change. However, until that time, the Ninth Circuit's decision remains the highest court interpretation of the scope of the exemption contained in Section 203(b)(5) of the Interstate Commerce Act.

STATEMENT OF D. JACK GIBSON, PRESIDENT, MIDWEST COAST TRANSPORT, INC., 405½ EAST EIGHTH STREET, SIOUX FALLS, S. DAK.

Mr. GIBSON. Thank you, Mr. Chairman. My name is D. Jack Gibson, and I am president of Midwest Coast Transport, Inc., 405½ E. Eighth Street, Sioux Falls, S. Dak.

Midwest Coast Transport, Inc., began business on September 1, 1951, transporting principally meats and packinghouse products from the Midwest meatpacking States to west coast destinations and in 1957 this operation was expanded to serve meatpackers to the east coast and we are authorized as an irregular route common carrier of specialized commodities to transport meats, packinghouse products, frozen foods, canned goods, and many other commodities requiring protection from either heat or cold.

In 1958 we began experiencing our first competition from so-called farm cooperative shipping associations. The initial competition was was from an Illinois corporation, the Agricultural Commodity Service, who had agents in different Midwestern localities and operated with an agent at Council Bluffs, Iowa, who engaged in the transportation of meats and packinghouse products to the west coast States at a rate below the existing published rates of the common carriers engaged in this type of transportation service.

The agent in charge, Mr. Robert Crawford, later opened offices in Fort Worth, Tex., and continued to transport meats and packinghouse products from both Council Bluffs and Fort Worth. An action was instituted by our company and other perishable carriers in MC-C-2488 Sub 1 and after numerous hearings and orders by the Interstate Commerce Commission Mr. Crawford was ordered to cease and desist the operations conducted under the Agricultural Commodity Services.

In operating out of Fort Worth, Tex., in April of 1959, Agricultural Commodity Services, leased four vehicles from the Northwestern Distributors, Inc. of Fort Worth, Tex. This company was a truck leasing organization engaged in leasing direct to shippers and also to the Agricultural Commodity Service and was headed by one Mr. Jack Cobb who, after the final order of the Interstate Commerce Commission, ordering Agricultural Commodity Services to cease and desist, immediately formed the Agricultural Transportation Association, Inc., of Fort Worth, Tex., and again operated as a carrier under the agricultural exemption.

At the time of the order to cease and desist Agricultural Commodity Service, Agent Robert Crawford was operating a total of 65 trucks transporting meats and packinghouse products to the west coast.

Over the years, we have encountered competition from many different companies operating under the exemption and to name a few would be the Chatsworth Cooperative Marketing Association, an Illinois corporation; the Nelson Cooperative Association, of Vernon, Calif.; Milk Producers Cooperative Association, Kansas City, Kans.; Midwest Fruit Cooperative Association of Kansas City, Kans.; and other small cooperatives that have operated for short periods of time.

I would like to comment that the Milk Producers Cooperative Association in Kansas City is a legitimate farm cooperative dealing in milk and dairy products in Kansas and Missouri, and manufactures cheese, and only since the *Northwest* decision—that has been

discussed here this morning by other witnesses—and only since this time, have they gone in now to the general carriage of meats and packinghouse products from Midwestern States to West Coast States.

Senator LAUSCHE. Is it your position that the Agricultural Commodities Service company is not a legitimate farm cooperative?

Mr. GIBSON. The Agricultural Commodity Services previously mentioned, yes, that is the one that was in the decision cited by Commissioner Walrath and Commissioner Bush.

Senator LAUSCHE. What about the other companies that you have mentioned? I see that you have omitted Milk Producers Cooperative Association, of Kansas City. You say that it is a legitimate farm cooperative. What about the others that you have mentioned?

Mr. GIBSON. Insofar as my personal opinion, I feel that they are not.

Senator LAUSCHE. All right. Proceed.

Mr. GIBSON. Appendix A, attached, is a résumé of recent observations of transportation services being furnished by different cooperatives under the agricultural exemption. I will not read that list, but would appreciate it being put in the record.

Senator LAUSCHE. That will be done.

(Attachment to statement follows:)

APPENDIX A

March 4, 1966: California Marketing Co-op, Vernon, California. Destination unknown. Observed loading fresh meat at Sioux Falls, S.D.

March 11, 1966: Agricultural Transportation Association of Texas, Inc., Dallas, Texas. Observed loading fresh meat and packinghouse products at St. Paul, Minn. Destination, Portland, Oregon.

March 14, 1966: California Marketing Co-op. Observed loading fresh meat; suspended hog carcasses at Watertown, S.D. Destination unknown.

March 14, 1966: Chatsworth Cooperative Marketing Association (an Illinois Corporation). Observed at Sioux Falls, S.D., unloading canned orange drink from Chicago, Illinois.

March 31, 1966: California Marketing Co-op observed loading fresh meat at Sioux Falls, S.D. Destination, San Francisco, California.

April 15, 1966: California Marketing Co-op observed loading fresh meat at Sioux Falls, S. Dak. Destination, San Francisco, California.

May 20, 1966: California Marketing Co-op observed loading fresh meat at Sioux Falls, S. Dak. Destination unknown.

May 26, 1966: Agricultural Transportation Association of Texas. Three separate units observed loading fresh hog carcasses at Harlan, Iowa. Destination known to be California.

June 14, 1966: California Marketing Co-op observed loading fresh meat at Sioux Falls. Destination San Francisco, California.

June 24, 1966: California Marketing Co-op observed loading fresh meat at Sioux Falls, S.D. Destination, San Francisco, California.

June 27, 1966: Milk Producers Co-op Association, Kansas City, Kansas. Observed loading fresh meat at Sioux Falls, South Dakota. Destination, San Francisco.

Mr. GIBSON. At one time, Midwest Coast Transport transported an average of 25 loads a week of hog carcasses from Midwest origins to Western destinations. At this time our company, even though authorized as a common carrier to perform this service, and after diligent sales to attract this type of business, our company does not perform any such services for any meatpacker. Cooperative associations, to the best of my knowledge, are performing these services for the meatpacking industry exclusively, and under the guise of the agricultural exemption.

The Interstate Commerce Commission has been very cooperative in attempting to curtail illegal operations, but the due process of Administrative Procedure Act is cumbersome and a period of 2 to 3 years elapses before the cooperative is ordered to cease and desist and, in the event such an order is issued, a new cooperative; namely, with the same people, is immediately formed and another new service is instituted.

As a common carrier, we are subject to all of the rules and regulations of the Interstate Commerce Commission and expend a considerable amount of money each year to conduct and maintain a complete safety program for our driver personnel.

The operation of farm cooperatives, since they do not come under ICC regulations and since they have no authority that can be attacked by the ICC, the Commission is almost powerless in supervising the cooperative's safety, hours of service, and maintenance of vehicles.

With that, Mr. Chairman, I would like to conclude my testimony.

Senator LAUSCHE. Thank you very much.

Mr. Sender, do you have any questions?

Mr. SENDER. No, sir.

Senator LAUSCHE. All right.

Thank you very much, Mr. Gibson.

The next witness will be Mr. H. N. Grayson, president of the Safeway Truck Lines, Inc., of South Bend, Ind.

Mr. Grayson, if you will proceed. You can dispense with the reading of your preliminaries, and go right into the core of what you want to say.

STATEMENT OF H. N. GRAYSON, PRESIDENT, SAFEWAY TRUCK LINES, INC., SOUTH BEND, IND.

Mr. GRAYSON. Thank you, Mr. Chairman. And, if I may, I would like to deviate slightly from my prepared statement, although I would like it to go into the record.

Senator LAUSCHE. It will be printed in the record in full.

(The statement referred to follows:)

STATEMENT OF HERBERT N. GRAYSON, PRESIDENT OF SAFEWAY TRUCK LINES, INC., SOUTH BEND, IND., ON S. 1729 BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE SENATE COMMERCE COMMITTEE, JULY 14, 1966

My name is Herbert N. Grayson. I reside at 1445 East LaSalle Street in South Bend, Indiana. For the last ten years, I have been employed in the trucking industry in management positions for several companies. For the past three years, it has been my privilege to serve as President of Safeway Truck Lines, Inc., whose general offices are located at 20450 Ireland Road in South Bend, Indiana.

Safeway Truck Lines, Inc. has been in continuous operation under that name since 1934. Our operating authority, granted by the Interstate Commerce Commission, extends over 28 states. The bulwark of our business is the hauling of perishables, primarily meats, from the Middle West to the major metropolitan areas of the Eastern Seaboard, ranging from Massachusetts to Maryland. On the return trip, we haul general freight back to the Midwest. Safeway Truck Lines, Inc. operates 180 tractor semi-trailer units; maintains thirteen terminals in ten states, and employs over 300 persons.

I appear here today in support of S. 1729. The regulated motor carriers such as ourselves, must have some protection from the illegal co-op truck operators. We are virtually powerless to defend ourselves, and legislation of the type proposed here would seem to be the most equitable remedy for all concerned.

To illustrate the type of damage that can be done by such an illegal carrier, I would like to direct your attention to a particular movement of freight, which I believe is fairly characteristic of what is happening. In the latter part of 1964, our sales people in Albany, New York, contacted many of the shippers of slate flooring, who are headquartered in New York near the Vermont border. This slate is the type commonly found in the entry hall of a home or public building, and is shipped in cardboard cartons. They had need for the type of service and equipment that we were able to offer; and as a result, our sales efforts were quite successful. During the calendar year of 1965, we hauled 48 loads of this slate, having a gross revenue of $23,441.50. Thirty-one of these loads were destined for Chicago and its suburbs so that during that year we averaged about one load per week of what we considered to be attractive freight, both because of the rate which it carried and the destination area. Suddenly during the period between December 14, 1965, and January 29, 1966, we realized that we had only hauled one load of slate. Inquiry of the shippers revealed that they had diverted their freight to an organization known as Chatsworth Co-op. They advised that they had been informed by the Chatsworth personnel that this was a legal operation; and that Chatsworth had reduced the rate from our $1.35 cwt. to Chicago to $0.90 cwt. to Chicago. So far, through the first six months of 1966, we hauled a total of ten loads of this commodity from these same shippers, having a gross revenue of only $5,109.22, and just one of which was destined for Chicago. The bulk of the loads tendered to us in 1966 were destined for Wisconsin. In fact, every load since March 24, 1966, has been shipped to a consignee in that State; the last load we were called upon to transport to Chicago was on January 29, 1966. We have consistently called upon these shippers to solicit the freight only to be rebuffed by the lower level of rates being offered by Chatsworth. I surmise that the only reason we are still enjoying the business to Wisconsin is because that State has very stiff regulations where the registration of motor carriers are concerned, and also because the freight is destined to out-of-the-way cities in that State which might make it unattractive for the co-ops.

On April 22, 1966, Chatsworth Co-op Marketing Association was found guilty by jury on a criminal charge of operating as a for-hire carrier in interstate and foreign commerce without authority from the ICC and that the defendant, Jack H. Smith, was also found guilty of aiding and abetting such unauthorized operations. This case was tried before a jury in the United States Court for the District of Minnesota. A fine of $11,500 was levied against both Chatsworth and defendant Smith. In finding the defendants guilty, the jury had refused to accept the Chatsworth defense that it was an agricultural co-operative operating within the exemption of the Interstate Commerce Act. On February 1, 1966, in the United States District Court for the Northern District of Illinois, Chatsworth Co-operative and its President, John Howell, were enjoined from further unauthorized transportation operations.

Following these decisions, we made a determined effort to regain the business. We found that it was now being hauled by the International Marketing Association of Fort Worth, Texas, another co-op trucking organization which no one had heard of prior to this time. On February 11, 1966, one of the I.M.A. trucks appeared in our Albany terminal looking for a load to the West. The I.M.A. sign on the truck was loosely applied over the previous Chatsworth sign. The driver stated that they had been engaged in hauling tile from the quarries, but that there was no load at this particular time. In response to a question about I.M.A., he said that this was a replacement for Chatsworth and that they were going to "Run this way for a while until the heat was off." As recently as Tuesday of last week, I had occasion to speak with several of the larger consignees of this product in Chicago, and three of them informed me that they were still receiving their merchandise routed I.M.A., and that they certainly had no intentions of switching back to Safeway as long as the rates were so much cheaper.

Now the loss of this particular movement in and of itself is not catastrophic to our company; but if this sort of thing is allowed to continue unchecked—if the Chatsworths and I.M.A.s are allowed to spring up overnight using different names and different states of registration, then inevitably the cumulative effect will be disastrous to the regulated carriers. I have previously brought out the various criminal actions of which Chatsworth and its officers were found guilty. To bring this illegal operation and its officers to the bar of justice took several years. The amount of the fine spread over these years is insignificant. Our investigation reveals that the administrative personnel and drivers of I.M.A., located at Sioux City, Iowa, and Omaha, Nebraksa, were exactly the same people who operated under the name of Chatsworth. In fact, the officer who was fined was the head

of the Sioux City office of I.M.A. There is every reason to believe that I.M.A. was set up ahead of time in anticipation of some legal action against Chatsworth, and the transition of names took place in a single day with no loss of business. Now if the successor group does the same thing for two more years, and then another successor is ready to take its place, the cycle will never end.

I strongly urge your favorable consideration of this measure or any measure that will provide some protection to the regulated motor carriers from these illegal inroads, but yet preserve the exemption of the legal farm co-operative. I submit that the only manner in which this can be done is through the office of the Interstate Commerce Commission.

Mr. GRAYSON. I appear here today in support of legislation to halt the activities of the illegal trucker who is hiding under the protective umbrella of the Agricultural Marketing Act of 1929.

Regulated carriers such as ours are virtually powerless to defend themselves and must come here to seek equitable legislative remedy. To illustrate my point I should like to direct your attention to a particular movement of freight which is, I believe, fairly representative of what is going on.

In the latter part of 1964 our sales people in Albany, N.Y., canvassed many of the shippers of slate flooring who are headquartered in the quarry sections in New York State near the Vermont border. This slate is of the type commonly found in the entry hall of a home or public buildings, and is shipped in a cardboard container.

These shippers had a need for the type of service and equipment that we were able to offer, and, as a result, our sales efforts were successful. During the calendar year of 1965 we hauled 48 loads of this slate, grossing $23,441.50. Thirty-one of these loads were destined for delivery to Chicago and its suburbs. So, during that year we averaged about a load per week of what we considered to be attractive freight. Our rate was compensatory; the delivery destinations were in our general operating area; and, above all, they helped to provide the all-important balance to our operations.

Historically, Mr. Chairman, meat from the Middle West to the east coast has far overbalanced the commodities coming back, and balance is necessary to profit. And freight from this particular area of New York is very difficult. It is a most difficult position to be in.

Now, frequent follow-up calls by our sales people and myself upon both the shippers and the consignees of this commodity indicated that both were pleased with our company's service. And then suddenly during a 6-week period between December 14, 1965 and January 29, 1966, this traffic slumped to a single truckload.

Inquiry of the shippers revealed that they had diverted the bulk of their freight to an organization know as Chatsworth Co-op Marketing Association. They stated that they had been advised by Chatsworth personnel that this was perfectly legal, and, further, that Chatsworth had cut our published rate of $1.35 per hundredweight to Chicago to 90 cents per hundredweight.

As a result, through the first half of 1966 we have handled only 10 loads of this commodity from these shippers, grossing only $5,109. Only one of these loads went to Chicago, which is the key hub of our company's operations, and that was on January 29, 1966.

Every load tendered to us of this particular commodity since March 24, 1966, has been destined for delivery in the State of Wisconsin, and we surmised that the reason for that is that the State of Wisconsin has very strict laws regarding the registration of motor carriers allowed to operate in that State, and they are rigidly enforced.

Stated plainly, the best part of the business is gone and we have what is left.

Now let's take a look at Chatsworth Co-op Marketing Association. On February 1, 1966, the U.S. District Court for the Northern District of Illinois, Chatsworth Cooperative, and its president, John Howell, were enjoined from further unauthorized transportation operations.

On April 22, 1966, Chatsworth was found guilty on a criminal charge of operating as a for-hire carrier in interstate and foreign commerce without authority from the ICC. And defendant Jack H. Smith, an officer of Chatsworth, was found guilty of aiding and abetting such unauthorized operations.

This case was tried before a jury in the U.S. District Court for the District of Minnesota. A fine of $11,500 was levied against both Chatsworth and Smith.

In finding the defendants guilty the jury refused to accept Chatsworth's defense that it was an agricultural cooperative operating within the exemptions of the Interstate Commerce Act.

Now these two decisions represented a single victory over an illegal trucking operation, and they put Chatsworth out of business, at least under that name.

But it took several years to accomplish this and many hours of effort on the part of the Interstate Commerce Commission, the regulated trucking industry.

The amount of the fines, while substantial, are actually insignificant when spread over the several years of operation.

Following the injunction of February 1, 1966, we made a determined effort to regain this business. We found, to our dismay, that it was now being transported by the International Marketing Association, of Fort Worth, Tex., a name hitherto unknown. Our subsequent investigation reveals that the administrative personnel and the drivers of International Marketing Association, which are located in Sioux City, Iowa, and Omaha, Nebr., were and are exactly the same people who operated in Chatsworth. In fact, the officer, Mr. Smith, who was fined by the court in Minnesota, was and, as far as I know, still is the manager of the Sioux City office of International Marketing Association.

Further, I have every reason to believe that IMA was set up in anticipation of the legal actions against Chatsworth, and that, in fact, the transition of names took place in a single day without the loss of a pound of freight to them.

On February 11, 1966, an International Marketing Association truck appeared in our Albany, N.Y., terminal. It was looking for a load back to the West. The IMA sign on the tractor was loosely applied over the old Chatsworth sign, so that the Chatsworth sign was clearly visible. Under questioning by our terminal manager, the driver stated:

> It is just a replacement for Chatsworth. We are going to run this way for a while until the heat is off.

As recently as Tuesday of last week we had occasion to speak with several of the major consignees of this slate in the Chicago area, people about whom we had become familiar during the year——

Senator LAUSCHE. You mean Tuesday of the first week of July?

Mr. GRAYSON. Tuesday of last week, a week ago Tuesday.

These were the principal consignees of the slate in the Chicago area and people with whom we had become friendly over a period of the time we enjoyed the business, and they stated that they were still receiving their merchandise by IMA trucks, and that they would keep Safeway in mind.

Now the loss of this particular business in and of itself is not catastrophic to our company. However, if this sort of circumvention of the law is allowed to continue unchecked, if the Chatsworth and the IMA are allowed to spring up overnight under different names, different States of registration, then inevitably the cumulative effect of this must be disastrous to the regulated carrier. It truly is a vicious circle.

In closing, Mr. Chairman, I strongly urge your favorable consideration of any measure that will provide lasting protection from this type of illegal inroad, and it is my opinion that this can only be done through the good offices of the Interstate Commerce Commission.

With that, thank you very much for the opportunity to appear here and make my views known.

Senator LAUSCHE. Did Chatsworth hold itself out as an agricultural cooperative?

Mr. GRAYSON. Oh, yes. That was their defense in the criminal action against them.

Senator LAUSCHE. And that was their facade in going out and getting business?

Mr. GRAYSON. Facade is an apt word. That is correct.

Senator LAUSCHE. I think that is all. Thank you very much.

Mr. GRAYSON. Thank you, sir.

Senator LAUSCHE. We will have about a 5-minute recess.

(Brief recess.)

Senator LAUSCHE. The next witness will be Mr. Stoney M. Stubbs, chairman of the board, Frozen Food Express, Inc., of Dallas, Tex.

Mr. Stubbs, we will be glad to hear you.

STATEMENT OF STONEY M. STUBBS, CHAIRMAN OF THE BOARD, FROZEN FOOD EXPRESS, INC., DALLAS, TEX.

Mr. STUBBS. Mr. Chairman and members, my name is Stoney M. Stubbs. I am chairman of the board and chief executive officer of Frozen Food Express, Inc., Dallas, Tex., a common motor carrier operating under certificates granted by the Interstate Commerce Commission. Our company specializes in the transportation of perishable food products and operates generally in the Southwest, Midwest, and western part of the United States. My company is a Texas corporation having been organized under the laws of the State of Texas in 1946 and has been engaging in its certificated transportation activities since that time.

I am also president of the Texas Motor Transportation Association and appear in behalf of all the members of that association in the State of Texas in connection with this legislation. Membership in that association at this time exceeds 1,000 truck operators.

I would like to have placed in the record at this time a copy of a recent resolution passed by the board of directors of the Texas Motor Transportation Association in convention at Houston, Tex., on

June 23, 1966, bearing on the transportation activities of agricultural co-ops.

Senator LAUSCHE. That will be so done.

Mr. STUBBS. Frozen Food Express began its operation in interstate commerce in 1948 and since that time up until January 1, 1962, enjoyed a steady growth in operations and profitability. In 1948 the company for the first time reached a million dollars in gross revenues and the rate of growth each year thereafter was approximately 20 percent until January 1, 1962, in which the revenues for the previous year, 1961, were approximately $9 million. Since 1962, our company has not been able to continue the rate of growth we had previously experienced in servicing the shippers and receivers in the territory in which we operate. This was primarily because of the advent of substantial operations on the part of illegally organized and operated so-called agricultural co-ops engaged exclusively in the transportation of perishable products for hire without the benefit of certificates and permits from the Interstate Commerce Commission and without economic or rate regulation by the Interstate Commerce Commission.

I would like now to describe the effect of the illegal agricultural co-ops on the operations of companies such as ours; the effect they have had on the transportation of perishable food products generally; and the effect they have had on the marketing of perishable products on the part of producers. Now, Mr. Chairman, the first major co-op on the scene was one commonly referred to as Agricultural Commodity Service, incorporated under Illinois law and with its home base in Council Bluffs, Iowa. This company began its initial operations in 1957 and engaged primarily in the transportation of meat products from the Corn Belt section of the United States to the west coast.

This co-op maintained that it could engage in the interstate transportation of goods for hire without the permits and qualifications of the Interstate Commerce Commission and proceeded to do so.

Since this organization contended that it could engage in the transportation of products for hire, it was able to negotiate on a daily basis for its services with shippers who were willing to take the chance and use such services. The result insofar as the common carriers were concerned was that the agricultural co-op was in a position to cream the more desirable traffic offered by the shippers. The less desirable traffic or the traffic involving empty miles or special services was then tendered to the common carriers. The common carriers were thus placed in a position since they were required to serve the public of having to serve the shippers for their less desirable traffic without the opportunity to participate in the better grade of traffic.

Since this co-op engaged principally in the transportation of fresh carcass meat from the Corn Belt to the west coast and since a great many meatpackers recognized that this was not a legal for-hire transportation organization, some packers refused to use the services of this company. Such packers that did use the services of this type of transporter succeeded in making substantial inroads in the marketing of their products in the California market at the expense of those meatpackers using legitimate for-hire common carriers. It has been said by many meatpackers that a difference of 20 cents per hundredweight in the highly competitive carcass meat business is sufficient to lose a sale and the rates of Agricultural Commodity Service were

frequently 20 to 25 cents below that charged by other common carriers. This tended to disrupt the established transportation and marketing of these products from the Midwest to the west coast.

The price problems increased as there was more and more pressure exerted on the regulated common carriers to make concessions to enable their users to meet this competition. The end result has been over the years a complete disruption of the rate structures involving the movement of meat and meat products from the Midwest to the western part of the United States. This same thing has happened from the Midwest to other sections of the United States although perhaps not to the degree it has to the west coast.

An investigation into the activities of this company was begun by the Interstate Commerce Commission and, after long and tedious hearings, this co-op was issued an order to cease and desist its transportation activities and this was finally accomplished as of February 18, 1962, and, on the very next day, the agent for Agricultural Commodity Service with an office in Fort Worth, organized and began the operation of a similar agricultural co-op under the name of Agricultural Transportation Association of Texas. While this association was apparently organized as a co-op under the laws of the State of Texas, it actually was organized for the purpose of engaging in transportation for hire without the necessity of securing certificates and permits from the Interstate Commerce Commission.

The same practices of Agricultural Commodity Service were utilized by its successor company with generally the same results. Here again a long and tedious investigation and hearing procedure was instituted by the Interstate Commerce Commission and although this operation began on February 19, 1962, as of today a final order has not yet been issued by the Interstate Commerce Commission. The hearing examiner recommended on December 18, 1963, that the co-op be issued a cease-and-desist order and Division 1 of the Interstate Commerce Commission followed this same general pattern on October 29, 1964. In the intervening time the Agricultural Transportation Association of Texas has continued its transportation activities with the same general results as were described above with respect to Agricultural Commodity Service.

You can see by examining the dates involved herein that the growth, expansion, and development of my company, Frozen Food Express, came to a grinding halt just about the time the Agricultural Transportation Association of Texas began its substantial motor carrier operation. It has been very difficult for our company to continue to sustain itself during this period of time and I am not sure that we can continue to sustain our economic muscle if some sort of relief from this type of illegal transportation is denied us. Because of my position in the industry and my knowledge of many other motor carriers similarly situated, I think I can say without question that all of them have had very severe economic problems that have been created to a very large degree by the activities of these illegal transportation co-ops.

I would like to recite, for example, some specific traffic that has been lost by our company during the period of time involved so that you will have a little bit better idea of the specifics that are involved here. We have lost traffic from Armour & Co. in Houston, Tex.; Estes

Packing Co. in Fort Worth, Tex.; Watkins Packing Co. in Dalhart, Tex.; Vernon Calhoun Packing Co. in Palestine, Tex.; Neuhoff Bros. Packers in Dallas, Tex.; San Antonio Packing Co. in San Antonio, Tex.; Excell Packing Co. in Wichita, Kans.; Union Packing Co. in Omaha, Nebr.; Iowa Beef Packers in Dennison, Iowa; Corn Huskers Packing Co. in Omaha, Nebr.; Sioux City Beef in Sioux City, Iowa; Missouri Beef Packers in Rockport, Mo., and Sunflower Packing Co. in Wichita, Kans. As a matter of interest we have also lost a substantial amount of traffic from national concerns which was diverted to various agricultural transportation co-ops. Such concerns were Libby McNeil & Libby, Pet Milk Co., Safeway Stores, Topco Associates, et cetera.

It is not the intent of my company nor is it the intention of the Transportation Motor Association of Texas to in any way restrict the operation of a properly organized legitimate agricultural co-op. We have no quarrel with the legitimate agricultural co-op engaging in the transportation of commodities and products for its members since we feel that in effect this is similar to the operation of trucks by any other business corporation transporting its own merchandise. I think all of you will agree that if a private carrier is not authorized to engage in the transportation for hire, for other than its own company or companies—that is, a company operating its own trucks and transporting its own products—it is logical that an agriculatural cooperative association should not be allowed to engage in transportation for hire in interstate for other than its own members or in connection with certain agricultural products which have been previously discussed.

Our company feels that enforcement activities against these illegal for-hire transportation companies has not been successful, that the general transportation policy of this country has been substantially disrupted and that the economic survival of many motor carriers engaged in the transportation of perishable food products is at stake if these agricultural transportation co-ops are allowed to continue. For these reasons we support this legislation to insure that the agricultural co-op engaged in for-hire transportation is properly constituted and legitimate within the framework of this legislation.

Thank you.

(The aforementioned resolution follows).

TEXAS MOTOR TRANSPORTATION ASSOCIATION, 406 EAST 11TH, AUSTIN, TEX.

RESOLUTION

Whereas, there is a large amount of illegal transportation of property in interstate commerce; and

Whereas, a significant portion of such illegal operations are camouflaged as the operations of farm cooperatives; and

Whereas, the decision of the Ninth Circuit Court of Appeals, in the Northwest Co-op case has greatly expanded the commodities which can be transported for non-members by bona fide farm cooperatives;

Now, therefore, be it resolved, that the Board of Directors of the Texas Motor Transportation Association, meeting in annual session in Houston, Texas, on June 23, 1966:

(1) Urges the Interstate Commerce Commission and all state transportation enforcement agencies, individually, and cooperatively to take prompt and decisive action to expose and prosecute illegal truck operations masquerading as those of farm cooperatives;

(2) Urges the Interstate Commerce Commission to take appropriate action to continue to enforce its long-standing interpretation that non-member hauling by

farm cooperatives must be limited to farm-related commodities, since the contrary approach taken by the Ninth Circuit Court of Appeals in the Northwest Co-op case had not been approved by the Supreme Court of the United States;

(3) Urges the organized trucking industry to take steps necessary to secure legislative relief from the decision in the Northwest Co-op case, and pledges its complete cooperation in such an effort.

Unanimously adopted by the Board of Directors, Texas Motor Transportation Association, June 23, 1966, in Annual Session at Houston, Texas.

JAMES E. TAYLOR,
Executive Director.

Senator LAUSCHE. Mr. Cannon, any questions?

Senator CANNON. No questions.

Senator LAUSCHE. Mr. Sender?

Mr. SENDER. No questions.

Senator LAUSCHE. Thanks very much for your very compact and yet thorough presentation.

Mr. STUBBS. Thank you, Mr. Chairman.

Senator LAUSCHE. Mr. Winton Teagle, the president of Refrigerated Transport Co., Inc., of Atlanta, Ga.

STATEMENT OF WINTON TEAGLE, PRESIDENT, REFRIGERATED TRANSPORT CO., INC., ATLANTA, GA.

Senator LAUSCHE. Mr. Teagle, have I met you before?

Mr. TEAGLE. Yes, sir; we were here in 1958 during the——

Senator LAUSCHE. We didn't meet when I had the fight with the truckers about the Ohio State ton-mile tax, did we, in Atlanta, Ga.?

Mr. TEAGLE. No.

Senator LAUSCHE. You weren't there?

Mr. TEAGLE. No, I kind of refereed that set-to impartially.

As my statement says, I am president of Refrigerated Transport Co. of Atlanta, Ga., and we are a certificated irregular route motor carrier of commodities requiring refrigeration in transit. Our company operates generally between the southeast on the one hand and on the other, points in the Southwest, Midwest, North, and East.

Of course, we are here today in support of Senate bill 1729 or any compromise bill that might come from it.

It has been our experience that unless changes are made in our Transportation Act to curb the unlawful agricultural cooperative, there will be no organized motor carrier industry as we know it today. We feel it will exist in a jungle of chaos as it was in before the passage of the Motor Carrier Act, part 2, in 1935.

We hope to show you why we think this will come about.

Much has been said here today about a carrier by truck operating out of Fort Worth, Tex., under the name of Agricultural Transportation Association of Texas. It is operating as an agricultural co-op, commonly referred to as ATA of Texas. The Interstate Commerce Commission at one time issued a cease and desist order against this operation but the order has been stayed by administrative procedure.

This entity has been operating for the better part of 3 years. It has few, if any, branch offices. Its principal place of business is in Fort Worth, Tex.

It has no sales force as we know it in the industry.

It has no traffic department. It needs none. It simply issues what it calls rate sheets on which a few specified towns are named showing rates from a few specified origin points on certain commodities.

For example, for Phelps City, Mo., to Jacksonville, Fla., this rate sheet reflects that it will haul at least 35,000 pounds of carcass meat for $1.85 per hundredweight. From the same origin point to Tampa, Fla., the rate it shows is $1.90 per hundredweight. To Miami, Fla., the rate is $2.05 per hundredweight. You can compare these rates with those published by our company in tariffs lawfully on file with the Interstate Commerce Commission. To Jacksonville, Fla., $1.89 per hundredweight; to Tampa, Fla., $2.01 per hundredweight; to Miami, Fla., $2.22 per hundredweight.

There is ample reason for any shipper who can lawfully or morally justify using the service of this concern. All pay the same price for live animals. All pay about the same for labor under areawide labor contracts. All the plants are about the same in efficiency. The freight rate is the only variable that helps one shipper sell cheaper to a customer than that of his competitor.

In the heavy meat-producing areas of Iowa, Nebraska, Minnesota, many shippers have used it. We have known that Iowa Beef Packers, Dakota City, Nebr., Fort Dodge, Iowa, and Denison, Iowa; Farmbest at Denison, Iowa; Missouri Beef Packers, Phelps City, Mo., all use this trucking concern to Florida. Other meatpackers using the ATA of Texas are Needham Packing, Sioux City, Iowa; Armour & Co., Omaha, Nebr., and Sioux City, Iowa; Swift & Co., Sioux City, Iowa; Spencer Packing Co., Spencer, Iowa. These are all reputable shippers of meat and meat products. Here is a point I would like to emphasize. These shippers all use refrigerated transport companies and other certificated motor carriers only if trucks cannot be furnished by ATA of Texas.

Our trucks await return loans of accept shipments to out-of-the-way places because ATA of Texas has creamed off the desirable loads into the peninsula of Florida.

Shippers and receivers using ATA of Texas out of Texas are also considerable in number. City Packing Co., Fort Worth; Estes Packing Co., Fort Worth; Kain Cattle, Fort Worth; First Street Corp., Fort Worth; Standard Meat Co., Fort Worth, and Paris, Tex.; Cudahy Packing Co., San Antonio, Tex.; Melton Provision of San Antonio, Tex.; Circle G Packing Co., Paris, Tex.; Vernon Calhoun Packing Co., Palestine, Tex.; San Angelo Packing Co., San Angelo, Tex.; Bub Davis Packing, Luling, Tex.; Neuhoff Brothers Packers, Dallas; and Texas Meat Packers, Dallas, Tex., are some. With such a list as this it is indeed questionable how those who do not use ATA of Texas compete with those who do.

Many thousands of pounds of meat and meat products move into Florida from the Midwest and Southwest the year round. The big, heavy item shipped by Florida the year around is frozen citrus concentrate. Since a balanced haul is a must in any trucking operation, the ATA of Texas has undercut the rates on frozen citrus concentrate from Florida both to the Midwest and to the Southwest. We have compiled a list of those wholesale grocery companies in the Southwest that are using ATA of Texas on movements of citrus inbound. Kimbell Grocert, Fort Worth; Wapples Platter Co., Fort Worth; Ben E. Keith Co., Fort Worth and west Texas areas; Safeway Stores, Inc., Garland, Tex.; IGA Stores, Oklahoma City, Okla.; H. E. Butt Wholesale Grocery Co., Corpus Christi, Tex., with warehouses in San Antonio, Tex.; Grocery Supply Co., Houston, Tex.; Fleming Co.,

Houston, Tex.; Steadman Wholesale Grocery Co., Beaumont and Houston, Tex.

These companies order frozen citrus concentrate from various shippers in Florida who, while they are not members of any agricultural co-op, must use the routing specified by their customer if they expect to make future or even present sales.

A rate sheet is even published by the ATA of Texas on frozen citrus concentrate. A copy of that rate sheet is attached and shown as exhibit I. Also attached and shown as exhibit II is a comparison of our rates on the same commodities to and from the same points.

At this point we have dwelled on movements of meat in one direction and movements of frozen citrus concentrate in the other. These are high-density commodities and produce the bulk of our revenues. There is relatively little deadhead in moving these commodities. The rates are on a reasonable compensatory level and are not subject to extreme fluctuation either up or down.

The ATA of Texas knows this and has made full use of the business. He needs no sales department. He needs no traffic department. He doesn't report any commodity statistics to the ICC. He needs no branch offices and he does not give a complete transportation service, as required by the National Transportation Office.

Senator LAUSCHE. Why does he not need these services that you are required to engage in? What is his advantage that enables him to dispense with the expenses of providing these services?

Mr. TEAGLE. We furnish less-than-truckload shipments, from 5 or 10 pounds to 10,000 pounds to anyone who demands that service. He doesn't do that.

Senator LAUSCHE. Is he able to carry at a rate lower than yours because of the omission of those expenses?

Mr. TEAGLE. Yes, sir; and because he can get a balanced haul in both directions.

Senator LAUSCHE. Are his rates generally lower than yours?

Mr. TEAGLE. About 25 cents a hundred.

Senator LAUSCHE. Does that difference generally run through the rate which you are required to charge and the rate that he charges?

Mr. TEAGLE. Yes, sir.

Senator LAUSCHE. Proceed.

Mr. TEAGLE. The ATA of Texas will accept no less-than-truckload shipments. He will not operate into an area where there are no backhauls. He will not take any freight from Florida to the eastern seaboard. He will take no freight from the Southwest or Midwest to the State of Mississippi simply because there is no backhaul from Mississippi. To deadhead to Florida for a backhaul would make his "cut rate" southbound unprofitable.

If the certificated common carrier cannot compete with this type of motor carrier service, what is to become of that shipper or receiver who is out of the balanced-haul area? Is he going to be forced to pay higher rates to get his freight hauled?

It seems to me that an agricultural co-op, truly and honestly reflecting the needs of its member group, would stem from a single agricultural group and be responding to its needs and desires. Instead, here is ATA of Texas, a trucking company formed by a professional truck operator with men contracted to him selling his wares to, on the one hand, meat packers in the Midwest and Southwest,

spread over a wide geographical producing area, and on the other hand, to packers and receivers of frozen orange concentrate in Florida. Therefore, instead of having the producers needs giving birth to a transportation service, here is the professional transportation service selecting piece by piece, packer by packer, those producers who would best fit his desires, his purpose in selecting the longest haul, highest paying shipments. This is, in my opinion, a trucking company masquerading as a cooperative, hiding its true purpose, which is to be able through its ability to cut rates, select the cream of the long-haul traffic and operate scot-free of supervision from any governmental agency.

Supervision and control of these alleged co-ops must come about and must come about quickly. They will grow in numbers very rapidly. The produce hauler of the past who existed and lived by his wits will no longer exist. In his place will be marketing and agricultural cooperatives hauling produce in one direction and television sets, chemicals, textiles and what have you on the return haul. There will be spawned a "gray area" of much greater magnitude than the agricultural exemptions ever did produce.

I want to make one final statement to show that this is not idle speculation. May 10, 1966, there was organized an All American Association. One of the incorporators is shown as a transporter and was formerly an employee of ATA of Texas. Paragraph 2 of the articles of incorporation read "the purposes for which the association is formed are to engage in the activity of producing, cultivating and caring for citrus groves, cultivating, producing, and marketing and selling of agricultural products and citrus fruits of its members, etc." This association formed for this purpose has as its principal place of business Rural Route 1, Box 255, Weatherford, Tex. Does it make sense to set up an association for this purpose when the nearest Texas orange grove is 420 miles away, the neartest Florida grove is 1,109 miles and the nearest California grove is about 1,366 miles. This is just another phony co-op that has sprouted and it won't be the last unless controls are placed on this type of transportation activity.

Senator LAUSCHE. Mr. Cannon?

Mr. CANNON. I have no questions.

Senator LAUSCHE. Mr. Sender?

Mr. SENDER. No questions.

Senator LAUSCHE. I wanted to put a question at this point to Mr. Walrath. Under existing law, what implements would you have to reach this company that has just been described by Mr. Teagle? He contends that it is not a farmer's cooperative, that it is geographically so far removed from the citrus production that it is laboring under or putting out a false front saying that it is a co-op when in fact it isn't. How would the Interstate Commerce Commission proceed to reach it under its powers?

Mr. WALRATH. I would think, Mr. Chairman, that under the present law, it would be very difficult indeed unless as we pointed out earlier, unless we had some experience in this operation. Certainly we would have no right to go in and look at his books and records to see that he is operating legitimately, unless something in the nature of the amendments suggested currently were made effective law, I think it would be very difficult indeed at this time.

Senator LAUSCHE. Under existing law you would have no authority to examine its books or subpena its operators to ascertain what its genuine purpose of operation is?

Mr. WALRATH. That is correct, sir.

Senator LAUSCHE. And you propose an amendment to the present law which under circumstances of this character, would give you the right to subpena the officers, ask for the production of books, and examine the books?

Mr. WALRATH. This is correct, sir, either under our suggestions or as I understand it, under those that have also been made today.

Senator LAUSCHE. That is all.

EXHIBIT I.—*ATA rates from central Florida, effective Aug. 4, 1964, until further notice*

	[1] 38,000	[1] 31,000	[1] 27,000	[2] 20,000	[2] 15,000	[2] 10,000	[2] 5,000
Hutchinson, Kans	$1.87	$1.97	$2.07	$2.17	$2.22	$2.27	$2.47
Topeka, Kans	1.77	1.87	1.97	2.07	2.12	2.17	2.37
Wichita, Kans	1.85	1.95	2.05	2.15	2.20	2.25	2.45
Chicago, Ill	1.61	1.71	1.81	1.91	1.96	2.01	2.21
Decatur, Ill	1.55	1.65	1.75	1.85	1.90	1.95	2.15
Fort Wayne, Ind	1.56	1.66	1.76	1.86	1.91	1.96	2.16
Muncie, Ind	1.52	1.62	1.72	1.82	1.87	1.92	2.12
Yorktown, Ind	1.55	1.65	1.75	1.85	1.90	1.95	2.15
Des Moines, Iowa	1.73	1.83	1.93	2.03	2.08	2.13	2.33
Fort Dodge, Iowa	3.78	1.88	1.98	2.08	2.13	2.18	2.38
Sioux City, Iowa	1.82	1.92	2.02	2.12	2.17	2.22	2.42
Woodward, Iowa (Ames)	1.78	1.88	1.98	2.08	2.13	2.18	2.38
Detroit, Mich	1.61	1.71	1.81	1.91	1.96	2.01	2.21
Minneapolis, Minn	1.85	1.95	2.05	2.15	2.20	2.25	2.45
Kansas City, Mo	1.71	1.81	1.91	2.01	2.06	2.11	2.31
St. Joseph, Mo	1.73	1.83	1.93	2.03	2.08	2.13	2.33
St. Louis, Mo	1.52	1.62	1.72	1.82	1.87	1.92	2.12
Springfield, Mo	1.67	1.77	1.87	1.97	2.02	2.07	2.27
Omaha, Nebr	1.78	1.88	1.98	2.08	2.13	2.18	2.38
Norfolk, Nebr	1.87	1.97	2.07	2.17	2.22	2.27	2.47
Oklahoma City, Okla	1.89	1.99	2.09	2.19	2.24	2.29	2.49
Tulsa, Okla	1.82	1.92	2.02	2.12	2.17	2.22	2.42
Amarillo, Tex	2.10	2.20	2.30	2.40	2.45	2.50	2.70
Austin, Tex	1.82	1.92	2.02	2.12	2.17	2.22	2.42
Dalhart, Tex	2.16	2.26	2.36	2.46	2.51	2.56	2.76
Dallas, Tex	1.74	1.84	1.94	2.04	2.09	2.14	2.34
El Paso, Tex	2.34	2.44	2.54	2.64	2.69	2.74	2.94
Houston, Tex	1.65	1.75	1.85	1.95	2.00	2.05	2.25
Lubbock, Tex	2.10	2.20	2.30	2.40	2.45	2.50	2.70
San Antonio, Tex	1.85	1.95	2.05	2.15	2.20	2.25	2.45
Tyler, Tex	1.65	1.75	1.85	1.95	2.00	2.05	2.25
Little Chute, Wis	1.72	1.82	1.92	2.02	2.07	2.12	2.32
Madison, Wis	1.63	1.73	1.83	1.93	1.98	2.03	2.23
Marshfield, Wis	1.75	1.85	1.95	2.05	2.10	2.15	2.35
Milwaukee, Wis	1.65	1.75	1.85	1.95	2.00	2.05	2.25
Shreveport, La	1.54	1.64	1.74	1.84	1.89	1.94	2.14

[1] Truckload rates: Stopoff and pickup charges, total of 4 pickups and stopoffs at no charge (includes original pickup and final destination); next 3 stopoffs $12.50 each; $25 per stopoff thereafter.
[2] LTL.

EXHIBIT II.—*From Orlando, Fla., effective July 6, 1966*[1] *(from SMCRC 200–B, MF–ICC 1334)*

	31,00	27,000	10,000	5,000	35,000
Hutchinson, Kans	$2.12	$2.22	$2.44	$2.93	
Topeka, Kans	1.99	2.09	2.30	2.76	
Wichita, Kans	2.10	2.20	2.42	2.90	
Chicago, Ill	1.81	1.91	2.10	2.52	$1.72
Decatur, Ill	1.75	1.85	2.03	2.44	
Fort Wayne, Ind	1.76	1.86	2.04	2.46	
Muncie, Ind	1.72	1.82	2.00	2.40	
Yorktown, Ind	1.72	1.82	2.00	2.40	
Des Moines, Iowa	1.98	2.08	2.29	2.75	
Fort Dodge, Iowa	2.04	2.14	2.35	2.82	
Sioux City, Iowa	2.08	2.18	2.40	2.88	
Woodward, Iowa (Ames)	1.98	2.08	2.29	2.75	
Detroit, Mich	1.81	1.91	2.10	2.52	
Minneapolis, Minn	2.09	2.19	2.41	2.89	1.97
Kansas City, Mo	1.97	2.07	2.28	2.73	
St. Joseph, Mo	1.98	2.08	2.29	2.75	
St. Louis, Mo	1.72	1.82	2.00	2.40	
Springfield, Mo	1.87	1.97	2.17	2.60	
Omaha, Nebr	2.04	2.14	2.35	2.82	
Norfolk, Nebr	2.11	2.21	2.43	2.92	
Oklahoma City, Okla	2.09	2.19	2.41	2.89	
Tulsa, Okla	2.02	2.12	2.33	2.80	
Amarillo, Tex	2.30	2.20	2.42	2.90	
Austin, Tex	2.02	2.12	2.33	2.80	
Dalhart, Tex	2.36	2.46	2.70	3.25	
Dallas, Tex	1.94	2.04	2.24	2.69	1.84
El Paso, Tex	2.54	2.64	2.90	3.48	
Houston, Tex	1.86	1.96	2.15	2.59	
Lubbock, Tex	2.30	2.40	2.64	3.17	
San Antonio, Tex	2.05	2.15	2.36	2.84	
Tyler, Tex	1.85	1.95	2.14	2.57	
Little Chute, Wis	1.97	2.07	2.28	2.73	
Madison, Wis	1.87	1.97	2.17	2.60	
Marshfield, Wis	1.99	2.09	2.30	2.76	
Milwaukee, Wis	1.85	1.95	2.14	2.57	
Shreveport, La	1.74	1.84	2.02	2.43	

[1] Truckload rates: Stopoff and pickup charges, total of 4 stops en route at $17 each or $68 total. (Rates include 1 pickup and 1 delivery without additional charge.)

Senator LAUSCHE. The next witness will be Mr. William Watkins, president, Watkins Motor Lines, Inc., Thomasville, Ga.

STATEMENT OF WILLIAM WATKINS, PRESIDENT, WATKINS MOTOR LINES, INC., THOMASVILLE, GA.

Mr. WATKINS. Mr. Chairman, my name is Bill Watkins and I reside at Thomasville, Ga., and I operate a common carrier by the name of Watkins Motor Lines, domiciled at Thomasville, Ga. However, our principal operation is to and from Florida, which is a State to which this farmer cooperative transportation has the greatest threat.

For the past several years, the progress of our business has been plagued by various gray area trucking operations, some of which in recent years have grown to multimillion dollar operations. The one Mr. Teagle just outlined, conservatively has taken $2½ million a year revenue that we did enjoy out of Florida. They have been conducting their business under the guise of farmer cooperatives and defending themselves before the ICC enforcement procedures under sections of the Motor Carrier Act, which were intended, as I always felt, to benefit the legitimate farmer.

In Florida, at least half of the citrus production down there is being carried on through legitimate operations. Before the *Northwest* case, none of those co-ops down there would condone any of this so-called co-op transportation. In recent months, since that decision in the

Northwest case, I would say every major farm co-op dealing in citrus down there has joined this ATA of Texas and by their coming into this, it could possibly legalize what heretofore had probably been an illegal operation.

If my interpretation of the way the court has effected this exemption is right, these co-ops I'm referring to undoubtedly do around $150 million annual sales, so the limit as to the amount that a co-op to which they were a member would have to produce transportation would be unlimited. However, the way Mr. Cobb has been operating his co-op is not for the benefit, as ATA of Texas, of the members so much except in lower rates that he gives them off of the top. So his nonmembers benefit about equally with his member.

These co-ops in Florida to this point aren't expecting dividends and things like that that is enticing them to get into Mr. Cobb's co-op, but it is the 25 cents a hundred lower rate that Mr. Teagle referred to.

Now Watkins Motor Lines has been in business for about 18 years hauling perishable food products out of Florida made by the citrus growers down there and in the 18 years, we have just experienced our first loss period. We have been a profitable organization up until this time. But the citrus traffic is being creamed off by ATA of Texas and now this new one, All America, which is formed by the general manager of ATA of Texas, who has left Mr. Cobb, who is president of ATA of Texas, and gone into business for himself. He is down in Florida soliciting the membership of the same group of co-ops that also belong to ATA of Texas, promising them even lower rates.

I am varying from my prepared testimony because nearly everything I said here has been said earlier. But, no Florida regular co-op has engaged in any of this for-hire transportation business yet themselves although all of them—well, Mr. Marvin Walker, who is president of one of the larger ones in Florida called Florida Citrus Canners Cooperative and another one, The Garden Citrus Growers Cooperative at Orlando and Adams Packing Association at Allandale, all of them know now that they could produce or put together their own truck fleet, go North and haul back products for RCA or any of this multiplicity of technical commodities that are being used at Cape Canaveral, and so forth.

There has been one co-op formed near Miami called Cape—I don't know where they got the name Cape unless it is because they are dealing primarily southbound in hauling manufactured products.

Prior to the *Northwest* decision, all the co-op trucking in and out of Florida has been limited to foodstuffs, but the foodstuffs weren't limited that they hauled to farmer produce. They hauled pies, they hauled all kinds of processed food items of any type. Primarily it was meat to begin with, but I don't know of any processed food item that we are now hauling that we aren't having competition from the co-ops such as processed food dinners and even condiments and things like that. They just don't stop at anything. They haul canned foods and my experience has been that there are very few reliable exempt carriers, meaning those that operated in the exemption purview, where they had no economic regulation.

Now this co-op exemption to and from the Miami area, which is predominantly Florida, is going to put into the entire regulated truck industry the same element of no regulation on rates and, as I have

just described, this new All America has been formed and the same people that were in there, they have spun out and they are offering lower rates than the other co-op.

Now, if somebody else comes along under All America and cuts out that rate, we will be back to the same lack of any kind of stability that has existed for years in the farm produce hauling. I can't think of a trucker with more than a dozen or so trucks that is engaged in hauling exclusively under the exemption because every direction is backhaul for somebody.

You take the farmer that starts out in Florida hauling his celery or his lettuce. That exempt trucker is going North and he gets into apply country and he cuts the rates on apples back to Florida so low, that then the Florida farmer, he has to quit and then the apple grower, he has to put that on his truck and he will haul so low for the exempt shipment he can get in Florida, that he then has to go out of business. So, it is just a seesaw.

That is what I envision that this exemption to and from our heavily agriculture area is going to do for the regulated trucking operations.

Senator LAUSCHE. Your statement as typed will be put in the record as if you had read it.

Any questions, Mr. Sender?

Mr. SENDER. No questions.

Senator LAUSCHE. All right, thanks very much.

(The full statement follows:)

STATEMENT OF BILL WATKINS, PRESIDENT OF THE WATKINS MOTOR LINES, INC., THOMASVILLE, GA., ON S. 1729

Mr. Chairman, Members of the Committee, my name is Bill Watkins. I reside at Thomasville, Georgia. I am president of Watkins Motor Lines, Inc., a common carrier by motor vehicles, operating under a certificate, with various subs thereto, issued by the I.C.C. under Certificate M.C. 95540.

Watkins Motor Lines is primarily a carrier of perishable foodstuffs. For the past several years the progress of our business has been plagued by various "grey area" trucking operations, some of which in recent years have grown to multi-million dollar operations. These most successful illegal trucking operations have been conducted under the guise of farmer cooperatives relying on and defending themselves before I.C.C. enforcement proceedings under certain sections of the Motor Carrier Act which were intended to exempt and benefit farmers and legitimate cooperatives. I am here today in support of this bill which I hope would put into the hands of the I.C.C. proper legal support for their efforts to enforce the spirit and intentions of the motor carrier regulatory act.

These so called cooperatives are not being operated for the benefit of growers but are, in effect, big profit organizations operated for the benefit of the owners and certain shippers who benefit by cut rates which are slightly reduced for the purpose of creaming off traffic and not supporting general transportation for the benefit of the public.

The worst one to hit our company is one headquartered at Fort Worth, Texas, by the name of Agricultural Transport Association of Texas. This so-called cooperative association has materially affected our revenues and, therefore, our ability to serve the public. They are hauling for the general public—for chain stores, meat packers, frozen food manufacturers, etc.—but will not assume any obligation to haul any traffic that they don't want.

In Florida, they are creaming off the frozen orange juice, hauling both for corporations and cooperatives. To be specific, we have had to reduce our refrigerated trailer system from 250 trailers of a year ago to 191 today as a result of the loss of business that this company has taken from us. They are hauling for such meat packers as Max Bauer Meat Company, Miami, Florida; Swift & Company, Chicago, Illinois; Iowa Beef Packers, Ft. Dodge, Iowa; and for such chain stores as Safeway Stores who is a national outfit headquartered at Oakland, California; Furr's Super Markets, Lubbock, Texas; and Super Value Stores, Hopkins, Minnesota.

They have limited their operations to where they can get top revenue loads and move between areas where they can operate a 100% balance in freight and cut rates to the shippers for the purpose of having shippers hold loads for them until the trucks arrive to keep a full balance in freight hauling. They have lowered rates and have upset the rate structure in the industry and have taken valuable traffic we need to balance our movements to economically offer and perform an overall refrigerated truck service for the public.

In recent court cases, the court's interpretation of exemptions, that run to cooperatives, are such that now a cooperative based in Flordia can haul farm commodities north and pick up a load of electronic gear destined to Cape Canaveral on the return load and not be touched by the law. They can haul a load of any type merchandise on return load for non-members or the government without a certificate as we are required to have. This exemption is available to cooperatives but not to the farmer himself under the court interpretation of the law.

We think this has been bad to date, but we have not seen anything as to what is going to happen. We even know of cooperatives that are spinning out of cooperatives and are cutting cooperatives' rates to take trucking business away from other cooperatives.

If this exemption is allowed to continue, there is no doubt but what the majority of the freight to and from agricultural areas will leave the common carrier, both rail and truck, and that rates for legal transportation services to and from these areas will have to be increased. There will be those who can avail themselves of the favored low rate services of cooperatives and there will be those who will be unable to qualify, some being benefited and others being discriminated against and subsidizing those being benefited.

Senator LAUSCHE. The next witness is Mr. Monte S. Holcomb, vice president of Brady Motorfrate, Inc., Des Moines, Iowa.

STATEMENT OF MONTE S. HOLCOMB, VICE PRESIDENT, BRADY MOTORFRATE, INC., DES MOINES, IOWA

Mr. HOLCOMB. Mr. Chairman, my name is Monte S. Holcomb, and I am a vice president and member of the executive board of Brady Motorfrate, Inc., with general headquarters in Des Moines, Iowa. I reside in West Des Moines, Iowa. I have been employed by the company for 15 years, the last 11 as an officer. As such, I am familiar with its policies and operations. The company is a regulated common carrier of general commodities operating under certificate No. MC–52110. Our authorized authority bascially covers all points in Iowa and specific points in the States of Minnesota, South Dakota, Nebraska, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan. The company also specializes in the movement of perishable products. A special division was formed in 1955 to handle these products from our western area to our eastern area to provide balance and equipment for the movement of l.t.l. and other dry freight loads from the east to the west. This decision was made at the time the ICC changed its rules as to the use of single trip operators of which we used many, east to west.

I am here not only as a representative of Brady Motorfrate, Inc., but also as an authorized representative of the Iowa Motor Truck Association, composed of many regulated carriers, in support of S. 1729 or a similar bill that will help correct a chaotic condition caused by the operations of companies under the "cloak" of co-ops and by the recent ruling in the *Northwest Agriculture Co-op* case. These conditions, if permitted to go unaltered, will cause havoc not only with the regulated carriers who specialize in the movement of perishables, and the carriers of general commodities, but also the shipping public which demands transportation service from the regulated carriers who

handle their needs for the movement of thousands of manufactured items.

I believe this to be true because hundreds, if not thousands, of the regulated carriers of general commodities depend on perishable traffic to supply equipment to the highly industrial areas of the country in order to furnish service to the tens of thousands of manufacturers that need transportation for shipments from 1 pound to thousands.

Perishable truckload traffic is the target tonnage handled and sought after by the "true co-op," the "illegal co-op" (the companies using the word "co-op" as a means of participating in for-hire transportation without a certificate or regulation), and the plain hundreds who participate in the gray area for-hire transportation. As this desirable tonnage continues to be captured by the above type of for-hire companies, and on an unregulated and unfair basis, it goes without reason that regulated carriers will curtail their operation to a near balance situation. As this continues, and it will, who then will serve the thousands of l.t.l. shippers of dry freight and those shipping perishable l.t.l.?

Will it be the type carriers we are talking about? We think not.

Will they invest millions in terminals to handle the thousands of tons of l.t.l. shipments? We think not.

Will they invest millions in city pickup and delivery equipment and the many other working tools needed to give good, sound service to the public? We think not.

Under controls and regulations this country has developed the greatest transportation system in the world. Why do we falter now?

I mentioned prior that we established a special division in 1955 to handle perishables west to east to provide balance and equipment to our eastern terminal points. Since that time our company has had a fine growth pattern and prospered. At the present time, and for some months now, we find we are unable to secure the perishable loads needed to provide the equipment for the movement of l.t.l. traffic from our eastern points. It is becoming more serious as the number of unregulated and illegal for-hire carriers enter the field of transportation.

At the present time we have knowledge of 12 for-hire carriers operating into and from the State of Iowa that are not regulated by the ICC or any other agency. Of these, five hold out to be cooperatives, namely:

1. International Marketing Association Co-op.: Reported to be headquartered in Sunland Park, N. Mex. Also, it was reported that this firm operated as Chatsworth Cooperative Marketing Association, incorporated in the State of Illinois just prior to opening operations from New Mexico.

Milk Producers Marketing Co., Kansas City, Kans.: This firm was never noticed in the State of Iowa until after the *Northwest* case. They now haul from Swift & Co. at Sioux City, Iowa, on a regular basis.

3. California Marketing Co-operative, 2820 South Sota, Los Angeles, Calif.

4. Northwest Agriculture Co-op, Box 1, Ontario, Oreg.

5. National Farms Line, Iowa Falls, Iowa.

The balance of seven are, in our opinion, strictly illegal in all respects to the transportation acts. All of the named and all of the seven not

named—as they go under names other than cooperatives—are hauling traffic formerly enjoyed by not only my company, but other regulated carriers that I represent who are members of the Iowa Motor Truck Association. The increase in unregulated, illegal, and unfair competition during the last few years is the reason my company, and no doubt others I am authorized to represent, now find it very difficult to balance our operation which is necessary to give service to the shipping public.

We cannot see the wisdom of the courts and other Government agencies giving a carte blanche to unregulated for-hire carriers to select the volume shippers they prefer to single out for preferred treatment without regard to the overall effect the decisions will have on our transportation system and the thousands of shippers of all kinds and various weight commodities

On behalf of Brady Motorfrate and the members of the Iowa Motor Truck Association, I sincerely urge that this committee act with speed and determination in causing legislation to be passed that will restore to the regulated carriers, charged by the ICC to serve all shippers within the scope of the certificates granted, the right to be competitive and on a regulated basis.

I want to thank the members of the committee for the opportunity which has been given me to testify. Thank you very much.

Senator LAUSCHE. Mr. John Kinnaird, executive secretary, Committee on Transportation Practices, of Washington, D.C.

STATEMENT OF JOHN M. KINNAIRD, EXECUTIVE SECRETARY, COMMITTEE ON TRANSPORTATION PRACTICES, WASHINGTON, D.C.

If you will proceed, Mr. Kinnaird.

Mr. KINNAIRD. Senator, my statement is relatively brief to begin with, but in light of the time and all, I will ask you to have it introduced in the record as prepared and I will depart from it in an attempt to make it more brief.

Senator LAUSCHE. That will be done.

Mr. KINNAIRD. Thank you, sir.

Yes, sir, as you have indicated, I represent the Committee on Transportation Practices and I think, Senator, you may recall our appearances before you in other instances. But briefly, sir, we represent three of the largest groups within the ATA framework. These groups are: The Common Carrier Conference—Irregular Route, the National Motor Freight Traffic Association, and the Regular Common Carrier Conference.

We have been engaged primarily since 1961 in a furtherance of the program in an attempt to eliminate illegal transportation, and, acting in behalf of the sponsors, we have been in many cases before the Commission and the courts on various aspects of illegal transportation. And our interest in the legislation that is before you today arises from the problem of illegal transportation that is performed under the color of this agriculture exemption, section 203(b)(5) of the Interstate Commerce Act.

And, while we fully support the proposition that remedial legislation s necessary, I might say an absolute must in my opinion, we would prefer the serious consideration by the committee of the compromising bill as set forth in Mr. Pinkney's testimony.

Now, in order that you would properly evaluate what I am going to tell you, I want to initially state that we were created in 1961 into the problem of illegal transportation. Senator, I don't mean illegal transportation, the operation by a certificated motor carrier of serving some point that he may not have authority to serve, something of that nature. I mean illegal competition on the part of people who hold no operating authority whatsoever from the ICC and who deliberately hide behind a facade, as you put it, of the various exemptions within the Interstate Commerce Act.

Now, in working on this problem, it was necessary that we obtain evidence, information. We just couldn't go to ICC and the courts on the basis of supposition and mere information. So, from time to time, we have retained ex-FBI agents, former employees of the Interstate Commerce Commission, people of that nature, private detective agencies—we have had many investigations conducted on that level.

In the majority of these, though, sir, we have used men who have an extensive background in transportation, men who have been in transportation all of their lives. And my purpose in telling you this is that, in order that you know the statements I am going to make are not predicated on supposition—they are similar to the statements you have been hearing this morning from people who are in the trucking business.

Now there are really two major aspects to the problem of the section 203(b)(5) exemption. One, you have been hearing about has been brought about by the *Northwest* decision, the recent decision, and I am certain you are familiar with that by now. That, in essence, held that the agriculture co-op could lawfully haul for hire anything for anybody without any authority from the ICC, subject, of course, only to the percentage limitation.

And the other aspect of the matter arises that section 203(b)(5), being an exemption, offers this hiding place for the illegal operator.

There are several cases, some of them have been mentioned this morning, others haven't. The *Nelson* case, *Iowa Co-op* case, and the *Chatsworth* case, that are good examples of this latter aspect of the problem.

Now these cases are not examples. The fact that they have resulted in successful action by the ICC, let me put it, does not indicate the level of enforcement that is needed to handle the problem. Chairman Bush and Commissioner Walrath have told you this morning of the difficulty that they have in successfully prosecuting these people. Well we have developed over the years a rather good liaison with State regulatory commissions, State highway patrols, and other enforcement and investigative agencies on a State level, and we receive reports constantly from those people. And these reports all indicate the presence on our Nation's highway of a vast number of trucks purporting to be leased and controlled by an agricultural co-op. And the point I want to make is that the ones that have been mentioned to you this morning are just a drop in the bucket, to put it bluntly.

Now, the Department of Agriculture has estimated by a study they made a year or two ago, that there are approximately 33,000 vehicles operated and controlled by agricultural co-ops. While we haven't had occasion to personally count all of the vehicles on the highway and to really evaluate our records in this instance, we conclude from the experience that we have had over the past 4 years, that this num-

ber is far from being accurate, and that there are well over 33,000 trucks operating on the highways of this Nation purporting to be engaged in activities as an agricultural co-op.

Now, you asked Mr. Walrath a few minutes ago about development of evidence and you heard Mr. Merrill this morning. Well, our position is even more difficult than theirs. They at least have some semblance of authority by virtue of being an ICC employee. Well, we have attempted to obtain evidence and I can tell you that it is most difficult to obtain. The only avenue of relief that has been open to us is one that you enacted last fall in Public Law 8917, so-called gray area bill, in which we have a right to go to the Federal district court for an injunction. But you put language in that bill that required a clear and patent violation. And we just can't get the evidence in every instance to prove a clear and patent violation. Now many of these agricultural cooperatives are incorporated under the laws of a different State. They file annual reports with those States. We have even attempted to get copies of those annual reports. You can in most instances, but under some State laws, the financial statistics, the volume of business from member, nonmember, will not be disclosed. We have run into that just recent, so even if we want to go into what we allege to be a clear and patent violation of the member versus nonmember business, we are precluded by the fact that we just can't get the information.

Now the only two questions that I point out that are left is whether the members of the co-op are in fact primarily engaged in agricultural pursuits, and whether the co-op is in fact complying with this 50-percent limitation. Now that is the status of the law following the *Northwest* case.

And as I have told you and as the ICC has pointed out, we are in an enforcement position where the evidence is just next to impossible to obtain. Now one of the points that I want to stress before I conclude is that some of the trucking witnesses have testified as to the advent of new operators since the decision in the *Northwest* case. I can clearly attent to that fact. Our investigations around the country have indicated that a number of agricultural co-ops that have never been engaged in transportation business have since the *Northwest* decision, started engaging in general for-hire transportation for anyone. For example, I think Mr. Pinkney alluded to this in his testimony, one agricultural cooperative just recently filed section 22 tenders with the Department of Defense in which it held itself out to haul freight of all kinds to all points in the Midwest, and to points in California.

Senator LAUSCHE. Will it be permitted to do so under that *Northwest* decision?

Mr. KINNAIRD. We don't think so and so far——

Senator LAUSCHE. But the applicant does think so?

Mr. KINNAIRD. Yes sir; he certainly does, but so far, we have been able to convince Interstate Commerce Commission that they should not accept the tender.

Now you have had previous testimony on the effect of ICC's desist order. You know that this thing is a pattern of starting an operation, doing business as long as you can, if you get caught, cease and desist, and you set up business the next day under another name or in another State, another corporation. So that to date, the ICC's cease and desist orders when they are finally obtained are meaningless.

Now, perhaps you are wondering why under all of these circumstances that we seek only the establishment of the conditions and requirements as set forth in the compromise bill and not a more direct approach. Well, frankly, I think the only alternative is the outright repeal of section 203(b)(5) amendment to the Interstate Commerce Act, but we also realize that while such relief may ultimately be forthcoming, at this time it is possibly better to attempt to cure the problem with revision rather than such surgery.

Now we are fully aware that there are bona fide agricultural cooperatives which are not engaged in illegal transportation activities and it should be stressed, as Mr. Pinkney has noted, that the compromise bill will not affect such cooperatives, only those who want to haul for-hire, for nonmembers, will be required to identify themselves and open their records to ICC inspection.

While this may not provide all the relief necessary, we think it will go a long way toward separating the legal from the illegal. Thank you, sir.

Senator LAUSCHE. Thank you very much.

Mr. KINNAIRD. Yes, sir; it is a pleasure to be here.

(Prepared statement follows:)

STATEMENT OF JOHN M. KINNAIRD ON BEHALF OF COMMITTEE ON TRANSPORTATION PRACTICES ON S. 1729

My name is John M. Kinnaird. I am a partner in the law firm of Rea, Cross, Knebal, and Kinnaird with offices at 917 Munsey Building, Washington, D.C. Since 1962 I have been retained by the Committee on Transportation Practices (COTP) as its Executive Secretary. COTP is a joint activity of three major associations of the regulated motor common carrier industry, the Common Carrier Conference—Irregular Route, the National Motor Freight Traffic Association and the Regular Common Carrier Conference plus many of the motor rate bureaus throughout the country.

The COTP has as its primary function the furtherance of a program aimed at the elimination of illegal surface transportation. Our interest in S. 1729 arises from the problem of illegal transportation performed under the color of Section 203(b)(5), the agricultural cooperative exemption of the Interstate Commerce Act. We fully support both the proposition that remedial legislation is necessary and the approach to the problem as set forth in S. 1729 but we would prefer the enactment of the compromise bill as set forth in the testimony of Mr. James F. Pinkney, the witness for the American Trucking Associations, Inc.

In order that you may properly evaluate my statement, it is necessary that I first explain that COTP was created in 1961 as a result of the concern of the regulated motor common carrier industry with the alarming increase in the number of illegal competitors. When I use the term "illegal competitors," I do not mean competition with another authorized motor carrier which served an unauthorized point or transported a commodity not within the scope of its certificate or permit. I mean competition with persons who hold no ICC authority but who flagrantly violate the IC Act by transporting the property of others for compensation. COTP recognized that in order to deal with this problem, it must have factual information. To obtain this, COTP has from time to time retained various competent persons to conduct investigations of the numerous complaints from the motor carrier industry. Included among these have been ex-F.B.I. agents, private detectives, and retired ICC enforcement personnel. However, the majority of the investigations have been conducted by men who have an extensive background in transportation, men who know both industry practices and regulation; in essence, men who are qualified to do the job.

My purpose in telling you this is in order that you will know that the statements I make are not predicated on supposition but on the experience obtained from nearly four years of directing investigations and evaluating reports relative to illegal transportation.

There are actually two major aspects of the problem created by the Section 203(b)(5) exemption. One is very clearly outlined by the recent decision of the

U.S. Court of Appeals for the Ninth Circuit in the Northwest Agricultural Cooperative Association Case. Previous witnesses have informed you in some detail as to the case so I won't outline the facts but I do want to point out that the Court held that an agricultural cooperative association, subject only to the percentage restriction provided in the Agricultural Marketing Act, 12 U.S.C.A. 1141j(a), could lawfully transport for hire anything for anybody without any authority from or regulation by the ICC.

The other aspect of the matter arises from the fact that Section 203(b)(5) of the IC Act, being an exemption to the requirement of interstate operating authority, furnishes a facade behind which the illegal operator may successfully continue his transportation activities and at the same time successfully frustrate efforts to prosecute him.

The Northwest Case is a good example of the first aspect. Examples of the other aspect, the use of an agricultural cooperative to disguise an illegal trucking operation, are *I.C.C.* v. *Nelson Cooperative Marketing Association, et al.*, 209 F. Supp 697 (1962), *I.C.C.* v. *Iowa Cooperative Association, et al.*, 236 F. Supp. 873 (1964) and the recent case in the U.S. District Court for the District of Minnesota in which a jury found Chatsworth Cooperative Marketing Association guilty on a 23 count criminal charge of operating without authority. It is to be noted that in finding the Defendants guilty, the jury refused to accept Chatsworth's defense that it was an agricultural cooperative operating within the exemption of the IC Act.

You will note that I have stated that the foregoing cases are examples of certain types of illegal transportation activities by agricultural cooperatives. However, they are not examples of the level of enforcement needed to control the situation. The COTP investigations have clearly indicated that the cooperatives mentioned as being successfully prosecuted are only a very small percentage of the number involved. We receive numerous reports from state regulatory commission enforcement officers, from state police agencies and from other similar sources. These reports all indicate the presence on our nation's highways of a vast number of trucks purporting to be leased and controlled by an agricultural cooperative. Previous reports by the Department of Agriculture have estimated the number of trucks owned or leased by agricultural cooperatives to be approximately 33,000. While we have not personally counted all the vehicles noted in the reports from the state road checks, we conclude from our experience that this number is far from being accurate—that there are well over 33,000 trucks so operated.

Our experience has also shown that it is most difficult to develop the evidence necessary to the filing of a complaint with the ICC. I should point out that this is the only practical avenue of relief presently available to the aggrieved motor carrier. P.L. 89–170, the so-called "gray area" bill, contained an amendment of Section 222(b)(2) of the IC Act which gives the injured party the right to apply to the district court of the United States for relief but this amendment was conditioned upon an operation in "clear and patent" violation of the IC Act. With the court ruling in the Northwest Case, the only questions as to the lawfulness of the transportation activities of an agricultural cooperative are (1) whether the members of the coop are in fact primarily engaged in agricultural pursuits and (2) whether the coop is in fact doing 50 per cent or more of its business with members, as required by the Agricultural Marketing Act. Evidence of this nature is, as I have stated, most difficult to obtain. Such records as cooperatives are required to maintain by the various state laws are normally not available to the public. Thus, the "clear and patent" requirement is not easy to satisfy.

Another problem arising from the Northwest decision has been the increase in non-member for-hire transportation activities by coops which previously had not engaged in such a business activity. At least one coop claiming exemption from the ICC Act has filed Section 22 tenders with the Department of Defense under which it offers to transport for the Department freight of any description.

We find that in many cases, the ICC cease and desist order or the Federal injunction is no real remedy because often one or more of the individuals enjoined from illegal operation will merely move their business address, create a new corporation with a new name and continue to operate in the same illegal fashion.

Perhaps you are wondering why, under these circumstances, that we seek only the establishment of the conditions and requirements as set forth in the compromise bill and not a more direct approach. Frankly, we think that the only alternative is outright repeal of the Section 203(b)(5) exemption. But we also realize that, while such relief may ultimately be forthcoming, at this time an attempt to cure the problem with revision rather than surgery is preferable. We are fully aware that there are bona-fide agricultural cooperatives which are not engaged in illegal

transportation practices. It should be stresses that, as Mr. Pinkney has noted, the compromise bill will not affect such cooperatives. Only those who want to transport "for-hire" for non-members will be required to identify themselves and open their records to ICC inspection. While this may not provide all the relief necessary, it will go a long way towards separating the legal from the illegal.

Senator LAUSCHE. Harry H. Breithaupt.

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

Mr. BREITHAUPT. Mr. Chairman, may I say that in the interest of conserving the subcommittee's time I should like to summarize my statement if it may be understood with your permission that my statement as a whole may be incorporated in the record.

Senator LAUSCHE. It will be fully incorporated in the record.

Mr. BREITHAUPT. For the record, may I say briefly that I represent the Association of American Railroads this morning. I appear in behalf of the member lines of that association in support of S. 1729. But, as I shall explain later in my statement, we do not believe the bill, as introduced, goes far enough to provide a satisfactory solution for the serious problems with which we are now confronted and we believe that more is needed.

For a number of years, the Interstate Commerce Commission has expressed concern about abuses of the escape provision of the act contained in section 203(b)(5). Others too, as you have heard, have been concerned. As earlier witnesses have stated, and as another representative of the railroads who is to follow me will describe, the Commission's principal concern in this regard in past years and the principal concern of others as well has been the abuse, often flagrant, of the statutory exemption that has occurred through subterfuge and deceit practiced by persons who in order to escape economic regulation of general for-hire transportation services performed by them have operated unlawfully under the guise of agricultural cooperative associations.

Other witnesses have shown by actual examples and case histories just how bogus or phony or fake agricultural cooperative associations have been used as cover for these illicit transportation activities.

The ICC, as you have heard, has made commendable efforts to deal with some of these spurious situations, but as the Commission itself has been candid to admit, it is not equipped with adequate policing authority to weed out those that are not entitled to the exemption.

S. 1729, as you have pointed out, is designed to provide the Commission with a measure of needed additional authority. And with the law amended in the particulars of S. 1729, as introduced, the Commission ought to be better able to cope with unlawful transportation performed by spurious agricultural cooperatives. For that reason, as I have said, we support the bill.

The Commission has stated and the subcommittee has heard from other witnesses that the present exemption is being used by various groups and organizations as a guise to perform general transportation services and to divert substantial amounts of tonnage from regulated motor carriers.

Although it is perhaps not as easy to point to specific examples in the case of the railroads as it is in the case of the regulated motor

carriers, a similar diversion of traffic from the railroads has taken and is taking place. Hence, Mr. Chairman, the support of the railroad industry for this bill.

I said at the outset of my statement that in past years, the principal concern of the Commission and others with this exemption has been its unlawful abuse by means of sham cooperatives. This bill is directed to the correction of that sort of abuse. It has as its purpose the augmentation of the Commission's regulatory authority and power in such a way as to enable the Commission to deal more effectively with what is clearly unlawful transportation.

But, as has already been pointed out to you this morning, comparatively recent developments have produced a problem that is much more serious than that to which the original bill is directed. I refer to the *Northwest* decision by the Ninth Circuit Court of Appeals and to the Supreme Court's denial of certiorari in that case early this year. With the decision in the *Northwest* case, it is clear that the problem is no longer merely one of transportation performed by fictitious or spurious agricultural cooperative associations, but is now one of much broader scope and impact.

Under the court of appeals decision, a bona fide agriculture cooperative association may perform transportation services of non-farm-related commodities for nonmembers of the association and do so for hire and yet wholly exempt from economic regulation by the Interstate Commerce Commission. The only limitation, as has been pointed out, appears to be that such transportation does not too closely approach 50 percent of the cooperative's total transportation business.

This *Northwest* decision, with the situation it creates, poses a very serious problem for the regulated carriers. It is fraught with much more difficulty and potential harm for them than the preexisting problem of spurious co-ops. Wholesale diversion of traffic from the regulated common carriers, both truck and rail, is likely, indeed certain, to occur.

The broad-scale exemption from economic regulation now available to agricultural cooperatives in the transportation of non-farm-related commodities for nonmembers will give them a tremendous advantage in competition with the closely regulated rail and motor carriers for such traffic.

The cooperatives' transportation charges are not subject to control by the ICC and they will be free to go as low as they please in their efforts to attract traffic for what would otherwise be empty backhauls. Indeed, I should point out that there is nothing, as I read the Court's decision, that would limit the exemption to backhauls. The regulated carriers thus are sure to lose traffic.

As the Solicitor General of the United States said in his unsuccessful petition to the Supreme Court for a writ of certiorari:

> The decision below now holds out the clear prospect that cooperatives will, in the future, be able to obtain substantial backhaul tonnage by diverting traffic in nonfarm related commodities from regulated motor and rail carriers. Such cooperatives may charge unregulated rates for the purpose of deriving some contribution to the cost of round trip movements. Such rates will be as low as necessary to divert traffic from the regulated carriers which rely exclusively upon transportation revenues for their livelihood. The record in this case illustrates the range of commodities which is subject to such diversion.
>
> Finally, while the present case on its facts involves only the backhauling of nonfarm-related commodities, the principle announced by the court of appeals

might also be applied to other transportation of such commodities deemed "necessary and incidental" to the cooperatives' farm-related activities. As one example, a cooperative association which has trucks wholly idle at certain seasons of the year might, on the basis of this decision, employ them during those periods in for-hire transportation of the products of a nearby manufacturing plant.

Senator LAUSCHE. Who uttered these words in the above quotation?

Mr. BREITHAUPT. They are quoted from the petition filed in the Supreme Court of the United States by the Solicitor General of the United States for a writ of certiorari.

Senator LAUSCHE. Proceed.

Mr. BREITHAUPT. In addition, the sweeping exemption that is now available to bona fide agricultural cooperative associations is almost certain to encourage and to spur the formation and use of spurious agricultural cooperatives as a means of evading regulation. Illicit transportation of this kind will surely increase. There is now a much greater incentive, or temptation, than heretofore for artifice, sham, and deception.

Now, Mr. Chairman, what does all of this mean in terms of a problem with which the Congress ought to be concerned? It means that there is a severe and imminent threat to the regulated common carriers of the Nation, with the prospect of a most serious undermining and weakening of the country's common carrier system of transportation. Over the years, the Congress has recognized with fair consistency that the regulated common carrier system of transportation must be maintained and preserved in full measure of strength and vigor, and that the public interest requires protection of the regulated common carriers from the destructively competitive inroads of unregulated for-hire carriage.

Time and again, the Congress has recognized that there is an overriding need, in the public interest, for a strong common carrier system. Thus this very subcommittee in a report subsequently adopted by its parent Committee on Interstate and Foreign Commerce, on the Transportation Act of 1958—Senate Report 1647, 85th Congress—said with respect to a problem involving another type of unregulated for-hire transportation, and I emphasize that it was another type of unregulated transportation altogether; agricultural cooperative associations were not involved, that—

> * * *, carriage of this sort undermines the strength of the regulated for-hire carriers and in so doing it also injures the public which is largely dependent upon regulated for-hire carriage for its transportation requirements. Protection is needed from destructive competition of this kind.

And, in that same report, this subcommittee said in its discussion of another and perhaps better known exemption from economic regulation than the one at issue in this particular hearing—the so-called agricultural commodities exemption contained in section 203(b)(6) of the Interstate Commerce Act—that—

> Regulated carriers are handicapped in their competition for traffic in "agricultural" commodities, for while the rates of the regulated carriers are strictly and rigidly controlled and are required to be published, the rates of the exempt haulers are not subject to any control and need not even be made public. As a consequence, large and ever-growing volumes of important traffic have been diverted to the exempt truckers and the diversion continues. The impact upon the regulated carriers is already serious; and the erosion of further classes of traffic is threatened by the trend of administrative and judicial determinations expanding the scope of the exemption.
>
> Attempts have been made to demonstrate that the benefits of the agricultural exemption accrue to the farmer in the form of increased income. These attempts

are not convincing to the subcommittee, and it appears that others than farmers are receiving benefits. It is important that this trend be halted before the position of the regulated carriers is more seriously impaired.

This, 8 years later, you will see, is apt language in the present circumstances.

More recently, just last year, in a report—Senate Report 387, 89th Congress—submitted by Senator Lausche for the Committee on Commerce to accompany S. 1727, 89th Congress, the so-called gray area bill, it was said—again with regard to a problem not relating specifically to agricultural cooperatives, but pertinent nevertheless—that—

> The loss (of revenue by the regulated carriers, both truckers and railroads to illegal transportation) is serious in terms of the common carrier industry because these carriers are the backbone of our national transportation industry. These regulated carriers are of crucial importance because of their public interest obligation to serve all of the public, in virtually every community in America, in good weather and in bad, and in good times and in bad. Without common carriers with a universal obligation to serve transportation would quickly deteriorate into a means of promoting the economic activity of a few. The public interest requires that we protect these carriers against the abuses of illegal carriers who assume no public responsibility.

Let me make clear that I do not mean by the use of this quotation, or of the earlier one, to charge that the transportation activities of bona fide agricultural cooperative associations are unlawful. I cite these expressions from reports of this subcommittee and its parent Committee on Commerce for their rationale and for their recognition of the need, in the public interest, to protect the strictly regulated common carriers from the onslaught of unregulated competition be it unlawful or lawful.

Now that the *Northwest* case appears to be the law of the land, at least in the ninth circuit, congressional enactment of S. 1729, as introduced, will not suffice as protection for the regulated motor and rail carriers against the threat posed by the unregulated transportation services that agricultural cooperative associations may render. There is urgent need for enactment of legislation of the kind suggested earlier in this hearing by Mr. James F. Pinkney in behalf of the American Trucking Associations, Inc.

We endorse the aims, objectives, and purposes of that proposal. We join the regulated motor carriers in its support. The proposed substitute for S. 1729 to which I refer, the subcommittee will recall, would provide that in order to be entitled to exemption from economic regulation an agricultural cooperative association or federation of such associations must be included on a list maintained by the Department of Agriculture and submitted annually to the Interstate Commerce Commission. This list would contain only such cooperative associations and federations as have been determined by the Secretary of Agriculture to be bona fide.

Any cooperative association or federation included on the approved list could engage in for-hire transportation for nonmember farmers, if it desired to do so, upon filing with the Interstate Commerce Commission a notice to that effect. For-hire transportation for nonmember farmers would be limited to "farm products"—defined as being those described in section 203(b)(6) of the Interstate Commerce Act—and—

> farm supplies used directly by the consignee in agricultural production.

Transportation performed for nonmembers would be limited to—

an amount not to exceed 50 percent of the value of the transportation service rendered by such cooperative association or federation for itself or its members.

It is legislation along these lines that is needed. S. 1729, as introduced, would no doubt enable the Interstate Commerce Commission to do a better and more effective job of policing the agricultural cooperative exemption against unlawful subterfuge and sham—the device of spurious cooperatives—but that is now, expecially since the *Northwest* decision, only one facet of the problem and, probably, a facet of diminished importance.

We urge the subcommittee to consider favorably and favorably report S. 1729 amended in such a way as to incorporate provisions along the lines of those that the regulated motor carriers have proposed and that we have endorsed.

That concludes my statement. I thank you, Mr. Chairman.

Senator LAUSCHE. Mr. Sender, any questions?

Mr. SENDER. No questions.

Senator LAUSCHE. Thanks very much, Mr. Breithaupt.

Mr. BREITHAUPT. Thank you, Mr. Chairman.

(The full statement follows:)

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS WITH RESPECT TO S. 1729

My name is Harry J. Breithaupt, Jr. I am General Attorney of the Association of American Railroads, with headquarters at the offices of the Association in Washington.

The Association of American Railroads is a voluntary unincorporated association encompassing those railroads of this country having all of the Class I railroad operating revenue and having all of the Class I operating mileage in the United States. Class I railroads represent 94 percent of total rail mileage and 95 percent of rail revenue.

I appear in behalf of the member lines of the Association of American Railroads, by authority of its Board of Directors, in support of S. 1729, the bill introduced on April 6, 1965, by Senator Magnuson (by request) "to amend section 203(b)(5) of the Interstate Commerce Act to provide for the issuance of certificates of exemption upon application and proof of eligibility, and for other purposes." As I shall explain later in my statement, however, we do not believe that S. 1729 as introduced goes far enough to provide a satisfactory solution for the serious problems that now confront us in respect of section 203(b)(5) of the Interstate Commerce Act. We believe that more is needed.

As the members of the Subcommittee know from the statements of witnesses who have preceded me, section 203(b)(5) of the Act (which this bill would amend) exempts from economic regulation by the Interstate Commerce Commission "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.

Such motor vehicles are thus exempt by that section from all of the provisions of part II of the Interstate Commerce Act (the so-called Motor Carrier Act) except those provisions relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment.

For a number of years the Interstate Commerce Commission has expressed concern about abuses of this escape provision of the Act. Others, too, have been concerned. As earlier witnesses have stated, and as another representative of the railroads (who is to follow me) will describe, the Commission's principal concern in this regard in past years and the principal concern of others as well has been abuse—sometimes flagrant—of the statutory exemption occurring through subterfuge and deceit practiced by persons who in order to escape economic regulation of general for-hire transportation services performed by them have operated unlawfully under the guise of agricultural cooperative associations.

Other witnesses have shown (or will show) by actual examples and case histories just how bogus or phony or fake agricultural cooperative associations have been used as cover for illicit transportation activities. Permit me, for the record, merely to cite these illustrative references in which the question has been whether, on a given set of facts, the operations of a group of individuals organized together as an agricultural cooperative association met the statutory definition of such an association under the Agricultural Marketing Act: *Interstate Commerce Commission* v. *Nelson Cooperative Marketing Association*, 209 F. Supp. 697 (W. D. Okla. 1962); *Interstate Commerce Commission* v. *Iowa Cooperative Association*, 236 F. Supp. 873 (S. D. Iowa 1964); *Machinery Haulers Association* v. *Agricultural Commodity Service*, 86 M. C. C. 5 (1961); *Agricultural Transportation Association of Texas—Investigation of Operations*, 96 M. C. C. 293 (1964).

The Interstate Commerce Commission has made commendable efforts to deal with some of these spurious situations but, as the Commission itself had candidly stated (in its 78th Annual Report to the Congress, 1964, for example) it "is not equipped with adequate policing authority to weed out those not entitled to the exemption."

S. 1729, a bill implementing a legislative recommendation advanced by the Interstate Commerce Commission as early as 1961, is designed to provide the Commission with a measure of needed additional authority. The bill would amend section 203(b)(5) of the Interstate Commerce Act in such fashion as to provide that agricultural cooperatives shall be entitled to exempt status thereunder only upon application and proof of eligibility. It would also amend the Act to permit the Commission or its duly authorized agents to inspect the books, records and other documents kept or maintained by such cooperatives.

With the law amended in these particulars the Commission ought to be better able to cope with unlawful transportation performed by spurious agricultural cooperatives. As I said, we support the bill. The Commission has stated, and the Subcommittee has heard from other witnesses during this hearing, that the present exemption is "being used by various groups and organizations as a guise to perform general transportation services and to divert substantial amounts of tonnage from regulated motor carriers". Although it is perhaps not as easy to point to specific examples in the case of the railroads as it is in the case of the regulated motor carriers, a similar diversion of traffic from the railroads has taken and is taking place. Hence the support of the railroad industry for S. 1729.

I said at the outset of my statement that in past years the principal concern of the Commission and others with section 203(b)(5) of the Interstate Commerce Act has been the unlawful abuse of the exemption by means of sham cooperatives. S. 1729 is directed to the correction of that sort of abuse. It has as its purpose the augmentation of the Commission's regulatory authority and power in such a way as to enable it to deal more effectively with clearly unlawful transportation.

Comparatively recent developments, however, have produced a problem that is more serious than that to which S. 1729 is directed. I refer to the decision of the United States Court of Appeals for the Ninth Circuit in *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), and to the Supreme Court's denial of *certiorari* in that case on January 24, 1966.

The *Northwest* case involved a non-profit corporation formed under the Idaho Cooperative Marketing Association Act for the purpose of enabling its members collectively and economically to transport their agricultural products to markets. Northwest was, and presumably still is, engaged solely in transportation activities with a fleet of long haul trucks. On return trips from market areas, Northwest transported farm supplies back to members of the cooperative. The volume of these farm supplies did not equal the volume of farm products shipped on the outbound trips, however, and consequently Northwest had available empty backhaul space in its trucks. In order to utilize this space Northwest backhauled non-farm-related commodities for non-members of the association for compensation.

For example, Northwest transported for non-members furnaces, air conditioners, and water heaters from California to Idaho; machinery from Minnesota to Idaho; hardware from New Jersey to Oregon; wire springs from Illinois to Oregon; yarn from Oregon to Idaho; door hanger parts from New York to Oregon, and roofing materials from California to Idaho. During a four-month period in 1963–1964 Northwest received approximately $230,375 for transportation services, of which some $41,000, or about 16 percent, was derived from the transportation for non-members of non-farm commodities.

The Interstate Commerce Commission brought suit in 1964 in the United States District Court for the District of Oregon to enjoin Northwest from this hauling of general commodities for-hire throughout the country, for non-member merchants and manufacturers, without a certificate of public convenience and necessity.

The Commission contended that transportation activities of agricultural cooperative associations are not completely exempt from economic regulation under section 203(b)(5) of the Interstate Commerce Act. It pointed out that an agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products, * * * farm supplies and/or farm business services". It conceded that transportation services performed for members of a cooperative that are "directly or functionally related" to their agricultural activities are exempt from economic regulation. It argued, however, that for-hire transportation of non-exempt commodities for non-members of an association is not exempt, and thus that Northwest's transportation of such commodities without a certificate of public convenience and necessity violated the Act.

Northwest defended on the ground that all of its transportation activity was exempt from regulation under section 203(b)(5). It pointed out that its for-hire transportation of non-exempt commodities for non-members produced much less revenue than it received from transporting products for its members, and that the income from these outside activities inured to the benefit of Northwest's members by economizing their marketing expenses.

The district court permanently enjoined Northwest from "transporting, by motor vehicle in interstate commerce on public highways for compensation, property other than that which is exempt from economic regulation under the Interstate Commerce Act, unless either (1) such transportation is directly beneficial or functionally related to the farming activities of defendant's members, or (2) there is in force and in effect, with respect to * * * [Northwest] a certificate or permit or other authorization issued by the Interstate Commerce Commission authorizing it to engage in such operations". The court found (234 F. Supp. 496, 498):

"* * * The difficulty with defendant's position is that it sanctions for-hire transportation in open competition with regulated common carriers without subjecting the Association's [Northwest's] fleet to regulation. Though Congress intended to exempt agricultural cooperatives from regulation under the Act in the transportation of their goods to market and their necessary supplies and services on return, I do not read the statute as granting these associations an exemption to enter the general transportation business. Undoubtedly, the Association's practice affords economies to its members, but these are economies not intended to be conferred by the Act."

This seems to us to have been a sound decision, but on appeal by Northwest to the United States Court of Appeals for the Ninth Circuit the district court's decision was reversed. The court of appeals first held that, since the agricultural cooperative exemption in the Interstate Commerce Act applies broadly to "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act," the limitation upon Northwest's transportation activities urged by the Commission "must be found in the definition of a cooperative association in the Agricultural Marketing Act."

The court then held that "a cooperative does not lose its status by engaging in activities other than its primary statutory activity so long as they are incidental and necessary to its effective performance", and that "Northwest's transportation of non-farm products and supplies was incidental and necessary" to the effective performance of Northwest's farm service within that test.

The Solicitor General, on behalf of the Interstate Commerce Commission, filed a petition for a writ of certiorari; but on January 24 of this year the Supreme Court denied review.

Thus, it is clear that the problem is no longer merely one of transportation performed by fictitious or spurious agricultural cooperative associations, but is now one of much broader scope and impact. Under the court of appeals' decision a *bona fide* agricultural cooperative association may perform transportation services of non-farm-related commodities for non-members of the association, and do so for-hire and yet wholly exempt from economic regulation by the Interstate Commerce Commission. The only limitation appears to be that such transportation does not too closely approach fifty percent of the cooperative's total transportation business. The court said (350 F. 2d 252, 256):

"A cooperative will retain its exemption only so long as it remains in essential character a 'cooperative association' described in the statutory definition. Thus the

activities in which it engages must be such that the cooperative can be fairly described as a farmer organization primarily engaged in marketing farm products for farmers, or purchasing, testing, or furnishing farm supplies or farm services for farmers; and operating for the benefit of the members of the cooperative in their capacity as producers of farm products or purchasers of farm supplies or farm business services. *A cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and in no conceivable circumstances could non-farm related business approach fifty per cent of the total and remain incidental and necessary to that which was farm-related.*" [Italic supplied.]

This decision, with the situation it creates, poses a very serious problem for the regulated carriers. It is fraught with much more difficulty and potential harm for them than the pre-existing problem of spurious co-ops. Wholesale diversion of traffic from the regulated common carriers (both truck and rail) is likely, indeed certain, to occur.

The broad-scale exemption from economic regulation now available to agricultural cooperative associations in the transportation of non-farm-related commodities for non-members will give them a tremendous advantage in competition with the closely regulated rail and motor carriers for such traffic. The cooperatives' transportation charges are not subject to control by the Interstate Commerce Commission, and they will be free to go as low as they please in their efforts to attract traffic for what would otherwise be empty backhauls. Indeed there is nothing in the Court's decision that would limit the exemption to backhauls. The regulated carriers are sure to lose traffic.

As the Solicitor General said in his petition to the Supreme Court for a writ of certiorari (*Interstate Commerce Commission* v. *Northwest Agricultural Cooperative Association, Inc.*, No. 807, October Term, 1965):

"The decision below now holds out the clear prospect that cooperatives will, in the future, be able to obtain substantial backhaul tonnage by diverting traffic in non-farm related commodities from regulated motor and rail carriers. Such cooperatives may charge unregulated rates for the purpose of deriving some contribution to the cost of round trip movements. Such rates will be as low as necessary to divert traffic from the regulated carriers which rely exclusively upon transportation revenues for their livelihood. The record in this case illustrates the range of commodities which is subject to such diversion.

"Finally, while the present case on its facts involves only the backhauling of non-farm-related commodities, the principle announced by the court of appeals might also be applied to other transportation of such commodities deemed 'necessary and incidental' to the cooperatives' farm-related activities. As one example, a cooperative association which has trucks wholly idle at certain seasons of the year might, on the basis of this decision, employ them during those periods in for-hire transportation of the products of a nearby manufacturing plant."

In addition, the sweeping exemption now available to *bona fide* agricultural cooperative associations is almost certain to encourage and spur the formation and use of spurious agricultural cooperatives as a means of evading ICC regulation. Illicit transportation of this kind will surely increase. There is now a much greater ncentive, or temptation, than heretofore for artifice, sham and deception.

Now what does all of this mean in terms of a problem with which the Congress ought to be concerned? It means that there is a severe and imminent threat to the regulated common carriers of the nation, with the prospect of a most serious undermining and weakening of the country's common carrier system of transportation. Over the years the Congress has recognized with fair consistency that the regulated common carrier system of transportation must be maintained and preserved in full measure of strength and vigor, and that the public interest requires protection of the regulated common carriers from the destructively competitive inroads of unregulated for-hire carriage.

Time and again the Congress has recognized that there is an overriding need, in the public interest, for a strong common carrier system. Thus this very Subcommittee in a report subsequently adopted by its parent Committee on Interstate and Foreign Commerce, on the Transportation Act of 1958 (Senate Report No. 1647, 85th Congress), said with respect to a problem involving another type of unregulated for-hire transportation (and I emphasize that it was another type of unregulated transportation altogether; agricultural cooperative associations were not involved) that—

"* * *, carriage of this sort undermines the strength of the regulated for-hire carriers and in so doing it also injures the public which is largely dependent upon regulated for-hire carriage for its transportation requirements. Protection is needed from destructive competition of this kind."

And in that same report this Subcommittee said in its discussion of another and perhaps better-known exemption from economic regulation than the one at issue in this particular hearing—the so-called agricultural commodities exemption contained in section 203(b)(6) of the Interstate Commerce Act—that—

"Regulated carriers are handicapped in their competition for traffic in "agricultural" commodities, for while the rates of the regulated carriers are strictly and rigidly controlled and are required to be published, the rates of the exempt haulers are not subject to any control and need not even be made public. As a consequence, large and ever-growing volumes of important traffic have been diverted to the exempt truckers and the diversion continues. The impact upon the regulated carriers is already serious; and the erosion of further classes of traffic is threatened by the trend of administrative and judicial determinations expanding the scope of the exemption.

"Attempts have made to demonstrate that the benefits of the agricultural exemption accrue to the farmer in the form in increased income. These attempts are not convincing to the subcommittee, and it appears that others than farmers are receiving benefits. It is important that this trend be halted before the position of the regulated carriers is more seriously impaired."

This, 8 years later, you will see, is apt language in the present circumstances.

More recently, just last year, in a report (Senate Report No. 387, 89th Congress) submitted by Senator Lausche for the Committee on Commerce to accompany S. 1727, 89th Congress, the so-called "Gray Area" bill, it was said (again with regard to a problem not relating specifically to agricultural cooperatives, but pertinent nevertheless) that—

"The loss [of revenue by the regulated carriers, both truckers and railroads, to illegal transportation] is serious in terms of the common carrier industry because these carriers are the backbone of our national transportation industry. These regulated carriers are of crucial importance because of their public interest obligation to serve all of the public, in virtually every community in America, in good weather and in bad, and in good times and in bad. Without common carriers with a universal obligation to serve, transportation would quickly deteriorate into a means of promoting the economic activity of a few. The public interest requires that we protect these carriers against the abuses of illegal carriers who assume no public responsibility."

Let me make clear that I do not mean by the use of this quotation, or of the earlier one, to charge that the transportation activities of *bona fide* agricultural cooperative associations are unlawful. I cite these expressions from reports of this Subcommittee and its parent Committee on Commerce for their rationale and for their recognition of the need, in the public interest, to protect the strictly regulated common carriers from the onslaught of unregulated competition be it unlawful or lawful.

Now that the *Northwest* case appears to be the law of the land, at least in the Ninth Circuit, Congressional enactment of S. 1729 as introduced will not suffice as protection for the regulated motor and rail carriers against the threat posed by the unregulated transportation services that agricultural cooperative associations may render. There is urgent need for enactment of legislation of the kind suggested earlier in this hearing by Mr. James F. Pinkney in behalf of The American Trucking Associations, Inc. We endorse the aims, objectives and purposes of that proposal. We join the regulated motor carriers in its support. The proposed substitute for S. 1729 to which I refer, the Subcommittee will recall, would provide that in order to be entitled to exemption from economic regulation an agricultural cooperative association or federation of such associations must be included on a list maintained by the Department of Agriculture and submitted annually to the Interstate Commerce Commission. This list would contain only such cooperative associations and federations as have been determined by the Secretary of Agriculture to be *bona fide*.

Any cooperative association or federation included on the approved list could engage in for-hire transportation for non-member farmers, if it desired to do so, upon filing with the Interstate Commerce Commission a notice to that effect. For-hire transportation for non-member farmers would be limited to "farm products" (defined as being those described in section 203(b)(6) of the Interstate Commerce Act) and "farm supplies used directly by the consignee in agricultural production." Transportation performed for non-members would be limited to "an amount not to exceed 50 percent of the value of the transportation service rendered by such cooperative association or federation for itself or its members".

It is legislation along these lines that is needed. S. 1729 as introduced would no doubt enable the Interstate Commerce Commission to do a better and more

effective job of policing the agricultural cooperatives exemption against unlawful subterfuge and sham (the device of spurious cooperatives); but that is now (especially since the *Northwest* decision) only one facet of the problem and, probably, a facet of diminished importance.

We urge the Subcommittee to consider favorably and favorably report S. 1729 amended in such a way as to incorporate provisions along the lines of those that the regulated motor carriers have proposed and that we have endorsed.

Senator LAUSCHE. Mr. Cothren, your entire statement will be printed in the record, and you can proceed to present the highlights as you so desire.

STATEMENT OF T. W. COTHREN, EXECUTIVE VICE PRESIDENT, ZERO REFRIGERATED LINES, SAN ANTONIO, TEX.

Mr. COTHREN. In the interest of time, I am T. W. Cothren, of Zero Refrigerated Lines, San Antonio, and my business address is 815 Merida Street, San Antonio, Tex. I have been employed by Zero Refrigerated Lines since 1960, and in the capacity of executive vice president since 1961.

My duties include supervision of sales, operations, and the various administrative functions of the company. I assist the president in the determination and making of policy.

Zero Refrigerated Lines is a motor common carrier operating under certificates of public convenience and necessity issued by the Interstate Commerce Commission.

Zero is incorporated under the laws of the State of Texas. It took over operations from its predecessor company, Cahill Refrigerated Lines on January 1, 1950, and is engaged primarily in the specialized transportation of perishable products and foodstuffs. We operate principally between the Southwestern States, on the one hand, and, on the other, the Midwest, west coast and Pacific Northwest States.

Zero operates approximately 50 tractor-trailer units, and we maintain terminals in San Antonio and Dallas, Tex.; Clovis, N. Mex.; Fort Dodge, Iowa; and Los Angeles, Calif.

Zero would be considered somewhat small as trucklines go. However, in several areas where we operate we are only one of two regulated carriers specialized in foodstuffs available to the public.

The history of our company indicates a growth pattern based on beginning revenues of $182,630 in 1949 to a high of $2,052,270 in 1959. Since 1959 our gross revenues have reflected our struggle to maintain operating revenues sufficient for the survival of our company. Appendix 1 sets that out pictorially for you.

This problem began late in 1959. Its direct cause can be easily traced to the loss of business to trucking co-ops that entered the perishable trucking field in our area at that time. During 1959 Agricultural Commodity Service (ACS), an alleged cooperative of Bloomington, Ill., opened an office and appointed an agent by the name of Raymond Waters in Fort Worth, Tex. Waters and his associate, Jack Cobb, immediately began to haul traffic which Zero had been and were then transporting between areas that we were authorized to serve.

ACS was very active and cut deeply into our customers—until ACS was required to cease and desist operations in February 1962 as a result of an Interstate Commerce Commission order. However, the

following day Agricultural Transportation Association of Texas (ATA of Texas) began operations as an alleged exempt co-op with offices in the same building in Fort Worth, Tex., using the same equipment and drivers formerly used by ACS, and with the same Jack Cobb and Raymond Waters running it. Only the name was changed. The operation remained the same. This co-op, ATA of Texas, has continued the past 4½ years, still taking business from us.

We contend that ATA of Texas and others of similar composition operating today are not bona fide cooperatives and should be required to cease and desist to operate, as was ACS.

Senator LAUSCHE. Do you think the officials of ATA ought to be subpenaed before this committee?

Mr. COTHREN. Yes, sir; I certainly do.

Senator LAUSCHE. That is you feel positive that they are operating under the guise of being a co-op but, in fact, are not?

Mr. COTHREN. Are not a bona fide one; yes, sir.

Senator LAUSCHE. Proceed.

Mr. COTHREN. Yes, sir; I think that would be very good for this committee, sir.

These co-ops obtained loads, many of which were formerly ours, by simply charging shippers lower rates. For example, Safeway Stores, of Oakland, Calif., was a good customer of ours. Their plant at Denison, Tex., was tendering us four to seven loads per week to California. We lost this traffic to ACS and subsequently to ATA of Texas because they undercut our published tariff rate by 17 cents per hundredweight.

When I personally discussed this matter with the traffic manager at Safeway, he informed us that his company was naturally interested in the lowest possible cost. He stated that even if we petitioned the Interstate Commerce Commission for a rate equal to the co-op rate, most likely we would be unsuccessful because other motor carriers and the railroads would surely oppose our reduction and it would be suspended and disallowed by the Commission. He added that even if we were successful in meeting the co-op rate, he had been assured by the co-op that they would immediately reduce their rate again in order to keep the business.

Since the rates charged by these co-ops are not required to be fixed, approved or regulated by the Interstate Commerce Commission in any way, they are able to change their rates whenever they wish.

This practice has extended over the past 6 years not just to Safeway Stores but to many more of our customers such as Libby, McNeil & Libby, of Chicago, Ill.; Neuhoff Bros. Packers, of Dallas, Tex.; Melton Provision Co., of San Antonio, Tex.; Topco Associates, Inc., of Skokie, Ill.; Ventura Processors, Inc., of Ventura, Calif.; Ideal Meat Co., of Los Angeles, Calif.; Grocers Supply Co., of Houston, Tex.; Johnston Pie Co., of Los Angeles, Calif.; and others whom we had regularly served prior to the creation of ACS and ATA of Texas.

Naturally, we have been attempting to take steps to survive. After losing several volume accounts we looked for other movement in which we could participate, and we attempted to cut rates on certain commodities which we were authorized to transport. Among these, for example, were rates on certain canned goods traffic which had been moving via rail. This type of movement is historically rail-type traffic. However, we desperately needed anything we could get.

Unfortunately for us in these circumstances, the procedure for rate reduction is both expensive and time-consuming, and is successful only in certain instances, depending on the opposition we encounter and our ability to operate at the proposed lower rate.

We had to be selective in it because we have to be sure we can continue to furnish good service at lower rates before we embark on this type of action. In some instances we have reduced rates on certain items to meet co-ops only to find that we could not afford to haul the traffic at the lower rate and still give as good service as the shipper required.

Senator LAUSCHE. Legally, are you allowed to haul it at a lower rate that is not compensatory?

Mr. COTHREN. Legally we are supposed not to because that rate would normally not be approved were it not compensatory.

Senator LAUSCHE. Go ahead.

Mr. COTHREN. A most important thing to note is that these co-ops operate by taking the cream off the top; i.e., to concentrate primarily on volume accounts. They accept loads from such accounts giving them a lower rate and attempt to require that customer to tender them a predetermined number of loads each week to preset destinations, each week.

If the shipper finds that it requires an additional truck or two, or needs a load to go to a destination that the co-op finds unattractive, then we, the regulated carrier, get the call to provide service, usually on short notice and at a hardship to us because we cannot plan for such business. The shippers know that we, as a regularly authorized common carrier, are required to provide service regardless of the difficulties created by the shipper's fickle attitude toward the regulated carriers such as Zero. In this itself lies the prime secret of the co-ops ability to make a profit, for it can preplan every load, has little or no solicitation expense, and very little communication cost involved in its operation. Few employes are required and practically no investment in permanent facilities is ever made.

We are interested in and strive for a stable, regulated transportation system. We support the criteria of public need and convenience for authorizing motor carrier service. If there is need for such cooperatives, then we must insist that they be bona fide ones.

We do not fear competition from legitimate cooperatives. We believe that the statutory requirements concerning (1) eligibility for membership and (2) percentage of hauling allowed for nonmembers, together with the proposal to limit the type of traffic they may haul, will adequately protect us if properly enforced and policed.

In that connection we desire to see the determination power placed in the hands of the ICC rather than with the Department of Agriculture since we feel that this is essentially a transportation matter which the former is best qualified to administer.

Further, the fact that the Secretary of Agriculture has intervened in several Commission proceedings as well as in the courts on the side of phoney co-ops such as ACS and ATA of Texas leaves doubt in our mind that the Department of Agriculture is sufficiently acquainted with the total transport picture in this country to warrant placing in its hands a matter of such great importance.

Thus we disagree with the proposed amendment to section 203(b)(5) of the act to the extent it would place such determinative powers in the Department of Agriculture.

The illegitimate cooperative does not observe the present requirements, and will not and cannot observe those proposed. It is free to operate on any basis compatible with its own desires, primary among which are the ability (1) to operate into any territory it likes, and (2) to charge any rate which it deems attractive enough to obtain the traffic.

Unfortunately, the existing procedures for stopping these unlawful operations are not satisfactory. ATA of Texas has remained in business and is still going strong today despite the fact that the Interstate Commerce Commission instituted an investigation into ATA's legality in January 1963. That proceeding still has not been resolved by the Commission.

We personally know of several individuals that are now planning and/or organizing trucking co-ops. One such is the All American Association, in which the name of Raymond Waters appears prominently, which has recently filed a request with the Railroad Commission of Texas to operate over the Texas highways in interstate commerce as a cooperative.

I understand on June 16 a hearing was held before the Railroad Commission of Texas, and I understand that their request was granted.

I would like to point out here that essentially the All American Association is now a co-op and that if ATA of Texas—the case presently pending before the Commission—if they were required to cease and desist by the Interstate Commerce Commission and by the courts, that that same Raymond Waters, who is now in the co-op business, who has been with ACS in the past and ATA, could now join with Jack Cobb until we have nothing but a success of cooperatives.

Therefore, I appear here today in support of legislation to establish a means by which a determination will be made as to whether any cooperative is a bona fide one before they actively enter the transportation field.

Unless appropriate legislation is enacted and action is taken to control that segment of the transportation industry which is using the nomme de guerre of the exempt cooperative to mask what are simply unlawful transportation activities, irreparable damage will continue to be done to the regulated carriers, both rail and truck, which are the backbone of this country's transportation system.

Thank you for the opportunity of appearing here today.

Senator LAUSCHE. Thank you very much, Mr. Cothren.

(Mr. Cothren's prepared statement follows:)

STATEMENT OF T. W. COTHREN, EXECUTIVE VICE PRESIDENT OF THE ZERO REFRIGERATED LINES, SAN ANTONIO, TEX., ON S. 1729

Mr. Chairman, Members of the Committee, my name is T. W. Cothren and my business address is 815 Merida Street, San Antonio, Texas. I have been employed by Zero Refrigerated Lines since 1960, and in the capacity of Executive Vice President since 1961.

My duties include supervision of sales, operations, and the various administrative functions of the company. I assist the President in the determination and making of policy.

Zero Refrigerated Lines is a motor common carrier, operating under certificates of Public Convenience and Necessity issued by the Interstate Commerce Commission.

Zero is incorporated under the laws of the State of Texas. It took over operations from its predecessor company, Cahill Refrigerated Lines on January 1, 1950, and is engaged primarily in the specialized transportation of perishable products and foodstuffs. We operate principally between the Southwestern States

on the one hand and, on the other, the Midwest, West Coast, and Pacific Northwest States.

Zero operates approximately 56 tractor-trailer units and we maintain terminals in San Antonio and Dallas, Texas; Clovis, New Mexico; Fort Dodge, Iowa; and Los Angeles, California.

Zero would be considered somewhat small, as truck lines go. However, in several areas where we operate we are only one of two regulated carriers specialized in foodstuffs available to the public.

The history of our company indicates a growth pattern based on beginning revenues of $182,630.00 in 1949 to a high of $2,052,270.00 in 1959. Since 1959, our gross revenues have reflected our struggle to maintain operating revenues sufficient for the survival of our company. Appendix 1 sets that out pictorially for you.

This problem began late in 1959. Its direct cause can be easily traced to the loss of business to trucking "co-ops" that entered the perishable trucking field in our area at that time. During 1959, Agricultural Commodity Service (ACS), an alleged cooperative of Bloomington, Illinois, opened an office and appointed an agent by the name of Raymond Waters in Fort Worth, Texas. Waters, and his associate, Jack Cobb, immediately began to haul traffic which Zero had been and were then transporting between areas that we were authorized to serve.

ACS was very active and cut deeply into our customers until ACS was required to cease and desist operations in February, 1962, as a result of an Interstate Commerce Commission order. However, *the following day,* Agricultural Transportation Association of Texas (ATA of Texas) began operations as an alleged exempt "co-op" with offices in the same building in Fort Worth, Texas, using the same equipment and drivers formerly used by ACS, and with the same Jack Cobb and Raymond Waters running it. Only the name was changed. The operation remained the same. This "co-op," ATA of Texas, has continued the past 4½ years, still taking business from us.

We contend that ATA of Texas and others of similar composition operating today are not bonafide cooperatives and should be required to cease and desist to operate, as was ACS.

These "co-ops" obtained loads, many of which were formerly ours, by simply charging shippers lower rates. For example, Safeway Stores of Oakland, California, was a good customer of ours. Their plant at Denison, Texas, was tendering us four to seven loads per week to California. We lost this traffic to ACS, and subsequently to ATA of Texas, because they undercut our published tariff rate by 17¢ per hundredweight. When I personally discussed this matter with the Traffic Manager at Safeway, he informed us that his company was naturally interested in the lowest possible cost. He stated that even if we petitioned the Interstate Commerce Commission for a rate equal to the "co-op" rate, most likely we would be unsuccessful because other motor carriers and the railroads would surely oppose our reduction and it would be suspended and disallowed by the Commission. He added that even if we were successful in meeting the "co-op" rate, he had been assured by the "co-op" that they would immediately reduce their rate again in order to keep the business.

Since the rates charged by these "co-ops" are not required to be fixed, approved, or regulated by the Interstate Commerce Commission in any way, they are able to change their rates whenever they wish.

This practice has extended over the past six years not just to Safeway Stores, but to many more of our customers, such as Libby, McNeil & Libby of Chicago, Illinois; Neuhoff Bros. Packers of Dallas, Texas; Melton Provision Company of San Antonio, Texas; Topco Associates, Inc. of Skokie, Illinois; Ventura Processors, Inc. of Ventura, California; Ideal Meat Company of Los Angeles, California; Grocers Supply Company of Houston, Texas; Johnston Pie Company of Los Angeles, California; and others whom we had regularly served prior to the creation of ACS and ATA of Texas.

Naturally, we have been attempting to take steps to survive. After losing several volume accounts, we looked for other movements in which we could participate and we attempted to cut rates on certain commodities which we were authorized to transport. Among these, for example, were rates on certain canned goods traffic which had been moving via rail. This type of movement is historically rail-type traffic; however, we desperately needed anything we could get.

Unfortunately for us in these circumstances, the procedure for rate reduction is both expensive and time consuming, and is successful only in certain instances, depending on the opposition we encounter and our ability to operate at the proposed lower rate.

Naturally, such rate cuts must be selective since we must be sure we can continue to furnish good service at the reduced rates before we embark on this course of action. In some instances, we have reduced rates on certain items to meet "co-ops" only to find that we could not afford to haul the traffic at the lower rate and still give as good service as the shipper required.

A most important thing to note is that these "co-ops" operate by taking the "cream" off the top; i.e., to concentrate primarily on volume accounts. They accept loads from such accounts giving them a lower rate and attempt to require that customer to tender them a predetermined number of loads each week to pre-set destinations, each week.

If the shipper finds that it requires an additional truck or two, or needs a load to go to a destination that the "co-op" finds unattractive, then we, the regulated carrier, get the call to provide service, usually on short notice and at a hardship to us because we cannot plan for such business. The shippers know that we, as a regularly authorized common carrier, are required to provide service, regardless of the difficulties created by the shipper's fickle attitude toward the regulated carriers such as Zero. In this itself lies the prime secret of the "co-ops" ability to make a profit, for it can pre-plan every load, has little or no solicitation expense, and very little communication cost involved in its operation. Few employees are required and practically no investment in permanent facilities is ever made.

We are interested in and strive for a stable, regulated transportation system. We support the criteria of "Public Need and Convenience" for authorizing motor carrier service. If there is need for such cooperatives, then we must insist that they be bona fide ones.

We do not fear competition from legitimate cooperatives. We believe that the statutory requirements concerning (1) eligibility for membership and (2) percentage of hauling allowed for non-members together with the proposal to limit the type of traffic they may haul will adequately protect us if properly enforced and policed.

In that connection we desire to see the determination power placed in the hands of the I.C.C. rather than with the Department of Agriculture since we feel that this is essentially a transportation matter which the former is best qualified to administer. Further, the fact that the Secretary of Agriculture has intervened in several Commission proceedings as well as in the Courts on the side of phoney co-ops such as ACS and ATA of Texas leaves doubt in our mind that the Department of Agriculture is sufficiently acquainted with the total transport picture in this country to warrant placing in its hands a matter of such great importance. Thus we disagree with the proposed amendment to Section 203(b)(5) of the Act to the extent it would place such determinative powers in the Department of Agriculture.

The illegitimate cooperative does not observe the present requirements, and will not and can not observe those proposed. It is free to operate on any basis compatible with its own desires, primary among which are the ability—(1) to operate into any territory it likes, and (2) to charge any rate which it deems attractive enough to obtain the traffic.

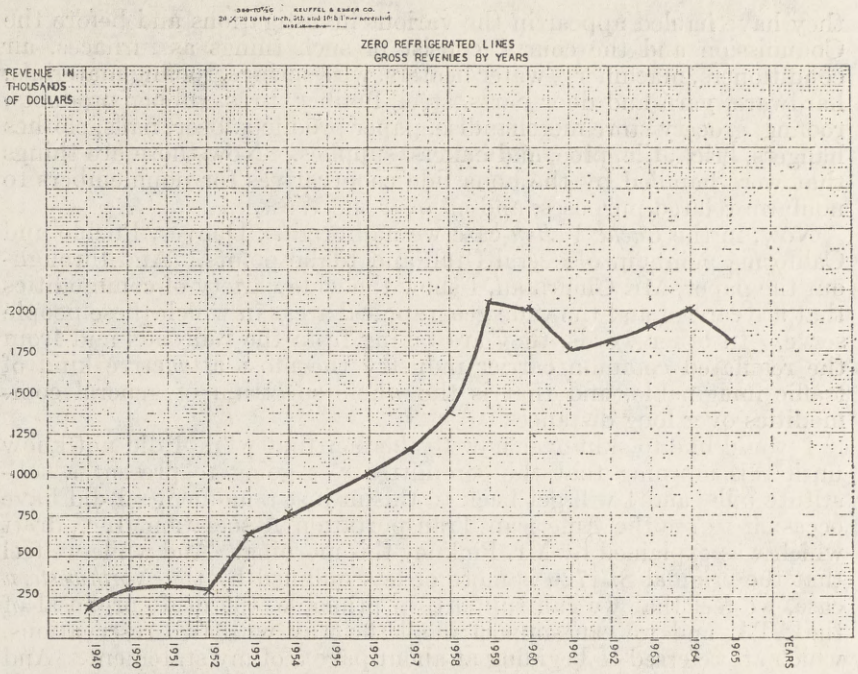
Unfortunately, the existing procedures for stopping these unlawful operations are not satisfactory. ATA of Texas has remained in business and is still going strong today despite the fact that the Interstate Commerce Commission instituted an investigation into ATA's legality in January, 1963. *That proceeding still has not been resolved* by the Commission.

We personally know of several individuals that are now planning and/or organizing trucking "co-ops." One such is the All American Association, in which the name of Raymond Waters appears prominently, which has recently filed a request with the Railroad Commission of Texas to operate over the Texas highways in interstate commerce as a cooperative.

Therefore, we appear here today in support of legislation to establish a means by which a determination will be made as to whether any cooperative is a bonafide one *before* they actively enter the transportation field.

Unless appropriate legislation is enacted and action is taken to control that segment of the transportation industry which is using the "Nomme d' Guerre" of the exempt cooperative to mask what are simply unlawful transportation activities, irreparable damage will continue to be done to the regulated carriers, both rail and truck, which are the backbone of this country's transportation system.

Thank you for the opportunity of appearing here today.



Senator LAUSCHE. Mr. E. D. White, commerce counsel, the association of Western Railways, Chicago, Ill.

Mr. White, you may proceed with the reading of your paper, or you may have it included in the record and give the core of what you want to say extemporaneously.

STATEMENT OF E. D. WHITE, COMMERCE COUNSEL, THE ASSOCIATION OF WESTERN RAILWAYS, CHICAGO, ILL.

Mr. WHITE. Mr. Chairman, I would like very much to have the paper entered in the record, and I will try to hit the highlights of it. Some of the things that I have to say in my written statement have been touched upon already this morning, but there are a few things that have not.

First, I would like to give the position of our members on this entire ball of wax, and that is that they strongly urge that the exemption should be rewritten in plain and unmistakable terms to the end that the bona fide agriculture associations and federations may freely fulfill their former transportation needs but may not haul everything for everybody.

And they further urge that the Interstate Commerce Commission be given the clear power to speedily stop operations of the hundreds of highway transports running under the claim of the exemption of section 203(b)(5) by bogus, self-styled cooperatives.

Now I point out in the paper that there are two types of competitors, the bona fide cooperatives and what we choose to call the spurious or pseudo associations, and we point out that the bona fide associations operate more than 33,000 trucks and that the things

they have hauled appear in the various investigations and before the Commission and the courts, consist of such things as furnaces, air conditioners, machinery, water heaters, wire springs, roofing materials, hardware, yarn and door parts, steel, lumber, tires, rubber products, roofing, grocery store merchandise, paper products, beer, nails, clothes hangers, brick, tile, pipe, and bakers' supplies. Now those are things that were handled by the bona fide cooperatives for nonmembers to nonfarm related purposes, and all over the West.

Now, in the *Cache Valley* case we had origins, Denver, Pueblo and California points into several Utah and Idaho points. And throughout the paper, Mr. Chairman, I show the wide variety of commodities that are carried and the wide geographical areas in which these people serve. In other words, they are taking from the railroads and from the regulated common carrier industry the most attractive kind of traffic imaginable, and that is the whole spectrum of general commodities over long distances.

I would like to skip over now to the fact that while I did not know until this morning that the committee was going to present a substitute bill—and I will get back to this in just a moment—I did have occasion to see the American Transportation Association, Inc., draft which was explained by Mr. Pinkney this morning. And while we feel that the original S. 1729 is more or less nullified by the *Northwestern* case, we feel that we can support, in principle, the draft proposal of the ATA, and we can support it all the way with two reservations, which are referred to begining at about page 5 of my statement. And that is this, that the ATA proposal, No. 1 would confer automatic bona fides on anyone who could successfully have their name placed upon a list to be prepared by the Secretary of Agriculture.

Now there are no standards to guide the Secretary as to what organizations could or should go on that list, and we fear that without some kind of criteria that it might well be that, inasmuch as these spurious associations go to such great pains, as has been pointed out by the Commission and ATA case, and it is cited in my paper, go to such great pains to give an outward show of legality, that it may well be that the Secretary will feel compelled to list those people, and then we are back right where we started from, except worse, because they would be automatic bona fides if you can obtain a place on the list.

Now we think there should be some standards in the ATA draft proposal to prevent sham or spurious or pseudo associations to obtain a place on the list.

Senator LAUSCHE. That is, it is your fear under the language in the ATA proposal that discretionary power of such breadth will be granted to the Secretary of Agriculture that he will be able to certify whatever alleged co-ops he pleases as being bona fidely engaged in the cooperative enterprise?

Mr. WHITE. Yes, sir. And it is not just a matter of what he may please to do. We are not criticizing the Secretary of Agriculture, but inasmuch as these people incorporate themselves in the various States under the agricultural cooperative acts of the various States and go through every possible process of making an outward show of bona fideness, that what we fear is that the Secretary may feel compelled to put them on because they do have a cloak of legality, so to speak.

Senator LAUSCHE. In summary, you are of the belief that if the ATA-proposed amendment is accepted, there ought to be included in it certain standards that will have to be met before an organization can be certified prima facie as a cooperative?

Mr. WHITE. That is right.

Now there is one other reservation that I personally have, having had some little experience in these investigations as to the ATA proposal, and that is this, that proposal, of course, would permit the bona fide cooperative to haul anything for their members, and that is good. We don't oppose that at all. That is good. But for nonmembers they could haul——

Senator LAUSCHE. Let's stop at this point. That is, you would give the bona fide cooperatives the full power to haul all goods for their own members?

Mr. WHITE. Yes, sir.

Senator LAUSCHE. But would you place any limitation dollarwise on what it may haul for its own members?

Mr. WHITE. No, sir.

Senator LAUSCHE. You would not? Unlimited power?

Mr. WHITE. For their own members, farm-related products. I am not talking about furnaces and steel beams. I am just talking—you see the ATA proposal relates it to farm-related items.

Senator LAUSCHE. Yes, sir.

Mr. WHITE. Now, the difficulty that I see in that is that the nonmembers are limited, and properly so. But there is no provision in the ATA proposal to define who may become a member. Now this is important in that it might avoid years of litigation. I am going to talk about the time lag in a minute, if I may, but you see in so many of what I term the pseudo associations there are nationally known manufacturers and processors who are accepted as members, and they claim that business is member business. I won't name their names, but they are in the Commission reports. But now what is to prevent a bona fide association from taking in United States Steel as a member? And then, as a member, there is no restriction whatsoever as to the type of commodity that could be hauled.

Senator LAUSCHE. What would you propose as the remedy to seal off that loophole?

Mr. WHITE. Sir, the only remedy in my statement was that we would be extremely happy to meet with the committee or its staff and try to work out those things. It can be done.

Now in my statement I mention how some of these things drag on and on and on, and it suddenly occurred to me that it might be critical, a criticism of the Commission. But I would like to explain that we are not critical of the Commission because of the time lag in these cases, because they are bitterly fought at every step. It takes a long investigation, it takes field men, the hearings stretch out, and pleadings stretch out, and the records are voluminous. I am not criticizing the Commission at all on the time lag on these things. As a matter of fact, on some of the cases I think maybe they were too much concerned with time lag.

Senator LAUSCHE. Thank you very much, Mr. White.

(Mr. White's prepared statement follows:)

STATEMENT OF ED WHITE, COMMERCE COUNSEL, THE ASSOCIATION OF WESTERN RAILWAYS WITH RESPECT TO S. 1729

My name is Ed White. I am Commerce Counsel of The Association of Western Railways, with headquarters at Chicago, Illinois.

The Association of Western Railways is a non-profit association whose members comprise almost all of the major lines serving the Western District, which, generally speaking, consists of the Upper Peninsula of Michigan, the States of Illinois and Wisconsin, and all of the contiguous states west of the Mississippi River.

Our member lines are deeply concerned over the inroads that the *bona fide* agricultural co-operatives have made in the transportation of non-farm related traffic and over the diversion of all kinds of traffic handled by the pseudo agricultural co-operatives.

At the request of member lines, the Association's Law Department has kept in close contact with these developments the past several years, and has participated in several of the Interstate Commerce Commission investigative proceedings. That such traffic diversions from the nation's regulated transportation system are of alarming proportions is beyond question.

Our members do not believe that it was the true intention of the Congress, in enacting section 203(b)(5) of the Interstate Commerce Act, to give blanket authority to the *bona fide* co-operatives to handle every type of commodity, between all points, including urban centers, for every member of the shipping and receiving public, as long as the revenues derived therefrom do not constitute more than 50 percent of their total business. Further, they do not believe it should be so easy for spurious "co-operatives" to continue to operate year after year under color of right. Our members feel and strongly urge that the exemption should be rewritten in plain and unmistakable terms to the end that *bona fide* agricultural associations and federations may freely fulfill their farm-related transportation needs, but may not haul everything everywhere for everybody. And, they further urge that the Interstate Commerce Commission be given the clear power to speedily stop operations of the hundreds of highway transports running under the claim of the exemption of section 203(b)(5) by bogus, self-styled co-operatives.

We are here concerned with two types of competitors.

First is the legitimate, *bona fide* co-operative, such as Northwest Agricultural Cooperative Association, Inc. [See 350 F. 2d 252, Cert. denied].

The other is the pseudo co-operative which engages in no business other than for-hire highway transportation, such as Agricultural Commodity Service [See 86 M.C.C. 5].

Both types pose real problems to the regulated transportation industry.

According to the March 7, 1966, issue of *Transportation Business Report*, there are more than 9,000 farm co-operatives which operate some 33,000 trucks. Under the Northwest Agricultural Cooperative decision, these vehicles may be used to backhaul any commodity for anyone, as long as the revenues do not exceed 50 percent of the total business. As stated in the March 7 report above referred to, the hauling of non-farm commodities for non-members "makes a real dent" in traffic which could be carried by regulated carriers.

The evidence in the Northwest Agricultural Cooperative case shows that articles transported for non-members include furnaces, air conditioners, machinery, water heaters, wire springs, roofing materials, hardware, yarn and door parts. Geographically, operations are carried on throughout the West, Midwest and Southwest.

The Interstate Commerce Commission's investigation of the operations of Cache Valley Dairy Association [96 M.C.C. 616] disclosed that this *bona fide* Utah agricultural co-operative in a 14-month period handled 638 interstate backhaul truckloads, of which only 12 contained commodites for the association's own business. Of the 638 truckloads handled for non-members, 447 involved commodities not directly used by producers of milk and dairy products. Some of the commodites handled were steel, lumber, tires, rubber products, roofing, grocery store merchandise, paper products, beer, wire products, nails, clothes hangers, brick, tile, pipe, and bakers' supplies. These movements originated at Denver, Pueblo and Minnequa, Colo. and Los Angeles and San Francisco, Calif. and were destined to Salt Lake City, Ogden, Logan, Provo and Smithfield, Utah and Montpelier, Ida.

Iowa Cooperative Association was found by the District Court for the Southern District of Iowa [236 F. Supp. 873] not to be a *bona fide* co-operative but, instead

nothing more than "a fictitious sham". Operations were enjoined. During the fiscal year ending August 31, 1964, this carrier's revenues were $1,085,633 of which all but $19,200 were held to represent illegal transportation of fresh pork and butter from Iowa and Nebraska points to points in California.

In the Agricultural Commodity Service proceeding [86 M.C.C. 5], the Commission found that that pseudo co-operative and some of its agents had illegally transported a broad range of commodities for an imposing list of manufacturer and processor "members" including fresh meats, packinghouse products, canned goods, sugar, containers, dairy products, fertilizer, feed, seed, chemicals, farm machinery and steel. Collectively, operations were conducted in every section of the country. Some 38 months after initiation of the proceeding, the Commission compelled this outfit to cease operations on February 18, 1962.

The very next day, Agricultural Transportation Association of Texas, promoted by one who was an agent for Agricultural Commodity Service, commenced operations. This promoter advised a number of the shippers of Agricultural Commodity Service that he and all his staff and equipment would be associated with the newly-formed Agricultural Transportation Association of Texas. On January 25, 1963, the Commission instituted an investigation of the activities of this carrier. A Hearing Examiner and the Commission's Division 1 [96 M.C.C. 293] found that all but an inconsequential portion of the transportation conducted by it was beyond the pale of section 203(b)(5). The case is now pending before the entire Commission. The evidence shows that during the first 12½ months of its operation—the start-up period—Agricultural Transportation Association of Texas realized revenues exceeding $1.7 million. The vast preponderance of this traffic consisted of fresh meats and packinghouse products and processed foods moving between points in about 20 states. Like Agricultural Commodity Service, Agricultural Transportation Association of Texas claims as "members" nationally known manufacturers and processors, some of whom were made respondents.

As a final example of the traffic here involved, we call attention to the recent section 22 tenders of American Farm Lines Co-op, headquartered at Oklahoma City, Okla. This concern offered to handle for the United States Government freight, all kinds, between all points in Kansas and all points in California and Washington; between St. Louis and Kansas City, Mo. and all points in California; between all points in Nebraska and all points in California; between all points in Oklahoma and all points in California and Washington; between Rock Island, Ill. and all points in California; and from Lincoln, Nebr. to specified points in Washington and Oregon.

The above-mentioned decision in the Northwest Agricultural Co-operative case would seem to nullify the benefits intended by S. 1729. However, we are familiar with the draft proposal of the American Trucking Associations, Inc., and we support that proposal in principle. We believe that the solution to the entire problem including provisions making injunctive relief against sham associations possible is found therein, subject to the two reservations hereinafter noted.

The draft proposal would automatically confer the benefits of the exemption upon those named on a list of *bona fide* associations and federations to be prepared annually by the Secretary of Agriculture, but there are no standards for the determination by the Secretary of *bona fides*. Bogus cooperatives as a matter of course take great pains to follow closely the form of agricultural co-operatives, including incorporation as such [96 M.C.C. 293, 299]. Unless criteria are established, the Secretary may well feel compelled to include on his list illegitimate carriers, such as Agricultural Transportation Association of Texas, who make every outward pretense of *bona fides*.

The draft proposal restricts the commodities which a *bona fide* co-operative may handle for non-members and permits unrestricted transportation for members. Unless requirements for membership are clearly defined, important, nationally-known manufacturers and processors may be admitted to membership, as they were by Agricultural Commodity Service and Agricultural Transportation Association of Texas and the primary purpose of the draft would be defeated.

Proper safeguards along these lines should be written into the enactment. They are needed to make unarguable any future claim that a manufacturer or processor is eligible for membership—for the purposes of highway transportation—in a *bona fide* association, and to make certain that a "fictitious sham" cannot possibly obtain a place on the Secretary's list. The bogus associations could then be enjoined as fast as they change their names and their places of

incorporation. We would be happy to work with the Committee's staff in an attempt to work out these details.

Senator LAUSCHE. The first witness tomorrow will be Frank A. Smith, Transportation Association of America, Washington, D.C. We will meet at 9 o'clock tomorrow morning.

(Whereupon, at 12:07 p.m., the subcommittee recessed, to reconvene at 9 a.m., July 15, 1966.)

AGRICULTURAL COOPERATIVE TRANSPORTATION

FRIDAY, JULY 15, 1966

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

The Subcommittee met at 9 a.m., in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

Senator LAUSCHE. The meeting will come to order.

The first witness this morning will be Mr. Frank A. Smith, of the Transportation Association of America.

STATEMENT OF FRANK A. SMITH, VICE PRESIDENT, RESEARCH, TRANSPORTATION ASSOCIATION OF AMERICA

Mr. SMITH. I have a rather short statement; it is a four-page statement. I will go through it, and in areas that have already been covered by witnesses, I will merely mention them, but I would like to expand my remarks in a couple of areas that I think were just covered briefly yesterday.

Senator LAUSCHE. You may do so. And the whole statement will be printed in the record.

Mr. SMITH. I am here today appearing on behalf of the TAA board of directors in partial support of S. 1729.

I must say partial support because current TAA policy applies only to that portion of S. 1729 which will require agricultural cooperatives to prove their eligibility before being permitted to perform transportation service under the exemption from ICC regulation contained in section 203(b)(5). While TAA strongly favors this certification requirement, which would be done by the ICC, it has no position on the latter portion of S. 1729, which would authorize the ICC to inspect the books and records of such cooperatives.

I would like to stress that since we are in favor of the certification requirement of S. 1729, we would likewise be in favor or support of this portion of the substitute bill proposed by Mr. Pinkney for the American Trucking Associations.

TAA, for the record, is a national transportation policy organization composed of transport users of all kinds, investors, and carriers of all modes who work together to help develop sound national policies that will assure the strongest possible transport system under private enterprise principles. Before the 115-member TAA board of directors adopts a policy position, the applicable policy proposal first is reviewed by 8 permanent panels, on which serve over 300 top executives from the following respective transport interests:

Users, investors, and air, freight forwarder, highway, pipeline, railroad, and water carriers. These panels make individual recommendations to the TAA board after studying the policy proposal and, if necessary, working with the other panels to reach a common position.

This procedure was followed in developing the following TAA position on which this testimony is based:

> The Interstate Commerce Act should be amended to require that, in order to be eligible for the exemption from regulation under Section 203(b)(5), a cooperative association must be certified as such by an appropriate Government agency.

I think it is important to emphasize that these various transport interests have considered this issue in order to show that the principle involved is of concern to the overall transportation industry.

In fact, when our board adopted our position, the policy was formally approved after the board was advised that the TAA user, investor, highway, and railroad panels specifically supported it, and the other four panels were not opposed to it. Another way of saying the latter is that the other four panels did not object to TAA's openly supporting this proposal.

The use of the words "appropriate Government agency" is interpreted to mean that we would favor either the Department of Agriculture or the ICC as the certifying agency.

The purpose of TAA's policy on agricultural cooperatives is to help prevent illegal for-hire motor carriers from engaging in general for-hire interstate transportation under the guise of being an exempt farmer cooperative.

As the chairman knows, TAA has worked several years in the past in trying to support legislation to help curb illegal for-hire carriage, which last year, through the help of this committee, resulted in the passage of Public Law 89–170.

Now, therefore, we are concerned about this basic problem of illegal for-hire carriage. Since at present there is no requirement that an organization claiming to be an agricultural cooperative must prove that it is bona fide prior to operating under section 203(b)(5), the door is wide open for illegal motor carriers to use this as a guise to engage in for-hire transportation beyond the regulatory control of the ICC.

The Commission has quite adequately explained yesterday why they have difficulty in taking enforcement action in this area, and they have expressed their position, so I won't repeat the next portion.

But on the bottom of page 2—the question could be raised whether passage of Public Law 89–170 last year has made it easier to take enforcement action against illegal farmer cooperatives. While it is true that such cooperatives are subject to the provisions of this recently passed public law, the fact remains that the burden of proving their ineligibility to use the co-op exemption still rests with the ICC or any plaintiff in a court suit. Since farmer co-ops can lawfully engage, within certain broad limits, in the for-hire transport of general conditions for nonmembers, the problem of identifying the illegal ones is very difficult. As a result, the effectiveness of Public Law 89–170 in this area of enforcement is definitely restricted at this time.

Now, at this point I would like to expand somewhat beyond my statement.

It is very important in enforcement of illegal for-hire carriage to utilize the technique of identification of commodities. I will illustrate.

If an enforcement officer stops a regulated carrier—which says he is a household goods carrier but is hauling general freight while not conclusive it is prima facie evidence that he is operating illegally, beyond the scope of his certificate.

Now, let's take a private carrier. A private carrier is stopped, and he is hauling general freight. If that freight, on the surface, has no direct relationship to the type of business the hauler is in, it is again not conclusive, but it is fairly prima facie evidence that there is a good chance he is illegally operating.

Now, let's take an agricultural co-op. Since the co-op—especially now—permitted to engage, to a certain extent, in the hauling of general commodities, when you stop an agricultural co-op, you have no way of relating what he is moving to whether he is lawful, for the simple reason that he is permitted to engage in this type of operation.

Senator LAUSCHE. When does his right to engage come to an end?

Mr. SMITH. His right would come to an end when it reaches one-half of his total business.

But as to the inspector on the road, it would be difficult for him to determine at what point this has gone beyond 50 percent. He would actually have to make some kind of analysis or check of the company. And with the limited powers, or practically nil powers of the Commission, I don't know how they are going to determine at what point it is 50 percent.

But I am just trying to illustrate that it takes some means of using commodity identification for immediate enforcement. And this is where we want to get the States to come in and assist, because the State enforcement people will use this mechanism.

Now, passage of the certification requirement would assure that only bona fide farmer cooperatives use this exemption and thus prevent sham co-ops from using it to engage in illegal for-hire transport. This should help close the loophole that permits illegal carriers to perform unregulated general for-hire transport service in unfair competition with regulated rail and motor carriers.

There has been discussed at length yesterday the *Northwest Co-op* case. This has created a very serious complication as a result of the Supreme Court's action.

Now, the effect of this Court decision is to permit bona fide farmer co-ops lawfully to engage in extensive for-hire transportation for nonmembers.

Figures were cited yesterday. The 1961 Department of Agriculture survey showed there are approximately 9,294 farmer co-ops in the United States. Now, since many of these are multi-million-dollar organizations, and if they were permitted to haul up to 50 percent of their overall revenues in transportation for nonmembers, you can see the potential for engaging in general for-hire transportation beyond ICC economic regulations is equivalent to the scope of operation of many of the larger regulated motor carriers.

Now, I should stress the purpose of pointing out the possible impact of this decision in the *Northwest* case is that it strengthens even more the need for a certification requirement, such as proposed in S. 1729, or by ATA.

Now, while TAA does not have a policy position on the merits or demerits of this particular Court decision, we are concerned about

the encouragement that it will undoubtedly give to illegal for-hire motor carriers to use the farmer co-op exemption as a means of entering the general transportation field, with a minimum chance of being prosecuted.

Without a certification requirement, a pseudofarmer co-op can tell shippers it is exempt under section 203(b)(5) and thus can lawfully engage in the for-hire carriage of general commodities.

Now, shippers, in turn—as it was pointed out yesterday by a number of the trucking company witnesses—becuase of this *Northwest* case decision, are more apt to use co-ops for moving their general freight at lower than published rates, and thus be more susceptible to offers from pseudofarmer co-ops.

At this point I would like to expand just a bit more.

We have had several shippers, large industrial shippers, that in the past have had telephone calls from agriculture co-ops. The latter would ask these shippers whether they would like to haul shipments at negotiated rates, which the co-ops said could be done mainly for their backhauls to certain points. The shipper would respond and say, "Well, do you have operating authority, since my commodities are regulated commodities." The co-op's answer would be, "We do not need operating authority, because we are an agricultural co-op."

In the past the shipper has said, "Well, there is still a question of law of whether you can legally haul this or not." And this particular shipper has denied any of this traffic to such a co-op.

Senator LAUSCHE. What type of commodity does that shipper handle?

Mr. SMITH. This is aluminum.

Senator LAUSCHE. Is that a regulated commodity as you said?

Mr. SMITH. Yes, sir.

Senator LAUSCHE. And it can only be carried by duly authorized transportation companies.

Mr. SMITH. If it is on a for-hire basis. The shipper himself could engage in private carriage of course. But if he was going to use for-hire carriage, it should be a regulated commodity.

Senator LAUSCHE. Will you identify some of the other regulated commodities, if you can?

Mr. SMITH. A regulated commodity would be canned goods, finished steel, furnaces—most manufactured commodities would be regulated commodities.

The point I was going to raise is that in the past the shipper could come back with that answer. Now, with this decision, he cannot come back and say that isn't lawful. He will know that it is lawful in certain cases. The question is the shipper is able to say, "Is this a bona fide co-op?" In other words, it would be unlawful if it is not a bona fide co-op. But as pointed out yesterday, how in the world—if the Commission cannot determine whether it is bona fide or not without extensive time and effort—will the average shipper be able to determine, first, whether the co-op is unlawful on the surface, and second, whether even if it is unlawful, whether what he is hauling is up to 50 percent or more, without looking at the records.

So you can see it does complicate this question.

If we had a certification process, at least this shipper could call up the local ICC office and say, "Is this co-op on your bona fide list?"

Now, in summary——

Senator LAUSCHE. Do you know what the reason was underlying the requirement that all regulated commodities had to be shipped either by the manufacturer on his own mode of transportation or by a regulated carrier?

Mr. SMITH. You mean the basic concept?

Senator LAUSCHE. Yes. Why did they say—now, you are shipping a regulated commodity, and you have got to ship it on the facility of a certified carrier. What is the reason supporting that law? Do you know?

Mr. SENDER. The 1935 Motor Carrier Act contained a declaration of purpose which was the predecessor of the national transportation policy. And it, in the terms set forth in the present version, which is the national transportation policy, set forth the reasons why Congress established regulation. That is to promote safe, economical, and efficient service, to encourage establishment and maintenance of reasonable charges for transportation service without unjust discrimination, undue preference, et cetera

Senator LAUSCHE. That is what I thought the answer was, that it was intended to provide some sort of guaranteed cargoes to insure that these carriers will be able to exist.

Mr. SMITH. That is right, sir. I would add only one other thing.

Basically the approach has been that we will have regulated transportation in general, and from that point, it has been determined which commodities will be removed from this type of regulation. That has been our approach rather than the other.

Senator LAUSCHE. I see. All right. Proceed.

Mr. SMITH. Our policy was a means of curbing illegal for-hire trucking which would be done by closing the loophole in the present statute and thus confining the use of this exemption to bona fide farmer co-ops.

While TAA has no position on the right of bona fide farmer co-ops to engage in general transport for nonmembers, it does believe the Supreme Court's decision in the *Northwest Co-op* case makes it even more necessary to impose a certification requirement on users of the farmer co-op exemption, since the current right to engage in extensive general for-hire transport will undoubtedly encourage pseudofarmer co-ops to use this subterfuge as a way to operate beyond ICC economic regulation—and, more important, at a minimum risk of prosecution.

(The complete statement of Mr. Smith follows:)

STATEMENT OF FRANK A. SMITH, VICE PRESIDENT, RESEARCH TRANSPORTATION ASSOCIATION OF AMERICA, ON S. 1729

My name is Frank A. Smith. I am Vice President—Research of the Transportation Association of America, which has its general offices in Washington, D.C. I am appearing today on behalf of the TAA Board of Directors in partial support of S. 1729. I say partial support because current TAA policy applies only to that portion of S. 1729 which will require agricultural cooperatives to prove their eligibility before being permitted to perform transportation service under the exemption from ICC regulation contained in Section 203(b)(5). While TAA strongly favors this certification requirement, it has no position on the latter portion of S. 1729, which would authorize the ICC to inspect the books and records of such cooperatives.

TAA, for the record, is a national transportation policy organization composed of transport users of all kinds, investors, and carriers of all modes who work together to help develop sound national policies that will assure the strongest possible transport system under private enterprise principles. Before the 115-

member TAA Board of Directors adopts a policy position, the applicable policy proposal first is reviewed by eight permanent Panels, on which serve over 300 top executives from the following respective transport interests: Users, Investors, and Air, Freight Forwarder, Highway, Pipe Line, Railroad, and Water carriers. These Panels make individual recommendations to the TAA Board after studying the policy proposal and, if necessary, working with the other Panels to reach a common position.

This procedure was followed in developing the following TAA position on which this testimony is based:

"The Interstate Commerce Act should be amended to require that, in order to be eligible for the exemption from regulation under Section 203(b)(5), a cooperative association must be certified as such by an appropriate Government agency." The use of the words "appropriate Government agency" is interpreted to mean that we would favor either the Department of Agriculture or the ICC as the certifying agency.

The purpose of TAA's policy on agricultural cooperatives is to help prevent illegal for-hire motor carriers from engaging in general for-hire interstate transportation under the guise of being an exempt farmer cooperative. Since at present there is no requirement that an organization claiming to be an agricultural cooperative must prove that it is bona fide prior to operating under Section 203(b)(5), the door is wide open for illegal motor carriers to use this as a guise to engage in for-hire transportation beyond the regulatory control of the ICC.

The question could be raised whether passage of Public Law 89–170 last year has made it easier to take enforcement action against illegal farmer cooperatives. While it is true that such cooperatives are subject to the provisions of this recently passed public law, the fact remains that the burden of proving their ineligibility to use the co-op exemption still rests with the ICC or any plaintiff in a court suit. Since farmer co-ops can lawfully engage, within certain broad limits, in the for-hire transport of general commodities for nonmembers, the problem of identifying the illegal ones is very difficult. As a result, the effectiveness of P.L. 89–170 in this area of enforcement is definitely restricted at this time.

Passage of the certification requirement would assure that only bona fide farmer cooperatives use this exemption and thus prevent sham co-ops from using it to engage in illegal for-hire transport. This should help close the loophole that permits illegal carriers to perform unregulated general for-hire transport service in unfair competition with regulated rail and motor carriers.

A much more serious complication has arisen as a result of the Supreme Court's action earlier this year which, in effect, upheld an appellate court's ruling in the Northwest Agricultural Cooperative Association Case that the farmer co-op exemption should be interpreted broadly to permit the backhaul of general commodities for nonmembers so long as revenues therefrom do not exceed its co-op function r evenues and are incidental and necessary to the co-op's primary legal activity.

The effect of this court decision is to permit farmer cooperatives lawfully to engage in extensive for-hire transportation for nonmembers. Since, according to a Department of Agriculture survey as of January 1, 1961, there are approximately 9,294 farmer cooperatives in the United States, the potential competition to regulated carriers is sizable. Since many of these cooperatives are multi-million-dollar organizations, their potential for engaging in general for-hire transportation beyond ICC economic regulation is equivalent to the scope of operations of many of the larger regulated motor carriers.

Our purpose of stressing the possible impact of the decision in the Northwest Case is to point out that it strengthens the need for a certification requirement such as proposed in S. 1729. While TAA does not have a policy position on the merits or demerits of this court decision, it is concerned about the encouragement that it will undoubtedly give to illegal for-hire motor carriers to use the farmer co-op exemption as a means of entering the general transport field with a minimum chance of being prosecuted. Without a certification requirement, a pseudo farmer cooperative can tell shippers it is exempt under Section 203(b)(5) and thus can lawfully engage in the for-hire carriage of general commodities.

Shippers, in turn, because of the Northwest Case decision, will be more apt to use co-ops for moving their general freight at lower than published rates, and thus be more susceptible to offers from pseudo farmer co-ops.

CONCLUSION

In summary, TAA supports that portion of S. 1729 that would require certification of farmer cooperatives before they can operate as exempt motor carriers under Section 203(b)(5) of the Interstate Commerce Act, although the Association has

no position on that portion of the bill to give the ICC the power to inspect the books of such co-ops.

The TAA policy was adopted as a means of curbing illegal for-hire trucking, which would be done by closing a loophole in the present statutes and thus confining use of this exemption to bona fide farmer co-ops.

While TAA has no position on the right of bona fide farmer co-ops to engage in general transport for non-members, it does believe the Supreme Court's decision in the Northwest Co-op Case makes it even more necessary to impose a certification requirement on users of the farmer co-op exemption, since the current right to engage in extensive general for-hire transport will undoubtedly encourage pseudo farmer co-ops to use this subterfuge as a way to operate beyond ICC economic regulation.

We, therefore, urge early approval of the certification requirement by your Subcommittee and subsequent favorable action by the full committee.

Senator LAUSCHE. I can't understand why your association supports the first half of S. 1729, and based upon your discussion about the difficulty of determing whether violations have occurred, you don't support the second part, which would authorize the ICC to inspect the books and records of such cooperatives.

Mr. SMITH. I think you have to understand our type of organization. It is a national policy organization.

We have, for example, a user panel of approximately 85 top traffic people of major corporations. On that particular issue, certainly the highway panel and our railroad panel would go all the way. There is the question, in our user panel, that shippers historically have resisted a furthering of ICC enforcement powers to inspect books, and so forth. The shippers in the past have resisted this. So we have a neutral position. We wouldn't oppose such a change if you choose to go ahead and make it. We in our organization have not been able to get all our groups to agree on this particular portion. So we are just neutral in that area.

Senator LAUSCHE. The Transportation Association of America has as members shippers of merchandise.

Mr. SMITH. Yes, sir; shipper and suppliers.

Senator LAUSCHE. Investors.

Mr. SMITH. Yes, sir.

Senator LAUSCHE. Freight forwarders, highway, pipeline, railroad, and water carriers. You feel you cover the gamut of interested parties, except the consuming public.

Mr. SMITH. Yes, sir. By consuming public I guess you mean the average man on the street.

Senator LAUSCHE. The public finally has to buy what is shipped.

Mr. SMITH. Of course, they would be represented in the user panel.

We are an across-the-board group. But our single objective is transportation policy.

We do have all these various interests, and I say at times our purpose is to try to get them to agree on something that would be commonly accepted.

Senator LAUSCHE. Well, when you have as members users of transportation facilities, the normal position of the user or the shipper would be to get a low rate, as low a rate as he possibly can——

Mr. SMITH. Yes, sir. In line with the best service.

Senator LAUSCHE. Well, the low rate would eventually inure to the benefit of the public, the buying public, of the things that have been transported.

Mr. SMITH. On the surface that may appear true. I think the best method, in the concept of regulated transportation, would be the lowest rate that provides the best overall service. We are going to have some services that are marginal and a regulated carrier would be the only one to perform them. He has got to have a little cushion somewhere. So we are striving for the lowest average rate.

Senator LAUSCHE. I think that is all. Thank you.

Mr. Albert B. Kelley, manager of the Transportation and Communications Department of the U.S. Chamber of Commerce.

STATEMENT OF ALBERT B. KELLEY, MANAGER, TRANSPORTATION AND COMMUNICATIONS DEPARTMENT, U.S. CHAMBER OF COMMERCE, WASHINGTON, D.C.

Mr. KELLEY. Mr. Chairman, I am here today to present the position of the Chamber of Commerce of the United States with respect to S. 1729. This bill provides for amendment of section 203(b)(5) of the Interstate Commerce Act so as to require that in future, an agricultural cooperative wishing to enjoy the exemption provisions of that section would be required to obtain and hold a certificate of exemption issued by the Interstate Commerce Commission.

The national chamber supports the objectives of this legislation. But we do not believe it goes far enough—our position is that more than a certification provision is required if the problem sought to be dealt with in S. 1729 is to be effectively resolved.

The next page of my testimony deals with background which I believe you heard in full yesterday from Chairman Bush and other witnesses, as to the *Northwest* case, so with your permission I will pass over that, to the bottom of page 2.

The consequences of the litigation which produced the court of appeals decision in the *Northwest* case are simply these:

(1) Without any showing of public convenience and necessity and without operating authority from the Interstate Commerce Commission, a bona fide agricultural cooperative may engage in for-hire motor carrier operations directly competitive with regulated commercial carriers.

(2) Moreover, it may do so without publishing its rates, without being bound to provide service to all who need or want it, and without adhering to the many other requirements imposed in the public interest upon members of the regulated common carrier system.

This, we believe, does serious and unwarranted damage both to the concept of strong common carrier transportation and to our national common carrier system. If ever there existed a situation which fits the term "destructive competition," this is it. The present and potential competition of for-hire transportation operations performed by agricultural cooperative organizations as a result of the *Northwest* decision could well lead to the destruction of some members of the common carrier community.

I believe you heard more specific testimony in that direct yesterday also.

S. 1729 provides a first step toward elimination of that threat, by requiring certification of bona fide farm cooperatives qualifying for the exemption of section 203(b)(5). This would have the very desir-

able result of weeding out any clearly unqualified organizations claiming the privileges of the exemption.

However, an additional step is needed if the problem is to be adequately resolved. The scope of the exemption itself must be limited so as to provide that qualified agricultural cooperative associations may engage only in necessary transportation of farm products and farm supplies under that exemption.

With this accomplished, qualified agricultural cooperatives could lawfully transport farm products and farm supplies under that exemption.

With this accomplished, qualified agricultural cooperatives could lawfully transport farm products and farm supplies in motor vehicles controlled and operated by such cooperatives, without operating authority from the Interstate Commerce Commission.

Under the certification provision embodied in S. 1729, the Commission would be able to determine whether the limits of this exemption, as rationalized above, were being properly observed, and to insure that the exemption was made available to all qualifying organizations.

This is a matter of extreme importance. The entire economy depends on a sound, efficient national transportation system. If the common carrier members of that system are forced to operate in the face of unjustified competition created by the broadening or distorting of statutory exemptions, the strength and efficiency of the system is endangered. Then, everyone suffers; the carriers, those who depend upon them for service, and the public as a whole. The national chamber urges you to remedy this situation with legislation which solves all of the problem, not just part of it.

(The complete prepared statement of Mr. Kelley follows:)

TESTIMONY OF ALBERT B. KELLEY, FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES

I am here today to present the position of the Chamber of Commerce of the United States with respect to S. 1729. This Bill provides for amendment of Section 203(b)(5) of the Interstate Commerce Act so as to require that in future, an agricultural cooperative wishing to enjoy the exemption provisions of that section would be required to obtain and hold a "certificate of exemption" issued by the Interstate Commerce Commission.

The National Chamber supports the objectives of this legislation. But we do not believe it goes far enough—our position is that more than a "certification" provision is required if the problem sought to be dealt with in S. 1729 is to be effectively resolved.

In order to make clear our position toward this bill, let me very briefly discuss developments which prompted the measure.

On August 3, 1964, the Interstate Commerce Commission instituted a proceeding against Northwest Agricultural Cooperative Association, Inc. in the United States District Court for the District of Oregon. The Commission sought an injunction prohibiting Northwest from engaging in certain for-hire back-haul motor carriage of non-farm commodities without ICC authority

The Commission claimed that this transportation did not fall within the farm cooperative exemption provided in Section 203(b)(5) of the Interstate Commerce Act. The court issued the injunction sought by the Commission.

On appeal to the Ninth Circuit Court of Appeals, Northwest maintained that its challenged transportation operations were exempt under Section 203(b)(5), which excludes from regulation "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act." The parties had agreed that Northwest fell within the definition and was, therefore, a bona fide agricultural cooperative.

The Commission contended that the provision of the Agricultural Marketing Act, that a cooperative "shall not deal in farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members," implicitly proscribes such a cooperative association from any dealings in non-farm products, supplies, or business services. However, the Court of Appeals, reversing the District Court, held that Northwest's for-hire transportation of non-farm products and supplies was "incidental and necessary" to its farm-related transportation.[1]

In its opinion, the Court stated that if a limitation is to be imposed upon this for-hire carriage of non-farm traffic by agricultural cooperatives, then "the readjustment must be made by Congress."

Subsequently, the Supreme Court of the United States declined to grant a writ of Certiorari, thus closing the door to further court consideration of the case. (A similar issue is still before the Commission, on reconsideration, in MC–C–3876 Cache Valley Dairy Association—Investigation of Operations.)

The consequences of the litigation which produced the Court of Appeals decision in the "Northwest" case are simply these:

(1) Without any showing of public convenience and necessity and without operating authority from the Interstate Commerce Commission, a bona fide agricultural cooperative may engage in for-hire motor carrier operations directly competitive with regulated commercial carriers.

(2) Moreover, it may do so without publishing its rates, without being bound to provide service to all who need or want it, and without adhering to the many other requirements imposed in the public interest upon members of the regulated common carrier system.

This, we believe, does serious and unwarranted damage both to the concept of strong common carrier transportation and to our national common carrier system. If ever there existed a situation which fits the term "destructive competition," this is it. The present and potential competition of for-hire transportation operations performed by agricultural cooperative organizations as a result of the Northwest decision could well lead to the destruction of some members of the common carrier community.

S. 1729 provides a first step toward elimination of that threat, by requiring certification of bona fide farm cooperatives qualifying for the exemption of Section 203(b)(5). This would have the very desirable result of weeding out any clearly unqualified organizetions claiming the privileges of the exemption.

However, an additional step is needed if the problem is to be adequately resolved. The scope of the exemption itself must be limited so as to provide that qualified agricultural cooperative associations may engage only in necessary transportation of farm products and farm supplies under that exemption.

With this accomplished, qualified agricultural cooperatives could lawfully transport farm products and farm supplies in motor vehicles controlled and operated by such cooperatives, without operating authority from the Interstate Commerce Commission.

Under the certification provision embodied in S. 1729, the Commission would be able to determine whether the limits of this exemption, as rationalized above, were being properly observed, and to insure that the exemption was made available to all qualifying organizations.

This is a matter of extreme importance. The entire economy depends on a sound, efficient national transportation system. If the common carrier members of that system are forced to operate in the face of unjustified competition created by the broadening or distorting of statutory exemptions, the strength and efficiency of the system is endangered. Then, everyone suffers—the carriers, those who depend upon them for service, and the public as a whole. The National Chamber urges you to remedy this situation with legislation which solves all of the problem, not just part of it.

Senator LAUSCHE. Any questions? Mr. Kenney.

Mr. KENNEY. Thank you, Mr. Chairman. I wasn't able to listen to all the testimony yesterday, and perhaps it was covered. But on the top of page 3, your statement indicating that agricultural cooperatives can carry commodities without adhering to many other requirements imposed upon regulated common carriers. Not suggesting

[1] 350 F 2d 352 (1965).

that they would do so. But do you mean, then, that an agricultural cooperative could, for instance, make rebates?

Mr. KELLEY. Yes, sir; I would see nothing that would prohibit them from doing it.

Mr. KENNEY. Or carry commodities at a different rate for one person than for another, the same commodity?

Mr. KELLEY. Yes. And, in addition, without a requirement of holding out on an all-comers' basis to all those who might want that service; yes, sir.

Mr. KENNEY. Yes. Clearly, they could carry it for one and not another. But even if they carried it for two people, they could carry it at a different rate for one than the second.

Mr. KELLEY. I see nothing in the law that would prohibit them from doing that now.

Mr. KENNEY. Thank you.

Senator LAUSCHE. What is your interpretation of the Northwest decision concerning the rights that it grants to these agricultural cooperatives to transport? Are they allowed to transport all types of goods without limitation, except that the volume dollarwise shall not exceed 50 percent of the total income dollarwise from transportation?

Mr. KELLEY. Yes, sir; that generally is our understanding—that is our understanding of the case.

Senator LAUSCHE. And do you mean that it can carry for its members or nonmembers in this same latitude that I just described?

Mr. KELLEY. I believe that traffic carried for its members would not fall within that 50 percent limitation, although I might be correctible on that point.

Senator LAUSCHE. Yes, that is correct. That is, for members it can carry without limit. I think that is self-evident.

Mr. KELLEY. That is correct.

Senator LAUSCHE. But for nonmembers, it is allowed to carry up to a dollarwise volume of transportation charges equal to the volume it carries for its members.

Mr. KELLEY. Well, as I understand the decision, Senator, it is permitted—under the Agricultural Marketing Act, and in a more general sense—to perform nonrelated business activities up to 50 percent of its cooperative activities. And its nonrelated transportation activities—its for-hire activities—would fall within that 50 percent.

Senator LAUSCHE. I see. All right.

Now, you say there should be an additional provision that qualified agricultural cooperative associations may engage only in necessary transportation of farm products and farm supplies under that exemption?

Mr. KELLEY. Yes, sir.

Senator LAUSCHE. Would this limitation be applicable to the transportation that it does for its own members and also for nonmembers?

Mr. KELLEY. That is correct. Yes, sir it; would.

Senator LAUSCHE. All right. I think that is all.

Mr. KELLEY. Thank you.

Senator LAUSCHE. We have one more witness—Mr. Francis J. O'Rourke, legislative counsel, National Tax Equality Association, Inc.

STATEMENT OF FRANCIS J. O'ROURKE, LEGISLATIVE COUNSEL, NATIONAL TAX EQUALITY ASSOCIATION, INC.

Mr. O'ROURKE. Mr. Chairman and members of the subcommittee, my name is Francis J. O'Rourke. I am a member of the Bar in the District of Columbia and legislative counsel for the National Tax Equality Association, Inc. Our organization represents many businessmen who face unfair competition in the marketplace as a result of inequitable Federal legislation, particularly in the areas of taxation and regulation. I wish to submit our association's brief statement in support of S. 1729, the enactment of which might open the way to further legislation that would bring about competitive equality in the trucking business. This bill would enable the ICC to cope more effectively with groups, cooperative or otherwise, that improperly use the exemption from the Interstate Commerce Act that is accorded agricultural cooperatives in their transportation activities.

The bill does not grant relief to authorized carriers from the competition of agricultural cooperatives performing general transportation services.

The problem of the unfair competitive advantage that cooperatives derive from their privileged tax status and from various other privileges accorded them by the Federal Government is not a new one. However, to many firms in the transportation industry the regulatory exemption of agricultural cooperatives is unwarranted. The freedom from regulation and ratemaking of cooperatives that engage for-hire in transporting goods not related to their cooperative businesses has enabled them to set rates far below those of their competitors with serious loss of business volume to the latter. The so-called *Northwest* case that came out of the ninth circuit last year shows clearly the difficulty faced by the trucking industry unless the Congress acts to alleviate the situation. As was stated in an article by Mr. Harry J. Jordan, published in the April 1966 issue of the ICC Practitioners' Journal at page 380:

> To stake out the boundaries of the Court of Appeals' decision, the Court has held that a bona fide agricultural cooperative may transport nonfarm related commodities for nonmembers of the cooperative and still be exempt from economic regulation by the Interstate Commerce Commission, provided such transportation does not approach too closely 50 per-cent of the cooperatives total transportation business. Stated more bluntly it is held that agricultural cooperatives are free, subject, of course, to the percentage of business limitation, to engage in general trucking.

And at page 382—

> To conclude, it is impossible to forecast at this time what tonnage and revenues will be lost by regulated carriers to agricultural cooperatives because of the Northwest case. Nonetheless, it apears safe to predict that a substantial amount of high rated traffic will be diverted from regulated carriers and that the economic impact of this loss upon such carriers, particularly the smaller ones, is not going to be good. It is equally safe to predict that unless the Northwest case is overruled by the Supreme Court, or changed by legislative enactment in the near future, the operations of agricultural cooperatives are going to grow substantially, and that they are going to be a significant new force to be reckoned with in the transportation industry.

We are of the opinion that S. 1729 will not fully remedy this problem. Therefore, we earnestly suggest that the subcommittee consider making cooperative trucking activities subject to the same regulation as that applicable to other trucking businesses. We submit for your

consideration that any special privilege or exemption accorded cooperatives to the detriment of their noncooperative competitors is inequitable and uneconomic, whether it involves their virtual exemption from the income tax, or their exemption from regulation in the field of public transportation and in other areas.

Senator LAUSCHE. I want to pursue what Mr. Kenney raised here a moment ago. He is a member of the staff.

Is it your understanding that agricultural cooperatives, under the *Northwest* case, will be permitted to solicit freight at charges which they deem adequate without considering what impact it may have on competitors of the shipper or any of the other evils which the regulatory acts sought to obviate?

Mr. O'ROURKE. With the preliminary statement that I am not an expert on the Interstate Commerce Act, I would agree that this case permits them to engage in competition, soliciting business for nonfarm products, transportation of nonfarm goods on behalf of nonmembers, to the serious detriment of their regulated competitors, the regulated trucking industry.

Senator LAUSCHE. Well, yesterday the witnesses testified of examples where the agricultural cooperative was soliciting business at a rate of carriage less than that declared to be compensable and proper which are charged by other carriers. Were you here when that testimony was given?

Mr. O'ROURKE. I do not believe so. I do not believe I was here when that testimony was presented. But I am quite certain, in view of my—because of my knowledge in other areas of cooperative competition—I am quite certain that is occurring.

Senator LAUSCHE. Well, if the agricultural cooperative is allowed to undercut the rate of the certified carrier, due to the exemption, wouldn't it follow that it could fix rates at its own whim and discretion, regardless of the impact that it would have upon competing business in a neighborhood, and regardless of the impact that it would have upon the development of the economy of one city as distinguished from the economy of another?

Mr. O'ROURKE. Yes, absolutely. I agree with that entirely.

Senator LAUSCHE. Do you care to ask some questions, Mr. Sender?

Mr. SENDER. Just to clarify this—the exemption provision in 203(b)(5) states that nothing in this part—that is the Motor Carrier Act—"except the provisions of section 204 relative to qualifications of maximum number of hours of service of employees, and safety operations and standards of equipment, shall include motor vehicles owned and controlled by cooperative associations."

Therefore, is it not your understanding that the provisions with regard to rates, fares, charges, discrimination, adequacy of service and equipment, would not apply to transportation of agricultural commodities in the motor vehicles that are exempt?

Mr. O'ROURKE. If I may, I would like the reporter to read the question back, just to make sure I understand it.

(The question was read by the reporter.)

Senator LAUSCHE. May I put this.

By your question, you are implying that the agricultural co-op will be completely exempt from all of these regulations in the solicitation of business, and in the carrying of the cargoes?

Mr. SENDER. Yes, sir—except as to safety.

Mr. O'ROURKE. Yes—well, that is my understanding of the exception. They are completely exempted from the provisions of the act, except as to that one area—the safety compliance factors required by the act.

Senator LAUSCHE. Well, that would seem to follow. If they are allowed to undercut by way of the rate in the very beginning, then they could proceed as far as they want, by granting rebates. charging less and less, disregarding the impact that the undercutting would have upon the economy of one community, or the ability of a shipper to survive in his competitive business.

Mr. O'ROURKE. Yes, Senator. This has been—unfortunately, this has been the history of unchecked cooperative competition in many industries.

Senator LAUSCHE. All right.

I think that is all.

At this point in the record, I want to insert a declaration made by the special study group of transportation policies in the United States, known as the Doyle report, and filed on June 26, 1961.

This report, on page 525, states:

> Exemption provided to cooperative associations as defined under the Agricultural Marketing Act, as set forth in section 203(b)(50) should remain unchanged for the present. The regulatory agency should be directed to institute an investigation of the operation of these associations in which the cooperation of the Department of Agriculture should be solicited to determine the degree to which, if at all, the exemption is being used to defeat the intent of regulation and exemption therefrom, and to promptly recommend any corrective measures found necessary. Associations not found qualified under provisions of the Marketing Act, should be promptly debarred from participating in exempt traffic and such penalties imposed as to effectively deter formation of so-called phoney associations. In this connection, the Secretary of Agriculture should be required to maintain an up-to-date list of bona fide cooperative associations certified as being in compliance with the Agricultural Marketing Act.

I will not read the next two or three paragraphs, and what is called finally a suggested solution.

On the 25th and 26th of July the opponents to the measure will be heard.

The meeting will be adjourned until that time.

(Whereupon, at 10 a.m., the committee adjourned.)

AGRICULTURAL COOPERATIVE TRANSPORTATION

MONDAY, JULY 25, 1966

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

The subcommittee met at 9:20 a.m., in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

Senator LAUSCHE. The meeting will come to order.

The hearing this morning is a continuation of the hearings on S. 1729, containing proposed amendments to the Interstate Commerce Act recommended by the Interstate Commerce Commission.

On July 14 and 15 testimony was received from representatives of the Interstate Commerce Commission and other interested parties supporting the proposed amendments. The hearings today and tomorrow are reserved to permit representatives of the Department of Agriculture and other interested parties opposing this proposed legislation to testify. After all those present today have had an opportunity to be heard, the hearings will be closed but the record will be held open until August 5, 1966, for the receipt of documents for incorporation in the printed record.

The first witness today is Mr. George Dice, Director, Transportation and Warehouse Division, Consumer and Marketing Service, Department of Agriculture.

Mr. Dice?

STATEMENT OF GEORGE DICE, DIRECTOR, TRANSPORTATION AND WAREHOUSE DIVISION, CONSUMER AND MARKETING SERVICE, DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C., ACCOMPANIED BY MORRISON NEELY, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE; AND JAMES LAUTH, ASSISTANT CHIEF, TRANSPORTATION SERVICES BRANCH, TRANSPORTATION AND WAREHOUSE DIVISION, CONSUMER AND MARKETING SERVICE, DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Senator LAUSCHE. Mr. Dice, you may proceed.

Mr. DICE. I have with me this morning on my right, Mr. Morrison Neely, of the Office of General Counsel of the Department of Agriculture, and on my left, Mr. James Lauth, Assistant Chief of the Transportation Services Branch of the Transportation and Warehouse Division, Consumer and Marketing Service.

I appreciate the opportunity to present this committee with the views of the U.S. Department of Agriculture on S. 1729, a bill to amend section 203(b)(5) of the Interstate Commerce Act to provide for the issuance of certificates of exemption upon application and proof of eligibility, and for other purposes.

In view of testimony presented to this committee on July 14 and 15, 1966, I should like also to express the Department's views on the amendment to S. 1729 proposed by Chairman John W. Bush, of the Interstate Commerce Commission, and on the substitute bill offered by Mr. James F. Pinkney, chief counsel, public affairs, American Trucking Associations, Inc.

The Department has forwarded to the Committee on Commerce a report expressing opposition to enactment of S. 1729. I shall not repeat the contents of that report in this statement, although I will refer to it and to studies conducted by the Farmer Cooperative Service on motortruck operations of farmer cooperatives.

It has long been a policy of the Department of Agriculture to encourage and promote the development and efficient operation of farmer cooperatives. This of course, is in accord with the congressional mandate in the Cooperative Marketing Act enacted in 1926.

Through cooperative action much has been done to improve the economic status of farmers and farm families by increasing efficiency in the marketing of farm products, in the acquisition of farm supplies, and in the provision of farm business services, one of which is arrangements for transportation.

Transportation is of paramount importance in the marketing of a tremendous volume of agricultural products by farmer cooperatives. It is important, however, to recognize that the great bulk of the intercity movement of these commodities is by for-hire transportation by railroad, highway, and waterway. Farmer cooperatives are important customers of the Nation's common carriers.

We have supplied members of the committee with copies of Farmer Cooperative Service General Reports 109 and 121 covering, respectively, "Motor Truck Operations" and "Motor Truck Operating Costs of Farmer Cooperatives."

I believe it would be worthwhile to incorporate these two reports in the record, if it is agreeable with you, sir.

Senator LAUSCHE. Yes, it will be done. It is so ordered.

(The above-mentioned documents follow:)

U.S. Department of Agriculture
FCS
Farmer Cooperative Service

General Report 109
February 1963

Motortruck Operations Of Farmer Cooperatives

FARMER COOPERATIVE SERVICE
U. S. DEPARTMENT OF AGRICULTURE
WASHINGTON 25, D. C.

Joseph G. Knapp, Administrator

The Farmer Cooperative Service conducts research studies and service activities of assistance to farmers in connection with cooperatives engaged in marketing farm products, purchasing farm supplies, and supplying business services. The work of the Service relates to problems of management, organization, policies, merchandising, product quality, costs, efficiency, financing, and membership.

The Service publishes the results of such studies; confers and advises with officials of farmer cooperatives; and works with educational agencies, cooperatives, and others in the dissemination of information relating to cooperative principles and practices.

This study was conducted under authority of the Agricultural Marketing Act of 1946 (RMA, Title II).

Contents

	Page
Highlights	iv
Trucks owned or leased	3
Types and sizes of motortrucks	3
Types of motortrucks, owned or leased	6
Trailers and semitrailers	8
Size of trucks	8
Owned versus leased equipment	9
Size of cooperative truck fleets	11
Trucks by size of cooperative	12
Over-the-road versus local hauling	15
Appendix	18

Highlights

This report gives the results of a study on the number, types, and distribution of motortrucks owned or leased by farmer cooperatives in the United States.

The 9,294 farmer cooperatives in the United States owned or leased an estimated 33,000 motortrucks as of January 1, 1961, based on a projection of findings of this study. This is an average of 3.5 trucks per association.

Compared with an estimated 28,000 trucks in 1951, the number of trucks operated by farmer cooperatives has increased about 18 percent within the past 10 years. As a general comparison, total truck registrations in the United States were 11.4 million in 1960, an increase of 32 percent over the 1951 total of 8.6 million.

Of the 6,171 cooperatives returning usable questionnaires, 56 percent reported they owned or leased trucks. Marketing associations accounted for 57 percent of all trucks. Practically all of the balance were trucks operated by purchasing cooperatives, as less than 1 percent was accounted for by service cooperatives. Dairy cooperatives accounted for over a third of all trucks reported by marketing associations.

For all cooperatives reporting, 39 percent of the truck units were van-type straight trucks, 18 percent straight tank, 33 percent "other" straight trucks, and only 10 percent were truck tractors. Nearly 4,000 trailers and semitrailers were reported, over two-thirds by marketing cooperatives, 32 percent by purchasing cooperatives, and 1 percent by service cooperatives.

Forty-one percent of all straight trucks reported were 1 1/2 tons or less in capacity, 43 percent were over 1 1/2 tons but less than 2 1/2 tons, and only 16 percent were rated 2 1/2 tons or over.

Cooperatives owned by far the majority of the motortrucks, trailers, and semitrailers they operated. Only 7 percent of the straight trucks operated by cooperatives were leased, as compared with 15 and 13 percent, respectively, for tractors and semitrailers.

There is a general relationship between the size of business of a cooperative and the number of trucks operated. Overall, the range ran from 3 trucks per cooperative with a dollar volume under $500,000 up to 82 trucks with business volumes of $10 million and over.

Truck mileage of all farmer cooperatives in 1960 was estimated at 660 million miles for both local and over-the-road trucking. This is about one-half of 1 percent of the United States total of 126.4 billion truck mileage over both rural and urban roads.

Only 28 percent of the total truck mileage reported by cooperatives was "over-the-road," which was defined in the questionnaire as: "Hauls other than local pick-up and delivery and movements from fields to local concentration points." Thus, the majority of truck operations by farmer cooperatives are local in nature.

Motortruck Operations of Farmer Cooperatives

by William C. Bowser, Jr.
Transportation Branch
Management Services Division

Motortrucks transport about 90 percent of all agricultural commodities to initial markets. Motortrucks operating under the limited exemption provided in the Interstate Commerce Act also carry most non-manufactured agricultural commodities to markets.

Little information is available on the number and types of motortrucks operated as well as the scope of operations of most carriers of agricultural commodities. The lack of such information leaves a serious gap in a research program aimed at promoting economy and efficiency in the transportation and distribution of agricultural products and supplies.

Farmer cooperatives use their own motortrucks to perform a small but important part of the overall transportation of agricultural commodities and supplies for their farmer members and patrons.

Farmer Cooperative Service made this study in response to recommendations made to the Department of Agriculture by the Transportation Research Advisory Committee, as the initial phase of a study of motortruck operating costs. Information on motortruck operations and costs is needed to provide benchmarks for the guidance of cooperative managements in helping them increase efficiency of motortruck operations and thereby increase returns to farmers.

In addition, trucking operations of farmer cooperatives are believed to be indicative of other firms engaged in similar business in the agricultural areas of the United States. Thus, information developed on motortruck operations of farmer cooperatives not only provides basic data needed to evaluate this segment of agricultural transportation but also provides a basis for estimating the significance of private motortruck operations in the agricultural community generally.

This, in turn, contributes to the body of knowledge required by the Department of Agriculture and other U. S. Government agencies in planning public policy, including planning for civil defense transportation.

This report primarily presents a general inventory of motortrucks owned and leased by farmer cooperatives in the United States. In addition, capacity and type of motortrucks operated and general

67-566 O—66——11

characteristics of operations are given by size and type of cooperative according to geographic location.

This study of motortruck operations of farmer cooperatives was conducted by mail questionnaire sent to all cooperatives on the mailing list of the Farmer Cooperative Service, U. S. Department of Agriculture. These included 9,294 local and regional cooperatives but actual mailings totaled 8,784, since several regional cooperatives, in replying to questionnaires, regularly include data for local member associations.

Over 70 percent, or 6,171 associations, returned usable questionnaires. Of this number, 56 percent reported owned or leased motortrucks. The estimated number of cooperatives in the United States, number and percentage reporting trucks, by States and regions, January 1, 1961, are given in appendix table 1.

Returns of the questionnaires by regions ranged from 65 percent for the Southern region to 78 percent for the Pacific region.

Returns of questionnaires by type of association show a similarly narrow range. Sixty-nine percent of the marketing cooperatives responded to the questionnaire compared to 72 percent for purchasing and 64 percent for service cooperatives (table 1.).

Only 28 percent of the service cooperatives operated trucks, however, compared to 78 percent for purchasing and 46 percent for marketing associations.

Table 1. - *Number of questionnaires mailed, respondents and percent response, number and percent of cooperatives operating motortrucks, by type of cooperative, January 1, 1961*

Type of cooperative	Questionnaires			Cooperatives operating motortrucks	
	Mailed	Respondents[1]	Response		
	Number		*Percent*	*Number*	*Percent*
Marketing					
Cotton	527	364	69	172	47
Dairy	1,541	1,112	72	581	52
Fruit and vegetable	702	482	69	168	35
Grain	2,014	1,451	72	811	56
Livestock and wool	651	362	56	61	17
Poultry	125	76	61	44	58
Miscellaneous[2]	267	203	76	44	22
Marketing (total)	5,827	4,050	69	1,881	46
Purchasing	2,737	1,980	72	1,549	78
Service[3]	220	141	64	39	28
All types	8,784	6,171	70	3,469	56

[1]Represents usable returned questionnaires included in main tabulation.
[2]Includes sugar products, forest products, rice, tobacco, fur pelts, hay, hops, nursery stock, tung oil, coffee, nuts, and other farm products not separately classified.
[3]Includes cooperatives furnishing special marketing or related services, such as cold storage lockers, trucking, warehousing, and seed cleaning.

Of the marketing associations, livestock and wool were low in percent of respondents operating trucks, with 17 percent, while more than half of the poultry, grain, and dairy cooperatives operated trucks.

Trucks Owned or Leased[1]

The total number of trucks farmer cooperatives owned or leased was estimated at 33,000 as of January 1, 1961.[2] This figure represents an average of 3.5 trucks for each cooperative in the United States.

According to a previous study, the number of trucks owned or leased by farmer cooperatives was estimated at 28,000 in 1951.[3] Thus, the estimated number of trucks owned or leased by cooperatives increased 18 percent from 1951 to 1960. In comparison, total truck registrations for the United States increased from 8.6 million in 1951 to 11.4 million in 1960, or 32 percent.

The percentage distribution of motortrucks, owned or leased, by type of cooperative, is illustrated in figure 1. Marketing associations accounted for 57 percent of all trucks, with practically all the balance being operated by purchasing associations. Dairy cooperatives led the marketing associations, with 35 percent of all trucks, followed by grain with 12 percent and fruit and vegetable cooperatives with 5 percent.[4]

Figure 2 is a map showing the regional distribution of trucks owned or leased by farmer cooperatives. These percentages are based on actual returns from responding cooperatives.

The geographic breakdown used is the same as that designated by the Interstate Commerce Commission for the continental United States. Non-contiguous areas include the States of Alaska and Hawaii and the Commonwealth of Puerto Rico.

Over half the trucks operated by farmer cooperatives are located in the Central (20 percent), Northwestern (20 percent), and Midwestern (16 percent) regions of the country. The Pacific region with 14 percent of the trucks, and the Southern region with 10 percent, follow.

Types and Sizes of Motortrucks

We obtained information on the following types of trucks and equipment, owned or leased, by cooperatives as of January 1, 1961: (1) Straight trucks with van bodies, tank bodies, and other type bodies; (2) truck tractors; and (3) truck trailers and

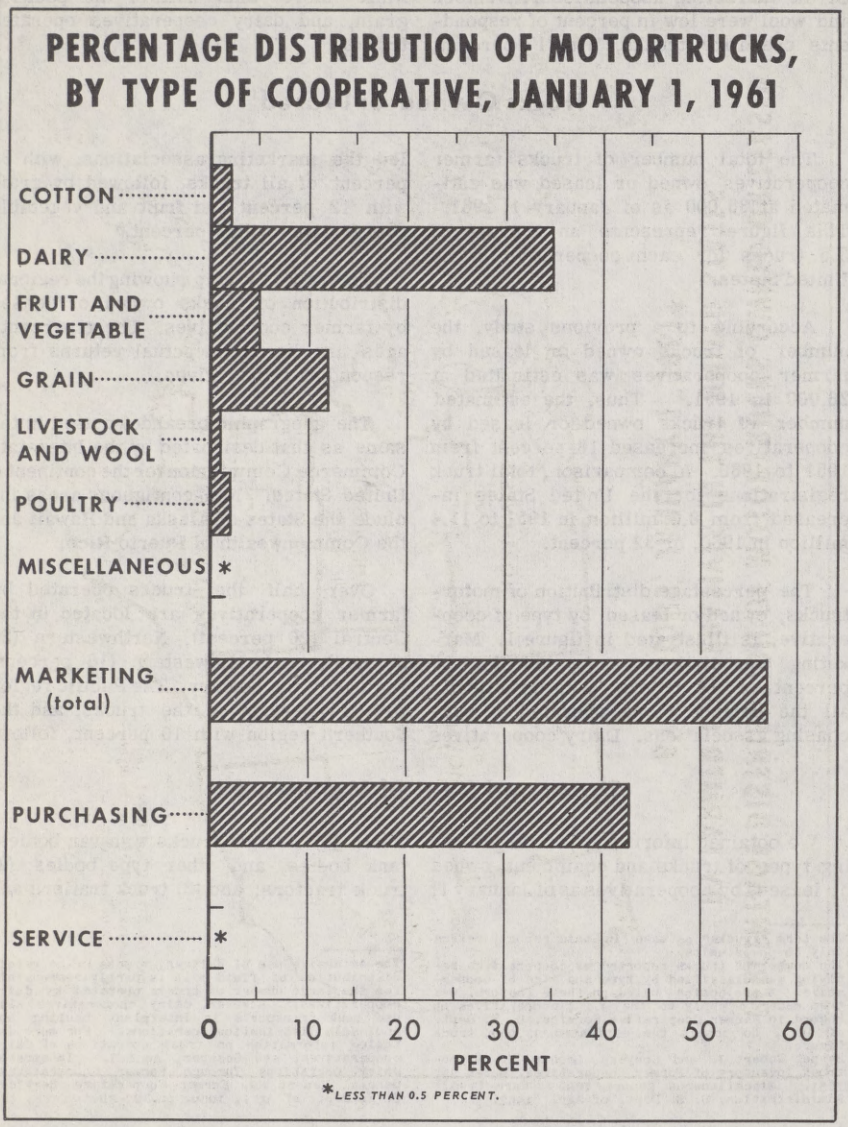
[1] The term "trucks" as used in this report, refers only to power units.

[2] The number of trucks reported by cooperatives replying was classified by type and size of cooperative. A projection, based on these factors, was then made to apply to the 9,294 cooperatives on record in Farmer Cooperative Service, U. S. Dept. of Agr., to obtain the estimated 33,000 truck figure.

[3] Byrne, Robert J. and Conyers, Leonard N. Motortruck Inventory of Farmer Cooperatives. March 31, 1951. Miscellaneous Report 168. Farm Credit Administration, U. S. Dept. of Agr. 1952.

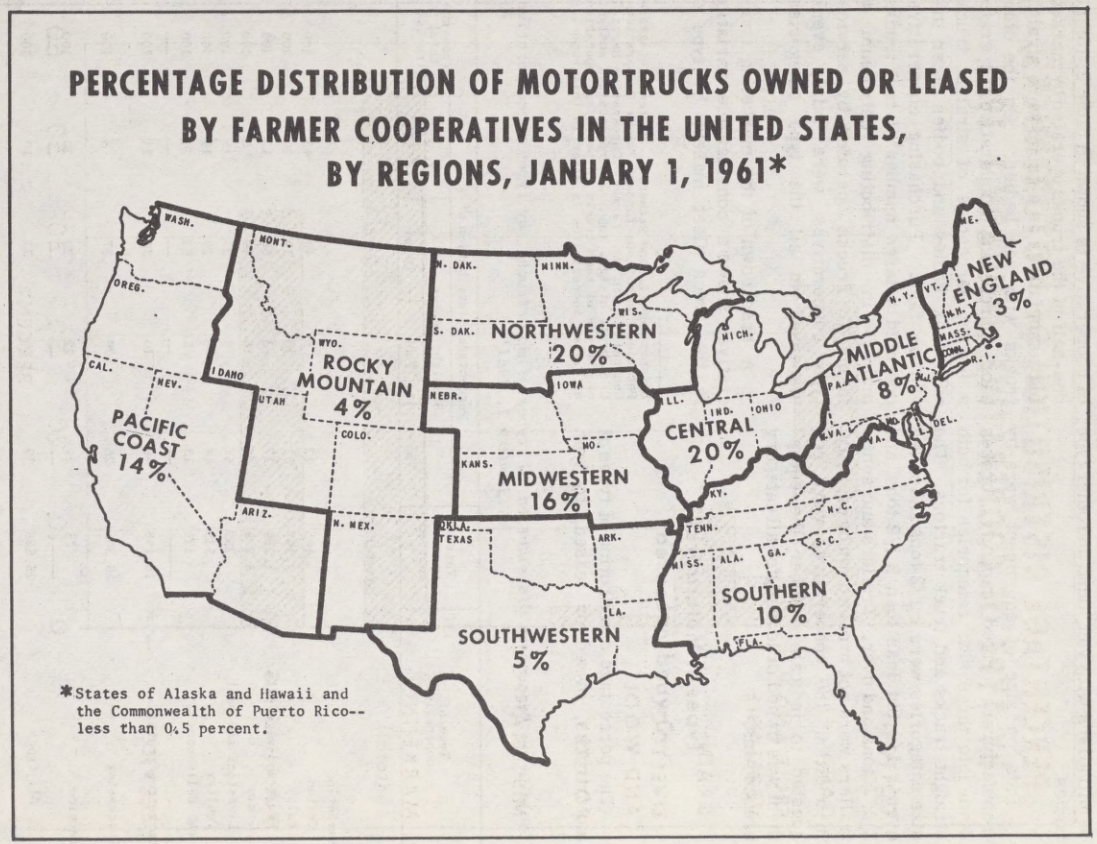
[4] The extensive use of delivery trucks in the retail distribution of fluid milk is partly responsible for the large number of trucks operated by dairy cooperatives. However, dairy cooperatives also use tank transports in interplant hauling and wholesale distribution operations. For more detailed information on truck operations of dairy cooperatives, see Gessner, Anne L. Integrated Dairy Operations Through Farmer Cooperatives, General Report 69, Farmer Cooperative Service, U. S. Dept. of Agr., 1959, pp. 37-39.

FIGURE 1


PERCENTAGE DISTRIBUTION OF MOTORTRUCKS, BY TYPE OF COOPERATIVE, JANUARY 1, 1961
COTTON
DAIRY
FRUIT AND VEGETABLE
GRAIN
LIVESTOCK AND WOOL
POULTRY
MISCELLANEOUS
MARKETING (total)
PURCHASING
SERVICE
0
10
20
30
40
50
60
PERCENT
*LESS THAN 0.5 PERCENT.

4

FIGURE 2


PERCENTAGE DISTRIBUTION OF MOTORTRUCKS OWNED OR LEASED BY FARMER COOPERATIVES IN THE UNITED STATES, BY REGIONS, JANUARY 1, 1961*
WASH.
OREG.
CAL.
NEV.
IDAHO
MONT.
WYO.
UTAH
COLO.
ARIZ.
N. MEX.
PACIFIC COAST 14%
ROCKY MOUNTAIN 4%
N. DAK.
MINN.
S. DAK.
NEBR.
KANS.
OKLA.
TEXAS
NORTHWESTERN 20%
IOWA
MO.
ARK.
LA.
MIDWESTERN 16%
SOUTHWESTERN 5%
WIS.
MICH.
ILL.
IND.
OHIO
KY.
TENN.
MISS.
ALA.
GA.
FLA.
S.C.
N.C.
VA.
W. VA.
PA.
N.Y.
CENTRAL 20%
SOUTHERN 10%
MIDDLE ATLANTIC 8%
ME.
VT.
N.H.
MASS.
CONN.
R.I.
N.J.
DEL.
MD.
NEW ENGLAND 3%
*States of Alaska and Hawaii and the Commonwealth of Puerto Rico--less than 0.5 percent.

semitrailers with van, tank, and other type bodies.

Data on size of equipment were by manufacturers' rated capacity, broken down into three size categories for both straight trucks and truck tractors. The size categories were 1 1/2 tons and under, over 1 1/2 but less than 2 1/2 tons, and 2 1/2 tons and over. Trailers and semitrailers were not broken down by capacity. In addition, the cooperatives were requested to indicate whether the equipment was owned or leased, for all category breakdowns.

Types of Motortrucks, Owned or Leased

The percentage distribution of types of motortrucks, owned or leased, by type of cooperative is shown in table 2. Nearly one-half of the trucks operated by marketing associations as a group were straight trucks with van bodies. On the other hand, purchasing cooperatives operated a higher percentage of straight trucks with tank bodies and bodies other than van or tank. Purchasing cooperatives operated a large number of tank trucks, mainly in distributing petroleum to farms.[5] Trucks operated by service-type cooperatives were fairly evenly dispersed in all the type categories.

A breakdown of the marketing cooperatives shows a considerable variation in the truck fleet makeup by type of

[5]Gessner, Anne L. and Mather, J. Warren. Integrated Petroleum Operations Through Farmer Cooperatives, General Report 58, Farmer Cooperative Service, U. S. Dept. of Agr. 1959. A more detailed analysis of the use of tank trucks in petroleum operations of farmer cooperatives is given in this report.

Table 2. - *Percentage distribution of types of motortrucks, by type of cooperative, January 1, 1961*[1]

Type of cooperative	Total trucks reported	Percentage distribution of -				Percentage total trucks
		Straight trucks			Truck tractors	
		Van	Tank	Other		
	Number	*Percent*				
Marketing						
Cotton	466	12	5	40	43	100
Dairy	9,397	61	10	19	10	100
Fruit and vegetable	1,164	17	3	68	12	100
Grain	3,205	29	16	49	6	100
Livestock and wool	252	57	5	23	15	100
Poultry	535	44	8	29	19	100
Miscellaneous	129	13	5	62	20	100
Marketing (total)	15,148	49	10	30	11	100
Purchasing	10,305	26	29	37	8	100
Service	75	29	22	20	29	100
All types	25,528	39	18	33	10	100

[1]As reported by 6,171 cooperatives.

Table 3. - *Number and percentage distribution of trailers and semitrailers, by type of cooperative and type of equipment, January 1, 1961*[1]

Type of cooperative	Number of trailers and semitrailers	Percentage distribution of trailers and semitrailers							
		By type of cooperative				By type of equipment			
		Van	Tank	Other	Total	Van	Tank	Other	Total
	Number	*Percent*							
Marketing									
Cotton	331	1	(2)	24	8	5	(2)	95	100
Dairy	1,320	42	50	5	33	39	55	6	100
Fruit and vegetable	403	5	1	25	10	14	3	83	100
Grain	325	3	7	14	8	12	29	59	100
Livestock and wool	33	1	(2)	2	1	27	12	61	100
Poultry	178	7	2	5	5	47	18	35	100
Miscellaneous	90	(2)	2	5	2	7	24	69	100
Marketing (total)	2,680	59	62	80	67	27	34	39	100
Purchasing	1,289	40	37	20	32	38	41	21	100
Service	25	1	1	0	1	32	68	0	100
All types	3,994	100	100	100	100	31	36	33	100

[1]Based on data reported by 6,171 cooperatives. Includes both owned and leased equipment.
[2]Less than 0.5 percent.

association activity. Dairy, livestock and wool, and poultry cooperatives were high in straight trucks with van bodies, while fruit and vegetable, grain, and other cooperatives listed under "miscellaneous" operated higher percentages of straight trucks with bodies other than tank or van.

The relatively high percentage of straight tank trucks reported by grain cooperatives was attributed to the petroleum distributing activities of some elevators. Truck tractors made up 43 percent of the trucks operated by cotton cooperatives. Many of these were believed to be used in hauling cotton from fields to gins, as nearly 80 percent were reportedly less than 2 1/2-ton capacity units.

For all cooperatives, 39 percent of the trucks were straight with van bodies, 18 percent were straight trucks with tank bodies, and 33 percent were straight trucks with other type bodies. Only 10 percent of the total power units operated by farmer cooperatives were truck tractors.

It is significant that 90 percent of the trucks operated by farmer cooperatives were straight trucks. This demonstrates the relatively short-haul operations of most cooperatives.

Of significance also is the high proportion, 51 percent, of straight trucks with bodies other than van type. This indicates the importance of "specialized"

hauling equipment in the makeup of trucks operated by cooperatives.

Trailers and Semitrailers

Of the trailers and semitrailers owned or leased by farmer cooperatives reporting, about two-thirds were operated by marketing associations and practically all the balance by purchasing associations. Dairy cooperatives accounted for about half the marketing total, with predominantly van and tank-type units (table 3).

Thirty-nine percent of the trailers and semitrailers operated by marketing cooperatives were other than van or tank, 34 percent were tank, and 27 percent were van. Tank-type trailers and semitrailers made up 41 percent of the units owned or leased by purchasing cooperatives. Service-type cooperatives, however, were high in tank units, with 68 percent. Distribution of trailers and semitrailers by type of unit was fairly even for all types of cooperatives.

As shown in table 4, semitrailers were more popular than full trailers. None of the service cooperatives reported operating any full trailers.

Table 4. - *Percentage distribution of trailers and semitrailers, by general type of cooperative, January 1, 1961*

Type of cooperative	Percentage distribution by kind of trailer		
	Trailers	Semitrailers	Total
	Percent		
Marketing	28	72	100
Purchasing	24	76	100
Service	0	100	100
All types	27	73	100

Size of Trucks

Table 5 shows the percentage distribution of cooperative trucks owned or leased, by manufacturers' rated capacity and type of truck. Appendix tables 2 and 3 give more detailed information by types and sizes of trucks, by type of cooperative.

Forty-one percent of all straight trucks reported were 1 1/2 tons or less, 43

Table 5. - *Percentage distribution of motortrucks operated by farmer cooperatives, by type of truck and manufacturers' rated capacity, January 1, 1961*[1]

Type of truck	Percentage distribution of trucks by manufacturers' rated capacity			
	1 1/2 tons and under	Over 1 1/2 but less than 2 1/2 tons	2 1/2 tons and over	Total
		Percent		
Truck tractors	3	13	84	100
Total straight trucks	41	43	16	100
Van	47	37	16	100
Tank	17	58	25	100
Other	47	43	10	100
Total all trucks	38	40	22	100

[1]Based on information from 3,469 farmer cooperatives reporting owned or leased trucks.

Table 6. - *Percentage distribution of motortrucks operated by farmer cooperatives, by type of cooperative and manufacturers' rated capacity, January 1, 1961*[1]

Type of cooperative	Percentage distribution of trucks by type of cooperative and manufacturers' rated capacity			
	1 1/2 tons and under	Over 1 1/2 but less than 2 1/2 tons	2 1/2 tons and over	Total
	Percent			
Marketing				
Cotton	37	50	13	100
Dairy	46	29	25	100
Fruit and vegetable	41	41	18	100
Grain	39	47	14	100
Livestock and wool	37	37	26	100
Poultry	21	52	27	100
Miscellaneous	27	40	33	100
Marketing (total)	43	35	22	100
Purchasing	30	48	22	100
Service	33	24	43	100
All types	38	40	22	100

[1]Based on information from 3,469 farmer cooperatives reporting owned or leased trucks.

percent were in the over 1 1/2 but less than 2 1/2-ton category, and only 16 percent were 2 1/2 tons or over. As would be expected, 84 percent of the truck tractors were 2 1/2 tons or over, with only 3 percent 1 1/2 tons or less. As shown in appendix table 2, 47 percent of the straight van trucks were 1 1/2 tons and under.

Trucks operated by the various types of cooperatives differed considerably in size. For example, four of the seven principal types of marketing cooperatives had most of their trucks in the over 1 1/2 but less than 2 1/2-ton category (table 6). As a group, however, 43 percent of the trucks of marketing cooperatives were 1 1/2-ton capacity or less. In contrast, 48 percent of the trucks operated by purchasing cooperatives were in the over 1 1/2 but less than 2 1/2 ton range, while the bulk of the trucks operated by service-type cooperatives, or 43 percent, were in the 2 1/2 tons and over category.

Owned Versus Leased Equipment

We obtained some information on the extent of motortruck leasing by farmer cooperatives. While the associations owned the majority of motortrucks, trailers, and semitrailers they operated, there were some significant differences in the percentage owned or leased by type of cooperative as well as by type of equipment operated.

As shown in table 7, farmer cooperatives leased only 7 percent of both the

Table 7. - *Percentage distribution of straight trucks, tractors, trailers, and semitrailers, owned or leased, by type of cooperative, January 1, 1961*[1]

Type of cooperative	Percentage distribution by kind of truck											
	Straight trucks			Tractors			Trailers			Semitrailers		
	Owned	Leased	Total	Owned	Leased	Total	Owned	Leased	Total	Owned	Leased	Total
	Percent											
Marketing												
Cotton	95	5	100	92	8	100	97	3	100	81	19	100
Dairy	92	8	100	90	10	100	92	8	100	91	9	100
Fruit and vegetable	97	3	100	95	5	100	95	5	100	94	6	100
Grain	99	1	100	88	12	100	94	6	100	82	18	100
Livestock and wool	94	6	100	79	21	100	67	33	100	70	30	100
Poultry	88	12	100	85	15	100	98	2	100	83	17	100
Miscellaneous	93	7	100	88	12	100	100	0	100	96	4	100
Marketing (total)	94	6	100	90	10	100	95	5	100	89	11	100
Purchasing	92	8	100	76	24	100	88	12	100	84	16	100
Service	98	2	100	68	32	100	0	0	0	68	32	100
All types	93	7	100	85	15	100	93	7	100	87	13	100

[1]Based on data reported by 3,469 farmer cooperatives.

straight trucks and full trailers they operated, as compared to 15 and 13 percent, respectively, for tractors and semitrailers. Marketing cooperatives leased 10 percent of the tractors they operated, as compared with 24 percent for purchasing cooperatives and 32 percent for service cooperatives. A more complete breakdown of leased versus owned equipment is given for straight trucks in appendix table 4.

Size of Cooperative Truck Fleets

Of the 6,171 farmer cooperatives returning usable questionnaires, 44 percent reported they did not own or lease any straight trucks or truck tractors. Twenty-three percent of the cooperatives reported 1 or 2 trucks, 17 percent reported 3 to 5 trucks, and 14 percent reported truck fleets ranging from 6 to 25 trucks. Only 2 percent of the cooperatives reported fleets of more than 25 trucks (table 8).

The percentage of cooperatives reporting at least one truck varied considerably by principal type of cooperative. While only about one-fourth of the service-type cooperatives reported trucks, almost 50 percent of the marketing cooperatives and more than three-fourths of the purchasing cooperatives owned or leased some motortrucks.

Thirty-five percent of the marketing cooperatives operated 1 to 5 trucks and 12 percent had more. Within the marketing group, poultry cooperatives had the highest percentage of associations

Table 8. - *Number of cooperatives reporting motortrucks owned or leased, and percent, by type of cooperative and size of fleet, January 1, 1961*

Type of cooperative	Number reporting	Percent of cooperatives by number of trucks					
		None	1 or 2	3 to 5	6 to 25	Over 25	Total
	Number	*Percent*					
Marketing							
Cotton	364	52	31	13	4	0	100
Dairy	1,112	48	20	12	14	6	100
Fruit and vegetable	482	65	15	9	10	1	100
Grain	1,451	44	27	20	9	(1)	100
Livestock and wool	362	83	9	5	3	0	100
Poultry	76	42	16	9	29	4	100
Miscellaneous	203	78	12	7	3	0	100
Marketing (total)	4,050	53	21	14	10	2	100
Purchasing	1,980	22	29	25	23	1	100
Service	141	72	24	2	2	0	100
All types	6,171	44	23	17	14	2	100

[1] Less than 0.5 percent.

Table 9. - *Number and percent of cooperatives reporting trucks owned or leased, and type of cooperative and size of trailer and semitrailer fleet, January 1, 1961*

Type of cooperative	Number reporting trucks	Percent of cooperatives by number of trailers and semitrailers					
		None	1 or 2	3 to 5	6 to 25	Over 25	Total
	Number	*Percent*					
Marketing							
Cotton	172	41	39	16	3	1	100
Dairy	581	75	12	6	5	2	100
Fruit and vegetable	168	67	10	13	8	2	100
Grain	811	86	11	2	1	(1)	100
Livestock and wool	61	74	21	3	2	0	100
Poultry	44	79	7	5	7	2	100
Miscellaneous	44	75	11	5	7	2	100
Marketing (total)	1,881	76	14	6	3	1	100
Purchasing	1,549	81	14	3	2	(1)	100
Service	39	77	18	3	2	0	100
All types	3,469	78	14	4	3	1	100

[1] Less than 0.5 percent.

operating trucks. Poultry cooperatives were also the only type with a larger percentage of their truck operations in a size category other than the 1 or 2 grouping; they had 29 percent in the 6 to 25 unit range. More than half the grain and dairy cooperatives operated trucks, while those cooperatives classified as miscellaneous-type associations had the lowest percentage of truck ownership or lease.

Information concerning cooperatively owned or leased trailers and semitrailers by size of fleet is in table 9. Only 22 percent of the 3,469 cooperatives operating trucks reported trailers or semitrailers. Of these, over 60 percent operated only one or two units. Of the marketing cooperatives, cotton cooperatives with 59 percent, and fruit and vegetable cooperatives with 33 percent, had the largest percentage of trailers and semitrailers.

Trucks by Size of Cooperative

The percentage of total trucks owned or leased by annual dollar volume of business for the various types of cooperatives is shown in table 10. Marketing cooperatives with annual business volumes from $1 million up to $5 million operated 34 percent of the trucks in marketing activities, while cooperatives in the $10 million and over category accounted for 36 percent of the trucks.

Trucks operated by purchasing cooperatives were more evenly distributed by size of business than the marketing

associations, except for the $5 million up to $10 million bracket, which accounted for only 1 percent. There were comparatively fewer cooperatives in this category than in any of the others, however, which probably accounted for the unusually low percentage. All service cooperative trucks were operated by associations with a business volume of under $500,000.

Types of marketing cooperatives varied considerably in percentage of trucks operated by size of business. Cotton cooperatives were high in the under $500,000 bracket, with 67 percent of their trucks in that group. Similarly, grain cooperatives were high in the $500,000 up to $1 million bracket with 22 percent, fruit and vegetable associations in the $1 million up to $5 million category with 61 percent, poultry in the $5 million up to $10 million category with 17 percent, and dairy cooperatives in the $10 million and over category, with 49 percent of their trucks.

This study showed a relationship between the size of the cooperative according to dollar volume of business and the number of trucks operated, (table 11). With certain exceptions, the average number of trucks per cooperative increased as the dollar volume of business increased. The average number of trucks per marketing cooperative rose from 3 for cooperatives with a dollar volume of under $500,000 to 77 for cooperatives with dollar volumes of $10 million and over, while purchasing cooperatives varied from 3

Table 10. - *Percentage distribution of motortrucks, by type of cooperative and annual dollar volume of business, January 1, 1961*

Type of cooperative	Number of trucks[1]	Percentage distribution of motortrucks, by cooperative dollar volume					
		Under $500,000	$500,000 up to $1 million	$1 million up to $5 million	$5 million up to $10 million	$10 million and over	Total
		Percent					
Marketing							
Cotton	433	67	15	17	(2)	(2)	100
Dairy	8,957	6	6	26	13	49	100
Fruit and vegetable	1,096	12	12	61	5	10	100
Grain	2,915	12	22	51	3	12	100
Livestock and wool	209	46	6	30	5	13	100
Poultry	456	4	10	26	17	43	100
Miscellaneous	118	25	19	47	6	3	100
Marketing (total)	14,184	10	10	34	10	36	100
Purchasing	9,829	25	18	31	1	25	100
Service	67	100	0	0	0	0	100
All types	24,080	17	13	32	6	32	100

[1]Number of trucks operated by farmer cooperatives reporting both truck operations and dollar volume of business.
[2]Less than 0.5 percent.

Table 11. - *Average number of motortrucks per cooperatives reporting trucks, by type of cooperative, by dollar volume of cooperative business, January 1, 1961*[1]

Type of cooperative	Average for all cooperatives[1]	Average number of trucks per cooperative, by dollar volume of business				
		Under $500,000	$500,000 up to $1 million	$1 million up to $5 million	$5 million up to $10 million	$10 million and over
	Number					
Marketing						
Cotton	3	3	3	4	1	2
Dairy	17	3	6	15	30	116
Fruit and vegetable	7	3	5	10	8	12
Grain	4	2	3	5	9	38
Livestock and wool	4	3	3	5	11	6
Poultry	11	2	6	7	15	66
Miscellaneous	3	2	2	4	2	3
Marketing (total)	8	3	4	8	21	77
Purchasing	7	3	6	12	16	96
Service	2	2	0	0	0	0
All types	8	3	5	10	21	82

[1]Based on data of 3,148 farmer cooperatives reporting both truck operations, owned or leased, and dollar volume of business.

to 96 trucks, respectively, for the same categories. Overall, marketing cooperatives reporting trucks averaged 8 trucks, purchasing 7 trucks, and service cooperatives 2 trucks per association.

Of the marketing associations, dairy cooperatives had the highest overall average number of trucks, with 17. This is partly due to the local retail delivery operations of many dairy cooperatives. Poultry cooperatives were next, with 11 trucks, and fruit and vegetable cooperatives were third with 7 trucks.

In reviewing the data shown in table 11, certain factors should be borne in mind. Some cooperatives in the $10 million and above class show a relatively high average number of trucks per association. Many of the organizations in this dollar volume category are overhead regional cooperatives, who in some cases reported for their local member associations but were treated as one cooperative. In centralized cooperatives, the trucks are generally owned and their operation supervised by the overhead association. On the other hand, local member associations in most federated type cooperatives own and operate their own motortrucks independently.

Over-the-Road Versus Local Hauling[6]

Total truck mileage reported by the 3,017 cooperatives replying to this question in full was 455 million miles for 1960. Of this total, 130 million miles, or 28 percent, was classified as over-the-road mileage. Truck mileage of all farmer cooperatives for 1960, based on the reported information, was estimated at 660 million miles for both local and over-the-road trucking.[7]

Total United States truck mileage over both rural and urban roads has been estimated at 126.4 billion miles for 1960. Thus, truck mileage of farmer cooperatives accounts for about one-half of 1 percent of the U. S. total.

Of the 3,217 cooperatives reporting type of truck operations in 1960, 1,055 or about one-third had "over-the-road" operations. Ten percent of the cooperatives reported up to 25 percent of their truck mileage as over-the-road, 13 percent reported from 25 percent to 74 percent, and 10 percent reported that their over-the-road hauling accounted for 75 percent or more of their truck mileage (table 12). Nineteen percent of the marketing cooperatives reported 50 percent or more of their truck mileage as over-the-road, against 14 percent and 27 percent,

[6]Over-the-road trucking was defined in the questionnaire as all hauls other than local pickup and delivery and movements from fields to local concentration points.
[7]The estimated 660 million total miles was based on a projection of average miles per truck by type of cooperative reporting.

Table 12. - *Percentage distribution of reporting cooperatives by approximate percent of total truck miles that were "over-the-road," 1960*[1]

Type of cooperative	Number of cooperatives	Percentage of cooperatives reporting by percent of "over-the-road" miles					
		Reported none	Less than 25 percent	25 to 49 percent	50 to 74 percent	75 percent and over	Total
	Number	*Percent*					
Marketing							
Cotton	151	53	1	3	4	39	100
Dairy	524	74	9	4	5	8	100
Fruit and vegetable	144	74	6	2	3	15	100
Grain	753	66	13	6	8	7	100
Livestock and wool	50	56	8	6	6	24	100
Poultry	42	60	5	9	17	9	100
Miscellaneous	38	50	5	8	16	21	100
Marketing (total)	1,702	67	9	5	7	12	100
Purchasing	1,482	67	12	7	6	8	100
Service	33	70	0	3	6	21	100
All types	3,217	67	10	6	7	10	100

[1]Based on data reported by 3,217 farmer cooperatives.

Table 13. - *Percent of total truck mileage of cooperatives reporting local and over-the-road, by type of cooperative and size of fleet, January 1, 1961*[1]

Type of cooperative	Total mileage	Percentage distribution by number of trucks and type of operation											
		1 or 2		3 to 5		6 to 25		26 to 100		Over 100		Total	
		Local	Over the road	Local	Over the road	Local	Over the road	Local	Over the road	Local	Over the road	Local	Over the road
	1,000 miles	*Percent*											
Marketing													
Cotton	5,358	22	11	19	12	19	17	0	0	0	0	60	40
Dairy	179,586	3	1	6	1	18	8	20	8	27	8	74	26
Fruit and vegetable	13,537	4	2	8	9	41	8	22	6	0	0	75	25
Grain	48,844	10	3	25	10	30	9	1	(2)	5	7	71	29
Livestock and wool	4,898	10	3	15	7	34	31	0	0	0	0	59	41
Poultry	11,442	2	(2)	3	0	39	14	3	12	11	16	58	42
Miscellaneous	2,542	8	2	8	28	4	50	0	0	0	0	20	80
Marketing (total)	266,207	5	2	10	3	23	9	15	7	19	7	72	28
Purchasing	186,639	10	2	14	3	32	9	3	7	12	8	71	29
Service	2,189	25	14	10	5	26	20	0	0	0	0	61	39
All types	455,035	7	2	12	3	27	9	10	7	16	7	72	28

[1]Based on data reported by 3,217 cooperatives.
[2]Less than 0.5 percent.

respectively, for purchasing and service cooperatives.

Thus, the great majority of cooperative trucking is local in nature. Most of these operations consist of local pickups and deliveries and primary movements from field to local concentration points.

Local and over-the-road truck mileages of the various cooperative activities, by size of truck fleet, are shown by percentages in table 13.

Seventy-two percent of the total mileage reported was local, versus 28 percent over-the-road. This was the same for marketing cooperatives as a group, while purchasing cooperatives reported 71 percent local hauling and service cooperatives 61 percent.

Percentage distribution of local and over-the-road mileage by size of truck fleet and geographic region is given in appendix table 5. The regional variation or range for local mileage ran from 59 percent for the Southwestern region to a high of 85 percent for both New England and the Middle Atlantic regions, a spread of 26 percentage points. The fleet size of 6 to 25 trucks registered the highest total percentage for both local and over-the-road mileage with 27 and 9 percent, respectively.

67-566 O—66——12

Appendix

Appendix table 1. - *Number of cooperatives, number and percentage reporting motortrucks, number of trucks, average trucks per cooperative, by State and geographic region, January 1, 1961*

State and geographic region	Number of cooperatives[1]	Cooperatives reporting		Cooperatives reporting trucks		Number of trucks[2]	Average trucks per cooperative[3]
		Number	Percent	Number	Percent		
Maine	20	12	60	6	50	46	7.7
New Hampshire	8	7	88	4	57	62	15.5
Vermont	29	17	59	6	35	36	6.0
Massachusetts	33	24	73	13	54	450	34.6
Rhode Island	2	2	100	0	0	0	0
Connecticut	23	14	61	8	57	86	10.8
New England	115	76	66	37	49	680	18.4
New York	174	126	72	36	29	880	24.4
New Jersey	49	32	65	10	31	74	7.4
Pennsylvania	146	123	84	65	53	1,105	17.0
Delaware	5	4	80	1	25	3	3.0
West Virginia	29	23	79	6	26	20	3.3
Maryland	29	22	76	9	41	95	10.6
Middle Atlantic	432	330	76	127	38	2,177	17.1
Illinois	485	321	66	180	56	1,107	6.2
Indiana	143	100	70	87	87	1,145	13.2
Ohio	285	196	69	155	79	1,743	11.2
Michigan	222	150	68	109	73	1,007	9.2
Central	1,135	767	68	531	69	5,002	9.4
Virginia	105	69	66	20	29	250	12.5
Kentucky	58	39	67	10	26	31	3.1
Tennessee	117	90	77	61	68	173	2.8
North Carolina	53	34	64	16	47	929	58.1
Mississippi	140	88	63	51	58	325	6.4
Alabama	49	30	61	17	57	113	6.6
Georgia	77	48	62	25	52	250	10.0
South Carolina	22	10	45	4	40	17	4.2
Florida	111	69	62	35	51	472	13.5
Southern	732	477	65	239	50	2,560	10.7
North Dakota	519	350	67	117	33	343	2.9
South Dakota	311	210	68	111	53	441	4.0
Minnesota	1,103	760	69	454	60	2,474	5.4
Wisconsin	699	528	76	295	56	1,785	6.0
Northwestern	2,632	1,848	70	977	53	5,043	5.2

See end of table for footnote references.
Table continued on following page.

Appendix table 1. - *Number of cooperatives, number and percentage reporting motortrucks, number of trucks, average trucks per cooperative, by State and geographic region, January 1, 1961 - continued*

State and geographic region	Number of cooperatives[1]	Cooperatives reporting		Cooperatives reporting trucks		Number of trucks[2]	Average trucks per cooperative[3]
		Number	Percent	Number	Percent		
Nebraska	393	254	65	148	58	548	3.7
Iowa	618	472	76	349	74	1,687	4.8
Kansas	353	262	74	178	68	798	4.5
Missouri	243	152	63	122	80	1,174	9.6
Midwestern	1,607	1,140	71	797	70	4,207	5.3
Oklahoma	182	126	69	57	45	331	5.8
Arkansas	113	76	67	38	50	152	4.0
Texas	514	366	71	191	52	741	3.9
Louisiana	59	41	69	10	24	69	6.9
Southwestern	868	609	70	296	49	1,293	4.4
Montana	178	120	67	68	57	212	3.1
Idaho	97	65	67	32	49	217	6.8
Wyoming	26	16	62	9	56	36	4.0
Utah	61	35	57	11	31	173	15.7
Colorado	115	80	70	54	68	203	3.8
New Mexico	32	21	66	11	52	52	4.7
Rocky Mountain	509	337	66	185	55	893	4.8
Washington	187	154	82	95	62	1,266	13.3
Oregon	119	88	74	53	60	714	13.5
California	398	309	78	111	36	1,488	13.4
Nevada	4	1	25	1	100	13	13.0
Arizona	14	11	79	7	64	130	18.6
Pacific	722	563	78	267	47	3,611	13.5
Alaska	2	1	50	1	100	18	18.0
Hawaii	18	15	83	7	47	24	3.4
Puerto Rico	12	8	67	5	63	20	4.0
Noncontiguous	32	24	75	13	54	62	4.8
United States	8,784	6,171	70	3,469	56	25,528	7.4

[1]Represents actual number of cooperatives to whom questionnaires were mailed. Several of the regional cooperatives included in the survey, however, regularly report statistical information for their local member associations. Thus, there is a disparity between the total number of cooperatives shown above and that listed by the History and Statistics Branch, Farmer Cooperative Service.
[2]Includes straight trucks and truck tractors.
[3]Average trucks per cooperative reporting motortrucks.

Appendix table 2. - *Percentage distribution of cooperative motortrucks, by manufacturers' rated capacity, January 1, 1961*[1]

Type of cooperative	Percentage distribution by number of trucks for each type cooperative															
	Truck tractors				Straight trucks											
					Van				Tank				Other			
	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total
	Percent															
Marketing																
Cotton	16	62	22	100	45	48	7	100	44	40	16	100	55	39	6	100
Dairy	2	8	90	100	52	32	16	100	10	33	57	100	69	27	4	100
Fruit and vegetable	12	7	81	100	48	34	18	100	85	9	6	100	43	50	7	100
Grain	1	12	87	100	41	50	9	100	32	59	9	100	45	46	9	100
Livestock and wool	13	8	79	100	42	43	15	100	0	33	67	100	46	41	13	100
Poultry	0	17	83	100	21	67	12	100	3	46	51	100	37	52	11	100
Miscellaneous	0	0	100	100	30	45	25	100	12	88	0	100	36	48	16	100
Marketing (total)	5	15	80	100	49	36	15	100	19	42	39	100	54	39	7	100
Purchasing	1	8	91	100	41	40	19	100	16	67	17	100	39	47	14	100
Service	0	36	64	100	36	28	36	100	19	19	62	100	93	7	0	100
Total	3	13	84	100	47	37	16	100	17	58	25	100	47	43	10	100

[1]Based on data reported by 6,171 farmer cooperatives. Includes both owned and leased motortrucks.

Appendix table 3. - *Percentage distribution of motortrucks, by type of cooperative, January 1, 1961*[1]

Type of cooperative	Percentage distribution by type of cooperative for each size truck																			
	Truck tractors				Straight trucks												All trucks			
					Van				Tank				Other							
	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total	1½ tons and under	Over 1½ tons but less than 2½ tons	2½ tons and over	Total
	Percent																			
Marketing																				
Cotton	37	39	2	8	1	1	(2)	1	2	(2)	(2)	1	3	2	1	2	2	2	1	2
Dairy	24	23	41	38	64	49	58	57	11	12	47	20	31	13	8	21	45	26	42	37
Fruit and vegetable	19	3	6	6	2	2	2	2	4	(2)	(2)	1	8	11	7	9	5	5	4	5
Grain	1	7	7	7	8	13	6	10	21	12	4	11	18	20	18	19	13	15	8	13
Livestock and wool	6	1	1	1	1	2	1	1	0	(2)	1	(2)	1	1	1	1	1	1	1	1
Poultry	0	5	4	4	1	4	2	2	(2)	1	2	1	1	2	2	2	1	3	3	2
Miscellaneous	0	0	1	1	(2)	(2)	(2)	(2)	(2)	(2)	0	(2)	1	1	1	1	1	(2)	1	(2)
Marketing (total)	87	78	62	65	77	71	69	73	38	25	54	34	63	50	38	55	68	52	60	60
Purchasing	13	20	37	34	23	29	30	27	62	75	45	66	37	50	62	45	32	48	40	40
Service	0	2	1	1	(2)	(2)	1	(2)	(2)	(2)	1	(2)	(2)	(2)	0	(2)	(2)	(2)	(2)	(2)
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[1]Based on data reported by 6,171 farmer cooperatives. Includes both owned and leased motortrucks.
[2]Less than 0.5 percent.

Appendix table 4. - *Percentage distribution of straight trucks, owned or leased, by type of truck and type of cooperative, January 1, 1961*[1]

Type of cooperative	Percentage distribution by type of truck											
	Van			Tank			Other			Total		
	Owned	Leased	Total	Owned	Leased	Total	Owned	Leased	Total	Owned	Leased	Total
	Percent											
Marketing												
Cotton	93	7	100	100	0	100	95	5	100	95	5	100
Dairy	91	9	100	85	15	100	97	3	100	92	8	100
Fruit and vegetable	91	9	100	100	0	100	98	2	100	97	3	100
Grain	98	2	100	98	2	100	99	1	100	99	1	100
Livestock and wool	92	8	100	100	0	100	97	3	100	94	6	100
Poultry	95	5	100	98	2	100	76	24	100	88	12	100
Miscellaneous	100	0	100	100	0	100	91	9	100	93	7	100
Marketing (total)	92	8	100	90	10	100	97	3	100	94	6	100
Purchasing	94	6	100	87	13	100	95	5	100	92	8	100
Service	100	0	100	94	6	100	100	0	100	98	2	100
All types	93	7	100	88	12	100	96	4	100	93	7	100

[1]Based on data reported by 3,469 farmer cooperatives.

Appendix table 5. - *Percentage distribution of total truck mileage of cooperatives reporting local and over-the-road mileage, by geographic region and size of fleet, 1960*[1]

Geographic region	Total mileage	Percentage distribution of total truck mileage by number of trucks											
		1 or 2		3 to 5		6 to 25		26 to 100		Over 100		Total	
		Local	Over the road	Local	Over the road	Local	Over the road	Local	Over the road	Local	Over the road	Local	Over the road
	1,000 miles	*Percent*											
New England	16,731	47	0	1	(2)	13	6	4	7	20	2	85	15
Middle Atlantic	38,345	1	1	4	1	21	1	8	3	51	9	85	15
Central	77,696	3	1	8	2	37	9	9	10	13	8	70	30
Southern	48,125	4	2	9	3	24	13	14	10	16	5	67	33
Northwestern	95,853	10	2	20	3	28	11	6	2	13	5	77	23
Midwestern	82,071	7	2	17	4	30	10	7	3	5	15	66	34
Southwestern	32,809	6	3	7	10	16	5	16	22	14	1	59	41
Rocky Mountain	13,466	9	3	11	4	18	14	26	15	0	0	64	36
Pacific	49,349	2	1	4	3	24	8	18	5	24	11	72	28
Noncontiguous	590	0	2	63	0	15	20	0	0	0	0	78	22
United States	455,035	7	2	12	3	27	9	10	7	16	7	72	28

[1]Based on data reported by 3,217 cooperatives.
[2]Less than 0.5 percent.

GENERAL REPORT 121
JUNE 1964

MOTORTRUCK OPERATING COSTS OF FARMER COOPERATIVES

FARMER COOPERATIVE SERVICE • U.S. DEPARTMENT OF AGRICULTURE

Farmer Cooperative Service
U.S. Department of Agriculture
Washington, D.C., 20250

Joseph G. Knapp, Administrator

The Farmer Cooperative Service conducts research studies and service activities of assistance to farmers in connection with cooperatives engaged in marketing farm products, purchasing farm supplies, and supplying business services. The work of the Service relates to problems of management, organization, policies, merchandising, product quality, costs, efficiency, financing, and membership.

The Service publishes the results of such studies; confers and advises with officials of farmer cooperatives; and works with educational agencies, cooperatives, and others in the dissemination of information relating to cooperative principles and practices.

Contents

	Page
Highlights	vi
Relationship of truck operating costs to total transportation expenditures	1
Number and types of motortrucks operated	2
Analysis of motortruck operating costs	2
Total operating costs	2
Direct costs	3
Overhead costs	3
Indirect costs	4
Distribution by average costs and size of truck fleet	4
Motortruck operations	4
Average length of trip	5
Backhaul characteristics	5
Reasons for operating own trucks	5
Disadvantages in operating own trucks	6
Observations	6
Appendix I	7
Appendix II	8

Highlights

This report gives results of a detailed study of motortruck operating costs of 20 farmer cooperatives.

Nineteen of these cooperatives spent over $100 million on transportation in 1962. Operation of their own trucks accounted for 12 percent of this amount, with expenditures on for-hire motortruck and rail transportation amounting to 86 percent of the total.

The 20 cooperatives providing motortruck operating cost information for this study operated 533 truck-tractors, 123 straight trucks, and 832 trailers and semitrailers. The average size fleet was 33 trucks.

The 656 truck-tractors and straight trucks operated by the 20 cooperatives traveled over 38 million miles in 1962. The average round trip, reported by 18 cooperatives, was 178.4 miles.

Each truck averaged 58,100 miles during the year. Pickups per trip averaged 1.9 and stopoffs 6.1. The average miles per gallon of fuel was 5.5.

Total operating costs for this fleet amounted to almost $13 3/4 million in 1962, or an average of 36 cents a mile operated.

Eleven of the 20 cooperatives had motortruck operating costs that averaged between 30 and 39.9 cents a mile.

Direct costs amounted to 25.6 cents a mile, or 71 percent of total operating costs, followed by 19 percent for overhead and 10 percent for indirect costs. Drivers' wages were the largest expense item, accounting for 13 cents a mile, or over 50 percent of direct costs.

Depreciation of motortrucks and facilities was the largest overhead cost item, amounting to 3.7 cents a mile, or 55 percent of total overhead costs. Office and garage salaries and wages accounted for 3.3 cents a mile, or almost 89 percent of total indirect costs.

Information obtained from 18 of the 20 cooperatives showed they had backhauls for only 46,627--or 21.8 percent--of the 213,606 trips their trucks made in 1962. Almost 93 percent of these backhauls were their own goods.

"Adequate service not available for needs" and "more economical" were the reasons expressed most often by management personnel for operating their own trucks.

"Operating problems" and "meeting various State vehicle size and weight laws" were the principal disadvantages or problems in operating their own trucks expressed by management.

Many of the cooperatives in this study need more detailed motortruck operating-cost record-keeping systems. Records were generally kept on a fleet basis, with no apparent way of measuring the performance of each truck in the fleet.

MOTORTRUCK OPERATING COSTS OF FARMER COOPERATIVES

by Thomas H. Camp
Transportation Branch
Management Services Division

The 9,294 farmer cooperatives in the United States owned or leased an estimated 33,000 motortrucks as of January 1, 1961, according to a recent study by Farmer Cooperative Service.[1] These motortrucks do an important part of the hauling of agricultural commodities and supplies for members and patrons of cooperatives.

This study was made in response to recommendations made to the Department of Agriculture by the Transportation and Storage Research Advisory Committee. It is the second phase of a study of motortruck operations and costs. These costs are needed to provide benchmarks for the guidance of cooperative managements in helping increase efficiency of operations and thereby increase returns to farmers.

A previous study by Farmer Cooperative Service provided a record of number, types, and sizes of motortrucks operated by farmer cooperatives. Of the 6,171 cooperatives participating in the previous study, 3,469 operated motortrucks. Only 128 of this number, however, operated fleets of 25 or more trucks.[2]

Of the 128 cooperatives operating 25 or more trucks, 28 stated that 50 percent or more of their total truck mileage was "over-the-road."[3]

These cooperatives were selected for detailed study to determine truck operating characteristics and costs for the larger fleet operators. We scheduled field interviews during 1963 and obtained usable motortruck operating cost information from 20 of the 28 cooperatives. This information is the basis of findings reported here.

Relationship of Truck Operating Costs to Total Transportation Expenditures

While this study pertains primarily to motortruck operating costs, related information on total transportation expenditures was obtained from 19 of the 20 cooperatives in the study. These cooperatives spent over $100 million on transportation in 1962 (table 1).

[1] Bowser, William C. Motortruck Operations of Farmer Cooperatives, Gen. Rpt. 109, Farmer Cooperative Serv., U.S. Dept. Agr., Feb. 1963.

[2] The term "trucks" as used here and hereafter in this report refers only to power units.

[3] "Over-the-road" was defined in the questionnaire as hauls other than local pickup and delivery and movements from fields to local concentration points.

The table shows cooperatives rely heavily on for-hire motortruck and rail carriers for transportation services. Their own private truck operations accounted for only 12 percent of total transportation expenditures.

Table 1.--Total transportation expenditures by 19 farmer cooperatives, 1962

Item	Costs	Percentage of total
	Dollars	Percent
For-hire motortruck and rail	$86,250,993	86
Own trucks	12,411,364	12
Own barges	1,767,600	2
For-hire, other	204,000	(2)
Traffic management [1]	354,810	(2)
Total	100,988,767	100.0

[1] Salaries and other traffic department expenses reported separately by 8 cooperatives and not included in preceding items.
[2] Less than one-half of one percent.

Records kept by the 19 cooperatives did not permit a breakdown between transportation expenditures on for-hire motortruck and rail. Limited information obtained from 10 of the 19 cooperatives, however, indicated for-hire motortrucks accounted for about 12 percent of the $86,250,993 spent for both.

Number and Types of Motortrucks Operated

Motortruck operating cost data were obtained on 533 truck-tractors, 123 straight trucks, and 832 trailers and semitrailers operated by the 20 cooperatives in this study. Of these, 45 truck-tractors and 45 semitrailers and trailers were leased (table 2).

Thirty-nine percent (183) of the van-type semitrailers and trailers and about two-thirds (62) of the straight trucks were refrigerated. The majority of straight trucks were large 10-wheel units.

Table 2.--Number and types of motortrucks owned or leased by 20 cooperatives, 1962

Type	Owned	Leased	Total
Truck tractors	488	45	533
Straight trucks:			
Van	89	-	89
Tank	-	-	-
Other	34	-	34
Total power units	611	45	656
Semitrailers and trailers:			
Van	445	28	473
Tank	157	7	164
Other	185	10	195
Total semitrailers and trailers	787	45	832

Analysis of Motortruck Operating Costs

The motortruck operating costs shown here were obtained from the accounting records of the 20 cooperatives in the study. These cooperatives were located in 11 States--Virginia, North Carolina, New York, Kansas, Minnesota, Indiana, Idaho, Utah, Oregon, Missouri, and California. Analysis of data showed no appreciable differences in costs that could be related to geographic region of operation.

Since cost recordkeeping systems varied widely among cooperatives, we devised a motortruck cost schedule and obtained costs from each of the 20 cooperatives for the major cost groups in the schedule (appendix 1). Use of this schedule permitted comparative analysis of costs among cooperatives.

Total Operating Costs

The average total motortruck operating costs of the 20 cooperatives in the study are shown by major cost groups in table 3. Total operating costs per mile averaged 36 cents.

Table 3.--Total motortruck operating costs by major cost groups, 20 cooperatives, 1962

Cost groups	Costs		
	Amount	Per mile	Percentage of total
	Dollars	Cents	Percent
Direct costs[1]	$9,772,422	25.6	71.2
Overhead costs[2]	2,548,465	6.7	18.5
Indirect costs[3]	1,409,979	3.7	10.3
Total	13,730,866	36.0	100.0

[1] Costs directly chargeable to individual vehicles which vary directly with vehicle miles traveled and tonnage hauled.

[2] Costs directly chargeable to individual vehicles which do not vary with vehicle miles traveled and tonnage hauled.

[3] Certain specified general expenses for the cooperative as a whole, not directly chargeable to individual vehicles.

Direct costs accounted for over two-thirds of the almost $13 3/4 million spent by the cooperatives in operating their own trucks in 1962. A more detailed cost breakdown under the major cost headings is shown in appendix 2.

Direct Costs

Drivers' wages accounted for over half of the direct operating costs reported by the 20 cooperatives (table 4). The next largest item was fuel, oil, and grease, which amounted to almost one-fourth of the direct operating costs.

Based on detailed information obtained from cost records of 14 of the 20 cooperatives, vehicle repairs and parts accounted for 3.6 cents a mile, or about 83 percent of the costs included in "all other".

None of the cooperatives in this study had helpers accompany the drivers on trips.

Table 4.--Total direct costs by individual costs items, 20 cooperatives, 1962

Items	Costs		
	Amount	Per mile	Percentage of total
	Dollars	Cents	Percent
Drivers' wages[1]	$4,956,471	13.0	50.7
Fuel, oil, and grease	2,322,684	6.1	23.8
Tires and tubes (including repairs)	825,876	2.1	8.4
All other[2]	1,667,391	4.4	17.1
Total	9,772,422	25.6	100.0

[1] Includes social security, workmen's compensation taxes and insurance, and fringe benefits.

[2] Includes vehicle repairs and parts, over-the-road expenses of drivers, road services, and general maintenance.

Overhead Costs

Depreciation of motortrucks and facilities amounted to 55 percent of total overhead costs (table 5). Rates of depreciation varied among cooperatives, but they were generally computed on a straight-line basis. Taxes, licenses, and permits were the second largest item, accounting for over 21 percent of overhead costs.

Table 5.--Total overhead costs by individual cost items, 20 cooperatives, 1962

Items	Costs		
	Amount	Per mile	Percentage of total
	Dollars	Cents	Percent
Depreciation of motortrucks and facilities	$1,412,471	3.7	55.4
Taxes, licenses, and permits	537,850	1.4	21.1
Insurance	316,845	.8	12.4
Interest on investment	281,299	.8	11.1
Total	2,548,465	6.7	100.0

Interest on investment, which accounted for over 11 percent of overhead costs, was generally not included in records kept by many cooperatives in this study. If the cost figure was not available, it was computed at the rate the cooperative was currently paying on borrowed capital for such an investment.

Indirect Costs

Indirect costs amounted to over 10 percent of total operating costs (table 6). Office and garage salaries and wages was the largest item, amounting to almost 90 percent of indirect costs.

Table 6.--Total indirect costs by individual cost items, 20 cooperatives, 1962

Items	Costs		
	Amount	Per mile	Percentage of total
	Dollars	Cents	Percent
Office and garage salaries and wages[1]	$1,251,920	3.3	88.8
All other[2]	158,059	.4	11.2
Total	1,409,979	3.7	100.0

[1] Includes traffic and transportation management, other executive time spent in general administration of trucking and related social security, workmen's compensation taxes and insurance, and fringe benefits.

[2] Includes heat, light, water, telephone, office and garage equipment and supplies, office and garage rental, and miscellaneous expenses.

Fourteen of the 20 cooperatives in the study operated their own garage or shop facilities for most major motortruck repairs and overhauls. The remainder operated limited facilities for minor repairs or preventive maintenance purposes and had major repairs and overhauls performed in commercial garages.

Based on information obtained from 12 of the 20 cooperatives, heat, light, water, and telephone accounted for over half of "all other" expenses.

Distribution by Average Costs and Size of Truck Fleet

Table 7 shows the distribution of the 20 cooperatives by cost categories. Eleven cooperatives had motortruck operating costs that averaged between 30 and 39.9 cents a mile.

Table 7.--Distribution of 20 cooperatives by average motortruck operating costs, and size of truck fleet, 1962

Cents per mile	Number of cooperatives	Trucks operated	
		Total	Average per cooperative
		Number	Number
Under 30	4	69	17.3
30 - 39.9	11	422	38.4
40 - 49.9	3	129	43.0
50 and above	2	36	18.0
Total	20	656	32.8

Four cooperatives had average total operating costs of under 30 cents a mile while two had costs averaging 50 cents or more a mile. These two extremes in costs may be attributed to inadequate cost records or, in the case of those 50 cents a mile and above, to including specialized hauling equipment that represents a large investment and relatively low annual mileage.

The 11 cooperatives with average costs between 30 and 39.9 cents a mile operated almost two-thirds of the motortrucks studied.

The average size fleet operated by the 20 cooperatives was 32.8 trucks.

Motortruck Operations

The operating characteristics of the motortrucks operated by the 20 cooperatives are shown in table 8. Data shown demonstrate the relatively short-haul and pickup and delivery-type operation that characterizes truck operations of cooperatives in this study.

While the 656 trucks operated by the cooperatives traveled over 38 million miles in 1962, the average round trip, as reported by 18 cooperatives, was 178.4 miles. The large number of stopoffs per trip (6.1) indicates the motortrucks operated by these cooperatives are used primarily in delivery-type operations. Information provided by 13 of the 20 cooperatives showed their average load per trip to be 10.9 tons.

Table 8.--Motortruck operating statistics, 20 cooperatives, 1962

Item	Number
Total miles operated	38,113,902
Average annual miles per truck	58,100
Average length of round trip (miles)[1]	178.4
Average pickups per trip	1.9
Average stopoffs per trip	6.1
Average miles per gal. of fuel	5.5

[1] As reported by 18 cooperatives.

Average Length of Trip

The distribution of 18 cooperatives by average length of round trip taken by their trucks in 1962 is shown in table 9. Fourteen of the 18 cooperatives averaged trips of under 400 miles. Only one cooperative averaged 700 or more miles per trip. The average length of round trip was under 300 miles for over 70 percent of the trucks operated by the 18 cooperatives.

Table 9.--Distribution of 18 cooperatives by average length of truck round trip, 1962

Average length of round trip	Number of cooperatives	Number of trucks
Miles		
Under 100	3	236
100 - 199	3	56
200 - 299	5	159
300 - 399	3	85
400 - 499	0	0
500 - 599	1	53
600 - 699	2	31
700 and over	1	17
Total	18	637

Backhaul Characteristics

Detailed information was obtained from 18 of the 20 cooperatives regarding frequency and characteristics of backhauls in their own trucks. As shown in table 10, the 18 cooperatives had backhauls for only 46,627 trips, or 21.8 percent of the 213,606 trips their 603 trucks made in 1962. Of these backhauls almost 93 percent were the cooperatives' own goods.

Lack of backhaul tonnage is a limiting factor in cooperative truck operations as indicated here.

Table 10.--Number and percentage of total trips (213,606) for which 18 cooperatives had backhauls, by type of backhaul, 1962

Type of backhaul	Backhauls		
	Number	Percentage of total trips	Percentage of backhaul trips
Own goods	43,340	20.3	92.9
Goods of other cooperatives	2,751	1.3	5.9
Exempt agricultural commodities	130	(1)	.3
All other	406	0.2	.9
Total	46,627	21.8	100.0

[1] Less than one-tenth of one percent.

Reasons for Operating Own Trucks

Management personnel of the 20 cooperatives responsible for supervision of trucking operations were asked to list reasons for operating their own trucks. Table 11 lists the reasons in order of importance.

Economy, service, and flexibility were the reasons mentioned most often by cooperatives in this study for operating their own trucks. The number of times, "adequate service not available for needs," was mentioned indicates many of the cooperatives are operating trucks out of necessity.

67-566 O—66——13

Table 11.--Reasons for operating own trucks, as reported by 20 cooperatives, 1962

Reasons	Number of times reported
More economical	14
Adequate service not available for needs	14
Greater flexibility in operation	12
Better service to customers and patrons	10
Advertisement and better customer relations	3

Disadvantages in Operating Own Trucks

Operating problems such as utilizing operating personnel during slack periods, balancing available equipment with hauling needs and keeping equipment productively employed were the major disadvantages or problems reported by the 20 cooperatives (table 12). These were followed closely by problems of meeting various State vehicle size and weight laws in interstate trucking. Items of importance also are listed in table 12.

Table 12.--Disadvantages or problems in operating own trucks, as reported by 20 cooperatives, 1962

Disadvantages or problems	Number of times reported
Operating problems	11
Meeting various State vehicle size and weight laws	10
Large investment needed	3
No cost advantage over for-hire carriers	3
No disadvantages	3
Lack of backhauls	2
Administrative burden	2

Observations

The farmer cooperatives studied operate motortrucks to provide a type service that is evidently not readily available from for-hire carriers. They are used primarily for operations requiring multiple stops and flexibility in service.

Many of the cooperatives in this study need more detailed motortruck operating-cost record-keeping systems. Most of them maintained adequate fleet records on drivers' wages, fuel, repair, and other direct operating costs but often overlooked one or more overhead items such as interest on investment and administrative costs.

Few of the cooperatives kept separate performance records on individual trucks. Most records were on a fleet basis, with no apparent way of measuring the performance of each truck in the fleet.

There might be advantages in keeping some operating records on an individual truck basis. This would permit measurement of efficiency and productivity of each unit, thus aiding management in minimizing costs and increasing overall efficiency of the fleet.

Appendix I

Motortruck Transportation Cost Analysis Sheet

Year _____ to _____ 19____
(Capital Investment $_____)

Interest on Investment (Rate _____%) . . . . . $_____

Depreciation (Including carrying charges, if any):

Straight trucks, excluding tires (Number: _____) $_____
Tractors " " (Number: _____) $_____
Trailers " " (Number: _____) $_____
Refrigeration Units (Number: _____) $_____
Garage and shop
Garage and shop equipment (include replacement of lost and broken tools.)

Total Depreciation . . . . . $_____

Insurance, Taxes, Licenses:

Comprehensive insurance on vehicles $_____
Collision insurance $_____
Public Liability and Property Damage $_____
Cargo insurance $_____
Insurance on Garage and Equipment (Fire, theft, etc.) $_____
Personal property taxes (City, State, County)
Garage $_____
Trucks and Trailers $_____
License Tags and Inspections $_____
Registration Fees $_____
State Use Taxes (on gas, other fuels and oil) $_____

Total Insurance, Taxes, and Licenses . . . . . $_____

Utilities, Supplies, etc.:

Heat, Light, and Water $_____
Telephone $_____
Office Space Costs or Rental $_____
Office Equipment and Supplies $_____
Rent (Garage & shop if not owned) $_____
Garage supplies, work uniforms, laundry $_____
Special Equipment (tarpaulins, heaters, fire extinguishers) $_____
Sign work $_____
Other (_____) $_____
Other (_____) $_____

Total Utilities, Supplies, Etc. . . . . $_____

Salaries (other than drivers and helpers):

Supervision (Garage and shop - Number _____) $ _____
Garage and shop employees (Number _____) $ _____
Traffic and Transportation
Management (Number _____) $ _____
(Include executive time spent in general administration of trucking operations.)
Office salaries and wages (Number _____) $ _____
Workman's compensation taxes and insurance
Social security tax $ _____
Fringe benefits:
Health insurance and hospitalization $ _____
Vacation and holiday pay $ _____
Bonus $ _____

Total Salaries (other than drivers and helpers) . . . . . $ _____

Operating Costs:

Fuel, Oil, and Grease (include filters) $ _____
Tires and tubes (Costs or depreciation) $ _____
Tire repair and recaps $ _____
Vehicle repairs and parts (own shop) $ _____
Repairs done outside of own shop (Including parts and labor) $ _____
Road services $ _____
Protective services (fuel for heaters or refrigeration units, icing, etc.) $ _____
Washing $ _____
Painting $ _____
Antifreeze and tire chains $ _____
Over-the-road expenses (driver and helper)
Meals $ _____
Lodging $ _____
Bridge and turnpike tolls $ _____
Fines $ _____
Other (_____) $ _____

Total Operating Costs . . . . . $ _____

Drivers' Wages:

Drivers' wages (Number: _____) $ _____
Helpers' wages (Number: _____) $ _____
Other driver expense (exclude meals, lodging, tolls, and fines) $ _____
Workmens' compensation taxes and insurance $ _____
Social Security Tax $ _____
Fringe benefits:
Health insurance and hospitalization $ _____
Vacation and holiday pay $ _____

Total Drivers' Wages . . . . . $ _____

GRAND TOTAL, TRUCK TRANSPORTATION COSTS . . . . . $ _____

Appendix II

Motortruck Operating Costs, 20 Cooperatives, 1962

Cost item	Costs			
	Amount	Per mile	Percent of group	Percent of total
	Dollars	Cents	Percent	Percent
Overhead				
Depreciation of motortrucks and facilities	$1,412,471	3.7	55.4	10.3
Taxes, licenses, and permits	537,850	1.4	21.1	3.9
Insurance	316,845	.8	12.4	2.3
Interest on investment	281,299	.8	11.1	2.0
Total	2,548,465	6.7	100.0	18.5
Direct				
Drivers' wages[1]	4,956,471	13.0	50.7	36.1
Fuel, oil, and grease	2,322,684	6.1	23.8	17.0
Tires and tubes (including repairs)	825,876	2.1	8.4	6.0
All other[2]	1,667,391	4.4	17.1	12.1
Total	9,772,422	25.6	100.0	71.2
Indirect				
Office and garage salaries and wages[3]	1,251,920	3.3	88.8	9.1
All other[4]	158,059	.4	11.2	1.2
Total	1,409,979	3.7	100.0	10.3
Grand total	13,730,866	36.0		100.0

[1] Includes social security, workmen's compensation taxes and insurance, and fringe benefits.
[2] Includes vehicle repairs and parts, over the road expenses of drivers, road services, and general maintenance.
[3] Includes traffic and transportation management and other executive time spent in general administration.
[4] Includes heat, light, water, telephone, office, and garage equipment and supplies, office and garage rental, and miscellaneous expenses.

Mr. DICE. It is pertinent to note that 19 of the 20 cooperatives surveyed in the study reported in General Report 121 spent over $100 million on transportation in 1962—but it is even more significant that more than $86 million of this total was spent on for-hire motortruck and rail transportation. See table 1 on p. 2 of the report.

Only about 12 percent represented private truck operations of these cooperatives, and this 12 percent included their farm-to-market and local pickup and delivery operations as well as over-the-road or intercity operations.

Senator LAUSCHE. These motortruck operating costs of farmer cooperatives, what years are covered?

Mr. DICE. This report covers the year 1962.

Senator LAUSCHE. Is that the latest available and best data?

Mr. DICE. That is the latest year for which any survey has been conducted by the Department. For that matter, I am sure it is the latest information available from any source on this subject.

Senator LAUSCHE. Do you have statistics from which comparisons could be made showing whether there has been a trend upward or downward, whichever it is, in the carrying of products by the cooperatives themselves?

Mr. DICE. We have the information that there was a modest increase between the years 1951 and 1960 in the volume of motortruck operations by the farmer cooperatives. But it was a lesser increase than the increase in total motor carrier operations in the United States.

Senator LAUSCHE. Are there any figures reflecting what the status is since the *Northwest* decision was rendered?

Mr. DICE. No; we know of no statistics available since that time. I should say, though, Mr. Chairman, that the Department is prepared to undertake a further survey to see just what has happened in motortruck operations by farmer cooperatives.

Senator LAUSCHE. The argument has been made that the floodgates were let open with the *Northwest* decision and that there is a trend now away from using public transportation and using the privately owned cooperative transportation.

Mr. DICE. Yes, we heard these statements, sir, and frankly we have heard nothing but statements. We know of no evidence of this tremendous expansion that is alleged in farmer cooperative operations.

Senator LAUSCHE. All right. You may proceed.

No, let me ask you: do you proceed on the theory that the decision will not be an influence in a trend to develop a more extensive private farm cooperative transportation?

Mr. DICE. To say that there may not be some additional transportation of the type authorized in that decision would perhaps be erroneous. We have no way of being assured of that. But we have no indication that there will be any opening of the floodgates.

Senator LAUSCHE. Yes. All right.

Mr. DICE. Of added significance are the reasons given by cooperatives for operating their own trucks, as set forth on pages 5 and 6 of General Report 121. These reasons—economy, lack of better service for certain transportation needs, provision of adequate service to customers and patrons, and greater flexibility of operation—clearly indicate that trucks were acquired and operated to improve the efficiency of operations. There is no indication that these organizations were interested in going into the transportation business as such.

With this background, let me discuss in more detail why the Department of Agriculture is opposed to enactment of S. 1729. First, we believe existing authorities and procedures are adequate to deal with the few organizations which seek to operate under the exemption, but which may not qualify as agricultural cooperatives.

Second, this proposal would increase regulatory control under the Interstate Commerce Act contrary to administration policy, which favors greater reliance on competition and less on the regulatory process.

Third, the provisions for issuance of certificates of exemption and for inspection of books and records of farmer cooperatives are unwarranted and unnecessary and would be discriminatory in their application.

Senator LAUSCHE. You were not here when the testimony was given earlier, were you?

Mr. DICE. Yes, sir; I was, on July 14.

Senator LAUSCHE. Testimony was given that companies have been created with a legitimate and proper facade, but operating illegally, and that the ability to discover the evidence is nil unless you look into the books to see what portions of the transportation is of a nature directly related to the farmers' business and what portion is nonfarm related.

Mr. DICE. We can't speak for all organizations that the Interstate Commerce Commission may have sought to investigate, but we do know in several instances when the Commission investigators requested access to the records they were given this access without any question.

Further, it is our understanding, sir, that if there is reason to suspect that there is an illegal operation, records can be subpenaed, and upon failure of the organization to open its books and records a court order can be obtained to gain access to those books and records.

Senator LAUSCHE. Now, what are you referring to when you say that when there is suspicion amply justified that there has been a violation of the transportation laws, but it is needed to go into the books to see what is being done, that a subpena can be issued? Under what authority do you issue that subpena?

Mr. DICE. I think it is covered by the rules of practice of the Commission and by—I don't have the specific section of law that would authorize it. But we do, a little later in our statement, comment, sir, that it has been possible to take action in a large number of cases where the operations of the carriers involved are not regulated under the Interstate Commerce Act, except as to safety.

Senator LAUSCHE. My recollection is that the testimony given heretofore on this bill was to the effect that the Commission has no authority with nonregulated carriers. It doesn't have authority to issue subpenaes and bring them before the Commission. Now, if that is the fact, do you still stand by your proposition that there are means of acquiring information covering the true facts?

Mr. DICE. The two things are directly contradictory. If that is the fact, then I would be wrong, of course.

Senator LAUSCHE. Is there any member of the Commission here, or any representative?

(No response.)

Senator LAUSCHE. Well, let's let the matter stand.

Mr. DICE. This may be further clarified on the next page of my statement, sir.

Senator LAUSCHE. All right. We can check that out and see exactly what the law is. That is, your position is that there is adequate law now?

Mr. DICE. Yes, sir.

Senator LAUSCHE. Good.

Mr. DICE. S. 1729 would require all cooperatives which operate motor vehicles pursuant to the exemption in section 203(b)(5) to apply for certificates of exemption and to demonstrate their eligibility.

However, except to the minor extent to which cooperatives may transport nonagricultural goods for nonmembers, their operations are no different from those of thousands of private carriers throughout the United States.

Any business may transport the products which it manufactures or distributes in its own vehicles, and may transport on the backhaul supplies or equipment used in its manufacturing or distribution operations.

No certificate or permit of any kind is required; and, indeed, the administrative task of issuing certificates to such carriers would be formidable, even if desirable or necessary.

Any motor carrier, whether regulated or unregulated, may transport agricultural commodities pursuant to the provisions of section 203(b)(6) of the interstate Commerce Act, commonly known as the "Agricultural Exemption." No certificate or permit of any kind is required to transport these commodities.

As we interpret the provisions of S. 1729, a farmer cooperative which transports only its own goods, farm supplies, and so-called exempt commodities, would be required to apply for a certificate of exemption, furnish proof of eligibility, and perhaps be required to appear at a hearing.

Thus, cooperatives would be required to obtain certificates of exemption to perform the same transportation operations which others may perform without certificates. Such a requirement is clearly discriminatory.

The Department of Agriculture does not condone illegal operations, and supports the Interstate Commerce Commission in its efforts to do an effective job, consistent with sound regulatory principles. Enforcement of regulatory laws is an extremely difficult task, but it should not be guided by a dubious philosophy which would impose a burden on farmer cooperatives in order to "weed out" or apprehend a few organizations that may not qualify under the law.

We believe the Commission's authority to investigate and take action against organizations claiming but not actually entitled to exemption under section 203(b)(5) is no less adequate than its authority to investigate and take action against other alleged unlawful operations.

In its 78th annual report, in discussing enforcement activities, the Commission states:

> There is continuing proliferation in the motor carrier field of devices to clothe various unlawful operations in an aura of legality. Of the 896 court enforcement actions relating to motor carriers, 252 involved gray area operations. We are particularly concerned with those operations conducted under the pretense of private carriage through dubious leasing agreements and so-called buy and sell arrangements.

The balance of the chapter or section on "Enforcement" makes no reference to any cases involving farmer cooperatives and we know of only one such case instituted during 1964. It would appear that transportation activities growing out of the cooperative exemption did not then and do not now, loom very large in the total enforcement task of the Interstate Commerce Commission.

Just commenting further, Mr. Chairman, the 252 operations referred to as gray area operations involve categories of carriers not subject to regulation. These include private carriers. And I think the term "gray area" is generally used to encompass operations of the carriers who transport the commodities under the 203(b)(6) exemption.

It is not surprising that few instances of enforcement problems stem from this exemption. As pointed out in the Department's written report, motor truck operations of cooperatives are microscopic compared to total motortruck operations in the United States.

This can be seen in the relatively minor position of farmer cooperatives operating equipment in motor carrier transportation. The 33,000 trucks estimated (General Rept. 109) to be owned or leased by the cooperatives as of January 1, 1961, was less than one-third of 1 percent of the 11.4 million truck registrations in the United States in 1960. In the 10-year period from 1951 to 1960, motor carrier operations by cooperatives did not expand as rapidly as the industry as a whole. There is no evidence that this relationship has changed.

In its statistical analysis, included in "Transportation Facts and Trends," second edition, April 1965, the research staff of the Transportation Association of America estimates the total highway freight bill at $29,473 million in 1960. Of this total, $7,155 million is represented by the intercity movements of ICC regulated trucks and $11,708 million by intercity movements by non-ICC regulated trucks.

Using data derived from findings in General Reports 109 and 121, we estimate the cost of over-the-road truck operations by farmer cooperatives at about $65 to $70 million in 1960. This is less than 1 percent of the freight bill estimated for ICC regulated trucks, and only about a third of 1 percent of the estimated intercity freight bill for all trucks.

In summary, the Department is opposed to enactment of S. 1729 because it would single out a minor segment of all motor transport operators and subject it to a regulatory device which is not warranted, not needed, and which is discriminatory in nature.

The amendment which the Interstate Commerce Commission proposed be added to the other provisions of S. 1729 would narrow the scope of the exemption provided by section 203(b)(5) of the Interstate Commerce Act.

This amendment would add to the present section 203 (b)(5) the words:

, but only when those motor vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

The Department opposes this proposed amendment, as well as the enactment of S. 1729. Transportation by farmer cooperatives or federations of cooperatives of nonfarm related commodities for nonmembers to an extent incidental and necessary to the effectuation of the principal activity of the cooperative or federation is neither unreasonable nor discriminatory.

There is no evidence to suggest that motor transportation by farmer cooperatives will expand significantly under the interpretation of the court of appeals in the *Northwest* case. This transportation does not constitute a substantial threat to common carrier transportation.

However, the proposed amendment is, in the Department's view, a substantial challenge to the congressional mandate in the Cooperative Marketing Act.

We would also like to comment on the provisions of the substitute bill proposed by the American Trucking Associations, Inc. We note first, that this bill would provide for the development each year by the Department of Agriculture of a list of cooperative associations, including federations of such associations qualifying under the terms of the Agricultural Marketing Act of 1929, as amended. With respect to this aspect of the proposal, the comment made with respect to S. 1729 is reasserted; namely, that such a certification procedure is neither justified nor needed.

Commenting further on the substitute bill, we note that any cooperative whose name is on the approved list would then be eligible to engage in the for-hire transportation of those commodities described in paragraph (6) of section 203(b), together with farm supplies used directly in agricultural production for nonmember farmers in an amount not to exceed 50 percent of the value of transportation service rendered for itself or its members.

Here it is proposed that farmer cooperatives might exercise the right to transport a limited quanity of the farm products described in paragraph (6) of section 203(b)—a right which is enjoyed by any other operator of a motor vehicle without limit.

Not only would cooperatives be subjected to discriminatory treatment by being restricted as to the quantity of the so-called "exempt" commodities they would transport, but they would have to petition the Commission for authority to transport even these limited quantities if they desired to do so for nonmember farmers.

And, finally, the proposed bill would authorize the ICC from time to time to review the books or examine the operations of such cooperative associations to check on the value of the transportation service rendered to nonmembers.

This provision has the same faults as the comparable provision in S. 1729; namely, that it is entirely inappropriate to subject all cooperatives to the burden of filing for certificates of eligibility and also to subject them to audit, solely for the purpose of identifying and taking appropriate action against a few organizations which may not be entitled to exemption under section 203(b)(5).

The Department would oppose enactment of this substitute bill.

Finally, we believe it desirable to clarify a matter on which there is considerable confusion and misunderstanding. I refer to the amount of nonmember business which a farmer cooperative may do under the Agricultural Marketing Act without losing its status as a farmer cooperative and the amount of transportation business which a farmer cooperative may do for nonmembers within the scope of the decision of the Court of Appeals for the Ninth Circuit in the *Northwest* case.

The term "agricultural cooperative" is defined in the Agricultural Marketing Act (12 U.S.C.A., 1141j(a)) as follows:

(a) As used in this subchapter, 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 per centum 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.

The third proviso makes clear the association must 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. Clearly, the law does not preclude the conduct of some nonfarm related activity by a cooperative association.

In the *Northwest* case the court made the following statement:

A cooperative will retain its exemption only so long as it remains in essential character a "cooperative association." Thus its activities must be such that it can be fairly described as a farmer organization primarily engaged in marketing farm products for farmers, or purchasing, testing, or furnishing farm supplies or farm services for farmers; and operating for the benefit of the members of the cooperative in their capacity as producers of farm products or purchasers of farm supplies or farm business services. * * * *A cooperative would not be of this character if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and it is difficult to imagine circumstances under which non-farm related business could approach fifty percent of the total and still remain incidental and necessary to farm-related business.* (Emphasis added.)

The court further stated:

The construction which we give the term—

Referring to cooperatives—

does not open the door to unrestricted competition by exempt cooperatives with regulated carriers. If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status as a "cooperative association" and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act. (Emphasis added.)

We believe that tansportation operations performed by farmer cooperatives within the framework of the court decision would not result in excessive diversion of traffic from regulated carriers, but that the "incidental" transportation of nonmember-nonfarm-related goods on backhauls to an extent necessary to render the operation efficient is of significant benefit to farmers and also to consumers because efficiency in transportation contributes to efficiency in marketing.

In the light of all of the foregoing, it is the Department's view that no change is needed in the law as it relates to the agricultural cooperative exemption.

If I may, I would like to add one further comment, Mr. Chairman. In the hearing on July 14, one witness made the statement that the Department appeared in ICC proceedings on the side of the Agricul-

tural Cooperative Service of Illinois, and the Agricultural Transportation Association of Texas. The Department did participate in both cases, Mr. Chairman. However, it took no position with respect to the lawfulness of the operation of either of these operations.

Rather, our intervention was concerned only with the interpretation of the provisions of the Agricultural Marketing Act and of section 203(b)(5) of the Interstate Commerce Act, which were referred to in the examiner's report and Commission documents.

Senator LAUSCHE. Thank you.

Mr. Sender?

Mr. SENDER. Does the Department of Agriculture, Mr. Dice, maintain a list of qualified agricultural cooperative associations, and if so, what standards or criteria are used to determine eligibility for listing?

Mr. DICE. The Department does obtain annually information from all of the cooperatives or federations of cooperatives on its list, which it believes to be substantially complete. There isn't absolute assurance that this is a complete list. But it is believed to be substantially complete. An effort is made to determine whether these cooperatives meet the requirements of the Agricultural Marketing Act. And these are the provisions which are quoted in my statement.

Mr. SENDER. In making up that list, is there any check of the standards and criteria as to their transportation activities?

Mr. DICE. No.

Senator LAUSCHE. The bill that was offered as a substitute to allow the Department of Agriculture to certify what it deemed to be the legitimate farm cooperatives in the country, would, if adopted, relieve the farm cooperative from making application for exemption, the exemption would become effective ipso facto upon the certification made by your Department. Is that correct?

Mr. DICE. This is the way I understand it, although there is a further provision that would narrow the exemption.

Senator LAUSCHE. Discuss it, please.

Mr. DICE. The provision of the bill is that the Department would prepare a list of qualified cooperatives or federations each year and submit this list to the Interstate Commerce Commission.

This presumably would have to be some list other than the list the Department now maintains. First, because in sending questionnaires to the cooperatives in the past, we have given assurance that the information supplied would be maintained as confidential and there is a real question as to whether we could release this list.

In any event, it would appear to us if a list is to be prepared for a specific purpose, as proposed here, it would be necessary that the cooperatives file specific reports if they desire their name to be included on this list of qualified cooperatives for submission to the ICC.

At this point, Mr. Chairman, the bill then makes provision that any association or federation whose name is contained on this approved list may engage in the for-hire transportation of farm products as described in paragraph 6 of the section, and farm supplies used directly by the consignee in agricultural production for nonmember farmers in an amount not to exceed 50 percent of the value of transportation service rendered by the association or federation for itself or its members.

Then it goes on to provide that if any such cooperative intends to engage in such for-hire transportation for nonmembers, it must notify

the Commission to this effect. Presumably this would include even those incidental quantities of farm supplies for nonmembers which might be included in a load being acquired for the primary use of members. Since they distribute in many instances through local stores, it would be impossible to prevent some portion from going to nonmembers.

But this would require any cooperative who did any business for nonmembers to file a notice with the Commission of its intent to so engage, whereupon the Commission——

Senator LAUSCHE. Let's summarize up to this point; that is, the substitute bill provided that the Secretary would prepare a list of bona fide cooperatives, and he would certify that list to the Interstate Commerce Commission.

Mr. DICE. That is right.

Senator LAUSCHE. After the certification has been made, and a cooperative contemplated serving nonmembers, it would have to file a notice of intention of so doing. Is that correct?

Mr. DICE. That is correct. That is the way we understand it, sir.

Senator LAUSCHE. What weakness do you find in those two provisions, if any?

Mr. DICE. Well, first the requirement that the cooperative make a filing—and I think this is inevitable, even though it is not specifically so stated—the requirement that they make a specific filing to have their name included on the list has the effect of transferring the burden of qualification for the exemption to the cooperative rather than to the regulatory agency.

Secondly, we think that the limitation that is provided on the second page of the bill is discriminatory.

Senator LAUSCHE. And it is discriminatory because no other private carrier would be burdened with that task; is that the theory?

Mr. DICE. Partly that, and partly because this would propose to limit, not to an amount equal to its member business, but to an amount equal to 50 percent of its member business, the quantities of otherwise exempt commodities which the cooperative could haul for nonmembers.

Senator LAUSCHE. One, with respect to placing the burden upon the Department of Agriculture, to certify the bona fide farm cooperatives, do you feel that would be an undue burden placed upon your Department?

Mr. DICE. The Department could undertake this operation. There would be some cost entailed. We have not made an estimate on it. But we could undertake it. Frankly, we believe if a certification is to be made, the Department is the proper agency. We don't believe it is appropriate to burden the cooperatives with this requirement.

Senator LAUSCHE. Now, then, the cooperatives of course would have to provide you with information and that is the burden you think ought not to be placed upon them?

Mr. DICE. Well, this burden and the further burden that if they transport any quantity whatsoever of nonmember goods, that they would have to serve notice of intention to do so to the ICC, and then open their books to any investigator that came along at any time seeking to determine the scope of their transportation operation. Now, I believe that any cooperative, if an investigator came along explaining a good reason he desired to have information about the transportation operation, would be glad to provide the information.

But we believe that a requirement which places this burden on the cooperatives to take advantage of an exemption specifically provided in the law is wrong.

Senator LAUSCHE. Let's examine these burdens. One would be the burden of supplying you with information as to whether or not they are a cooperative.

Mr. DICE. That is correct.

Senator LAUSCHE. Don't they do that now?

Mr. DICE. We make a request to those on our list to voluntarily provide information for statistical purposes, and as a basis for research conducted by the Farmer Cooperative Service of the Department, research which in turn is beneficial to the farmer cooperatives.

Senator LAUSCHE. Now, then, what additional burden would be placed upon them other than the one that you just described?

Mr. DICE. Well, if you read on here, the Commission would examine the books and records to determine the scope and value of the transportation service rendered.

Senator LAUSCHE. Now you have gone to the third step. The first step is your job in determining whether it is a bona fide cooperative. What additional burdens would be placed upon you and the cooperative in order for you to fulfill the task of certifying?

Mr. DICE. No additional burdens for that purpose.

Senator LAUSCHE. All right. Now, second would be the service of notice that the cooperative intended to serve nonfarm clients?

Mr. DICE. Nonmembers.

Senator LAUSCHE. Nonmembers, yes. And you feel that that would be an undue burden upon the cooperatives?

Mr. DICE. Just the service of the notice would not, in itself, be an undue burden.

Senator LAUSCHE. All right. Where would the burden arise?

Mr. DICE. If this led to examination of books and hearings and proceedings, to enable the cooperatives to do what they are now authorized to do under the law, we think it would be a mistake, and a burden.

Senator LAUSCHE. Now, the right of the Commission to examine from time to time the books would be for the purpose of determining whether the cooperative was hauling in excess of 50 percent of its total business for nonmembers; is that correct?

Mr. DICE. Not 50 percent of its total business, 50 percent of the quantity hauled for members.

Senator LAUSCHE. Yes.

Mr. DICE. That is the stated purpose of the examination. Of course the requirement itself, we think, is discriminatory, because this would say that, in effect, that the cooperative, in marketing its goods, may acquire a backhaul 50 percent of the time, even if that backhaul is an agricultural commodity for a nonmember, but one which may be transported by any other motor carrier in the United States not subject to regulation.

Senator LAUSCHE. Then you stand upon the proposition that you are treating the cooperative different than you treat the private carrier?

Mr. DICE. Private or exempt, or for that matter in this particular respect, different than the regulated carriers who may transport any quantity they wish of the exempt agricultural commodity.

Senator LAUSCHE. I think that is all.

Mr. Sender?

Mr. SENDER. In your testimony on page 8, you quote the definition of agricultural cooperative which makes reference to cooperative associations of farmers. What is the definition of farmers? Could this be a grocery store that might own a few pigs, or a large processor, with some farm operation?

Mr. NEELY. It is in terms of a producer of agricultural commodities, rather than farmer. It is a loose term that has been used. There is no definition of a farmer in the act.

Mr. SENDER. Could Safeway Stores, which incidentally might produce some agricultural commodities, be a farmer?

Mr. NEELY. It might be under certain circumstances, yes. A corporation may be a farmer within the meaning of certain programs and activities of the Department of Agriculture.

Mr. SENDER. Then Safeway Stores could be a member of a cooperative association?

Mr. NEELY. If it otherwise meets the qualification of a producer.

Mr. SENDER. Are there not some farm cooperatives that are engaged solely in transportation for cooperative members?

Mr. DICE. There are some, yes. Northwest is one such.

Mr. SENDER. In connection with such cooperative, how would the incidental and necessary test differ from a 50-percent test?

Mr. DICE. In this particular, in the court decision, the specific level of backhaul transportation of non-farm-related goods is not spelled out. Indeed, I don't know that it would be possible to say that any time it exceeds 10 percent or 15 percent or 20 percent it ceases to be incidental.

It seems to me it would depend on the individual case. But the court concluded that it would be difficult to imagine this non-farm-related transportation even approaching 50 percent of the total and the organization to still maintain its essential character as a cooperative association.

Senator LAUSCHE. Would the passing of S. 1729 in any way affect the present right of a farm cooperative to carry goods either for its members or nonmenbers?

Mr. DICE. The language of S. 1729 as it was introduced and without the amendment that was proposed on July 14, should not restrict that.

Senator LAUSCHE. That is, the bill, if adopted, will not at all change the right of farm cooperatives to carry goods either for their own members or nonmembers as presently provided in the law.

Now, two, we get to the matter of enforcement of law and the protection of the transportation industry, and that is where the intrusion occurs. Is that correct?

Mr. DICE. Yes.

Senator LAUSCHE. You feel that the farm cooperatives should be allowed to remain completely exempt from the law, as they are now?

Mr. DICE. Well, completely exempt—they are not completely exempt in the sense that they may do anything they wish. But we believe the——

Senator LAUSCHE. No, providing they operate within the law.

Mr. DICE. We believe the exemption as presently provided in the law is perfectly appropriate.

Senator LAUSCHE. I think that is all.

Mr. SENDER. On page 3 you referred to administration policies. Would you elaborate on that, please? Is that different from the national transportation policies enacted by Congress?

Mr. DICE. Yes. What I am referring to there, back in 1962, President Kennedy first enunciated the policy of greater reliance on competition and less on the regulatory process. He repeated it again in 1963. This was repeated again by President Johnson in 1965. So the administration policy has been to seek less regulation rather than an expansion of the regulatory process.

Senator LAUSCHE. Can you identify a single one of the proposals made by the Kennedy transportation policy that the Congress had adopted?

Mr. DICE. I believe that some of the enforcement provisions were included in a bill that was enacted last year. I don't remember the number of the bill offhand. H.R. 5401, I believe, did include some of the provisions.

Senator LAUSCHE. But the main ones are still as they were before that policy was enunciated?

Mr. DICE. Yes; that is right, sir.

Senator LAUSCHE. I think that is all. Is Mr. Frank Sollars, Ohio Farm Bureau Federation present?

Mr. TRIGGS. Mr. Chairman, I regret that Frank Sollars who was to present our statement was unable to make transportation arrangements to get here.

Senator LAUSCHE. All right. We will defer his appearance until he comes.

Mr. TRIGGS. I will present the statement.

Senator LAUSCHE. You are from Washington, aren't you?

Mr. TRIGGS. Yes, sir.

Senator LAUSCHE. We will first call some of the out-of-town witnesses.

Mr. Clifford Carlsen, Northwest Agricultural Cooperative Association, advised the committee that he would be unable to testify in person. Mr. Carlsen's letter and attached statement will be placed in the record.

(The letter and statement referred to follow:)

KING, MILLER, ANDERSON, NASH & YERKE,
ATTORNEYS AND COUNSELORS AT LAW,
Portland, Oreg., July 20, 1966.

Subject: S. 1729, Hearing before Surface Transportation Subcommittee.

Mr. STANTON P. SENDER,
Staff Counsel, Senate Committee on Commerce,
Old Senate Office Building, Washington, D.C.

DEAR MR. SENDER: I enclose two copies of my statement in opposition to the proposed legislation. I understand that I am scheduled to appear on either July 25 or July 26, 1966.

Our transportation situation in the northwest has steadily deteriorated since our last telephone conversation. Although I have tried every possible means of arranging transportation, I have been unsuccessful. My only hope now is to try to get some space on a flight from San Francisco or Los Angeles which now appears quite doubtful, even assuming I could get to San Francisco or Los Angeles.

If the situation does not improve by this weekend, I will wire Senator Lausche and request that he hear me at some later time that is convenient for him and when I can get transportation.

Very truly yours,

CLIFFORD N. CARLSEN, Jr.

STATEMENT OF CLIFFORD N. CARLSEN, JR., ATTORNEY FOR NORTHWEST AGRICULTURAL COOPERATIVE ASSOCIATION, INC.

My name is Clifford N. Carlsen, Jr. I am a partner in the law firm of King, Miller, Anderson, Nash & Yerke with offices in the American Bank Building, Portland, Oregon. I have been attorney for Northwest Agricultural Cooperative Association, Inc., since its formation and I represented Northwest in its litigation with the Interstate Commerce Commission. I appear in behalf of Northwest in opposition to S. 1729.

I understand that the supporters of the proposed legislation base their claim for a need for such legislation on two points. (1) That the decision in Northwest Agricultural Cooperative Association, Inc., v. the Interstate Commerce Commission by the Court of Appeals for the Ninth Circuit allows the unrestricted entry of legitimate cooperatives into the general transportation business and (2) the inability of the Interstate Commerce Commission to control organizations masquerading as agricultural cooperatives but which do not fulfill the requirements for such cooperatives as set out by the Agricultural Marketing Act.

The decision by the Court of Appeals in the Northwest case clearly does not allow the entry of a farmer cooperative into the general transportation business. This was exactly the same concern expressed by opponents to the farm cooperative exemption to the certification provisions of the Interstate Commerce Act when that exemption was first debated in 1935. The subsequent growth of the regulated transportation industry since 1935 has illustrated that those fears were groundless. The Northwest decision does not expand the exemption.

Northwest was formed pursuant to the Idaho Cooperative Marketing Association Act and in conformance with the requirements for a farm cooperative as set out in the Agricultural Marketing Act. It was organized for the purpose of transporting the agricultural products of its members to market. Northwest was unable to fill all of its returning vehicles with products directly related to the agricultural activities of its members. Accordingly, on some of its return trips from market areas to which it has hauled its members' products, it transports certain nonagricultural commodities for nonmembers so that the vehicles will not return empty. The Interstate Commerce Commission investigated the activities of Northwest, reviewed its books and records and disputed the right of Northwest to back-haul nonagricultural commodities for nonmembers. The Commission then brought suit in federal court to enjoin these hauls. The Commission had full access to all the records of Northwest and the case was presented to the court on a stipulation of facts. The Commission stipulated that Northwest was a bona fide cooperative association, properly organized and fulfilling all the requirements of the Agricultural Marketing Act and that its primary business was to furnish transportation services for its farmer members. The Court of Appeals held that Northwest could engage in nonmember nonagricultural business so long as this business was incidental to and necessary for the effectuation of its primary function—that is, the direct service to its farmer members. In the Northwest case, all the questioned hauls are directly related to services to members—they fill a vehicle which is returning from having delivered a member's commodities.

The court clearly held that a cooperative can do that which is reasonably necessary to implement the provisions of the Agricultural Marketing Act—that is, to prevent inefficient and wasteful methods of distribution and to encourage the organization of farmers into effective associations to accomplish those ends. The interpretation of some witnesses that the decision entitles a bona fide cooperative to enter into the general transportation business is not justified. First of all, an organization qualifying for the exemption must be engaged only in performing services for its members. Any nonmember business it does must be accomplished only with the end of fulfilling its primary responsibility in a more efficient and economical manner. There has been some speculation that the decision allows unrestricted for-hire carriage so long as that carriage does not exceed 50 percent of the cooperative's business. There is nothing in the decision to substantiate this speculation. The test is clear: a cooperative can only do that which is incidental and necessary to its primary function. This test of course does not allow for a precise percentage formula in determining what amount of business it could do—nor should the test be that rigid. For some cooperatives, 3 percent nonmember business might be more than was reasonably necessary to accomplish its primary function. In another situation, 25 percent might not be too much. The criteria always must be to measure the facts of a specific coopera-

tive's situation against the stated policy provisions of the Agricultural Marketing Act.

Nor is the proposed legislation needed to enable the Interstate Commerce Commission to control the transportation activities of organizations which are flying under the false colors of a farmer cooperative. The Commission has those powers now. It exercised the powers in its review of the Northwest business prior to the time it brought the suit to enjoin. The Commission exercised its valid powers when it came into Northwest and reviewed all of its records concerning its hauls, the manner in which the cooperative was organized and the statutes under which it was controlled, the identity of the members and the manner of operations. Farmer ccoperatives engaged in the transportation business are, of course, subject to provisions of the Interstate Commerce Act other than the certification provisions. The Commission conducted the same complete investigation with regard to the Cache Valley Cooperative prior to commencing administrative procedures against Cache Valley. The authority for investigation and control is held by the Interstate Commerce Commission now. I submit that elimination of the exemption should not be accomplished merely because the existence of such an exemption may cause some administrative difficulty in policing it—so long as the Commission has the power and the facilities for that policing.

It appears to me that the basic issue presented by the proposed legislation is not really a concern over the effects of the Northwest decision or of control of illegitimate cooperatives. Plainly and simply, the supporters are asking Congress to reverse a policy position that it took in 1935 and to legislate a higher policy value for regulated transportation than for agriculture. Put in this posture, such a reversal of the long held policy as exemplified by the cooperative exemption to the Interstate Commerce Act and the purpose provisions of the Agricultural Marketing Act is not justified. The need for an efficient and economic agricultural distribution system is no less now than it was in 1935. The effect on the national transportation industry has not been catastrophic because of this exemption. The growth of that industry in the last 30 years is proof enough of its ability to survive the exemption. The coincident growth of the agricultural industry during this same period has certainly been less noteworthy.

Senator LAUSCHE. Mr. Zeddies, Midland Cooperatives, Inc.

STATEMENT OF M. D. ZEDDIES, MIDLAND COOPERATIVES, INC., MINNEAPOLIS, MINN.

Senator LAUSCHE. You may proceed, Mr. Zeddies. Your entire statement may be placed in the record, so you can summarize the highlights of it or you can read it, whichever you please.

Mr. ZEDDIES. If the chairman please, I will follow it quite closely, but I would like to editorialize a little as I go along.

My name is N. D. Zeddies; I am representing Midland Cooperatives, Inc., Minneapolis, Minn., as its general counsel. I also represent a number of federated-type trucking associations engaged primarily in the transportation of petroleum products for the farmer cooperatives.

I would like to express my appreciation, first of all, for being permitted to appear before this committee, Mr. Chairman.

Midland Cooperatives, Inc., is a regional wholesale cooperative having 648 members which are all local cooperative associations in the States of Minnesota, Wisconsin, Iowa, North and South Dakota, and Michigan. Each of these cooperative associations has an average membership of approximately 800 persons, most of whom are farmers. Of these 648 cooperative associations, 450 are cooperatives within the meaning of the Agricultural Marketing Act and meet the standards set forth in that act. Of that 648, I don't have the exact figure, but I think a close estimate is that about 25 percent of these smaller cooperatives are members of cooperative trucking associations, claiming to be exempt under section 203(b)(5) of the Interstate Commerce Act.

These cooperatives are in the transportation business not because their objective is transportation for hire, but for a number of other reasons important to their primary purpose of supplying goods and services to their members at the lowest cost.

Their transportation activities generally are motivated by a number of factors, the first of which, and I think the most important, to reduce the cost of transportation of goods, principally power and heating fuels, from terminals to their own bulk storage facilities. This is generally referred to as the short haul from the terminals to the bulk storage plants.

The ultimate savings to the farmer member is between 10 percent and 15 percent of transportation costs as compared with other carrier-for-hire rates.

I might mention these cooperatives generally follow the tariffs of the common carriers, so they are not price cutters. They establish these tariffs in many cases because they don't know any other way of determining in advance how to establish tariffs.

Now the short-haul freight costs average about one-half cent a gallon in the territory where these cooperatives exist that I am representing here. And this would be about $40 per load. And the range of savings is from about three-tenths of a cent per gallon to 1 cent per gallon on the fuel that is transported from the terminal to the cooperative.

Now the savings to the farmer then is about $5 per load of 8,000 gallons of product. Another reason is to improve transportation service.

These are isolated communities in many cases, the drivers of this equipment are in many cases former cooperative employees who have been bulk haulers. They are familiar with the facilities of the cooperatives, they normally have arrangements where they can unload without a cooperative employee in attendance, day or night. And of course this reduces the labor costs and the necessity for carrying heavy inventories, because the equipment is flexible, the men know the operation, and they are always available.

Another thing, the equipment is generally better designed to meet the needs of the cooperatives than the common carrier. The equipment is generally smaller and can be used during months when load limits are placed on the highways, and this is particularly true in the northern part of the country, during the spring breakup, there are load limits on most of the roads in the isolated communities and very few cooperatives have their facilities on unrestricted highways, they are in small towns and it is important therefore to be able to use equipment that can get on these roads.

Another thing, by owning their own equipment or operating their own equipment, they are assured that their transportation needs to be handled during the peak seasonal demand for products. Of course agriculture is a seasonal business.

Now I am here on behalf of Midland Cooperatives and its members in opposition to S. 1729 for the following reasons:

First of all, it appears to us that the prior determination by the Interstate Commerce Commission that a cooperative meets the requirements of section 203(b)(5) is unnecessary. If the conditions are met under the statute, there really isn't much discretion to be exercised by the Commission. The cooperative is entitled to exemption

as a matter of law. And the ICC may disagree at times in the interpretation, but if the tests are met, there isn't any question about whether the cooperative is exempt or not.

The determination I think can best be made by the cooperative or its counsel and it takes the burden off any regulatory agency, in the case of a claim for exemption, because that is where the facts are located, and the determination can easily be made.

Another thing, certification for small cooperatives—and most of these cooperatives I represent are very small cooperatives, made up of from 2 to 10 small cooperative associations, who have formed a federation to serve their needs—if S. 1729 becomes law the cost of certification could be a rather onerous burden.

The cooperatives would be required to engage counsel to prepare petitions, attend hearings, employ witnesses, pay expenses of transportation to inconvenient places, sometimes long distances away. And this is costly, particularly for a very small outfit.

Senator LAUSCHE. At this point, Mr. Zeddies, assume that all that you have said here is true in these paragraphs marked 1, 2 and 3. That is, you feel the cooperative ought to determine whether it is amenable to the law or not.

Mr. ZEDDIES. I think in the first instance, it should make that determination, the same as it does in the case of a tax exemption. When a cooperative decides that it is qualified for exemption under the Internal Revenue Code, it merely files an affidavit of exemption.

Senator LAUSCHE. Well, anyhow you say the determination, whether the cooperative is exempt or not, can best be made by the cooperative or its counsel.

Now at what point does the Government or the general public have a right to enter and how shall it enter to determine whether that determination made by the cooperative and its counsel is correct?

Mr. ZEDDIES. I think as soon as that cooperative begins to operate, the Interstate Commerce Commission now, under 204(c) of the act, has the right to determine whether or not the operation is within the act.

Senator LAUSCHE. What is 204(c)?

Mr. ZEDDIES. It is the section which gives the Commission authority to make investigations and issue orders. My experience has been that in many of the cooperatives that I represent have been brought before the Commission under section 204(c).

Senator LAUSCHE. 204(c):

> Upon complaint in writing to the Commission by any person, State board, organization or body politic, or upon its own initiative, without complaint, the Commission may investigate whether any motor carrier or broker has failed to comply with any provision of this part or with any requirement established pursuant thereto.
>
> If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue and appropriate order to compel the carrier or broker to comply therewith. Whenever the Commission is of the opinion that any complaint does not state reasonable grounds for investigation, and action on its part, it may dismiss such complaint.

It is your position that under 204(c) the Commission does have the power to make effectively the investigation and the decision whether the cooperative is operating within the provisions of the law?

Mr. ZEDDIES. That is my opinion and it is obviously the Commission's opinion, because it is under that section that most of the

proceedings that I have been involved in have been brought. And it has never been questioned.

Senator LAUSCHE. Well, there is some question whether the Commission deems that to be adequate, because if it does, it did not so testify last week.

Mr. SENDER. Under that section, is the Commission able to inspect your books and records upon the filing of a complaint, or a complaint being brought on its own initiative?

Mr. ZEDDIES. I assume it has all of the power necessary to expedite that provision. And the cooperatives, as far as I know, have never questioned the Commission's right to come and look at their books. As a matter of fact, we have invited the Commission always to come and look at the books.

Mr. SENDER. The case in which you were involved, that you testified to, you opened your books and records to the Commission investigators?

Mr. ZEDDIES. Absolutely and that has always been our policy, to invite the Commission to look at those books any time.

Senator LAUSCHE. One of the important issues discussed last week was the helplessness of the Commission in procuring evidence except through the policing on the highways and the looking at the cargo generally. But that doesn't make it efficient, because there is this 50-percent rule involved.

So I merely point that out to you because this is one of the important issues in this hearing.

Mr. ZEDDIES. Well, I reviewed the testimony that the Commission introduced here, and maybe in other parts of the country the Commission is much more bashful, but it has not been bashful in the area in which I operate. And certainly the regulated carriers haven't been bashful about filing complaints. And a question has never arisen about the fact that the Commission has been unable to get the evidence necessary to make a determination. I never heard of it before.

Senator LAUSCHE. All right. You may proceed.

Mr. ZEDDIES. Determination by the ICC would require too much time and would not permit the flexibility necessary to meet the needs of the cooperatives and their farmer members in emergencies, and during seasonal peak demands.

We have had occasion where we set up an association in just a few days time in order to meet an immediate need. If we had to go to the Commission and spend a year or year and a half to get a certificate it would be impossible. Then the exemption would be absolutely useless.

I represented one cooperative in which an investigation was made by the Commission in 1963, in 1964 the Commission issued its order to stop the cooperative from operating, there was no hearing on the matter, it was presented by stipulation, and the briefs were filed early in 1965, and that decision, that case has not yet been decided.

Now if that is an example of how long it would take to get certificated as an exempt carrier, the exemption might as well be removed completely, because it just would not be adaptable for use under the situations generally where cooperatives have to set up these associations.

I am not complaining. I am just saying if this is a demonstration of the amount of work the Commission has, and the speed with which applications could be handled, this won't work.

There is presently available in our opinion to the Interstate Commerce Commission ample authority to investigate cooperatives and their equipment and to determine if they meet the requirements for exemption. Even though exempt, they have to meet the requirements concerning hours of drivers, and the safety requirements and even on that pretext alone, they could conduct a complete investigation, I think, but they haven't had to resort to that.

They, as far as I know, have got all of the authority they need.

S. 1729 requires existing cooperatives to obtain a certificate of exemption, and 120 days is allowed for obtaining such a certificate. Of course, the cooperative can operate—for obtaining it. That is really not a correct statement.

As I understand S. 1729, they have 120 days within which to file and seek a certificate, but they can continue to operate. But certainly 120 days, if it was felt a certificate could be issued in 120 days, why, I think that would be quite impossible. The provisions of S. 1729 which require that a cooperative association or federation of associations shall appear on a list which the Department of Agriculture should submit to the Commission as qualifying under the term of the Agricultural Marketing Act as bona fide cooperative associations is unrealistic for the following reasons:

As I understand it, the Department of Agriculture has no reason to make a determination that a cooperative association is a cooperative within the meaning of the Agricultural Act at the present time for any purpose.

The only reason that it keeps any records, as I understand it now, with respect to cooperatives is for statistical purposes. It isn't burdened with the task of administering any exemption for the Treasury Department or for any other Department. This is purely statistical as far as the Department of Agriculture is concerned. And I think the testimony of the previous gentleman suggests that.

A listing of cooperatives by the Department would be useful for statistical purposes only and the maintenance of such a list would only place an additional burden on the Department. And of course incur additional expense for the cooperatives.

At the present time the reporting that is done by agricultural cooperatives to the Department is purely voluntary, and I think most cooperatives are cooperating for their own benefit, to be sure that the Department of Agriculture has the statistics upon which to make decisions for suggesting legislation and for acting in its capacity as an administrative function to help agriculture.

The ICC has ample facilities now for determining whether or not a cooperative meets the exemption requirements under section 203(b)(5), because we, as I said before, believe it can come and look at those records any time it wants to.

The object of the Interstate Commerce Act as we understand it is to regulate commerce and not to destroy or impede it. It was passed by Congress to protect the national and public interest, and not necessarily the interests of the regulated carriers.

In the construction in our courts, including the Supreme Court, on various occasions it was asserted that the Act will be construed, if possible, so as to facilitate and promote commerce and not to hamper or destroy it.

The exemption now contained in section 203(b)(5) is designed to facilitate and promote commerce and not to impede it and the proposed amendment would in part destroy the exemption itself and contravene its purpose for the reasons I already indicated.

I think the Commission has already tried to substitute its own ideas about what exemption ought to be in contravention of the statute, because I think the Agricultural Marketing Act clearly sets forth what a cooperative is.

I represent a cooperative called the Edgerton Cooperative Ale Association and in that case the Board that investigated it came down with a ruling that here was a cooperative made up of other cooperatives and of individual farmers, and it ruled that this was a hybrid, it wasn't provided for in the statute.

Well, I think the statute is clear, I think here was an attempt to substitute something that the Congress never intended at all. Most of the cooperatives operating under the protection of section 203(b)(5), the ones I represent anyway, are small cooperatives and by themselves they cannot afford the transportation equipment necessary to serve their purposes and they couldn't operate this equipment alone at sufficient capacity to obtain economic results. And that is the reason they have organized these small federations, to get enough volume to efficiently operate their equipment.

Very few of the large federated-type cooperatives use or need this exemption. That is, in the supply cooperative field, because they operate as private carriers, hauling their own goods. Of course what will undoubtedly happen if this type of legislation is passed, the large federated-type cooperatives will have to move in and handle this business, so the regulated carriers aren't going to benefit by this kind of legislation, because there are other ways in which the cooperatives can serve themselves through the large federated organizations.

And we have had to do this in cases where the ICC has harassed a small federation of cooperatives because it has done some non-member business to keep itself in business. But I don't think that is the answer. I think this legislation should be analyzed on its own, and we shouldn't have to be looking for means to circumvent it, if it is passed. I think we should head right into it now.

The right of cooperative associations to engage in transportation without interference from other carriers or the Interstate Commerce Commission is essential to the process of integrating agriculture to the point where it can become a self-sufficient part of our tight economy. I think agriculture has by experience demonstrated that unless these farmers can control the tools of production and control what we produce and what they buy, as far as possible, agriculture is in trouble. And it has been in trouble.

Agriculture is the only business I know of where the farmer has to buy everything at retail and he is in the manufacturing business and he sells his goods at manufacturer's prices. It isn't any wonder that agriculture is in trouble. And this transportation is part of an integrated agriculture.

And I think the Congress ought to be careful that we don't put onerous burdens and destroy the freedom that agriculture now has and give it some more problems.

Cooperative associations are not in serious competition with regulated carriers. They are generally hauling farm supplies which

constitute a small portion of the cargo of regulated carriers. After all, less than 10 percent of our population lives on farms today. And this is no real competition to the regulated carrier.

I don't think it was the intention of Congress to create a monopoly in favor of regulated carriers, otherwise the exemptions of section 203(b)(5) would never have been adopted. I am sure the farmers aren't urging the passage of 1729. It is against their own interests.

I haven't seen anybody here representing the public generally, saying the public needs this. I think the public is benefiting from every exemption agriculture has, including this one, because it has a direct affect on the cost of farm production.

And if this S. 1729 is passed, it will affect the cost of farm production. Obviously then it is the regulated carriers who are promoting this legislation. The ICC has indicated a favorable attitude toward it.

I was a little surprised to see the railroads in here. I don't know, the railroads aren't operating trucks on short hauls and they are not going to get any business out of this cooperative short-haul operation. It was a little amusing to see that kind of effort.

The adoption of S. 1729 would tend to further eliminate competition in the field of transportation, particularly petroleum transportation.

Now competition in petroleum transportation in the area I come from has already diminished in some localities to a rather dangerous point. This has occurred through acquisitions and dissolutions of small carriers, mergers.

In Minnesota, for instance, we have only three major petroleum carriers, regulated carriers. The small carrier is disappearing. And competition in this field is disappearing.

In Wisconsin there are only two major petroleum carriers in the State.

Now I think it is unfortunate that the regulated carriers should want to monopolize transportation in the hands of just a few carriers, because this will bring on legislation that is going to be tough and the public is going to insist, I think, that there be some competition in this field.

Certainly the cooperative carriers are no threat to the safety of the public, because even though exempt they must comply with the safety requirements of the Interstate Commerce Act. The cooperative carriers could hardly be considered serious competition to the regulated carriers because they handle such a small percentage of the transportation, even for agriculture.

As I said before, they have almost without exception adopted the tariffs of the regulated carriers. Even in those cases where they have had to do some business for nonmembers, they don't cut their rates to these nonmembers. If they haul gasoline for a private operator in a small town to fill a load, he pays the tariff that he would pay if he had that load hauled by a regulated carrier.

And, of all of the federated cooperatives I represent, none of them pay a patronage refund to other than members. So that the nonmember gets no economic advantage to using the cooperative as a carrier. He pays the same tariff he would to a regulated carrier. And certainly if the regulated carrier is doing a better job for him, he will use the regulated carrier.

As I read S. 1729 it would really require substantially the same formality in obtaining a certificate of exemption as is required in

obtaining a certificate of convenience and necessity by a regulated carrier. There is no reason why such a formality should be required, as I indicated before. Cooperative associations engaged in transportation offer their services almost exclusively to members. They are not in competition really with the regulated carriers.

We think it would be extremely unfortunate for agriculture, and probably for the transportation industry too, if this thing became law.

Somebody raised the question before about whether or not the *Northwest* case doesn't open the floodgates. As far as we are concerned, we think that it expresses the law as we always understood it. Nothing new has happened. I don't think it will open the floodgates at all. This is what we always thought the law was.

End of my statement, Mr. Chairman. Thank you very much.

Senator LAUSCHE. I would like to ask a question or two about the composition of your Midland Cooperatives, Inc. You say—

> Midland Cooperatives, Inc., is a regional wholesale cooperative having 648 members which are all local cooperative associations in the States of Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and Michigan. Each of these cooperative associations has an average membership of approximately 800 persons, most of whom are farmers.

Now what types of business are the nonfarmers engaged?

Mr. ZEDDIES. Well, in view of the fact that these cooperatives are in rural communities, many of them are retired farmers, some are people who live in small towns, storekeepers, people employed in the shops. But they are substantially all farmers around the communities in which their headquarters are located.

Senator LAUSCHE. Now let's assume the storekeeper in a small town, can he become a member, is he a member of one of these associations as a nonfarmer member?

Mr. ZEDDIES. Well, he may or may not, depending on the individual cooperative. If the cooperative is attempting to maintain its position as an agricultural cooperative for tax purposes, under section 321 of the Internal Revenue Code, he probably cannot become a member. But where the cooperative association is not attempting to be tax exempt, he may become a member.

Senator LAUSCHE. Now as a member of such an association, to what benefits is he entitled and what services?

Mr. ZEDDIES. He is entitled to all of the services and benefits the cooperative offers.

Senator LAUSCHE. Would that be true even though he is a nonfarmer?

Mr. ZEDDIES. Yes.

Senator LAUSCHE. He becomes a member of the farm cooperative.

Mr. ZEDDIES. Yes, sir.

Senator LAUSCHE. And then he is entitled to all of the benefits and services that the farm cooperative provides.

Mr. ZEDDIES. Yes. Mr. Chairman, I would like to give you one other word of explanation. Under the Agricultural Marketing Act, a certain tolerance is permitted. That is, it doesn't require that the membership of the cooperative be 100-percent farmers. And most of these 450 cooperative associations which are cooperatives within the meaning of the Agricultural Marketing Act maintain that eligibility as a cooperative for the reason that they borrow funds from the

bank of cooperatives and, therefore, their nonfarmer members must be not greater than 10 percent of their total membership. And they generally adhere to that.

Senator LAUSCHE. You further state in your statement:

> Of these 648 cooperative associations, 450 are cooperatives within the meaning of the Agricultural Marketing Act, and of that number, approximately 25 percent are members of the cooperative trucking associations which are exempt under 203(b)(5).

That is, of the 450 cooperatives within the meaning of the Agricultural Marketing Act, 25 percent or about 112.

Mr. ZEDDIES. Yes.

Senator LAUSCHE. Now then let's assume you were in the Interstate Commerce Commission, the Chairman, and you had a complaint that a cooperative was carrying a greater volume of nonfarm products for nonmembers than the law allowed. What procedure would you follow in attempting to stop it?

Mr. ZEDDIES. Well, I am not an expert on the administration of the act.

Senator LAUSCHE. No. 1, you cited section 204(c).

Mr. ZEDDIES. I think I would proceed under 204(c), depending on whether there was a complaint issued, or the Commission on its own investigation made the determination, I would proceed under that section to call the cooperative before the Commission, to get the facts, to determine whether or not it was operating within the provisions of that act.

Senator LAUSCHE. Let's assume you asked that the cooperative produce its books to show what its business consisted of, and it refused to do so. Do you feel that there is the power of subpena to bring in the books at the present time?

Mr. ZEDDIES. Yes; I think if there is a formal hearing, I think the Commission has that power. I don't think there is any doubt about it. It has never been questioned, as far as I know. I don't think it has ever been questioned in a proceeding.

Senator LAUSCHE. And you feel the power of subpena and the power of calling in witnesses and subpena duces tecum all exist now?

Mr. ZEDDIES. Yes; I think it is inherent in the power of the Commission.

Senator LAUSCHE. Mr. Sender?

Mr. SENDER. You mentioned an affidavit of exemption under the Internal Revenue Code. Would you elaborate on that?

Mr. ZEDDIES. Well, the Treasury Department prescribed a specific form, called an affidavit of exemption. Upon the filing of that affidavit, if the facts submitted indicate to the Treasury Department that there is compliance, that is it.

Now, the cooperative is not prevented from operating until the Treasury Department makes a determination. It is just that the Treasury Department says, and the courts have said, that if the conditions for exemption exist, the cooperative is exempt as a matter of law. There is no determination to be made other than if the facts are there, and that is it.

Mr. SENDER. The Internal Revenue Service may inspect the books and records?

Mr. ZEDDIES. Oh, certainly.

Mr. SENDER. Do you find this procedure onerous or burdensome upon you?

Mr. ZEDDIES. Filing an affidavit?

Mr. SENDER. Yes.

Mr. ZEDDIES. No. But the practice in all of the cooperatives that I have represented is that when the cooperative wants to engage in exempt transportation, as an exempt cooperative, we notify the Commission for two reasons. First of all, we want the Commission to have the evidence that we believe we have to support the proposition that it is exempt; and second, we need the regulations and we need the Commission to instruct the cooperative that it is subject to the safety requirements of the act.

We always do that. It is just a normal procedure.

Mr. SENDER. Then you would have no objection to a similar procedure being written into the Interstate Commerce Commission Act, I take it?

Mr. ZEDDIES. No; I wouldn't. But I would object if the cooperative would be refused the right to operate until the Commission issues the certificate. I think it has that right as a matter of law. If it is subsequently determined the cooperative doesn't qualify, the Commission has all of the authority it now needs.

Senator LAUSCHE. If you are of the opinion that the Commission has all of these powers which you described a moment ago, under 204(c), if it is a fact that it doesn't have those powers, would you object to a law being adopted that would give the power?

Mr. ZEDDIES. I would have no objection to the law providing that the Commission has the power—that is, aside from all of this other procedural falderal provided for here—to give the Commission the power I think it now has to inspect the books of a cooperative to determine if it is actually entitled to operate as an exempt cooperative.

Senator LAUSCHE. That is all. Thank you very much.

Mr. ZEDDIES. Thank you, sir.

Senator LAUSCHE. Are there any other out-of-town witnesses here who are scheduled to testify today?

Mr. OLMSTED. Yes. Mr. Olmsted from Kansas City.

Senator LAUSCHE. Mr. Olmsted, National Farm Lines, Iowa Falls, Iowa.

STATEMENT OF F. R. OLMSTED, GENERAL COUNSEL OF THE CONSUMERS COOPERATIVE ASSOCIATION, KANSAS CITY, MO., REPRESENTING NATIONAL FARM LINES, IOWA FALLS, IOWA

Mr. OLMSTED. My name is F. R. Olmsted, general counsel of the Consumers Cooperative Association in Kansas City, Mo. The Consumers Cooperative Association, like Midland, is a manufacturing and wholesale federated cooperative. It serves approximately 2,000 local cooperative associations in about 14 Midwest States.

I am here today to present a statement on behalf of National Farm Lines.

National Farm Lines is a federated agricultural cooperative under the provisions of the Cooperative Marketing Association Act of the State of Oklahoma (title 2, secs. 361a to 361y, Oklahoma statutes). In 1964 it moved its headquarters from Oklahoma City to Iowa Falls, Iowa.

Its members consist of 33 bona fide agricultural cooperative associations engaged in either marketing the products of their farmer

members or furnishing farm supplies to such members and other patrons, or both. A current list of such members is attached. (See p. 215.)

National Farm Lines is engaged in furnishing transportation services only and operates for the sole purpose of transporting farm products and supplies for its member cooperatives. Practically all backhauls are limited to exempt agricultural commodities. Only in rare instances will a backhaul involve any other nonmember property.

During its fiscal year ended November 30, 1965, it transported to market for its member cooperatives approximately 67,314,300 pounds of pork, 27,392,375 pounds of canned fruits and vegetables, 1,212,060 pounds of dairy products, and 3,258,000 pounds of frozen juices. This transportation accounted for 73 percent of its operating revenues, or $1,877,925. The remaining 27 percent, or $694,575, came from the transportation of 40,318,000 pounds of exempt agricultural commodities.

During the first 6 months of the current fiscal year, its transportation revenues from member cooperatives were $778,968, or 71 percent of the total. The amount of $294,311, or 27 percent, came from the transportation of exempt agricultural products; and $21,704, or 2 percent, came from other backhauls. During such period it transported to market for its member cooperatives approximately 27,940,650 pounds of pork, 8,480,750 pounds of canned fruits and vegetables, 2,417,455 pounds of dairy products, 1,956,000 pounds of frozen juices, and 1,102,000 pounds of other products. In addition, it moved to market 17,176,000 pounds of exempt agricultural products.

The cooperatives making the greatest use of its services, in the order of their freight volume, are:

1. Farmbest, Inc., Denison and Iowa Falls, Iowa, a cooperative hog marketing association;
2. California Canners & Growers, San Francisco, Calif., a cooperative fruit and vegetable marketing association;
3. Lindsay Ripe Olive Co., Lindsay, Calif., a cooperative olive marketing association;
4. Tri-Valley Growers, San Francisco, Calif., also a cooperative fruit and vegetable marketing association;
5. Sunkist Growers, Inc., Los Angeles, Calif., a cooperative citrus marketing association;
7. North Star Dairies, St. Paul, Minn., a cooperative dairy products marketing association; and
7. Land O' Lakes Creamery, Minneapolis, Minn., also a cooperative dairy products marketing association.

While its operating revenues are not insignificant, they are not a true measure of the relative importance or value of National Farm Lines. Actually, its operating revenues have exceeded its operating expenses in only one year of its existence, which indicates rather strongly that it does not operate principally, if at all, for the purpose of producing net savings for its members. Its true purpose is to provide for its members a type of economical transportation service not available from any other source. In addition to the fact that their rates are prohibitive, in many instances, especially in the movement of farm products from the central part of the United States to the west coast, regulated common carriers are wholly unable to provide the fast and readily available standby service required by some of the members of National Farm Lines.

National Farm Lines opposes S. 1729 for the following reasons:

First, because we sincerely believe that its enactment is wholly unnecessary. In our opinion, the Commission has available to it all of the power and authority necessary for it to remove from the scene any carrier wrongfully claiming the right to exemption from economic regulation under section 203(b)(5). This has been amply demonstrated by its successful actions or proceedings against Agricultural Commodity Service (86 M.C.C. 5); Nelson Cooperative Marketing Association (209 F. Supp. 697); Iowa Cooperative Association (236 F. Supp. 873); and Chatsworth Cooperative Marketing Association (347 F. 2d 821). And these are only a few of the cases in which they have been successful. In each of these cases, the carrier was adjudged to be not exempt under such section and was required to and did discontinue its motor carrier operations. The long arm of the law is readily available to the Commission without any additional legislation. It may initiate inquiry proceedings or join in complaint proceedings, or it may seek an injunction in a district court, ot ir may initiate criminal proceedings, all of which it has done so effectively in the past.

Second, because, in our judgment, its enactment would create a far greater evil than the one sought to be eliminated. The Commission's record indicates quite clearly that it is opposed to this exemption. All doubt, if any, about this was completely dispelled when Commission Chairman John W. Bush and his colleagues testified before you on July 14 in support of S. 1729 and stated that the Commission was not seeking registration, merely, but wanted, also, to further limit permissible transportation under this exemption.

If, by the enactment of such proposed legislation, the Commission were made prosecutor, judge, and jury, it would be only natural for it to seriously limit the exemption by placing upon it the exceedingly narrow interpretations which in the past it has unsuccessfully sought to obtain by means of legislation and court action. As far back as 1943, it sought by court action in *ICC* v. *Jamestown Farmers Union Federated Cooperative Transportation Association* (C.C.A. 8, 1945, 151 Fed. 403), to disqualify Jamestown because it did not provide transportation for farmers direct, but only for cooperative associations of farmers. More recently, in the *Northwest* case it attempted to disqualify a cooperative which was admittedly a bona fide "cooperative association" as that term is defined in the Agricultural Marketing Act, and by reference included in section 203(b)(5), merely because the association, of necessity and in furtherance of its primary purpose of cooperatively transporting to market the farm products of its member producers, handled a small percentage of backhauls for nonmembers which were wholly unrelated to the cooperative services provided for its members. In that case the court made the following statements with reference to the Commission's interpretation of the exemption:

> Subsequent to the enactment of Section 203(b)(5), bills were introduced in Congress at the request of the Commission to condition the Section 203(b)(5) exemption upon the nature of the transportation activities involved. Congress took no action on these proposals.
>
> The Commission argues that unless the transportation of non-farm products and supplies is absolutely prohibited, it cannot be limited at all * * *. The argument rests on a faulty premise.

More recently, in Edgerton Cooperative Oil Association, Investigation of Operations, M.C.C. 4570, mentioned by Mr. Zeddies, the

Commission challenged the right of a cooperative to the exemption on the ground that since the cooperative has as members and provides service to both individual farmers and cooperative associations of farmers, it is neither a "cooperative association" nor a "federation of such associations."

Also, in Cache Valley Dairy Association, Investigation of Operations, 96 M.C.C. 616, the Commission contended that the cooperative in question could not provide any services for nonmembers which have no interest in farming or in a farm business; in other words, that a cooperative cannot transport commodities not related to or an actual part of an agricultural or farm business.

In addition, its testimony before you makes it clear that it now wants specific legislation to very materially limit the existing exemption provision.

On the record it is apparent that the Commission is an opponent of the exemption and should not be given the power to limit or destroy such exemption by the very practical but deadly expedience of refusing to grant registration to an applicant or delaying the granting of such registration long enough to force the waiting applicant out of business. If registration has any merit, and we do not think that it has, then such power of life and death over cooperatives should be vested in an office or agency less biased or prejudiced than the Commission, which naturally is concerned only with transportation problems and cannot reasonably be expected to know the damaging effects its transportation judgments might have upon the far more important marketing and purchasing operations of agricultural cooperatives. The USDA, for example, would be in much better position to handle the task because it could more easily and clearly see the whole picture, and not merely the transportation segment of the picture.

We do not believe, however, that registration could or would serve any important purpose. Having determined that an applicant was a "cooperative association" and that the motor vehicles controlled by it were, therefore, within the exemption, the Commission would still be confronted with the problem, as it is under existing law, of determining whether such association was in fact operating within the exemption. This it would then have to do in exactly the same manner as it now is required to do, and as it would have to do next year even though it might presently determine that such association is now duly qualified under the exemption.

The very same problem exists with respect to any private carrier or other exempt carrier. Any exempt carrier which fails to comply with the requirements of its exemption may thereby forfeit its exemption. The Commission must then avail itself of the enforcement proceedings authorized by the act. This may not be entirely to the liking of the Commission, but it enables the exempt carrier to have his day in court and to offer such defenses as are available to him.

In the case of cooperatives, as in the case of other exempt carriers, the Commission is not lacking in enforcement powers and should not be granted a shortcut, which, as a practical matter, could effectively prevent a qualified claimant from availing itself of the right to a statutory exemption, and from performing those functions which Congress has encouraged it to perform for agricultural producers by adoption of the Agricultural Marketing Act and the section 203(b)(5) exemption.

We recognize, of course, the enforcement problem created by the emergence of uncertificated carriers-for-hire falsely claiming to be exempt under section 203(b)(5). If the Commission were willing to limit itself to the proper and vigorous enforcement measures available to it, and devote less time to trying to change the law, we submit that it could, with reasonable dispatch, obtain injunctions against such illegal operators. The individuals involved could and normally would be included in the injunctions and could be rather easily restrained from resuming such unlawful operations under some other name.

The courts do not look with particular favor upon an individual who willfully and wantonly violates a writ of injunction. Also, both the initial violation and the subsequent one constitute crimes and may be dealt with as such.

We concede that delays are inevitable and that there are obstacles to be hurdled, but we do not believe that there is much merit to the contention that the Commission's present powers or remedies are inadequate. A few more heavy fines, if not a few jail sentences, would undoubtedly accomplish much toward eliminating the admittedly vexing violations of the Motor Carrier Act by those who falsely claim to be entitled to the section 203(b)(5) exemption.

If it would serve any real need, we would not be opposed to granting the Commission the right to inspect the for-hire transportation records of a cooperative association claiming exemption under section 203(b)(5). If any carrier should refuse such right, it would not be too difficult for the Commission to file either civil or criminal action in a U.S. district court and obtain all of the needed evidence by means of the very liberal discovery proceedings permitted under the Federal rules. It always has section 204(c) of the act, of course, for inquiry or complaint proceedings. In view of the Commission's admitted opposition to this exemption, we do not believe that it would be appropriate to vest it with a power which might be used to punish or harass legitimate cooperatives entitled to the exemption and operating within its terms.

In conclusion, we submit that there is no evidence that the proper use of such exemption by true cooperative associations is a threat to regulated transportation or to our national transportation policy; that the only serious problem confronting all of us is the violation of the law by truckers falsely claiming to be entitled to the exemption in question; that such problem can be successfully eliminated by vigorous enforcement of existing laws; that the proposed certification of cooperative associations would put the many to great expense for the few, without eliminating the ever present necessity of enforcement; that the orderly production and marketing of farm products necessitates the continued existence of effective and efficient farmer cooperatives; and that the public interest can best be served by the refusal of the Congress to enact S. 1729, in any form.

(Attachment to statement follows:)

MEMBERSHIP LIST OF NATIONAL FARM LINES

1. Southern Farmers Association, 800 North Palm Street, North Little Rock, Arkansas.
2. Southwest Milk Producers Association, 615 West Chestnut Avenue, Arkansas City, Kansas.
3. Producers Creamery Company, P.O. Box 1837, S.S. Station, Springfield, Missouri.

4. Producers Creamery Company, 101 Vine Street, Chillicothe, Missouri.
5. Lindsey Ripe Olive Company, P.O. 278, Lindsay, California.
6. Farmbest, Inc., P.O. Box 403, Denison, Iowa.
7. Consumers Cooperative Association, P.O. Box 7305, Kansas City, Missouri 64116.
8. Neosho Valley Cooperative Creameries, Erie, Kansas.
9. Farmers Union Cooperative Creamery Co., P.O. Drawer 111, Superior, Nebraska.
10. Rocca Bella Olive Association, P.O. Box 188, Wallace, California.
11. Orinda Olive Corporation, P.O. Box 527, Corning, California.
12. Fruit Growers Cooperative, Lock Box 208, Sturgeon Bay, Wisconsin.
13. Tri-Valley Growers, 240 Battery Street, San Francisco, California.
14. Blue Ribbon Growers, Yakima, Washington.
15. Coquille Valley Dairy Cooperative, Bandon, Oregon.
16. Mt. Angel Cooperative Creamery, Mount Angel, Oregon.
17. Washington Canners Cooperative, Box 30, Vancouver, Washington.
18. Calavo Growers of California, Box 3486, Terminal Annex, Los Angeles 54, California.
19. California Canners and Growers, 3100 Ferry Building, San Francisco, California.
20. Midwest Producers Creamery, 224 West Jefferson Boulevard, South Bend, Indiana.
21. American Farms Cooperative, P.O. Box 311, Waupun, Wisconsin.
22. United Cooperatives, Inc., P.O. Box 836, Alliance, Ohio.
23. North Star Dairies, 625 New York Building, St. Paul, Minnesota.
24. Tip Top Dairies, Hillsboro, Kansas.
25. California Fruit Exchange, P.O. Box 2038, Sacramento, California.
26. Farmers Cooperative of Arkansas and Oklahoma, P.O. Box 307, Van Buren, Arkansas.
27. Sunkist Growers, Inc., 707 West Fifth Street, Los Angeles, California.
28. Florida Citrue Canners Cooperative, Lake Wales, Florida.
29. Knouse Food Cooperative, Inc., Peach Glen, Pennsylvania.
30. Land O'Lakes Creameries, Inc., 2215 Kennedy Street, N.E., Minneapolis, Minnesota.
31. Castroville Marketing Association, Castroville, California.
32. Blue Lake Packers, Inc., P.O. Box 5038, Salem, Oregon.
33. Cotton Producers Association, P.O. Box 2210, Atlanta, Georgia.

Senator LAUSCHE. Just one or two questions, Mr. Olmsted.

You are here representing the National Farm Lines?

Mr. OLMSTED. Yes, sir.

Senator LAUSCHE. It has 33 members?

Mr. OLMSTED. Yes.

Senator LAUSCHE. Comprised of agricultural cooperatives?

Mr. OLMSTED. Yes, sir.

Senator LAUSCHE. Is transportation the principal service that National Farm Lines renders?

Mr. OLMSTED. It is the only service.

Senator LAUSCHE. What type of vehicles do you have?

Mr. OLMSTED. We use all over-the-road, long-haul trailers, refrigerated trailers.

Senator LAUSCHE. I see. That is, trucking service?

Mr. OLMSTED. Yes, all trucking.

Senator LAUSCHE. How many trucks do you have; do you know?

Mr. OLMSTED. Yes, we operate about 50 tractors and about 75 trailers.

Senator LAUSCHE. And your present average business is about how much per year? In the last 4 or 5 years.

Mr. OLMSTED. Oh, we will average about $2 million in revenue a year.

Senator LAUSCHE. That is what it looks like from your paper here. I notice that in your paper at the end you speak of the Commission

utilizing the rights granted under Federal law dealing with the filing of an action to discover evidence. Are you of the belief that the Commission has the power under 294(c) to subpena a suspected transgressor to bring his documents and papers with him?

Mr. OLMSTED. I think there might be some question whether 204(c) is broad enough for that, if a cooperative association should refuse to grant ICC permission to inspect its records. As Mr. Zeddies pointed out, they do have the power under the safety and hours of work requirements of the act to inspect the records of the cooperative from the operating standpoint, not from the economic operation standpoint. In other words, I think a cooperative might deny them the right. In actual practice, this is not done. In our association, National Farm Lines, for example, the Interstate Commerce Commission came to us, asked for the privilege of inspecting our records, and they were given the records. They are not denied the right. I have never heard of a case where they have been denied the right.

Senator LAUSCHE. It isn't a strong position to argue that they can go in under the pretext of examining safety records?

Mr. OLMSTED. No; I agree with that.

Senator LAUSCHE. And then try to hiddenly—you don't subscribe to that?

Mr. OLMSTED. No. Right.

Senator LAUSCHE. I don't think it is a good argument?

Mr. OLMSTED. Right.

Senator LAUSCHE. I am very grateful for your paper. Thank you very much.

Senator LAUSCHE. Are there any other out-of-town witnesses?

(No response.)

Then Mr. Triggs who is going to present Mr. Sollars' statement may come forward.

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

Senator LAUSCHE. Do you want to read Mr. Sollars' whole paper, or do you wish to have it placed in the record?

Mr. TRIGGS. I would like to read the paper, but I will skip certain sections of it and ask that the sections skipped be put in the record.

Senator LAUSCHE. All right.

Mr. TRIGGS. Most of our 1,677,820 Farm Bureau members are also members of one or more marketing, supply, or service cooperatives and therefore have a major interest in the legislation under consideration.

AGRICULTURAL COMMODITY SERVICE CASE AND SIMILAR CASES

We do not support the use of the cooperative form of organization by concerns that do not meet the criteria of the Agricultural Marketing Act of 1929, as a cover for engaging in unlawful transportation.

We do not support the activities, as described to the committee, of the Agricultural Transportation Service, or of similar concerns.

We have made no careful review of the activities of other organizations referred to by previous witnesses, but it appears probable that

in at least some such cases the organizations failed to meet the provisions of the Agricultural Marketing Act.

We fully support the efforts of the Commission to terminate unlawful operations.

It has been suggested by prior witnesses that the authority of the Commission is inadequate to deal effectively with nonlegitimate "cooperatives."

We do not testify as legal authorities in this area, but it appears to us that the Commission has failed to use the remedies available to it in a timely and effective manner.

It has, for example, been three and a half years since the Commission ordered an investigation and over two and a half years since the examiner recommended the issuance of a cease-and-desist order in the *ATA of Texas* case, referred to by most of the proponent witnesses, but the case is still pending before the Commission.

We do not understand why the Commission has failed, in any of the cases complained of, to use the injunction procedures provided in Public Law 89–170, which were designed to expedite the elimination of unlawful transportation.

We do not understand why the parties complaining to this committee about the unlawful activities of certain allegedly illegitimate "cooperatives," have failed to use the private injunction procedures provided in Public Law 89–170, which were designed to provide a more expeditious and effective means for private parties to proceed against unlawful operations.

We do not believe it has been demonstrated to the committee that the remedies now available to the Commission and to private parties have been used in a timely fashion.

Nevertheless we will not oppose any or all legislation designed to enhance the effectiveness and expedition of the Commission's efforts to eliminate unlawful transportation by nonlegitimate "cooperatives."

But we do not agree that because there are a few "bad apples in a barrel" that all the apples should be condemned. We do not support an extension of regulation to all cooperatives to eliminate the operations of a few nonlegitimate "cooperatives."

We therefore oppose the enactment of S. 1729 and the "compromise" proposal offered to the committee.

THE NORTHWEST AGRICULTURAL COOPERATIVE ASSOCIATION CASE

The effect of the *Northwest* decision can easily be exaggerated and has, in our opinion, been exaggerated by prior witnesses. The following comments of the Ninth Circuit Court are excerpted from its decision (234 F. Supp. 496 (D. Or. 1964)):

> A cooperative will retain its exemption only so long as it remains in essential character a "cooperative association" described in the statutory definition. Thus the activities in which it engages much be such that the cooperative can be fairly described as a farmer organization primarily engaged in marketing farm products for farmers, or purchasing, testing, or furnishing farm supplies or farm services for farmers; and operating for the benefit of the members of the cooperative in their capacity as producers of farm products or purchasers of farm supplies or farm business services. A cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and in no conceivable circumstances could non-farm related business approach fifty percent of the total and remain incidental and necessary to that which was farm-related.

The meaning which we ascribe to the term "cooperative association" accords with the general purpose of the Agricultural Marketing Act. The Act was intended to encourage the organization and operation of farm cooperatives. Its terms are to be liberally construed to effectuate that purpose. It would defeat the purpose of the Act to construe the term "cooperative association" in such a way as to deny a cooperative the right to engage in incidental activities which, as a practical matter, are necessary to the performance of an activity authorized by that Act.

The construction which we give to the term does not open the door to unrestricted competition by exempt cooperatives with regulated carriers. If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status, as a "cooperative association" and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act.

We would emphasize what the court has said, that the decision "does not open the door to unrestricted competition by exempt cooperatives with regulated carriers." Indeed the decision imposes a substantial restrictive test, that the transportation performed must be both incidental and necessary to the primary activities of the cooperative on behalf of the farmer members in their capacity as producers of farm products or purchasers of farm supplies, and that "in no conceivable circumstances could non-farm-related business approach 50 percent of the total and remain incidental and necessary" to such major purpose.

It appears to us that the circuit court in the *Northwest* case has laid down a reasonable and defensible guideline with respect to the scope of transportation activities by farmer cooperatives. We support the decision as a reasonable and workable definition of the transportation function that may be performed by cooperatives that meet the criteria of the Agricultural Marketing Act of 1929.

The decision has brought clarity to an area of statutory law that has been in need of clarification.

We submit that any belief that the decision will result in any significant diversion of traffic from regulated carriers by legitimate cooperatives is unwarranted.

We urge that the Commission adopt the guidelines set forth in the *Northwest* decision as the proper interpretation of law to be used in dealing with other cases that may arise.

THE SCOPE OF COOPERATIVE TRANSPORTATION OPERATIONS

The following quotations are from a study of the Farmer Cooperative Service of the U.S. Department of Agriculture, General Report 109, February 1963, titled "Motortruck Operations of Farmer Cooperatives":

The 9294 farmer cooperatives in the United States owned or leased an estimated 33,000 motortrucks as of January 1, 1961, based on a projection of findings of this study. This is an average of 3.5 trucks per association.

Compared with an estimated 28,000 trucks in 1951, the number of trucks operated by farmer cooperatives has increased about 18 percent within the past 10 years. As a general comparison, total truck registrations in the United States were 11.4 million in 1960, an increase of 32 percent over the 1951 total of 816 million.

Truck mileage of all farmer cooperatives in 1960 was estimated at 660 million miles for both local and over-the-road trucking. This is about one-half of 1 percent of the United States total of 126.4 billion truck mileage over both rural and urban roads.

Only 28 percent of the total truck mileage reported by cooperatives was "over the road" which was defined as "hauls other than local pick-up and delivery and movements from fields to local concentration points." Thus the majority of truck operations by farmer cooperatives are local in nature.

Thus, not only is the total volume of cooperative trucking a negligible percentage of total truck operations but it is also a declining percentage.

This 28 percent of a half percent consists overwhelmingly of farm products and farm supplies with respect to which no issue is involved in this hearing. A small fraction of the 28 percent of a half percent consists of nonfarm products hauled by legitimate cooperatives on a backhaul basis, that the proponents of the bills would outlaw.

CARRIAGE BY REGULATED TRUCK CARRIERS

The regulated motortruck industry is one of the most rapidly growing segments of our economy. Estimated revenues of class I, II, and III motor carriers, as reported by the Interstate Commerce Commission, is shown in the following table:

Estimated revenues from carrying property of Class I, II, and III motor carriers

[Millions of dollars]

	Intercity revenues of intercity carriers		Total revenues, intercity and local
	Common	Contract	
1939	579.1	112.0	792.2
1944	998.9	80.3	1,351.9
1949	2,302.7	169.4	2,911.2
1954	3,729.3	345.3	4,737.1
1959	5,516.4	517.0	7,144.9
1960	5,765.3	485.3	7,213.9
1961	5,916.3	402.6	7,462.7
1962	6,474.4	492.6	8,131.1
1963	6,792.3	497.2	8,548.3
1964	(1)	(1)	9,154.8
1965	(1)	(1)	10,085.9

[1] Not available.

You will notice the final column, which reports the total revenues of class I, II, and III motor carriers. This is clearly a growth industry. Few industries have a sharper upward trend than the regulated motor carriage industry.

Thus there is plenty of room for a rapid and sustained growth of regulated transportation without impairment of the capacity of legitimate cooperatives to serve their members under present regulatory provisions. Obviously the regulated carriers are able to increase the volume of traffic they handle from year to year by big percentages despite the small amount of for-hire carriage by legitimate cooperatives.

S. 1729

In view of the factual data as set forth above, it appears to us that S. 1729 is an extreme proposal.

The bill would require any cooperative that wishes to engage in transportation within the scope of section 203(b)(5) to file information concerning its operations, and obtain a certificate from the Commis-

sion authorizing such operations, subject to the authority of the Commission to revoke such certificate.

It would place the burden of proof, transfer the burden of proof from the Commission to the applicant, to demonstrate that its operations are within the scope of the exemption.

A small business, and most cooperatives are comparatively small businesses, is faced with a very difficult situation when it is charged with a violation of regulations by a Federal agency. Even though the burden of proof is on the agency, the defendant has comparatively limited resources of specialized legal talent and technical personnel as compared with those available to the agency.

To throw into the balance an additional responsibility on the cooperative to prove in the original instance and subsequently under threat of revocation that its operations are in accord with the law and/or the Commission's concepts as to the interpretation of the law, is a heavy burden.

We must strongly oppose the concept that a cooperative must obtain the approval of the Commission before it can operate under the scope of 203(b)(5).

The bill would further authorize the representatives of the Commission to have access "at all times * * * to inspect and copy any and all accounts, books, records, memorandums, correspondence, and other documents" of the association.

We regard general and unrestricted authorizations to inspect the books, records, and correspondence of all of the concerns in a segment of the economy, even though there may not be a color of reason to suppose they are violating the law, is a potent regulatory power which should be granted only when a crucial and far-reaching question of public policy is involved. No such crucial and far-reaching question of public policy is involved in the present instance.

Senator LAUSCHE. Just a moment. You say: "We regard general and unrestricted authorizations to inspect the books, records, and correspondence of all of the concerns in a segment of the economy, even though there may not be a color of reason to suppose they are violating the law, is a potent regulatory power which should be granted only when a crucial and far-reaching question of public policy is involved."

What is your understanding, dealing with the present law, as to whether or not the Commission, when it believes it has reasonable grounds to conclude that the law is being violated, has the right to issue a subpena to bring forth the books?

Mr. TRIGGS. I am not a lawyer, Senator. I would make this comment, however: All of the history and all of the discussion that I have heard of this subject has yet to disclose—and I am not saying there are no such cases—has yet to disclose an instance where a cooperative, and probably many other defendants, has failed to make its books and records available on request.

Now, we are not opposed necessarily to carefully restricted language of any bill designed to enforce the law that involves opening up the books where there is a substantial reason to believe that a violation has occurred. But beyond that, to just give them a fishing expedition, so they can go in at any time without the color of suspicion of a violation, seems to us to be an extreme sort of proposition.

Senator LAUSCHE. All right. Thank you. You may proceed.

Mr. TRIGGS. Indeed, the Congress over the years has granted such authority with discretion. Even the authority of the Internal Revenue Service is more strictly limited than the delegation of power in this bill.

There has been need for clarification of the scope of cooperative transportation for many years. The permissible scope of such operation has now been fairly well established by judicial action, particularly the *Northwest* case, if the Commission will accept that finding.

The enactment of S. 1729 would jettison the judicial history on this issue in recent years and reopen the whole issue for readjudication.

This bill and the Commission's proposed modification thereof is replete with uncertainties and ambiguities. A few are listed below:

Would the term "farm products" in the proposed addition be the same as the definition of "agricultural commodities" in section 203(b)(6)? What would be the interpretation of the Commission and the courts of the term "farm-related traffic"?

Would the Commission have authority to further define "the meaning and scope of section 203(b)(5)" before certificates of exemption were issued?

Does the proposed requirement with respect to filing information and other provisions of the bill extend to both the intrastate and interstate transportation of the cooperative? Does the bill retain the historical concept of the act that only interstate transportation is to be regulated?

Must a cooperative whose transportation is 99.9-percent intrastate and 0.1-percent interstate obtain a certificate of exemption and open its books to the Commission?

Does the proposed regulatory procedure apply with equal effect to local gathering and distribution (which may or may not involve crossing a State line) as to over-the-road hauling?

We respectfully submit that S. 1729 involves a massive and burdensome regulatory pattern in relation to the problem involved, is replete with uncertainties and ambiguities that would raise many new problems, and should not be enacted.

THE "COMPROMISE" PROPOSAL

A number of prior witnesses have indicated their support of the "compromise" proposal offered by the American Trucking Association.

We would agree that if any Government agency is to be given a responsibility for preparing a roster of bona fide cooperatives eligible for exemption under section 203(b)(5) of the act, the Department of Agriculture is the agency best qualified to do so.

In other respects we can find little in the proposal of the American Trucking Association that represents a compromise.

The "compromise" proposal would nullify the decision of the ninth circuit court in the *Northwest* case, since it would not permit a cooperative to backhaul a pound of any nonfarm related traffic, no matter how incidental this might be to the major purpose of the cooperative nor how necessary such backhaul might be to the ability of the cooperative to efficiently serve its members.

The enactment of the "compromise" proposal would result in inefficient use of cooperative manpower and equipment.

In the case of those cooperatives that haul members' products a considerable distance this might be a virtual death sentence to the

continued existence of such cooperatives because they would be limited to uneconomic one-way hauling.

In light of the extraordinary growth of regulated carriage by motor vehicle and the insignificant volume of for-hire transportation the *Northwest* decision permits cooperatives to handle, we submit there is plenty of room for regulated carriers to grow and prosper, as they have been growing and prospering, without destroying or reducing the capacity of legitimate cooperatives to serve their members.

The "compromise" proposal would even go so far as to require that a cooperative that proposes to haul a negligible tonnage of nonmember farm products on a for-hire basis would be required to notify the Commission of its intention to do so, and to open its books to the Commission.

This, we submit, is ridiculous. In most cases a cooperative which accepts nonmember business does so on exactly the same basis as member business and makes the same charges for marketing the products of nonmembers as for members. Presumably if this charge includes a transportation charge, this would be for-hire business, and the cooperative would be required to notify the Commission of its intention to engage in such business. If—and I am not sure—this is what the language used means, then its purpose would be defeated. Cooperatives could do what some do now, that is, provide that when a nonmember turns over a quantity of a product to be marketed by the cooperative, this constitutes an application for membership, which ripens into membership by a deduction of membership dues from sales proceeds.

The "compromise" proposal, like S. 1729, is ambiguous and unclear in many respects. We list below a few of the uncertainties raised in our minds:

Is the list of bona fide cooperatives to be prepared by the Department to include all cooperatives or only those engaged in interstate transportation?

If the list of cooperatives is to be prepared annually, what is the situation in the interim with respect to (1) a cooperative whose status has not been determined by the Department at the time the list is submitted, (2) a cooperative which decides to undertake a transportation function in the interim?

Is the determination as to whether or not nonmember business exceeds one-third of total business to be made (1) inclusive or exclusive of intrastate transportation? or (2) inclusive or exclusive of local pickup and delivery service? or other local transportation?

Is the language limiting for-hire transportation "for nonmember farmers" to one-third of total transportation intended to and does it have the effect of prohibiting transportation service at all to another cooperative?

If so, and the language appears on its face to so provide, could this intention be defeated by one cooperative becoming a member of the second cooperative?

Does the requirement that the cooperative must notify the Commission if it intends to engage in for-hire transportation for nonmembers apply in the case of a cooperative entirely engaged in intrastate transportation or local gathering or distribution?

Suppose a cooperative is listed as a bona fide cooperative, but does not inform the Commission of its intention to engage in for-hire

transportation because it does not intend to do so; but then, to meet market needs or commitments, finds it necessary to do so, what is the status of such transportation? Lawful or unlawful?

For the reasons stated above we must express our opposition to the enactment of the so-called compromise proposal.

Thank you very much, Mr. Chairman.

Senator LAUSCHE. Mr. Triggs, thank you very much.

Mr. SENDER. Does the American Farm Bureau Federation have any policy or have they taken any action against illegal farmer cooperatives?

Mr. TRIGGS. We are not in the legal business and we are not in the transportation business, so we have not taken any action against illegal cooperatives.

Mr. SENDER. Assuming bogus cooperatives are a problem, how would you recommend these cooperatives be identified and eliminated by the Interstate Commerce Commission?

Mr. TRIGGS. Well, I don't think there is any problem of identifying them, because the Commission receives a constant flow of complaints from competitors. And it doesn't seem to me that the job of making a determination that they are or are not a legitimate cooperative is a job that requires a year's investigation.

If an examiner couldn't make this finding in a month or so, if the cooperative or illegitimate cooperative makes its books available to him, he is not really doing very much of a job.

Mr. SENDER. Under your interpretation of the exemption in 203(b)(5), what are the limits of the incidental and necessary exemption for a cooperative established for the sole purpose of transporting goods to market?

Mr. TRIGGS. Well, admittedly the test "incidental and necessary" is a fairly difficult one to apply. For that reason it is appropriate and desirable that it be left to the determination of the court.

But I think the language speaks for itself. It has to be incidental to the major business of the cooperative on behalf of its farmers, and has to be necessary in a prescribed amount for the successful performance of that business.

I would assume that in many cooperatives this would mean virtually no for-hire return haul business. In other cooperatives, such as the Northwest and Cache Valley, the backhaul business is very important to the continued operation.

It is pretty hard to define these terms, but I think they are reasonably clear in their application.

Mr. SENDER. Since a backhaul is reasonably necessary to the performance of the transportation service, wouldn't the incidental and necessary test suggest that more than 50 percent might be required in some cases to sustain the function—namely, that of transportation?

Mr. TRIGGS. Well, we will stand on the decision of the ninth circuit which said that "in no case could incidental and necessary mean anything approaching 50 percent."

Senator LAUSCHE. Mr. Triggs, you have read the paper of Mr. Sollars of the Ohio Farm Bureau Federation.

Mr. TRIGGS. Yes, sir.

Senator LAUSCHE. And this is his paper, to which you subscribe?

Mr. TRIGGS. Well, he was the witness for the American Farm Bureau Federation. So this is a statement of the American Farm Bureau Federation.

Senator LAUSCHE. Thank you very much.

Mr. Ross, Cache Valley Dairy Association.

STATEMENT OF HARRY ROSS, CACHE VALLEY DAIRY ASSOCIATION, WASHINGTON, D.C.

Mr. Ross. Mr. Chairman, I am appearing here instead of Mr. M. C. Harris, of Logan, Utah, the attorney for Cache Valley Dairy Association, who was unable to appear. I believe this was explained in a conference with the staff previously.

Senator LAUSCHE. Yes.

Mr. Ross. I would like to read this brief statement prepared by Mr. Harris, if I may.

Senator LAUSCHE. Please proceed.

Mr. Ross. The experience of the Cache Valley Dairy Association with the investigations of the Interstate Commerce Commission, concerning the exemption of agricultural cooperatives from the provisions of the Interstate Commerce Act as provided in section 203(b)(5), has convinced us that this proposal to reduce the scope of this exemption is an attempt to persuade Congress that agricultural cooperatives should be denied any exemption that would permit them to haul goods not functionally related to the products produced and marketed by cooperatives for their members; to grant to the Commission sole authority to determine what goods could be transported by agricultural cooperatives; to deny any incidental toleration in close cases as to the character of such goods; to refuse to recognize any toleration whatever in the backhaul of the exempt vehicles, no matter how incidental such transportation might be or what efficiency must be discarded by the cooperatives in order to give to the licensed haulers an absolute monopoly of hauling goods for hire.

We submit the following statement relating to our experience as a strong reason why Congress should not delegate power to the Commission which would require agricultural cooperatives to secure prior approval of that administrative body before being permitted to operate motor vehicles free from economic regulation or which would permit the Commission to determine what goods agricultural cooperatives may transport on backhauls. We urge this is a field that should be guarded very seriously by Congress.

A full statement of the details of the Cache Valley Dairy case cannot be covered in this brief statement, but copies of briefs filed in the Cache Valley Dairy case and any other documents that might be interesting to the committee are available and will be furnished for the record if the committee desires.

THE CACHE VALLEY DAIRY ASSOCIATION CASE

Cache Valley Dairy Association was incorporated in February 1931 under the Cooperative Marketing Act of the State of Utah. Its members were all farmers owning their farms and dairy herds. For approximately 10 years the organization acted merely as a bargaining organization, meeting with the various condensed milk companies in

the area of northern Utah and southern Idaho who handled almost 100 percent of the milk produced in the territory. During these years, a small authorized retain was withheld by the association from the members' milk checks until a fund was accumulated for the purchase of a vacant sugar factory building, which was then converted into a cheese manufacturing plant. Within a short time the association was marketing all of the milk produced by its members.

There are no highly paid or salaried officers of the association. The members are all producers of dairy products and milk for the market. Every member has one vote. All products marketed are for members. All officers and directors are farm producers of dairy products. The association operates under a revolving capital plan whereby the farmer members provide necessary capital to their association. Authorized retains are simply deducted from the proceeds of the sale of the dairy products as a capital fund and rotated on a basis of 5 or 6 years. No interest is paid on the capital. The milk is processed into American, swiss, and cottage cheese, butter, powdered milk, whey, and similar dairy products. The products remain the property of the association and are sold at retail and wholesale. After payment of costs of processing and sale, all of the proceeds are paid to the members: first by paying the prevailing price on a monthly basis and the remainder being paid or allocated at the end of each year as certificates of interest in the association with funds represented by such certificates being used as revolving capital until paid out as above indicated. For tax purposes, members report the allocated capital as income for the year in which it is allocated. Of its total business, 95 percent is done with and for its farmer members. This is a complete and ideal working agricultural cooperative.

Cache Valley Dairy Association grew for several years and eventually began marketing its milk in Denver, a haul of approximately 550 miles. Three or four especially designed trucks were used in this operation and whenever possible dairy supplies were hauled from Denver area to Utah on the backhaul. When there were no such products for backhaul, groceries and other similar items were at times hauled for hire for nonmembers. This was in reliance upon the express exemption in section 203(b)(5). In 1962 some investigators from the Interstate Commerce Commission visited the Cache Valley Dairy plant at Smithfield, Utah, and asked for and were permitted to examine the books of the association. They declined to disclose their purpose and we do not know yet why we were picked for such an investigation of applicable laws. After many days' work, the investigators compiled a complete list of all items which they felt were not "functionally related" to the dairy farmers' products, which had been hauled in backhaul for approximately 6 months of the year. Cease and desist proceedings were initiated before the Commission in 1963. These proceedings are still pending.

Much of interest in these proceedings could be presented here, but is omitted in the interest of brevity. Cache Valley Dairy Association contended that its backhaul was in the interest of efficiency in that empty trucks take just as much space on the highway as loaded ones; that all savings went to producers and not $1 to anyone else; that with competition as keen as it is in the dairy business, this very small backhaul—approximately 2 percent of its business—was essential to the efficient and economical marketing of the members' dairy products;

and that such backhauls are incidental and necessary for the performance by the association of its primary function; that is, efficient distribution of its members' products. We were willing to continue to limit our backhaul of nonfarm products or supplies to times when there were no farm products or supplies available for the backhaul. The Commission's examiner, in our opinion, read into section 203(b)(5) language similar to that now being proposed before your committee and held that the association should be required to cease transporting all so-called nonfunctionally related products.

Cache Valley Dairy Association appealed to the Commission from the decision of the examiner, and reiterated the contentions stated above. The matter is still pending before the Commission after nearly 4 years since the investigation was commenced.

We say with all soberness that, if these proposed amendments are adopted, the administrative body concerned, which will act as investigator, prosecutor, judge, and jury, may well not recognize any meaningful exemption of any kind. We are quite certain that it will not permit any tolerance for mere incidental operation involving small volumes, regardless of its comparative importance to the farmer cooperatives and insignificant importance to the licensed haulers.

In the very nature of things, sufficient dairy products cannot be produced to supply the market in the immediate vicinity of large centers of population. It is becoming very common to have dairy products hauled long distances to these population centers. Necessarily, the expense of the haul must be added to the consumer's price. If all vehicles hauling farmers' milk products to the city must come back empty when there are no functionally related goods to be returned, this extra cost must also be added to the consumer's price. The only purpose of the backhaul of non-farm-related goods is to reduce the expense of the haul to market and to aid in maintenance of an efficient and economical marketing operation. Whatever is received from the backhaul is credited back immediately to the cost of the haul. The insignificant volume of such backhauls, although necessary to the dairy operation, does not and should not destroy the fact that Cache Valley Dairy Association is a farmer owned and farmer operated cooperative association. We feel keenly that the facts of the Cache Valley Dairy Association operation cannot justify the long drawn out investigation and more or less stagnant handling of the matter.

There are, no doubt, instances where persons, not bona fide cooperatives, try to use this exemption by posing as agricultural cooperatives.

However, such instances can be adequately dealt with under existing enforcement powers of the Commission. They certainly do not justify the proposals now before you which would impose constant administrative regulation and resultant unnecessary costs upon numerous cooperative associations which, like Cache Valley Dairy Association, engage in transportation of nonfarm related products only where required to efficiently serve their members in the marketing of their products.

What I have said has been with firm conviction and in good faith. We have been tempted to let loose with many stronger statements. We have faith in our Congress doing what they believe to be in the interest of the people and hope it can be kept that way.

We thank you for permitting us to present this statement and respectfully urge that you disapprove S. 1729 and any similar proposals that would narrow the "cooperative association exemption" as presently provided by section 203(b)(5) of the Interstate Commerce Act.

Senator LAUSCHE. Thanks very much for your efforts to help.

Mr. Sender, do you have any questions?

Mr. SENDER. Are the items that are hauled on return by Cache Valley farm supplies, farm products, or farm-related traffic?

Mr. Ross. The nonfunctionally related traffic for nonmembers I assume is what you are referring to?

Mr. SENDER. Yes.

Mr. Ross. As shown by the records in the *Cache Valley* case before the Commission, they are not farm supplies in the sense of the way that term may be normally used.

They consist of such items as indicated in the statement—groceries, things of that nature. In some cases perhaps wire, and if you mean wire fencing, that perhaps could be a farm supply.

But they were moved to nonmembers such as local stores, things of that nature.

Now a portion of the backhaul transportation was, as indicated again by the Commission's records, of farm supplies, and as indicated by this statement, wherever such products were available, that is what they took.

But in the so-called non-farm-related movement, that was engaged in only where absolutely necessary to achieve a backhaul. And where other types of products were not available.

Senator LAUSCHE. What would you include in the non-farm-related cargo that was hauled?

Mr. Ross. Senator, I frankly think that this term, as has been indicated by prior witnesses, when you speak of farm related or non-farm related or functionally related, is a vague term. It is not capable of a definite definition.

The way I used the term was to use it in the same connotation as was used in the proceeding before the Commission, where they said that the non-farm-related commodities were those which were not necessary or incidental to the actual conduct of a farm business.

Senator LAUSCHE. What were the items that were involved in this case of which you are speaking that caused doubt as to whether or not you were within the law?

Mr. Ross. Such commodities as groceries and things of that nature. Groceries, wire——

Senator LAUSCHE. For whom and to whom?

Mr. Ross. It was for nonmembers. They were not members. And it was not to members. It was a completely separate haul, insofar as the association was concerned. It was neither from nor to a member of the association.

Senator LAUSCHE. Who was the hirer in getting the grocery goods? The operator of a grocery store?

Mr. Ross. It varied, Senator, between the shipper and the consignee. It might be the shipper or it might be the consignee.

Senator LAUSCHE. But it wasn't the farmer who was the consignee of the groceries?

Mr. Ross. No, sir.

Senator LAUSCHE. It was a nonmember?

Mr. Ross. Nonmember.

Senator LAUSCHE. Engaged in the grocery business primarily in most instances?

Mr. Ross. In the instances where groceries were the product, yes, sir.

Senator LAUSCHE. What about the wire? For whom was that hauled?

Mr. Ross. That was for a local hardware store.

Senator LAUSCHE. In most of the cases was the hauling done for merchants in the farm community who were not members?

Mr. Ross. Senator, you are asking questions that go beyond the record to some extent in the case, and, remember, I am not a member of this cooperative, I merely appeared here on behalf of Mr. Harris. So when you get that detailed I can't answer the questions.

Senator LAUSCHE. All right, good enough. Thank you very much. Mr. Harmanson?

STATEMENT OF L. JAMES HARMANSON, JR., GENERAL COUNSEL, NATIONAL COUNCIL OF FARMER COOPERATIVES, 1200 17TH STREET NW., WASHINGTON, D.C.

Senator LAUSCHE. I would suggest that your statement be placed in the record and that you deal with the highlights of it, Mr. Harmanson. You are thoroughly familiar with this subject.

Mr. HARMANSON. Mr. Chairman, I appreciate the hour is getting late, and some of the material that is in the statement has already been covered. I certainly will eliminate as much duplication as is possible.

Senator LAUSCHE. I will rely upon your judgment then.

Mr. HARMANSON. Thank you. Might I state that about half of the material before you consists of appendixes. I shall refer to those appendixes and request, if in your judgment it is proper, they be made a part of the record.

Senator LAUSCHE. They will all be made a part of the record as a part of your presentation.

Mr. HARMANSON. I shall come directly to the issues that seem to have been presented to your committee for decision.

I would first like to state that the council is opposed to the Commission bill, either with or without the amendment proposed on July 14, and is also opposed to the substitute recommended by the American Trucking Associations, Inc. at the recent hearings.

At the same time I would like to point out the policy position adopted by the delegate body, the delegates of all of the members of the council contained at the bottom of page 1 of the statement. These policies are as follows:

> Agricultural Cooperative Truck Exemption. It is the established policy of the National Council to oppose any restrictions by legislation or administrative interpretation of Section 203(b)(5) (the agricultural truck exemption) of the Motor Carrier Act.
>
> However, we are opposed to attempted operations based on a claim of exemption under Section 203(b)(5) by those who fail to qualify thereunder. (Adopted 1960, Reaffirmed 1965).
>
> Eligibility of Agricultural Cooperatives Under Motor Carrier Exemption. The National Council is opposed to any proposal which would require certification by

any Federal agency of agricultural cooperative associations qualified under Section 203(b)(5) of the Interstate Commerce Act, as a condition to operating under such exemption. (Adopted 1966).

Now turning to page 2, to the problem, why it arose and the council's recommendations for action.

The council has not taken and does not now take a position of blind opposition to constructive steps within the scope of this exemption as interpreted by the courts to prevent abuses and unlawful operation thereunder by unqualified organizations or persons. We would support such steps and we believe steps can be taken by the Commission that will be effective under its present authorities.

The council, as early as July 9, 1959, upon learning that some organizations, reportedly not true farmer cooperatives, were attempting to operate under this exemption, made a specific effort to do something about it. The council at that time contacted the Director of the Bureau of Motor Carriers of the Commission and requested, in writing, prompt issuance "for public guidance of the basic rules or criteria to be followed under present law for qualification under section 203(b)(5) of the Motor Carrier Act."

Copies of this request were forwarded to the Chairman of the Commission as well as to each of the three Commissioners then serving as members of the Commission's division 1, the division charged with primary responsibility for supervision over activities of persons engaged in transportation by motor vehicle. We urged adherence to the Commission's own stated interpretation set forth by administrative ruling No. 91 issued July 17, 1940, subparagraph 5, which stated:

"The business must be primarily"—and this was in the ruling issued in 1940—"that of farmers acting together in marketing farm products and/or furnishing farm supplies and farm business service."

The council then stated to the Commission that the issuance of such a ruling "should be helpful in eliminating abuses and preventing unqualified organizations from engaging in transportation under the guise of the 'exemption' to the extent that any such activity may exist."

The reply, dated July 17, 1959, pointed out that certain proceedings involving this exemption were before the Commission and "before too long" they would be set for hearings and were expected to provide "formal answers regarding the questionable features of the exemption." (The council's letter and the Commission's reply are attached as appendix III. See p. 245.)

Thus, the Commission in 1959 turned down the council's request for issuance of definitive rules for guidance of genuine farmer cooperatives seeking to comply with the law. Rather, the reply of the Director of the Bureau of Motor Carriers clearly indicated that the Commission preferred to approach the problem on a case-by-case basis.

Now, 7 years later, following costly litigation in the intervening years, the Ninth Circuit Court of Appeals has finally provided the formal answer promised by the Commission in 1959.

This answer came in a decision entered in the *Northwest* case (*Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2d 252 (9th Cir. 1965), cert. denied, Jan. 25, 1966) upholding the council's position that a cooperative

association as defined by the Agricultural Marketing Act can lawfully transport for hire in its trucks non-farm-related commodities to the extent that such operation is necessary for and incidental to performance of its primary agricultural activities. But what has happened in the meantime? You are told that abuses have multiplied during this period when the Commission was trying unsuccessfully to limit the scope of this exemption by administrative action.

We respectfully submit, in all sincerity, that citizens and organizations who want to obey the law deserve prompter and better treatment from a Federal agency charged with administering the law, and not making the law.

The council believes now, as it did in 1959, that there is no need or justification for amendment of section 203(b)(5). The gates have not been opened for cooperative associations to enter into the general transportation business by the decision of the Ninth Circuit Court of Appeals in the *Northwest* case as alleged by some.

The language of the court in the *Northwest* case made this crystal clear. There are some very clear and definitive restrictions spelled out in that decision which should guide the Commission in disposing of the pending cases before it and in providing appropriate guidelines for general application in administration of this exemption.

The restrictions prescribed by the court in the *Northwest* case are that transportation of non-farm-related commodities may be performed only where such activity is "incidental to" and "necessary for" effectuation of the cooperative's primary agricultural functions.

Moreover, the court defined what is meant by these terms. It said that such transportation is "incidental" to the cooperative's agricultural activity when—

> Limited to [use of] otherwise empty trucksreturning from hauling member farm products to market, and producing a small return in proportion to * * * [the cooperative's] income from trucking farm products and farm supplies.

In like manner, the court stated that transportation of non-farm-related products is "necessary" when—

> it is not economically feasible to operate the trucks empty on return trips, and * * * [where] the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The court also took occasion to point out that failure to so restrict transportation of non-farm-related commodities would deprive cooperatives of the right to operate under section 203(b)(5). It stated:

> If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status as a "cooperative association" and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act.

It is evident, therefore, that the exemption provided by section 203(b)(5) does not permit agricultural cooperatives to "enter into large-scale competition" with regulated common carriers as has been contended.

To the contrary, cooperative associations are proscribed from such large-scale involvement in for-hire transportation of non-farm-related commodities.

The proponents of the proposed legislation contend that its adoption is necessary in order to prevent illegal operations by persons claiming

to operate under the cooperative association exemption but who are not entitled to do so.

However, now the Commission has a clear guide as to the scope of the exemption and specific criteria. They may not be criteria which will be applicable in every case, Mr. Chairman, but they are criteria with sufficient clarity that, with its authority under the law, the Commission could issue criteria that could be understood by all and guide all who would operate under this exemption.

Thus the Commission, without further legislation, should be able to promptly eliminate illegal operations conducted under the guise of this exemption. This is particularly true because the Commission is now armed with additional enforcement weapons to deal with illegal operators in Public Law 89–170 enacted September 6, 1965. Your committee played an important part in developing the final form of that legislation and the council supported it.

That legislation authorized cooperative agreements with the various States to enforce laws and regulations concerning highway transportation and vested the Commission and even private persons with wide additional authorities to deal effectively and promptly with illegal operations.

Senator LAUSCHE. This Public Law 89–170 is the one that was passed a year ago granting the right to an aggrieved carrier or shipper, and maybe a consignee, to institute action by way of injunction to restrain unlawful transportation practices: is that correct?

Mr. HARMANSON. Yes, that is a very important provision of that law.

In the case of alleged clear and patent violations.

Senator LAUSCHE. Yes. That is, a prima facie case of clear and patent violation had to be made in order to invest the court with jurisdiction. Is that correct?

Mr. HARMANSON. Yes, sir; in the case of private parties bringing the action.

Senator LAUSCHE. Now in addition to that remedy, what is your interpretation of the powers under 204(c)?

Mr. HARMANSON. You mean——

Senator LAUSCHE. In addition to that ability to stop unlawful operations?

Mr. HARMANSON. To get access to the records of the cooperative?

Senator LAUSCHE. Yes.

Mr. HARMANSON. I will answer specifically, Senator, but might I say my reference to this illegal carriage bill was not so much the rights given by it for private parties that believed they were injured as a result of these clear and patent violations to bring the action; I was referring primarily to the broader authority given by the Congress in that bill for the Commission to bring actions in various Federal districts.

Now I will answer your question specifically.

Senator LAUSCHE. My recollection is, in the preceding hearings on this bill, it was testified that though an action is brought under this Public Law 89–170, you had to have proof to sustain the action, and that the ability to obtain the proof was nil under existing law. The only method by which proof could be obtained was through general policing and that was not adequate, and they said they needed the right to look at the books of nonregulated carriers.

What is your understanding of their powers under existing law?

Mr. HARMANSON. Well, Senator, my understanding is this: There are several provisions in the Interstate Commerce Act that have been pointed out—I have made no detailed study of it—that would seem to vest the Interstate Commerce Commission with sufficient authority to get at the records of cooperatives believed to be illegally operating.

I refer specifically, in addition to section 205(d) of the act which has been mentioned several times on this record, to section 12 (2) and (3) of part I of the act.

Please understand I have made no detailed study or research on this, but these sections have been brought to my attention by lawyers who follow transportation law more closely than I, as sections which might be applicable.

But my position is that if upon study it is the judgment of your committee that there is not ample authority under existing law for the Commission to get at the records of organizations proposing or alleging that they are operating under the cooperative association exemption and who are believed to be suspect, then sufficient authority should be given under the law to make clear that they can get access to the records.

Senator LAUSCHE. Right. Now what I am referring to, I have before me the transcript of the hearing when Mr. Bush, the Chairman of the ICC testified. And with Mr. Bush was a Mr. Merrill. And this is my question:

> Mr. Merrill, Mr. Bush made the statement "The Commission is not presently equipped with adequate authority to effectively limit the exemption to those carriers which are bona fide agricultural co-ops, whose transportation activities are within the scope of Section 203(b)(5)."
>
> Why are you not equipped to adequately cope with the problem that is created by the activities just described by the Chairman?
>
> Mr. MERRILL. Because we have no power to inspect the records of either the shipper or the consignee unless they agree, nor of the person performing the transportation. And if they close their doors, we have no power to get it unless we can get a prima facie case establishing that they are in fact unlawful, and then we can use the subpoena power. But until we have the justification for the subpoena, we have no right to inspect and that is the reason the Commission is asking for additional power.

I think this clears up what we have been discussing. That is, they have got to have a prima facie case that there is a violation before they can use the subpena power.

It is your position, however, that if this committee should conclude that the powers granted for enforcement are not now adequate, that you would have no objection to the provision of such powers?

If that is not your position, you may so state.

Mr. HARMANSON. Might I put it this way: If there is not sufficient authority for the Commission to obtain the records of any cooperative, that is suspect, that then they should have the power to do so.

Senator Lausche, I believe that any bona fide farmer cooperative in this country, if it were approached properly by a representative of the Interstate Commerce Commission, would make readily available its records to them, as has been demonstrated, I think, on this record.

Mr. SENDER. Isn't it a circular matter, though, Mr. Harmanson, that the Commission has to have some means of determining whether a cooperative is suspect, before it can then go to the cooperative and say, "You are suspect; we want to see your books and records"?

Mr. HARMANSON. Well, I think there is a practical side to this, Mr. Sender. The spokesman for the American Trucking Associations, in effect, stated on this record on July 14 that the problem generally—and I am qualifying it because I think he may have had some qualification—was not with respect to the bona fide farmer cooperatives in this country but that the problem was with those who were trying to make money in public transportation under the guise of this exemption.

You have had spread on this record on the 14th the names of a number—I don't know whether it was 10, 12, or 14. And it is my belief as a practical matter that these persons out in the country that are trying to operate wrongly under this exemption are well known by the regulated carriers and by the law enforcement officers. Why, you have the names on the sides of trucks of most bona fide cooperatives in the country, and they are well known in the communities as genuine farmer organizations.

There is a practical side as well as a highly legalized side to this whole problem.

Senator LAUSCHE. You are here in Washington, aren't you?

Mr. HARMANSON. Yes, sir.

Senator LAUSCHE. We are to continue these hearings tomorrow morning at 9 o'clock. So unless there is some witness who cannot get here tomorrow morning, I will recess the hearings at this time until 9 o'clock.

(Thereupon, at 12:08 p.m. the hearing was recessed, to reconvene at 9 a.m. the following day.)

AGRICULTURAL COOPERATIVE ASSOCIATION

TUESDAY, JULY 26, 1966

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

The subcommittee met at 9 a.m., in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

Senator LAUSCHE. You may proceed, Mr. Harmanson.

CONTINUING STATEMENT OF L. JAMES HARMANSON, JR., GENERAL COUNSEL, NATIONAL COUNCIL OF FARMER COOPERATIVES, WASHINGTON, D.C.

Mr. HARMANSON. Mr. Chairman, just before adjournment yesterday, you had asked me a question concerning my opinion as to the adequacy of the authority of the Interstate Commerce Commission to obtain access to the records under existing law. I have given thought to your question overnight and I would like to make a few brief comments relative to that matter.

Senator LAUSCHE. You may do so.

Mr. HARMANSON. I refer to a provision of the Interstate Commerce Act which has been referred to by others, section 205(d), as believing that it did seem to give authority to the Commission to get access to these records. Without complete and adequate legal research, which I have been unable to perform, I think that an opinion as to the adequacy of that particular statute to give the Commission the authority it needs is almost without value.

Senator LAUSCHE. I will not attempt to study it at this time, but you feel that 205(d), is that it?

Mr. HARMANSON. Yes, 205(d).

Senator LAUSCHE. Contains provisions which empowers the Commission to subpena records?

Mr. HARMANSON. Well, my statement is that it has been suggested and it would appear from a reading of it that it might contain authority for the Commission on a proper proceeding to obtain records of any one operating under the Interstate Commerce Act, part II. I have not been able to do the legal research to enable me to advise you that I feel definitely that it does.

Senator LAUSCHE. Yesterday I quoted an answer given by the man in charge of the investigating agency who said that they must have a prima facie case of wrongdoing before they are empowered to issue a subpena. You are not able to say whether this 205(d)

deals with that provision described by the investigating man that they must have a prima facie case?

Mr. HARMANSON. No, I am not prepared to say that.

Senator LAUSCHE. You proceed with your testimony.

Mr. HARMANSON. I would like to say, Mr. Chairman, that it seems to me that rather than opinions as to the authority that the Commission has under that section to proceed in cases where it is believed persons are operating illegally under 203(b)(5), that the actual experience of the Commission is most important.

Now, then, I notice in the statement of Chairman Bush before your committee, he stated that the Commission is not presently equipped with "adequate authority" to effectively limit the exception to those carriers which are bona fide agricultural cooperatives and so forth. At another point in his statement, at the bottom of page 2, he said:

> Although the information necessary to discharge this responsibility is often available only from the respondent's records, the Commission has no specific authority to inspect them.

I have noticed that in one case he has referred to adequacy of the authority, and in another to "no specific authority." And then he stated further:

"Thus, if the Commission is unable to gain access to the records, the investigation becomes futile, unless * * *"

It seems to me in analyzing this problem that it would be very helpful to learn the experience of the Commission.

First. Has the Commission in any cases requested an organization claiming exemption under section 203(b)(5) to produce its pertinent records and been refused?

Second. In the case of such refusals, if any, has the Commission issued an investigative subpena which has not been honored by the association on which it has been served?

Third. If there have been such cases, has the Commission sought to enforce in the courts the subpena and if so, with what results?

Now then, I believe, and we believe that all reasonable men should agree that any executive department of government or any regulatory commission that is charged with the responsibility of administering a law passed by Congress should have authority to get access to the records of individuals and organizations to see whether or not they are complying with the law. And it is our position if it is the decision of your committee that the Interstate Commerce Commission is not now clothed under existing law with authority to get access to the records, the pertinent records, of organizations claiming to operate under this exemption, then they should be given that authority.

Senator LAUSCHE. First of all, I want to express gratitude to you for reading the testimony of Mr. Bush. Yesterday my memory was sort of challenged. There was an impact upon my mind of testimony that there wasn't adequate authority to investigate. Now your final position is that, if we conclude that there is not, you would anticipate us to remedy that weakness. And I want to say to you, Mr. Harmanson, that is the type of expression I would expect from a person who comes before the committee and asks that his word be considered.

Mr. HARMANSON. May I proceed with the statement?

Senator LAUSCHE. Yes.

Mr. HARMANSON. I shall omit a few paragraphs to conserve time on that which I find is duplication.

Turning to page 6, justification for present scope of the exemption. It has been asked at these hearings whether one can justify a policy whereby a cooperative association under the exemption can transport any nonfarm commodity under the necessary and incidental interpretation free from economic regulation. We believe that we can. It is justified in our opinion on the basis of congressionally approved policies relating both to administration of the Interstate Commerce Act set forth in the national transportation policy and in the policy for effective merchandising of agricultural commodities in interstate and foreign commerce contained in the Agricultural Marketing Act of 1929.

I readily admit that although each of these policies, as many policies in their wisdom passed by the Congress, contain various provisions which can be cited to support varying points of view. These two national policies respectively and consistently provide for promotion of, and I quote first the national transportation policy, "adequate, economical, and efficient" service, and secondly, in the Agricultural Marketing Act, prevention of "inefficient and wasteful methods of distribution." Limited operation of cooperative association trucks serving their farmer members' needs, including the transportation of nonfarm products on the backhaul where necessary is in full accord with these provisions of congressional policies.

Farmers cooperatives have an obligation to market all the products their members produce and turn over to them for marketing. Likewise, cooperative associations have an obligation to get farm supplies to farmers at the times and places needed. The compelling reason why many cooperatives have found it necessary to obtain and operate their own trucks is the inadequacy of the service available from common carriers from the standpoints of availability of equipment at the time and place needed, and lack of flexibility in the service offered by regulated carriers. Where economical, efficient, and adequate service is available, you do not find bona fide cooperative associations of farmers encumbering their primary business of marketing farm products and furnishing farm supplies with trucking operations and incurring the accompanying headaches. It is done where the farmers themselves through the management of their associations regard it as a necessary incident to proper performance of their primary agricultural functions.

In weighing the justification for the present scope of this exemption, it is pertinent to note that the cooperative association exemption, as well as the "agricultural commodities exemption" in section 203(b)(6), have been a part of the Motor Carrier Act since its enactment in 1935. Availability of these exemptions has not inhibited the growth of regulated rail and motor carriers. To the contrary, the regulated motor carrier and railroad industries have now reached an unprecedented state of prosperity.

Mr. Chairman, I would like to add, of course they have had their ups and downs from year to year, their problems as have farmer cooperatives, but yesterday afternoon a report came to my attention when I returned to the office, from the American Trucking Associations, Inter-City Truck Tonnage, first quarter, 1966. Turning to the first page, there is an analysis of the intercity tonnage transported by the classes I and II intercity motor carriers of property. And it shows that the volume of intercity freight transported by truck during the

first quarter of 1966 was 9 percent above the corresponding quarter of 1965 and 29.1 percent above the first quarter of 1964. They have listed on this by index the tonnage of the regulated carriers for the first quarter of the years 1940 through 1966 and the year 1966, the first quarter, compared with all of the other quarters, as stated by them is the highest of record at 155 index points. With the period 1957–59 as 100, the first-quarter figures for each of the last 5 years, from 1962 to 1966, shows the record of the regulated trucking industry on the basis of tonnage by their own reports continually going up.

Even the specific motor common carrier complainants before your committee on July 14, in spite of the alleged volume of business which they claimed has been taken from them as a result of operations under this exemption, have creditable growth records. Their complaints before your committee are in striking contrast to their revenue and tonnage records during the past 5 years as disclosed by reports filed with the Interstate Commerce Commission.

I am attaching to this statement as appendix IV tables reflecting freight revenue and tons of revenue freight carried for the years 1961–65 by each of the motor carrier which appeared in support of proposed legislation on July 14. The revenue and tonnage figures shown were taken from official records of the Interstate Commerce Commission. These records reflect a remarkable growth in both revenues and volume of tonnage handled.

I want to say in all fairness that the record I have attached here will show a downward trend in one year, and there are some slight variations, but I think that your committee and your staff will see that the total picture reflected there is one of remarkable growth in the 5-year period.

Moreover, a large part of the total traffic handled by these particular motor carriers is composed of meats and packinghouse products. In considering their claim that such traffic has been diverted from their lines by competition offered by cooperative associations, it is significant to note the reverse experience of rail carriers.

At least, this is true for the period 1960–63, the latest years for which we could get records. Thus, official records of the Commission reflect that fresh meat rail shipments, both by refrigerator car and piggyback, increased by more than 37 percent in the period between 1960 and 1963. It seems clear to us that much of the meat traffic which the complainant motor carriers amy have lost has been due in large part to increased use of rail service by meat shippers. The reason is evident; namely, rail rates have been materially reduced on much meat traffic while motor carrier rates have not kept pace.

For example, rail rates on meat from Des Moines, Iowa, to Los Angeles, Calif., were reduced, effective May 15, 1965, from $2.37, and you should add there 30 cents for refrigeration charge to bring that up to a total of $2.67, to $1.19 per 100 pounds, and you should add to that about 14 cents for estimated cost of refrigeration, while the applicable motor carrier rate remained at $2.46 per 100 pounds on hanging meat and $2.36 per 100 pounds on boxed meat.

You may say that is just one example. Trying to be fair—I am no rate expert—when I heard this motor carrier testimony on July 14 I asked the Department of Agriculture to check these points out from official records and I understand that this is fairly typical, Des Moines is from the heart of the livestock area and we do know that

Los Angeles and southern California is a large consuming center, that a lot of meat products go into that area.

Now this next point has been mentioned about the policy of the present administration and I recognize from the question that you asked another witness, has the Congress enacted any legislation changing the policy with respect to recognizing more of the forces of competition and minimizing regulation?

I do think it is important, however, that even——

Senator LAUSCHE. What is your understanding about the facts that will answer that question that I put?

Mr. HARMANSON. Yes, sir; my understanding coincides with yours. I do recall very distinctly that I had the pleasure of testifying before both committees, Senate Commerce Committee and House Commerce Committee. The latter committee did act to report deregulation proposals so as to remove much regulation existing with respect to the railroads on agricultural products and bulk commodities. But the deregulation proposed was not reported by the Senate Commerce Committee. It did get out of the House Commerce Committee, but still, as far as the executive department of Government is concerned, we have its position.

There is a statement from the executive branch of this Government which I think that we can rely upon. President Johnson's statement last year in his state of the Union message was: "I will recommend heavier reliance on competition in transportation." That recommendation specifically has not come. His recommendation on Department of Transportation has come, but not in the other area.

Senator LAUSCHE. I don't like to say it at this hearing, but he also stated in his message on the state of the Union last January, that he would submit legislation that would adequately cope with work stoppages on the transportation systems of the country. It is now 7 months later and nothing has been forthcoming. You need not comment about that.

Mr. HARMANSON. May I proceed, Mr. Chairman?

Senator LAUSCHE. Go ahead and proceed.

Mr. HARMANSON. I will just add this sentence at the bottom of page 8. We respectfully urge that your committee view the specific proposal before you in the framework of the broader national picture of the revolution in transportation that is taking place through the forces of competition. The rendering of adequate service at the lowest possible cost and full utilization of equipment to prevent waste and extravagance in the farm-marketing system are two basic principles underlying the initial enactment of this exemption in 1935 and offers full justification for its continuance in 1966.

OBJECTIONS TO SPECIFIC PROVISIONS OF THE PROPOSALS TO NARROW THE EXEMPTION

We have thus far in this statement given basic reasons for our opposition to the proposals to narrow the scope of this exemption without reference to the specific language of the proposals before you. We turn now to reasons why each of the legislative proposals would be an improper and defective vehicle for accomplishment of the ends sought.

S. 1729—THE ICC PROPOSAL

The Commission recommended on July 14 that language be added at the end of present section 203(b)(5) in addition to the proposed amendment set forth in S. 1729. This latest proposal of the Commission is stated as being designed to meet what it described as "the current crisis" resulting from the Northwest decision. It reads as follows:

but only when those motor vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

The adoption of such language would almost certainly lead to years of litigation to obtain final determination of what is a "farm product," a "farm supply" and "other farm-related traffic."

Mr. Chairman, what I am going to say now is with the highest respect for the Interstate Commerce Commission, its present and past members and what I shall say now is not a reflection upon their decisions. I think all of their decisions are made in good faith and in their good judgment, but what I shall recite to you is a matter of official record and as far as the administration of these exemptions relating to agriculture, I think they do have some pertinency to the matters under consideration by your committee.

The past is the guide as to what we might expect in the future. An amendment sponsored by Congressman Marvin Jones and adopted by Congress in the Motor Carrier Act in 1935 was section 203(b)(6) which provided in part an exemption from economic regulation for "motor vehicles used in carrying * * * agricultural commodities (not including manufactured products thereof)." It took years of litigation to establish, over the opposition of the ICC, that spinach which is washed, tobacco which is redried, nuts which are shelled, poultry which is dressed and eviscerated, and scores of other products from the farm placed in merchandisable form to meet consumers' needs and demands are still "agricultural commodities" and not "manufactured products." It took action by the Congress, initiated by the Senate Commerce Committee in 1952, to establish by statute that nursery stock under section 203(b)(6) is an agricultural commodity. The Commission had contended that although the fruit from the tree is an agricultural commodity, the parent tree bearing the fruit is not. Public Law 472 (S. 2357) enacted June 9, 1952, amended section 203(b)(6) to specifically provide that the term "agricultural commodities" was intended by Congress to include "horticultural" products.

Initiated on the Senate side in 1952, and I recall former Senator Bricker from Ohio was a member of this committee when the above action was taken.

At first glance one might conclude that the terms "farm products," "farm supplies" and "other farm-related traffic" proposed by the Commission as a statutory limitation on the transportation of qualified farmer cooperatives should present no problem of interpretation and administration. But the consistent record of the Commission in interpreting statutory terms involved in exemptions related to agriculture, as illustrated above, is the basis for our concern over the use of such proposed terms (see Marketing Research Report No. 188, July 1957, pp. 17–38, published by Marketing Research Service, U.S.

Department of Agriculture, entitled "The Agricultural Exemption in Interstate Trucking—A Legislative and Judicial History").

Next let us examine the Commission bill as originally introduced.

It would require any cooperative association, before operating under the exemption, to be certified by the Commission as meeting the definition in the Agricultural Marketing Act of 1929 and as engaging in transportation activities within the meaning and scope of section 203(b)(5). In the absence of such certification the cooperative association could not operate its trucks under this exemption. This bill would permit the ICC to substitute its views as to what the law should be for what the law presently is, as enacted by Congress, and as it has been interpreted by the courts. This bill would vest the ICC with authority to rule that any cooperative association transporting its own or its members' products to market in a truck controlled and operated by it, could not under this exemption transport a single payload of non-farm-related products on the backhaul.

The clear impact of the bill is that it would by indirection give the Commission authority to effectively repeal the meaningful scope of this exemption. If the Commission should follow what its attorneys have argued in the decided and pending cases involving this issue, it is clear that no cooperative association need expect to be granted a certificate of exemption which engages or proposes to engage in any backhaul transportation of non-farm-related commodities, no matter how incidental to, or necessary for, the performance of its primary, authorized activities of marketing farm products or furnishing farm supplies or farm business services. This intent of S. 1729 is now made clear by the specific amendment submitted by the Commission on July 14 and previously discussed.

There is one point on which we have had many calls from our members, in the provisions of the Commission bill, and I feel an obligation to mention it.

Many farmer cooperatives transport only their own goods in their trucks. To this extent they are pure private carriers. Although the language of this bill is not entirely clear, it permits an interpretation, although I do not believe it is the intent of the Commission, that even such private carrier operations could not be conducted by a cooperative association until a certificate had been obtained from the Commission. If such is the intended result, this provision would be grossly discriminatory since there is no requirement for certification as to the thousands of other private businesses who transport their own goods in their own motor vehicles.

Section 3 of this bill represents a proposed assertion of extreme bureaucratic control over an industry in which transportation is only incidental to its primary function—the marketing of crops and furnishing of farm supplies and services. In section 3 it is proposed that the Commission or its duly authorized special agents, accountants or examiners shall at all times have authority—

> to inspect and copy any and all accounts, books, records, memorandums, correspondence, and other documents of * * * cooperative associations or federations of cooperative associations holding a certificate of exemption issued pursuant to Section 204(a)(4b) of this part * * *.

This proposed grant of authority is without limitation or requirement of pertinency and would apply to "any and all" of the enumerated property of the cooperative. Under such an unlimited grant of

authority, cooperative associations holding certificates of exemption would be exposed to the hazard of interference with their business operations and infringement upon their rights to privacy by overzealous inquiries by Federal agents on matters totally unrelated to a proper exercise of the Commission's jurisdiction relating to transportation.

Moreover, we believe that any bona fide farmer cooperative in the country would, on proper request make available to an authorized representative of the Commission documentary evidence to support its qualification under the Agricultural Marketing Act definition and its compliance with the transportation requirements under section 203(b)(5).

The unnecessary and enormous costs and delays under a certification procedure as proposed by section 2 of the bill which also provides for hearings on the applications for certificates, would be completely unjustified.

SUBSTITUTE PROPOSAL BY AMERICAN TRUCKING ASSOCIATIONS, INC.

The language of the substitute proposed by the American Trucking Associations, Inc., and supported generally by the railroads and other witnesses before your committee on July 14 is even more drastic and discriminatory than the Commission proposal.

Initially, the title of the proposal "to *clarify* the exemption contained in subsection 203(b)(5) of the Interstate Commerce Act relating to agricultural cooperative" [emphasis supplied] is clearly misleading. Rather than clarifying, the proposal would drastically limit the scope of the exemption and the title should by appropriate language make this clear.

Although we believe that the U.S. Department of Agriculture in view of its experience and authorized functions is better equipped to pass judgment upon whether a "cooperative association" meets the definition in the Agricultural Marketing Act of 1929, as amended, we are just as opposed to the unjustified and useless expenditure of the taxpayers' money through the Department of Agriculture as through the ICC, or any other Government agency. The proposal for certification by the Department of Agriculture is no less objectionable than the proposal for a similar certification by the Commission because we believe there simply is no justification or need for certification by any agency. We believe the problem described before your committee, can adequately be gotten at to get the illegal operators off the road without such duplicating certification procedures.

The cost and time involved for the Department of Agriculture to determine and furnish annually to ICC a list of all the cooperative associations and federations of cooperative associations in the country which meet the definition in the Agricultural Marketing Act of 1929, would be stupendous. The proposal would require an examination of not only the corporate papers to determine organization qualifications, but also the operations of the near 9,000 agricultural cooperatives in the country, many of which do not control and operate any motor vehicles in interstate commerce.

It is important to note that the Agricultural Marketing Act definition encompasses not only how a cooperative association is organized but also how it operates. It would require a host of additional

personnel not only in Washington but in the field from the Department of Agriculture to properly discharge its responsibility in connection with furnishing such a list to the ICC annually. Before the Department could complete its examination and investigation for submission of one annual list, the work in developing another list would necessarily be underway.

The real heart of the ATA proposal is contained in the drastic and discriminatory limitation which it proposes to impose on the operations of bona fide cooperatives, as follows:

> Any cooperative association or federation of such cooperative associations whose name is contained on the approved list may engage in the for-hire transportation of farm products, as described in (6) of this section, and farm supplies used directly by the consignee in agricultural production, for non-member farmers in an amount not to exceed 50 percent of the value of transportation service rendered by such cooperative association or federation for itself or its members.

Under this provision the transportation by farmer cooperatives on the approved list for nonmembers would be limited exclusively to farm products described in section 203(b)(6) and farm supplies and even such limited transportation could be performed only for farmers. Apparently not for an association of farmers or not for anyone else in the distributive system, only for farmers.

Today under section 203(b)(6) motor vehicles of anyone, including farmer cooperatives, private carriers, motor common carriers, and railroads, can lawfully transport for hire agricultural products specified in that section without any limitation whatsoever as to quantity transported. It is a well-known fact that many private carriers and motor common carriers actually engage in extensive operations under section 203(b)(6) without any requirement for certification or any limitation on the quantity that can be hauled. Section 203(b)(6) is a "commodity" exemption and under it today motor common carriers, private carriers, railroads, and other persons can transport for hire the named commodities without regard to the identity or occupation of persons for whom such transportation is performed.

Senator LAUSCHE. Just one moment at this point. You have at this immediate time been discussing the proposal to have the Department of Agriculture certify the eligible cooperatives. That is correct, isn't it?

Mr. HARMANSON. Yes, sir.

Senator LAUSCHE. And it is your contention that under that proposal there is a purpose to change the substance of the law as it now exists in its allowance of cooperatives to carry nonmember goods and not directly related to farming?

Mr. HARMANSON. No, sir. That part of the proposal of the American Trucking Associations requiring the certification by the Secretary of Agriculture, that part is not designed, in my opinion, to cut down on the scope of the exemption as to what can be hauled as presently interpreted by the courts. It is the provision that I have quoted——

Senator LAUSCHE. You misunderstood my question. I understand one phase of it deals with certification. The next phase of it deals with what the powers shall be of the cooperatives.

Mr. HARMANSON. To haul, if they are on the list.

Senator LAUSCHE. Yes; and on page 14 it is your contention that the proposal of the ATA would narrow the scope of authority to haul.

Mr. HARMANSON. Yes, sir.

Senator LAUSCHE. My question now is, does the original bill narrow the scope, that is, S. 1729, does it narrow the scope of authority to haul?

Mr. HARMANSON. It specifically narrows the scope of the haul with the amendment that the Commission proposed to this committee on July 14.

Senator LAUSCHE. Now let's get it summarized.

The original bill did not narrow the authority to haul?

Mr. HARMANSON. Not directly.

Senator LAUSCHE. Now just one moment. Not directly, but the amendment that was offered while the bill was being heard does narrow?

Mr. HARMANSON. Yes, sir.

Senator LAUSCHE. Now we finally get to the ATA proposal, and you contend that also narrows the authority?

Mr. HARMANSON. The scope; yes, sir.

Senator LAUSCHE. You may proceed.

I asked the witness from the Department of Agriculture yesterday, I believe, whether there was a purpose to change the substance of the authority to haul and my recollection is that he answered that there was no proposed change. Proceed.

Mr. HARMANSON. I am sorry to have taken so much time, Mr. Chairman. Just let me proceed to the bottom of page 14.

Here the ATA proposes to pick out farmer cooperatives of the country as the only businesses which would be limited by statute in transportation of agricultural commodities as defined by section 203(b)(6) by permitting such transportation only when performed for farmers. I am repeating a point I previously made. To compound the discrimination such limited transportation by bona fide farmer cooperatives would further be limited to 50 percent of the value of transportation service rendered by the cooperative or federation for itself or its members. This in effect represents an arbitrary reduction of the permissible maximum nonmember business from 50 percent of the total as now provided in the Agricultural Marketing Act to 33⅓ percent of the cooperative's total business and the basis for the computation as now provided in the statute would also be limited by this proposal.

It should be noted that these proposed discriminatory limitations are not aimed at illegal operators but directly at bona fide farmer cooperatives whose names appear on the USDA approved list.

In summary, we emphasize the council's continuing willingness to cooperate in constructive efforts to eliminate abuses and illegal operations attempted under this exemption. At the same time the council shall continue to oppose all such proposals as those before your committee designed to impede bona fide farmer cooperatives in performing their authorized functions.

Senator LAUSCHE. Thanks very much for your presentation. I think I have asked the questions that I wanted to, so that will be the conclusion of your statement.

Mr. HARMANSON. We appreciate very much, Mr. Chairman, the opportunity to present the council's views to you.

(Appendixes follow:)

APPENDIX I

INTERSTATE COMMERCE ACT, PART II, SECTION 203(b)(5)

Section 203(b): "Nothing in this part, except the provisions of section 203 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include. . . . (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;"

APPENDIX II

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 per centum 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 III

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D.C., July 9, 1959.

Re "Cooperative Association" Exemption in Section 203(b)(5) of the Interstate Commerce Act, Part II.

Mr. HERBERT QUALLS,
Director, Bureau of Motor Carriers,
Interstate Commerce Commission, Washington, D.C.

DEAR MR. QUALLS: I am enclosing a copy of a report adopted by the Executive Transportation Committee, one of the standing committees of the National Council of Farmer Cooperatives, at a meeting of the Committee on May 15, 1959, with respect to the captioned matter. I concur fully with this report and the purpose of this letter is to effectuate that recommendation in the report to apprise the Commission of the Council's long-standing policy position of preserving this exemption as clearly intended by Congress in order to provide for the essential transportation needs of farmers through their cooperatives.

It seems to us that the scope of this exemption as stated in the statute, supplemented by the legislative history accompanying its enactment is quite clear. There appears to be only one possible major point that needs administrative clarification. That is the point of whether an agricultural cooperative meeting the statutory definition must as to any transportation service in its own trucks within the 50% nonmember business that may be transacted, haul products which (1) *exclusively* or (2) *primarily* come within one of the authorized types of activities set forth in the statute. Our position on this point is set forth under Item 2 on Page 2 of the report and is fully supported, we believe, by Ruling No. 91 of July 17, 1940, subparagraph 5, by the Bureau of Motor Carriers containing this sentence: "The business must be *primarily* that of farmers acting together in market-

ing farm products and/or furnishing farm supplies and farm business service." (Italics supplied.)

The Council, which has approimately 50% of the approximately 10,000 "farmer cooperatives" in the country represented in its membership, does not seek or desire that farmer cooperatives be permitted to haul for others than its members or other patrons, except to the extent sanctioned by the statute. We do, however, insist that the statutory right to render a transportation service in trucks controlled and operated by qualified agricultural cooperatives be fully preserved in order to provide for the essential transportation needs of farmers through their cooperatives. Since some time at best, will be required for a decision by the Commission in the pending cases involving this exemption, we feel that it is in the interest of all parties concerned and sound administration for the Bureau of Motor Carriers to remove so far as possible the present doubt and controversy that is alleged to prevail in some sections of the country as to the scope of this exemption, by issuing promptly for public guidance the basic rules or criteria to be followed under present law for qualification under Section 203(b)(5) of the Motor Carrier Act. The farmers' business through their associations' trucks must go on from day to day and they are entitled to know from the responsible administrative agency the basic rules for compliance with the law.

Since the latest known ruling or regulation promulgated by the Bureau of Motor Carriers for the administration of this particular exemption was issued almost 20 years ago, it seems to us essential in the light of the present controversy that the Bureau of Motor Carriers issue promptly some authoritative ruling for current application as to the scope of this exemption without awaiting a decision in pending cases. This should be helpful in eliminating abuses and preventing unqualified organizations from engaging in transportation under the guise of the "exemption" to the extent that any such activity may exist.

If you should desire additional evidence other than that cited in support of our position that a proper interpretation of the statute will permit some incidental hauling of products other than those coming within the scope of the specifically authorized activities as set forth under Item 2 on Page 2 of the enclosed report we shall be glad to furnish it on request.

I am designating a copy of this letter for the information of the Chairman of the Commission and those Commissioners presently comprising Division 1, which I understand has supervision over motor carrier activities.

Sincerely yours,

HOMER L. BRINKLEY,
Executive Vice-President.

REPORT OF SPECIAL COMMITTEE ON "COOPERATIVE ASSOCIATION" EXEMPTION

(SEC. 203(b)(5) OF THE INTERSTATE COMMERCE ACT, PART II—ADOPTED BY EXECUTIVE TRANSPORTATION COMMITTEE OF THE NATIONAL COUNCIL OF FARMER COOPERATIVES, MAY 15, 1959)

The Executive Transportation Committee at its meeting on May 14–15, 1959, has given careful consideration to the current problems incident to alleged abuses under Section 203(b)(5) of the Interstate Commerce Act, Part II, commonly referred to as the "cooperative association" exemption. Representatives of the U.S. Department of Agriculture, the American Trucking Association, Inc., and the Bureau of Motor Carriers of the Interstate Commerce Commission, have appeared before the Committee by invitation and presented their views with respect to these problems.

There are some important questions involved in these problems which suggest the need for prompt clarification of the issues on behalf of the agricultural cooperatives of the country. The following points are noted:

1. There are two complaint cases MC–C–2488 and MC–C–2488 Sub 1, and an investigation proceeding MC–C–2576 presently pending before the Commission involving a determination of qualification for exemption from economic regulation under Sec. 203(b)(5) of the Interstate Commerce Act, Part II, and a possible interpretation of the scope of the exemption in such Section.

2. The principal case law applicable to this exemption is the decision in the case *Interstate Commerce Commission* v. *Jamestown Farmers Union Federated Cooperative Transportation Association*, C.C.A. 8th, 151 F. 2d 403 (1945), affirming 57 F. Supp. 749.

3. Since the enactment of the Motor Carrier Act in 1935, containing this exemption, as later amended, the only known ruling or regulation promulgated with respect to it by the I.C.C. or any of its Bureaus, was Ruling No. 91, dated July 17, 1940.

4. We believe that under the wording of the "cooperative association" exemption, and the legislative history accompanying its adoption as interpreted by the Courts to date, the I.C.C. can and should exercise its administrative responsibility and authority so as to preserve the exemption from economic regulation for motor vehicles controlled and operated by cooperative associations meeting the definition in the Agricultural Marketing Act of 1929, as amended, by denying the claim to such exemption to any organization or business enterprise not meeting such definition. The responsibility and authority should be exercised vigorously and promptly to prevent operations under the guise of the exemption by those who do not qualify under the provisions of the statute.

It is the considered judgment of this Committee that qualification for the "cooperative association" exemption in existing law as judicially interpreted to date includes the following:

1. The motor vehicles must be *controlled* and *operated* by a cooperative association meeting the requirements of the statutory definition (Sec. 203(b)(5)).

2. The association must be one in which farmers act together:

(1) in marketing farm products and/or furnishing farm supplies and/or farm business services as their primary or predominant activity (See Jamestown Decision and Bureau of Motor Carriers Ruling #91, July 17, 1940).

The handling of some transportation business not qualifying as a strictly farm business service which is merely incidental to the authorized primary activity is still within the scope of the exemption (see statements of Congressman Jones, sponsor of the exemption amendment—*Congressional Record*, Vol. 79, part II, page 12218, July 31, 1935).

(2) For their mutual benefit as provided in the statute.

3. The association allows each member only one vote regardless of the amount of stock or capital owned by the member and/or does not pay dividends on stock or membership capital in excess of 8 percent (Agricultural Marketing Act of 1929, as amended).

4. 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 the association with or for members.

The Committee, therefore, recommends that Council officials take appropriate and timely action to apprise the Commission of the Council's long-standing policy position of preserving this exemption, as clearly intended by Congress, to provide for the essential transportation needs of farmers through their cooperatives.

It is further recommended, that the Council officially apprise the Secretary of Agriculture of the importance of this matter to the thousands of farmer cooperatives throughout the country and urge that the Department under its statutory authority actively participate in proceedings before the Commission and take such other action as may be appropriate to preserve, without impairment, the intended scope of the exemption for agricultural cooperatives.

INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS,
Washington, July 17, 1959.

Mr. HOMER L. BRINKLEY,
Executive Vice-President, National Council of Farmer Cooperatives,
744 Jackson Place NW., Washington 6, D.C.

DEAR SIR: I have your letter of July 9, 1959 and the report of the Council's Executive Transportation Committee concerning abuses of the "cooperative association" exemption in Section 203(b)(5) of the Interstate Commerce Act. You ask that this Bureau issue an administrative ruling stating its current position as to the scope of this exemption, particularly with respect to the transportation that may be rendered for non-members.

As you know, there are pending before the Commission certain proceedings which involve the lawfulness of operations conducted by an organization purportedly operating under this exemption. It is expected that these cases will be set for hearings before too long and that they will provide formal answers regarding the questionable features of the exemption. In view of this we believe that no new ruling to supplement existing Ruling No. 91 should be issued at this time.

You have received a copy of my remarks made before the Central Area Shipper-Motor Carrier Conference at Fort Wayne, Indiana, on June 11, 1959, in which this exemption was discussed in some detail. Those comments represent the informal views of the Bureau as to the scope of the exemption.

Very truly yours,

HERBERT QUALLS, *Director.*

APPENDIX IV

Freight Revenue and Tons of Freight Hauled of Seven Class I Motor Carriers

The information concerning the freight revenue and tons of revenue freight carried in intercity service of the seven Class I motor carriers which follows was abstracted from their respective Annual Report Form A's, for the years indicated, which are on file with the Interstate Commerce Commission, Washington, D.C.

BRADY MOTORFRATE, INC., DES MOINES, IOWA, ICC DOCKET NO. 52110

Year	Freight revenue intercity common carrier	1961 equals 100 percent	Tons of revenue freight carried in intercity service	1961 equals 100 percent
1961	9,056,031	100.0	426,584	100.0
1962	9,153,680	101.1	408,336	95.7
1963	8,818,111	97.4	387,204	90.8
1964	12,754,242	140.8	582,520	136.6
1965	14,421,334	159.2	632,264	148.2

FROZEN FOOD EXPRESS, DALLAS, TEX., ICC DOCKET NO. 108207

1961	7,945,213	100.0	228,378	100.0
1962	8,149,484	102.6	221,926	97.2
1963	8,748,441	110.1	240,568	105.3
1964	9,379,891	118.1	249,135	109.1
1965	9,654,799	121.5	257,847	112.9

MIDWEST COAST TRANSPORT, INC., SIOUX FALLS, S. DAK., ICC DOCKET NO. 111812

1961	7,625,519	100.0	204,916	100.0
1962	7,651,045	100.3	213,643	104.3
1963	8,593,153	112.7	237,402	115.9
1964	10,066,130	132.0	274,913	134.2
1965	10,444,137	137.0	288,747	140.9

REFRIGERATED TRANSPORT CO., INC., ATLANTA, GA., ICC DOCKET NO. 107515

1961	5,413,962	100.0	183,219	100.0
1962	6,334,721	117.0	233,786	127.6
1963	7,118,260	131.5	267,060	145.8
1964	9,263,462	171.1	357,051	194.9
1965	8,595,283	158.8	305,768	166.9

SAFEWAY TRUCK LINES, INC., SOUTH BEND, IND., ICC DOCKET NO. 110193

1961	6,898,656	100.0	228,506	100.0
1962	6,427,794	93.0	218,042	95.4
1963	5,917,219	86.0	194,517	85.1
1964	7,972,886	115.5	278,413	121.8
1965	11,256,156	163.2	376,177	164.6

WATKINS MOTOR LINES, INC., THOMASVILLE, GA., ICC DOCKET NO. 95540

1961	7,980,212	100.0	253,640	100.0
1962	9,063,742	113.6	294,680	116.2
1963	11,279,099	141.3	368,650	145.3
1964	11,559,883	144.8	[1] 309,004	119.5
1965	11,755,731	147.3	422,905	166.7

ZERO REFRIGERATED LINES, SAN ANTONIO, TEX., ICC DOCKET No. 110098

1961	1,722,427	100.0	43,227	100.0
1962	1,783,146	103.5	43,889	101.5
1963	1,894,295	110.0	49,169	113.7
1964	2,094,476	121.6	57,993	134.2
1965	1,842,188	107.0	51,040	118.1

[1] Tonnage decrease not explained. Figure may be error in view of freight revenue increase for year.

Senator LAUSCHE. Mr. Churchill, if you will come forward, please.

STATEMENT OF RICHARD T. CHURCHILL, SECRETARY AND GENERAL COUNSEL, AGRICULTURAL TRANSPORTATION ASSOCIATION OF TEXAS; ACCOMPANIED BY JACK R. COBB, GENERAL MANAGER

Mr. CHURCHILL. Mr. Chairman, my name is Richard T. Churchill. I am secretary and general counsel of Agricultural Transportation Association of Texas, Fort Worth, Tex., also known as ATA of Texas. With me here today is Mr. Jack R. Cobb, general manager of ATA of Texas on my right.

We are here today to present the position of our association with respect to S. 1729 as well as the amendment suggested by John W. Bush, chairman, on behalf of the Interstate Commerce Commission, and the amendment proposed by the American Trucking Associations, Inc. Previous witnesses for the proponents of S. 1729 have testified concerning ATA of Texas and its operations, and we desire to correct certain inaccurate statements and misconceptions left in the record.

As a prerequisite to the statement of our position on the bill, ATA of Texas is not, as has been alleged by many prior witnesses, a "phony" or "sham" cooperative, nor has it attempted to engage in "unrestricted for-hire transportation of general commodities" under the partial exemption of section 203(b)(5) of the Interstate Commerce Act. Neither is ATA of Texas the "successor" or "a continuation" of Agricultural Commodity Service—which was ordered by the ICC to cease and desist operations in 86 MCC 5 (1961)—and it was expressly found to the contrary by Examiner Shoup in his report in MC–C4028 at page 22.

ATA of Texas was chartered under the Texas Marketing Act and has at all times been operated as a nonprofit membership association without capital stock. It now has 54 registered members, all of whom actively use the services furnished by the association. The members include more than 20 old-line bona fide agricultural cooperatives, most of whom are themselves members of banks of cooperatives in their respective area of the United States.

The remaining members are all producers of agricultural products. Two-thirds of the present board of directors of ATA of Texas are either officers or key management personnel in other large agricultural cooperatives which are themselves member of ATA.

The remaining directors are substantial independent producers of agricultural products.

The board of directors meet regularly to fix operating policy for the cooperative, to investigate and approve all applications for membership, and to review and approve reports from the staff.

ATA of Texas presently has and has had for some time pending applications from a number of qualified producer members which have not been approved by the board of directors because the cooperative does not, in the board's opinion, have sufficient equipment to furnish the marketing services needed by existing members and still serve the new members also. All operations of the cooperative and decisions of the board of directors are reviewed by the members in annual meeting each year. ATA of Texas has declared and paid

67–566—66——17

a patronage refund to its members each year since the fiscal year 1962–63. These patronage refunds, which consisted of the entire net margins each year, were:

For the year 1962–63 series—$30,271.46 on $2,406,802 gross revenue; 1964 series—$52.000.22 on $3,241,462 gross revenue; 1965 series being the most recent one—$35,352.61 on $3,333,039 gross revenue.

We might interpolate this was adjusted for a change in the bylaws. Previously all of the patronage refunds had been paid to all patrons of the cooperative. There was a change in 1964 in the bylaws of the association and thereafter, all patronage refunds were paid directly to members only. Any net margins earned as a result of nonmember traffic or services used by nonmembers of the cooperative was reported as earned income to the Internal Revenue Service and the applicable income taxes were paid and reported thereon.

ATA of Texas presently operates about 65–70 units in conducting its marketing services, and the size of its fleet has not varied substantially for the past 3 years, even though its members have had need for additional equipment and would use it if available through the cooperative. With this fleet, ATA of Texas has performed many highly specialized services for its members during the past 4½ years. Prior witnesses before this subcommittee have asserted that ATA of Texas is guilty of doing certain things:

1. Lowering rates and upsetting the rate structure in the industry;
2. Creamed off only high revenue full truckloads;
3. Refused to accept LTL shipments or traffic they do not want;
4. Operates without a sales department or traffic department;
5. Requires the shipper to tender it a predetermined number of loads to preset destinations each week.

These were things which the witnesses testified here regarding ATA of Texas and also indicated was illustrative of other cooperatives which they claimed to be sham or bogus cooperatives.

Let's examine the facts and see if this actually exists. First, the allegation concerning destructive rate cutting. ATA of Texas as an agricultural cooperative operating interstate only, under the partial exemption of section 203(b)(5) of the Interstate Commerce Act, is not subject to economic regulation by the ICC; however, its rates must still be set at a compensatory level, otherwise its patrons and members would have to be assessed periodically to make up deficits in its operating costs.

ATA of Texas has voluntarily limited all of its transportation services to the movement of fresh, frozen, and semiprocessed food items principally for its members, and only incidentally for nonmembers.

It has not, Mr. Chairman, hauled the type of commodities, regulated commodities, which have been described by prior witnesses in connection with certain other cooperatives, for example some of the items that were questioned in the *Northwest* case: some machinery wire, tools, tires, items like this and the same thing in the *Cache Valley* case.

To this end, it has equipped its fleet with the most modern, efficient, highly specialized equipment available and has tailored its services to meet the special marketing needs of its various members.

The fact that the cooperative has been able to coordinate the marketing needs of members in one area of the country with the marketing needs of other members in another area of the country has enabled it to effect savings in its operating costs.

Also by using the most modern and efficient equipment, including foamed-in-place trailers, it has been able to provided 36,000 and 38,000 pound minimum weight rates to its members at a time when all other motor carriers were quoting 27,000 and 31,000 pound minimum weight rates as their largest minimum.

Of course, the larger minimum further effected a rate savings, all of which has been passed on by the cooperative to its patrons in the form of lower rates and patronage refunds.

Contrary to the charges that have been made, the lower rates charged by ATA of Texas—where the rates are in fact lower—for its services are the results of better planning and more efficient operations, larger minimum weights per truckload, cooperative member cooperation in the scheduling of loads, weights, loading times, delivery times, as well as pool loading by members, and not, we insist, because of a cutting of rates simply to acquire business.

For example, I might interpolate through cooperation of the members and ATA of Texas, provisions have been made many times for night loadings, after-hour loadings for after-hours unloading, for loading and unloading on Sundays and Saturday afternoons which has expedited movement of the equipment, has expedited delivery loads and thereby has cut the costs of the movement. This would only be possible through a very close and intimate relationship between the member and the carrier.

Any comparison of rates charged by ATA of Texas for its services, and those charged by other motor carriers operating in the same areas and with the the same commodities, will reflect that the rates of ATA of Texas are in many instances equal to those of the regulated carriers, or are within 10 cents per hundredweight thereof, except in a few isolated areas where ATA of Texas' operating circumstances afford greater savings.

As a matter of fact most of the rates, Mr. Chairman, are within pennies of or equal to the motor carrier rates, the average motor carrier rates for the commodities in the area in which it moves.

They are necessarily negotiated rates, however, directly between the cooperative and its members, and its patrons.

The often repeated charge that the "coops are creaming off only the high revenue full truckload" shipments is likewise not applicable to ATA of Texas. It is true that most of the loads transported by ATA of Texas are full truckloads, however, this is not the result of any "creaming off" rather it is the end result of careful planning and organization by the cooperative with its member-shippers to move their loads in the most economical manner possible and many times, is also because of pooling of two or more members' shipments so as to give both the advantage of a full truckload rate.

It is true that ATA of Texas does not have any sales staff or department as such, and the reason for this is the fact that ATA of Texas is not in the general transportation business, does not hold itself out to be so engaged and therefore has no need for a sales department as such. In addition, every employee of the cooperative, all of the directors, and even the members are themselves the best sellers of the cooperative's services whenever possible.

We might interpolate there the cooperative in fact turns down as much freight as it moves. And it does not have to solicit, most of this is brought to it and it has an opportunity to accept it if it has equipment available from its members.

So that if the cooperative was interested in creaming off only the top freight, if it was interested in only dealing in a general transportation industry, it would have two or three times the amount of the equipment that it has today and it would be accepting this tendered freight trying to make the fastest buck possible and get out. It is not doing this.

ATA of Texas does have a traffic and dispatch department. It has four full-time employees who work very closely with all of its members in scheduling their marketing needs. These men are on call 24 hours a day and are personally acquainted with and have vested many of the personnel and most of the needs of the shipping departments of the members of ATA of Texas. And with this closeness they are able to effect further savings and further efficiencies.

ATA of Texas does accept LTL shipments and has always done so in its efforts to best serve its members. Not only does the cooperative accept LTL shipments from its members but it does so without imposing an impossible LTL charge since it only charges 25 cents per hundredweight additional rate so as not to penalize those members who must from time to time use LTL service.

Because of the higher incidence of LTL loads in the Florida area, ATA of Texas provides its members with a special LTL truck per week each week, to pool and deliver LTL shipments.

Also it has worked with many of its members in all areas of the country to provide them with a multiple pickup and/or drop service—with only a nominal charge of $12.50 per drop over four, in other words, first four drops are free, with no extra charge, which has permitted its members to reach market outlets which can not take truckload shipments and which would not justify the high penalty rate charged for such service at the common carrier rate. By furnishing this multiple pickup and drop service to its members, ATA of Texas has assisted them in building such small accounts into accounts which can take split loads or even full loads after a period of time after the market has been developed by the initial small deliveries.

In addition, ATA of Texas has pioneered the development of a "truck in transit" program for a federated cooperative member on the west coast for deliveries throughout the Midwestern United States. Such program is now a success although it operated at a loss during the first year, at only a breakeven basis for the second full year and now shows a slight excess of income over expenses for the third full year.

At the time ATA of Texas originated this intransit program, no other carrier offered a similar service and indeed, this particular member could not obtain the required service from any other single line carrier and the entire marketing program they put together would have failed but for the specialized services of ATA of Texas.

Of course, ATA of Texas does not offer such LTL service or intransit service to the general public because it is not in the general transportation business and has no intention or desire to become so engaged, notwithstanding the assertions of prior witnesses before this subcommittee to the contrary.

Neither does ATA of Texas require its members or patrons to tender it a predetermined number of loads each week to preset destinations,

even if it could be done which is sincerely doubted. What it has done is to plan very closely with its members for the most efficient utilization of equipment consistent with quality service and minimum delay so as to achieve the greatest savings possible in shipping costs. This in turn has led to development of a marketing pattern by the various members which indeed does repeat itself from week to week and very well may give the appearance to outsiders who do not know the true facts that ATA of Texas has in fact succeeded in telling its shippers when, where and how many loads they can ship. Unfortunately, this utopia has not been achieved by ATA or anyone else to my knowledge.

Again, ATA of Texas was the first to offer all of its members in the central citrus-producing section of Florida a uniform rate to the same interstate destinations, without favoring those members on the north edge of the area over those located on the southern edge of the area. Historically there had been a difference in the rate charged there on the north edge, which was less than that charged with the members producing on the south edge. Although shippers from that area had attempted in vain for years to secure such an equal basis from other motor carriers in the area.

The above recitation of the true facts regarding ATA of Texas and its operations, which are those of a bona fide agricultural cooperation owned and controlled by its members, does not alter the fact that there are operating today a number of "phony" or "psuedo" cooperatives who do not even pretend to operate as a true cooperative other than to claim the right to use the partial exemption of section 203(b)(5) of the act.

The officers and directors of ATA of Texas know this and have at all times attempted to work with the local field offices of the ICC and to keep such offices advised of the formation, operations, and personnel of such "sham co-ops." ATA of Texas has gathered information from time to time both on its own motion and at request upon Iowa Cooperative Association; Nelson Cooperative Association; Chatsworth Cooperative Marketing Association; California Marketing Association; International Marketing Association; and American Farm Lines Coop; All American Association among others and made it available without cost to the Fort Worth office of the ICC, yet this office advises ATA of Texas that it has not been authorized by Washington to take any action against such "sham" organizations, except in the case of Iowa Cooperative Association, Chatsworth Cooperative Marketing Association, and Nelson Cooperative Association.

In each instance, the Commission succeeded in getting an injunction against further operations of the alleged cooperative under existing laws based on the finding that none of the three was a cooperative in fact. In each instance, the desired injunction was secured by a minimum of delay and was certainly effective to prevent the principals involved from once more engaging in unlawful for-hire carriage.

Mr. Chairman, in that connection, the officers and director of ATA of Texas have recently advised the Fort Worth ICC office of the formation of the All American Association, which one or two of the witnesses on July 14 adverted to in their testimony as being a new cooperative and perhaps a spinoff from ATA of Texas. It is not a spinoff, although some of the principals involved therein are former employees of ATA of Texas. And as a part of the effort to assist in the control of these phony cooperatives, ATA of Texas gathered

information, including certified copies of the articles of incorporation, a list of equipment, list of the directors, a list of the alleged members, and an independent investigation of each and every one of these members by ATA of Texas and furnished all of this information without charge to the ICC office in Fort Worth, showing them that only 1 of 12 alleged members had in fact actually signed up with All American Association and giving them a breakdown of the loads that had bee 1 hauled, to our knowledge, up to that time.

The office in Fort Worth advised the officers of ATA of Texas that they could not do anything with this information, which had been furnished to them and which we submit certainly showed a prima facie case of an unlawful and sham or phony cooperative. They said that it would do them no useful purpose to write this up and to furnish this information to the Washington office of the ICC because they would not follow through on it, it would not back them up.

This was the information that had been furnished to us within the past several weeks.

This is why the Commission would come before this subcommittee and claim that it does not have the power or the tools to effectively police this exemption when information has been furnished free of charge to them and detailed information which, in our opinion, was sufficient to show that there was in fact operating a phony or sham cooperative and yet nothing was done with the information and no action to our knowledge has been taken up to and including today against this association.

In those cases where a new organization commences operation under the cooperative exemption and the Commission's initial field investigation indicates that the organization is not a true cooperative, then the Commission certainly has the tools at hand; namely, a civil injunction action through the Federal district court, to effectively and quickly police such operations in our opinion.

Also they have, we feel, under subdivision 204(c) of the Interstate Commerce Act—the authority to investigate either upon complaint, or without complaint, and complaints usually are not slow in forthcoming and the Commission I think was frank to admit this in its testimony. They will get notices of organizations of these new associations within days of the fact that they have been organized and I find nothing, Mr. Chairman, in section 204(c) of the Interstate Commerce Act which requires the Commission to have a prima facie case before it can investigate. As a matter of fact, a reference to the particular statute will show that if after investigation by the Commission it finds that the particular cooperative or the particular investigation is not required, it may simply dismiss it.

So there is no provision, I feel that it is an administrative requirement set up by the Commission in its judgment or discretion that it have a prima facie case before it proceeds with an investigation or institutes an investigation, either on its own motion or upon complaint. But there is nothing in the act as written by Congress which requires this.

And certainly under section 205(d), having instituted any type of investigation, either upon complaint or on its own motion, the Commission has full power to examine all pertinent records without any further authority from Congress. And if it has any difficulty in securing such investigational records, it has an open avenue to go

right into the Federal district court in the area and secure subpena powers in addition to that through a civil action in the Federal court to compel the production of testimony, records, witnesses, et cetera.

Senator LAUSCHE. Through what type of action?

Mr. CHURCHILL. This would be through an injunction action or through an action to compel the production of testimonies and the discovery rules of the Federal rules of——

Senator LAUSCHE. An action to compel the production of testimony?

Mr. CHURCHILL. Yes, sir.

Senator LAUSCHE. Are you speaking of the common law action of discovery or are you speaking about statutory procedures?

Mr. CHURCHILL. This would be common law discovery procedures.

As a result of this we are not persuaded by the Commission's and proponents' expressed view that it—the Commission—is hampered or powerless to effectively deal with the actual "sham" or "phony" cooperatives. We feel that a more energetic application and use of the tools already available and at hand, by the Commission, would go far to solve the problem of the "pseudo co-ops" today without the necessity of hamstringing or tying the hands of legitimate cooperatives who are using the so-called cooperative exemption.

Nevertheless, ATA of Texas desires to go on record as favoring a proper type of certification of agricultural cooperatives as a prerequisite to their being entitled to use the cooperative exemption, as we see many advantages which could flow from such certification and at this time relatively few disadvantages to the bona fide cooperative.

We differ, however, in the manner and method of such certification. First, we submit that the Department of Agriculture is the proper agency to be charged with the duty and responsibility for determination of eligibility to certification, and to this extent we agree with the proposal of the American Trucking Associations, Inc. This agency has for years dealt with the same basic questions which would be involved in such a determination of eligibility and could draw upon its long experience and knowledgeable personnel to efficiently, economically, and fairly discharge the task of certification.

After certification, if it should become law, we feel that the Interstate Commerce Commission should be charged with policing the use by such cooperatives of the exemption and we would not object to the Commission having the limited right to inspec the books and records of the cooperative for the purpose of determining that the cooperative was in truth and fact controlling the motor vehicles and that the cooperative was in fact performing more services for its registered members than for nonmembers, provided they did not use this for a fishing expedition, or attempt to harass, if it was found to be a bona fide operation.

In this connection, Mr. Chairman, we might say that in connection with all of the operations of ATA and its confrontation with the ICC and the investigation proceedings, they came to us and asked to see our records. We furnished them to them, every single record, in fact, made duplicate copies of all requested records without cost and submitted them to them. And we have always done this and we know, as prior witnesses have testified yesterday, of no single cooperative which has held itself out to be a bona fide cooperative which has not cooperated with the Commission in every instance.

I know of only one instance that has come to my knowledge in the past 5 or 6 years in which a cooperative or alleged cooperative refused

to give any records whatever, and this was the Nelson Cooperative which has since been put under injunction and put out of business by the Commission.

As a part of these records that we furnished to them, there was a true and complete copy of all bills of lading from the first shipment which ATA moved up to the inclusion of the investigation.

We would, however, object to the recommended amendment suggested by the Commission which seeks to restrict the exemption solely to transportation of "farm products, farm supplies, and farm-related traffic" for the same reason that Mr. Harmanson previously testified to, which has been the Commission's desire since the exemption was first adopted by Congress. To so limit the exemption would create uncertainty and multiplicity of litigation over definition of the terms used in the amendment and, further, would be the first step in the complete nullification of the exemption, which, after all is said, is, we submit, the real but unannounced purpose of the proponents.

For the same reasons, we oppose the alternate proposal advanced by the American Trucking Associations, Inc., insofar as it attempts to restrict the scope of the present exemption for hire transportation solely to transportation of farm products as described in section 6; that is, exempt list commodities, and to farm supplies used directly by the consignee in agricultural production. This latter proposal would render the exemption useless to most if not all cooperatives because of the very nature of the limits as well as the economics involved in such severely limited transportation.

For example, under the amendment proposed by both the Commission and by the American Trucking Associations, Inc., in our opinion, for example, Sunkist, Inc., could not market its members orange or lemon juice in frozen concentrate form even though Sunkist was using motor vehicles owned or controlled by the cooperative, since frozen orange or lemon concentrate is not an exempt-list commodity.

In conclusion, although ATA of Texas is not one of the "sham" or "bogus co-ops" adverted to by all of proponents' witnesses and as mistakenly assumed by them, ATA of Texas recognizes the existence of many such "pseudo co-ops" and the reasonable probability that many more will be organized the time ahead.

We might add at this time we do not feel the *Northwest* case as such, Mr. Chairman, will open the floodgates for formation of these additional phony or bogus or pseudo cooperatives because we personally feel that the *Northwest* case simply reiterated the existing law which had been laid down by the *Jamestown* case quite a number of years ago and which merely expanded and gave a few more definite guidelines to what the law, as we understood it, had already been laid out by the circuit court.

For this reason, ATA of Texas favors a reasonable certification provision being added to section 203(b)(5) to be performed by the Farmer Cooperative Service of the USDA and with the ICC to police the use of such exemption by certified cooperatives with a limited authority to check the cooperatives' records to see if they were complying with the limitation on nonmember services and maintaining the cooperative form of operation.

We would oppose all other and further attempts to nullify or make meaningless the cooperative exemption through limitation of com-

modities that might be transported or limitation of persons who might receive nonmember services.

Thank you for giving me the opportunity to appear.

Senator LAUSCHE. Mr. Churchill, how long has ATA of Texas been in existence?

Mr. CHURCHILL. About 5 years, Your Honor. It started—it was organized in the late fall of 1961. It started operation——

Senator LAUSCHE. How long have you been associated with it?

Mr. CHURCHILL. Since that time, sir. I have been counsel for them since organization.

Senator LAUSCHE. Are there officials of ATA of Texas at present, individuals who were officials of a farm cooperative that was dissolved through the efforts of the ICC?

Mr. CHURCHILL. No, sir. There is not and never has been. None of the officers or directors of ATA of Texas was ever connected with or officially affiliated with Agricultural Commodity Service in any executive capacity whatever.

Senator LAUSCHE. You say none of the officers were ever connected with an alleged farm cooperative that was dissolved by the ICC. Do you have individuals connected with it that are not officers which were associated with such an alleged farm cooperative?

Mr. CHURCHILL. We have or had and still have, I believe, one or two employees which were employees of Mr. Cobb at the time that he worked for this Agricultural Commodity Service for about a 6 months' period of time.

Senator LAUSCHE. Where was Agriculture Commodity Service located?

Mr. CHURCHILL. It was an Illinois corporation and had——

Senator LAUSCHE. Do you recall when it was dissolved?

Mr. CHURCHILL. It was dissolved sometime during the year 1962. It ceased operations, in my understanding, in the spring of 1962.

Senator LAUSCHE. And when did ATA come into existence?

Mr. CHURCHILL. It came into existence in the fall of 1961, sir, several months before ACS actually ceased operations.

Senator LAUSCHE. Who were the moving forces that brought ATA into existence? Who was the leader of the movement?

Mr. CHURCHILL. Mr. Cobb was one of the men.

Senator LAUSCHE. Was Cobb connected with the farm cooperative that was dissolved?

Mr. CHURCHILL. He was an employee of it for about a 6-month period of time, sir. And he had voluntarily left the cooperative.

Senator LAUSCHE. And he was located in Illinois?

Mr. CHURCHILL. No, sir; he had never worked in Illinois for them. He was located in Fort Worth, and was operating out of an office that they had for a period of time at Fort Worth. He was an employee. He was never an officer, director, had no management authority in the cooperative whatever.

Senator LAUSCHE. Now, in addition to him, what other persons were connected with this dissolved cooperative?

Mr. CHURCHILL. I believe, sir, there was a secretary who worked in the Fort Worth office directly for Mr. Cobb and one or two men who assisted him in the operation of the vehicles.

Senator LAUSCHE. Were they the moving forces in bringing ATA of Texas into existence?

Mr. CHURCHILL. No, sir; the moving forces, actually, were independent farmers and ranchers in the State of Texas.

Senator LAUSCHE. What was the part of these several men? What did they have to do with it?

Mr. CHURCHILL. They were the actual incorporators and initial directors and officers of the association, sir.

Senator LAUSCHE. They were the designers of the plan, being the initial incorporators, they were the most important individuals, weren't they?

Mr. CHURCHILL. Yes, sir.

Senator LAUSCHE. Then there was a relationship between this dissolved Illinois farm cooperative and the organizers of the ATA of Texas?

Mr. CHURCHILL. No, sir. I believe you misunderstood me, Senator. The organizers and first directors and officers of the association were independent farmers and ranchers in the State of Texas who had had absolutely no contact in any way, form, or fashion with the prior cooperative, Agriculture Commodity Service.

Senator LAUSCHE. Why were these several men that were connected with Agriculture Commodity Service chosen to be the incorporators?

Mr. CHURCHILL. They were not. You have confused it, Senator. They were not chosen. That is what I said. The only people that had any connection at all were a few employees who had worked in the Fort Worth office in simply administrative positions, such as secretary and a dispatcher.

Senator LAUSCHE. Well, were you an incorporator, Mr. Cobb?

Mr. CHURCHILL. He was one of the incorporators.

Senator LAUSCHE. Were you connected with——

Mr. CHURCHILL. With Agriculture Commodity Service?

Senator LAUSCHE. Yes, sir.

Mr. CHURCHILL. He was an employee.

Mr. COBB. Only an employee.

Mr. CHURCHILL. Employee for about 6 months.

Senator LAUSCHE. Why do you distinguish between connected and an employee?

Mr. CHURCHILL. Because, sir, if——

Senator LAUSCHE. What were you, Mr. Cobb?

Mr. COBB. I was an employee.

Senator LAUSCHE. In what capacity?

Mr. COBB. As manager of the Fort Worth office.

Senator LAUSCHE. And how long were you the manager?

Mr. COBB. Six months, approximately.

Senator LAUSCHE. Were you familiar with the fact that the ICC was proceeding against the Illinois alleged cooperative?

Mr. COBB. That is the reason that I got out; yes, sir.

Senator LAUSCHE. And that is the reason you got out and you got out before the dissolution was effected?

Mr. COBB. Yes, sir.

Senator LAUSCHE. Now, then, what part did you play? Were you an incorporator of ATA of Texas?

Mr. COBB. Yes, sir; but we started that back in 1961. We started organizing it back in 1961.

Senator LAUSCHE. Who started the operation of ATA of Texas, was it you and your associates? If not, who were they?

Mr. COBB. It was I and the farmers and producers in the Texas area.

Senator LAUSCHE. You went to see the farmers, is that correct?

Mr. COBB. Some came to me and, of course, then I contacted others.

Senator LAUSCHE. All right.

Mr. Churchill, have any of the investigating officials of the ICC come to ATA of Texas on the basis that you were not a genuine cooperative and that you were using the facade of a cooperative to do transportation, nonregulated transportation?

Mr. CHURCHILL. Yes, sir; at the outset——

Senator LAUSCHE. When?

Mr. CHURCHILL. At the outset of the incorporation and operations in the spring of 1962, they so came in and advised some of the employees of the association, including Mr. Cobb, that they were of the opinion that the cooperative was illegal and, "we are going to put you out of business." Whereupon, we asked: "In what ways are we illegal and improper?" And they said, well, they could tell us, but they weren't going to do this. We asked them officially. As a matter of fact, we had a conference in my office shortly after that with two of the agents of the Commission and I asked them if they would assist us in remedying any defincieny that we might have made in the organization and operations to date. And they said they could not do that, that they knew how to do it, but they could not tell us. And when pressed for a reason as to why they could not assist us, because we were requesting assistance, they said that they just simply could not.

Senator LAUSCHE. That was when?

Mr. CHURCHILL. This was in the spring of 1962, sir.

Senator LAUSCHE. Have your books been examined by the ICC since that time?

Mr. CHURCHILL. Yes, sir; they have. They were examined at that time and this was the time that we made available to them all of the records, including copies of all bills of lading, without cost.

Senator LAUSCHE. How many times have they been examined?

Mr. CHURCHILL. They spent several weeks at that time, sir, in the office, looking at all of the books and records.

Senator LAUSCHE. That was in 1962?

Mr. CHURCHILL. Yes, sir; in the spring of 1962, and then they came back again in the summer of 1962, spent another several weeks looking at all of the books and records, and then, following the initiation of the investigation by the Commission in January of 1963, they came back again and asked if they could see the books and records, and we again permitted them to do so, and in fact permitted them to bring out their own accountant who was a CPA, and he spent more than 1 week in the office and had free access to all of the records at my direction.

Senator LAUSCHE. Was that the last time that they examined your books?

Mr. CHURCHILL. That is the last time, although we have voluntarily made available to them from time to time, without request, summaries of records and have assured them that if they desire to see further records we will make them available, and we have so tendered the same records to the Commission here in Washington in connection with the investigation.

Senator LAUSCHE. Now, then, you say your ATA of Texas has 54 registered members?

Mr. CHURCHILL. This is correct, sir.

Senator LAUSCHE. That is it has 54 farm cooperatives that are members of ATA?

Mr. CHURCHILL. They are not all farm cooperatives, Senators. There are approximately 20 of them which are, themselves, farm cooperatives. The remaining members are individuals, independent producers, whether they be corporate, partnership, joint associations.

Senator LAUSCHE. Now, then, the members include more than 20 old-line bona fide agriculture cooperatives?

Mr. CHURCHILL. That is correct.

Senator LAUSCHE. Most of whom are themselves members of banks of cooperatives in their area of the United States. The remaining members are all producers of agricultural products.

Mr. CHURCHILL. That is right.

Mr. COBB. Yes, sir.

Senator LAUSCHE. What type of products do they engage in?

Mr. CHURCHILL. It cuts fairly well across the entire gamut of the agriculture products, sir, including, as we mentioned, citrus products, oranges, grapefruits, lemons, limes. It also includes all of the fresh vegetables—lettuce, carrots, peas, beans, corn.

Senator LAUSCHE. Are the citrus fruits members, mainly in Florida?

Mr. CHURCHILL. No, sir; also in California. We have citrus cooperatives and citrus producers who are members both in the States of California and Florida. There is also——

Senator LAUSCHE. Now you say the remaining members are all producers of agricultural products. That is 34 of them are not farm cooperatives?

Mr. CHURCHILL. This is correct, sir.

Senator LAUSCHE. They are individual producers of what are supposed to be farm products?

Mr. CHURCHILL. They are very substantial.

Senator LAUSCHE. Which is your main member, the one for whom you do the most hauling?

Mr. CHURCHILL. It would be the cooperatives, sir.

Senator LAUSCHE. No individuals among these 34?

Mr. CHURCHILL. I would not have, at this time, that information at my fingertips.

Senator LAUSCHE. Well, your best judgment, which one is it?

Mr. CHURCHILL. One of the larger ones is a producer in the Pittsburg, Calif., area, which farms 6,000 acres of truck crops, principally strawberries and tomatoes.

Senator LAUSCHE. And what is the name of that one?

Mr. CHURCHILL. This is California Canners at Antioch, Calif.

Senator LAUSCHE. That is they produce canned goods?

Mr. CHURCHILL. They market their products. They have their own processing plant, which is owned by five brothers, and they own their land, they own 6,000 acres which they farm, and in addition to that they lease an additional 5,000 acres in this area, and they are tremendous producers and processors and distributors of tomato products, particularly.

Senator LAUSCHE. What percentage of your total annual income do you derive from this one client or one member, approximately?

Mr. CHURCHILL. I would say not over 4 to 5 percent.

Senator LAUSCHE. Now, which is your second largest non-bona-fide agricultural cooperative?

Mr. CHURCHILL. I would have to—I am not that familiar, sir, with the current records of the membership production. And I didn't bring these particular records with me. I can tell you this——

Senator LAUSCHE. Mr. Cobb, which one is your second largest noncooperative, farm cooperative user of your services?

Mr. COBB. Sir, we don't have those records here. We would be glad to produce them, though. However——

Senator LAUSCHE. You have some idea, haven't you? I am not tying you down.

Mr. COBB. Well, sir, out of the State of California, Oregon, and Washington, we have the Federated Cooperative, National Processors.

Senator LAUSCHE. Federated Cooperatives?

Mr. COBB. Yes, sir; a group of cooperatives, named National Processors.

Senator LAUSCHE. I am not talking about the bona fide agricultural cooperatives. I am talking about the 34 that are not cooperatives.

Mr. COBB. What I was leading up to, sir, they load all of the trucks that we have in, principally all of them in the State of California, Oregon, and Washington back into the Midwest. And it would be, I don't know who would be the next largest cooperative member, but the noncooperative members are small, as far as the volume of shipping that we do for them.

Mr. CHURCHILL. The cooperative members themselves——

Senator LAUSCHE. Can you identify one that you think is next largest? I just want to get a specimen of the type of hauling you are doing.

Mr. COBB. Marianna Frozen Foods.

Senator LAUSCHE. What does it produce?

Mr. COBB. Berries and fruit. Of course they grow them and then they freeze them and then we ship them to market for them.

Senator LAUSCHE. How large an operator is that member?

Mr.COBB. About 1,500 acres of berries and fruit.

Senator LAUSCHE. I will not question you further on them. Will you supply for the record a statement showing the volume of revenue that you derive from the 34 nonfarmer cooperatives and the other 20 farmer cooperatives?

Mr. COBB. Yes, sir.

Mr. CHURCHILL. Yes, sir. We can do that and would be happy to do so.

Senator, might we add at this point——

Senator LAUSCHE. Just 1 minute. Now, do you haul for nonmembers at all?

Mr. CHURCHILL. Yes, sir.

Senator LAUSCHE. Who is your principal shipper in the nonmember class?

Mr. CHURCHILL. That depends, sir—the principal shipper at this time would probably be Safeway Stores as a nonmember, because of the existence of a plant which they have at Denison, Tex., which the cooperative does hauling for it to the Midwest on the backhaul basis and to the west coast.

Senator LAUSCHE. Where is that Safeway store located?

Mr. CHURCHILL. Not a store, sir, they have a mill or factory there at Denison, Tex., which prepares shortening——

Senator LAUSCHE. Denison, Tex?

Mr. CHURCHILL. Yes, sir.

Senator LAUSCHE. How do you happen to serve it?

Mr. CHURCHILL. Because, sir, it is a backhaul to move the trucks back without running them empty to pick up membership loads and on the west coast and in the Midwest and in the Florida area.

Senator LAUSCHE. What percentage of your income is derived from Safeway?

Mr. CHURCHILL. I could not give you the exact percentage, sir, but it would be not more than 2 or 3 percent at most. This includes all of the freight that they would pay for and would include membership shipments which come in from cooperatives which Safeway is the purchaser. This is one of the points that I was going to point out, sir, is the fact that Safeway, A. & P., Kroger, Super Value Stores, Flemming Stores, and other large grocery chains purchase tremendous amounts of products from cooperatives and in particular from cooperatives which are members of ATA of Texas and we regularly move products from our cooperative members and even from our independent producer members to Safeway Stores, to their distribution houses and we, as a result of this movement, Safeway has asked us from time to time to move as a nonmember product for them which they were not purchasing but which they already had.

Senator LAUSCHE. Is Safeway your largest nonmember shipper?

Mr. CHURCHILL. I believe it was in 1964. I don't know if it was, sir, in 1965 or at the current time.

Senator LAUSCHE. Would you provide for the record a tabulation of your receipts from nonmembers?

Mr. CHURCHILL. We would be happy to, sir.

Senator LAUSCHE. How do you ascertain this distribution to the members? ATA of Texas has declared and paid a patronage refund. Will you define patronage refund briefly?

Mr. CHURCHILL. Patronage refund, sir, is the net margin left after the payment of all expenses of operation of the cooperative for a fiscal year. In other words, it is the money, the excess of income over expenses for a full fiscal year operation, including any taxes that may have been paid and this is declared on a proportionate or pro rata basis and paid to all members in the proportion that the shipments made by them throughout the course of the year varies to the total shipments. And each year——

Senator LAUSCHE. Do you distribute each year the difference between the cost of operation and the revenues derived?

Mr. CHURCHILL. Yes, sir. Each year there has been 100-percent distribution or declaration of patronage refund and a payment in accordance with the Internal Revenue Code provisions of 20 percent of this in cash and the issuance of a revolving fund certificate representing the balance or remaining 80 percent of the patronage refund, which the members have authorized the cooperative to retain for operating capital and which the cooperative must revolve these certificates, paying the oldest certificate first within a 10-year period of time if funds are available to do so.

Senator LAUSCHE. Do these noncooperatives participate also in the patronage refunds?

Mr. CHURCHILL. Yes, they do. The members do, sir, but not the nonmembers.

Senator LAUSCHE. How are the votes assigned to the different members?

Mr. CHURCHILL. Each member has one and only one vote, irrespective of the size.

Senator LAUSCHE. Will you provide for the record a tabulation of the salaries of the officers?

Mr. CHURCHILL. Yes, sir, we can do this.

(Supplemental statement follows:)

SUPPLEMENT STATEMENT OF RICHARD T. CHURCHILL, SECRETARY AND GENERAL COUNSEL, ATA OF TEXAS ON S. 1729

At the request of the Chairman of the Subcommittee, ATA of Texas has agreed to furnish for the record certain additional information as to its operations as follows:

A. MEMBERSHIP—NONMEMBERSHIP BUSINESS RATIO

During the month of June, 1966, ATA of Texas had gross revenue of $356,642.00, of which 60.7— was business done for registered members, and 39.3% was business done for non-members, including all transportation of exempt list commodities under Section 203(b)(6) of the Interstate Commerce Act. In the month of July, 1966, ATA of Texas had gross revenue of $315,312.00, of which 62% was done for registered members, and 38% was done for non-members, including transportation of exempt list commodities. Because of the IBM accounting system in use, we cannot state what percentage of exempt list commodities were transported during June and July, 1966, until the cards are analyzed after the close of the fiscal year on August 31, 1966.

For the fiscal year ending August 31, 1965, ATA of Texas had originated 28.7% of its membership business for a federated cooperative, National Processors, Incorporated, and an additional 10.63% of its membership business total had been done for cooperative members on the West Coast. For the same period, the cooperative members of ATA of Texas located in Florida had tendered 15.25% of all membership business, and this percentage has grown steadily during the 1965–1966 fiscal year. At the present time, Plymouth Citrus Products Cooperative at Plymouth, Florida, has been the largest shipper-member from Florida

B. NON-MEMBER BUSINESS

The Chairman requested information as to the largest single non-member patron of ATA of Texas, and a review of the records for the fiscal year ending August 31, 1965, reveals that ATA of Texas performed services for eight (8) separate divisions of Safeway Stores, Inc., during the fiscal year, and that such business so done for Safeway amounted to 13.4% of the non-member business of ATA of Texas. The other larger non-member users of ATA of Texas' services were:

	Percent
Armours	0. 02
Gurrentz International	. 016
Geldin Meat Co	. 011
Western Iowa Pork Co	. 01
Grocers Supply Co	. 008
Maffrey Co	. 007

C. SALARIES OF OFFICERS

The current salaries of the officers of ATA of Texas, as fixed by the Board of Directors annually, are as follows:

President and General Manager (per annum)	$27, 500
Vice-President (per annum)	13, 500
Treasurer (per annum)	10, 800
Secretary	0
General Counsel (Retainer) (per month)	750

The members of the Board of Directors are paid $100.00 per Board of Directors meeting attended plus travel expense reimbursement.

CONCLUSION

ATA of Texas has had occasions in the past and currently uses certificated common carriers from time to time to move shipments which it cannot transport due to equipment breakdown, shortage of available equipment, inc., and where it does so, ATA of Texas itself pays the difference between the rate which ATA of Texas would have received for such member shipment, and what is charged by the common carrier for the substitute service. Such substitution of equipment has not always been satisfactory to our members as is witnessed by the recent letter which is attached hereto, as Exhibit "A" and which protests the quality of equipment and drivers furnished by Brady Motor Frate, one of the proponent witnesses before this subcommittee on S. Bill 1729.

EXHIBIT A

NATIONAL PROCESSORS, INC.,
Orinda, Calif., July 20, 1966.

Mr. JACK COBB.
Agricultural Transportation Association of Texas,
Fort Worth, Tex.

JACK: Yesterday we wrote a letter to our Albany office advising them of a claim to be filed with ATA on a shipment made to Super Valu, Hopkins, Minnesota back on July 5th. This was one of the shipments made by Brady Motor Freight.

We observed that of late you have been using more and more Brady Motor Freight equipment and we wonder why this has become necessary—and also, we are not too sure that we want to use Brady as we don't feel as though Brady's equipment or service is as good as ATA.

Yesterday we had a call from our cold storage warehouse in Bonner Springs wondering why we were using Brady of late in lieu of ATA equipment. Our warehouse does not feel that the Brady equipment is as good as ATA nor do they have the same calibre of personnel running their trucks as we normally received from your operation.

We have run into similar comments from our customers in that they are noticing a distinct difference in the type of equipment that is bringing their product to them. They also feel the people at Brady are not as cooperative or as interested in giving "service" as ATA's trucks.

In my letter of the 19th—I advised that the truck that came into Super Valu, Hopkins, was extremely poor equipment and that the insulation was so poor you could actually see through the floor of the truck. Also, we understand that the Thermo-King unit went out on several occasions and that, generally, their equipment is not as good as yours.

At any rate—we would appreciate hearing from you as to why it is necessary for ATA to start using inferior carriers on our shipments. We have been able to build a very sizeable and sound business due to the service that your organization has given us and we are, naturally, concerned when we find that it is becoming necessary for you to go outside for assistance from other truckers who are, apparently, not capable of doing the job either from an equipment point of view or from a service point of view.

May we have your comments on this.

Very truly yours,

ROBERT F. BLUME.

Mr. SENDER. I have a couple of questions. On the bottom of page 3 you state "ATA of Texas presently operates about 60 to 75 units." Are these owned by ATA of Texas? Are they leased from owner-operators, or are they leased from truck leasing companies?

Mr. CHURCHILL. At the present time, Mr. Sender, the ATA of Texas owns, I believe, seven or eight tractors. It owns 12 trailers, I believe is the latest count, and it leases the balance of them on a 1-year basis—that is, lease term is 1 year with the right of renewal.

Most of this leased equipment is furnished by various leasing companies which may own, may have leased to the company, anywhere from 1, but usually 4 or 5, up to 10, 12, 15 units leased to the company.

There are a few men who work for the company as full-time drivers who own an interest in equipment and which is leased to the company.

Mr. SENDER. Are most of the leased vehicles leased from national leasing companies or from affiliated leasing companies?

Mr. CHURCHILL. No, sir, they are not affiliated. There are no affiliated leasing companies to the cooperative. You ask if they are national leasing companies. My best recollection at this time, without rechecking the records are that there are none leased from national leasing companies, but from independent local leasing companies, principally in the Texas area or Texas-Oklahoma area, not from national companies such as Hertz or National Leasing, or some of these.

Senator LAUSCHE. When you were originally organized, what subscriptions were made by the members to the capital structure?

Mr. CHURCHILL. The capital structure, sir, was nominal in the way of subscriptions from members.

Senator LAUSCHE. What was the capital structure? You say it was nominal?

Mr. CHURCHILL. $5 membership fee, sir, and $5 dues.

Senator LAUSCHE. How many members did you have when you began?

Mr. CHURCHILL. Approximately 30.

Senator LAUSCHE. So paid in $150.

Mr. CHURCHILL. That is correct.

Senator LAUSCHE. How did you finance the remainder of the operation?

Mr. CHURCHILL. Financed on short-term bank loans pledged by the accounts receivable, secured by the accounts receivable.

Senator LAUSCHE. Did any of the members guarantee the payment of the bank notes?

Mr. CHURCHILL. No, sir, I don't believe it was required.

Senator LAUSCHE. All pledged by accounts receivable?

Mr. CHURCHILL. Yes.

Senator LAUSCHE. How did you get the equipment to operate with only $150 in subscriptions?

Mr. CHURCHILL. It was leased, sir.

Senator LAUSCHE. Leased?

Mr. CHURCHILL. Yes, sir.

Mr. SENDER. Was the lease on the basis of percentage of revenue?

Mr. CHURCHILL. Yes, which is the most commonly used in the industry and industrywide.

Senator LAUSCHE. Are either of you connected with any of the trucking companies that have leased the equipment?

Mr. CHURCHILL. Mr. Cobb initially had equipment which was leased to the company. However, he sold all of that equipment and got out of the equipment business.

Senator LAUSCHE. Are you counsel for any of the trucking companies?

Mr. CHURCHILL. No, sir. I have done work for numerous trucking companies from time to time, on an individual basis in connection with insurance claims, collisions, et cetera, but I am not presently nor have I been counsel for any of the trucking companies.

Senator LAUSCHE. All right. I think that is all.

Mr. CHURCHILL. Thank you, sir.

Senator LAUSCHE. Mr. Angus McDonald. Will you proceed?

STATEMENT OF ANGUS McDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION, WASHINGTON, D.C.

Mr. MCDONALD. Mr. Chairman, my name is Angus McDonald. I am director of research at National Farmers Union. I have been employed by this organization for approximately 18½ years and have handled the legislation pertaining to transportation during that period.

National Farmers Union is a general farm organization, with approximately a membership of 300,000 families residing mainly in the Missouri and Upper Missouri and Mississippi Valleys. Our organization is affiliated with Farmers Union cooperatives. Two of the largest are in St. Paul, Minn., the Farmers Union Central Exchange and the Farmers Union Grain Terminal Association, a marketing cooperative, reputed to be the largest grain marketing cooperative in the world.

The Farmers Union Central Exchange has a number of transportation cooperatives. I might say parenthetically, Mr. Chairman, that I know very little about the organization and administration of the cooperatives affiliated with the Farmers Union. I have composed a statement here which I believe it is not necessary to read, but I will touch on several points.

Senator LAUSCHE. It will be printed in the record fully and I would appreciate it very much if you touch on the highlights of what your views are of this proposed legislation, Mr. McDonald.

Mr. MCDONALD. Yes, sir. Of course, it is my desire to accommodate myself to the convenience of the chairman. I have heard much expert testimony yesterday and today and I realize that much of my statement here is redundant and repetitious on the points that have already been made.

I would like to point out, Mr. Chairman, a brief resolution which pertains to this bill considered here, adopted at the national convention of the National Farmers Union in March in Denver—Denver by the way is our national headquarters—this resolution was adopted in March 1966 and is as follows:

The existing agriculture exemption should be retained

Therefore, we have felt and I have consulted with our national president, with our people in St. Paul, and with others in regard to this bill, as I was going to say, we felt strongly that we should be opposed to this legislation.

We feel it is unnecessary. We feel that history will show that over the years, the Interstate Commerce Commission has been opposed to the very existence of the agriculture exemption. I refer to this document, which Mr. Harmanson referred to, the agriculture exemption in Interstate Trucking, Marketing Research Report, No. 188, a publication of the U.S. Department of Agriculture. I have read this document and I am convinced that over the years from the very inception of the act passed in 1935, that the ICC has shown a bias against the agriculture exemption and that the courts have more nearly interpreted correctly the law as passed by Congress in 1935.

It would appear that the ICC has been very active and very zealous in its getting after those cooperatives which it felt were in violation of

the agriculture exemption. The record, I believe, shows that. Therefore, we fail to see why additional authority is necessary to give to the ICC power over the life or death of a transportation cooperative.

I call attention to—I have a draft of the bill here, to that part of the bill which I am referring to occurs after the provision referring to the 120 days——

Senator LAUSCHE. What page?

Mr. MCDONALD. I am sorry, Mr. Chairman, I don't have a copy of the printed bill, but the language——

Senator LAUSCHE. I have it, it is line 7, page 3.

Mr. MCDONALD. The language I am about to discuss says "that the exemption will not be revoked immediately, that the cooperative may have a grace period of 120 days * * * and so forth, and so on. And then at the end of that sentence, Mr. Chairman, according to this draft I have, it says, "unless otherwise ordered by the Commission in that or any other proceeding."

Which seems to us to cancel out the 120 days or any grace period.

Now perhaps we are wrong in that interpretation, but under our interpretation, the Interstate Commerce Commission may suspend the activities of transportation cooperatives at any time that it so feels they should be suspended.

Now in regard to the section 3, the last section, there has been much discussion here about the power of the Interstate Commerce Commission to subpena the books of a cooperative. And in this section, of course, it may be clear that the ICC could go in at any time on any pretext or without any reason whatsoever, and dig into the books and records of the cooperative. Testimony has been given here that the cooperatives have been very cooperative with the Commission in opening up their books at any time they were requested. Testimony has been given here that the Commission has relied a good deal on complaints which have apparently been very numerous over the years, complaints by competitors that the agriculture exemption was violated. And it would seem to us that looking at the enforcement of the agriculture exemption from a practical standpoint, that the authority under the existing statute is sufficient for bringing to book those cooperatives or those phony cooperatives or would-be cooperatives who are in violation of the law.

We think this is an extension of bureaucratic power which is unwarranted. We think it substitutes the will of an agency which has shown no sympathy with the farmer, and the farmer by the way has experienced extremely low income over a period of years. This agency has, and this perhaps is not pertinent, but this agency has been ever ready to raise freight rates again and again and again to the disadvantage of the farmer. This agency has refused to approve applications of the common carriers who wish to reduce their rates and the railroad's famous case is the *Southern* case.

I was before this committee several years ago on that. And I don't think, perhaps we are wrong, Mr. Chairman, but we feel that if there is going to be any certificates or any filing of information or material, and it should be perhaps in the Department of Agriculture rather than—we are not suggesting that—but we think, again I say perhaps wrongly, that the Interstate Commerce Commission is not a friend of the farmer and that history indicates that to be true.

That, I believe, is all I want to say at this time.

Senator LAUSCHE. Thanks very much. Your statement will be printed in the record fully.

(Complete text follows:)

STATEMENT OF ANGUS MCDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. Chairman and members of the committee, I am appearing here in opposition to S. 1729 which provides that cooperative trucking associations must obtain a certificate of exemption if they are to benefit from the agricultural exemptions as authorized in 203(b)(5) of the Interstate Commerce Act. Many years ago when the Congress authorized this exemption the necessity for applying an exemption to farm commodities and to farmer cooperatives engaged in transportation of farm commodities was considered in great detail by committees in both Houses and by members of the House and Senate. Every facet of the problem was explored.

Congressmen wisely came to the conclusion that common carriers could not fulfill all of the transportation needs of farmers. Common carriers have certain specified routes and rates which are more or less rigidly fixed. Many farm commodities are produced in areas at some distance from routes traversed by truck lanes and by railroads. These main routes are of necessity across areas where there is sufficient business to justify their operation, not only during peak periods but during the entire year.

Routes traversed by private trucks and vehicles operated by farmers and farm cooperatives are geared to the fact that the burdens of transportation vary greatly from season to season and often from day to day. The farmer may have an enormous amount of farm produce, highly perishable, which must be transported quickly and efficiently to terminal points where the produce may be picked up by the common carrier and transported over a considerable distance. The system of unregulated transportation supplements and complements the common carrier system. The irregular and spasmodic nature of agriculture, dependent on changes in the weather, on insect pests and varying demands, requires that perishable farm commodities be transported in an irregular and spasmodic fashion.

One crop may be a failure in one section while there may be a glut on the local market in another area of the same crop. This necessitates emergency transportation involving the use of possibly hundreds of trucks which would not be used in the area to any great extent during the year. Unless one has experience and observes the problems of the transportation of perishable commodities, it is almost impossible to visualize the situation when a crop like strawberries, which may deteriorate in a matter of hours, is ready to be transported to consumer markets.

A flexible transportation system today is needed more than ever before. American consumers demand variety and good quality at the grocery store, particularly in regard to fruits and vegetables. A flexible transportation system is therefore in the interest of not only consumers but supermarkets which must satisfy the demands of housewives for high quality perishable items.

Another reason why the agricultural exemption is so important to farmers is that farm prices and consequently farm income are relatively low. Income of the farm population has remained more or less static or has declined for a number of years. If the farmer is deprived of a flexible transportation system which enables him to sell his perishable commodities, farmers would experience further declines in income. Statistics from the Department of Agriculture and from a study by the California Department of Agriculture indicate that the farmer's share of the consumer dollar on certain fresh vegetables may be as low as 10 per cent. Further decreases in the already low prices of on-the-farm fruits and vegetables would depress prices to the point where farmers in many instances would derive little or nothing from their labor and investment.

The National Farmers Union, over a period of many years, has opposed any and all efforts of those who are seeking to destroy the agricultural exemption for their own selfish purposes. Common carriers, as pointed out, cannot give and apparently are not interested in giving the farmer service which he has developed for himself. They simply wish to prevent the farmer from operating his own trucks and trucks operated by his cooperatives.

In January 1961, according to a study made by the Department of Agriculture, 9,294 farm cooperative trucking organizations owned or leased an estimated 33,000 trucks. It is seen that the cooperatives operated on the average 3.5 trucks. Nearly all of these trucks were engaged in relatively short-haul opera-

tions. Forty-one per cent of all "straight" trucks reported had a capacity of 1½ tons or less; 43 per cent were in the over 1½ ton category but only 16 per cent had had a 2½ ton capacity. Thus, the size of these trucks indicates that they were used by farmers in local operations for relatively short hauls. It is obvious that these trucks provided little competition for railroads or the great continental truck lines.

A word should be said about the attitude of the Interstate Commerce Commission regarding the agricultural exemption. Attention is called to Marketing Research Report No. 188. A legislative and judicial history is given in this excellent document. The authors of the bulletin not only recite in detail what happened in congressional committees and on the floors of the two legislative houses but give a synopsis of the important judicial actions involving the agricultural exemption. It is readily apparent from a cursory reading of this report that the Interstate Commerce Commission has long been opposed to the existence of the agricultural exemption and has sought by one means or another to destroy it over a period of many years. It is also apparent that the courts have been in disagreement with the position of the I.C.C. and have overturned the contentions of the Commission in almost every case. I will not burden the record by going into detail regarding the attempts of the Commission to limit, destroy and nullify the agricultural exemption by devious and indirect means. It will suffice to say that not only have the courts agreed in general with the interpretations which have been made from time to time by agricultural organizations which are represented at this hearing but the Congress has refused to be dictated to by the Commission and has, in fact, liberalized and broadened the agricultural exemption.

I will give only one example in regard to the attempts of the Commission to destroy the benefits which farmers derive from the agricultural exemption. One attempt of the Commission to weaken and destroy the exemption involves the practice of trip leases. This practice involving a matter or common sense and economics simply meant that a trucker who had a lot of farm commodities to market could trip lease his truck on the return home and thereby avoid returning with an empty truck. This would seem like a sensible way to carry on a business.

However, the Commission did not so regard the practice. In 1956 it handed down a ukase that trucks could not be leased for less than a 30-day period. It dared not, apparently, outlaw trip leaing altogether but thought to so hamstring the practice that it would be uneconomic and impractical. Farm organizations, ever on the alert against assaults by the Commission on the agricultural exemption, united beyond legislation which would specifically prevent the I.C.C. from carrying out its intention of outlawing all vehicles for less than the 30-day period. There was, of course, great opposition to this legislation. The railroads and the regulated trucks, together with the I.C.C. united in a great lobbying effort and put pressure on the Congress. Their activities, as far as their own selfish purposes were concerned, were in vain. Congress refused to approve the bureaucratic decision in regard to trip leasing and passed the bill which set it aside in 1957.

The legislation under consideration here provides that the agricultural exemption would not apply to a cooperative association unless it had obtained a certificate of exemption issued by the Commission. In other words, the law which Congress passed in good faith giving cooperative groups exemption might in effect be repealed and cooperatives could only enjoy the benefits of the exemption permitted by an agency which has repeatedly attempted to weaken and destroy it.

Looking back over the long and tortuous history of the exemption, it is not difficult for us to imagine what would happen to many cooperative farm trucking organizations if this bill should become law. By one technicality or another each cooperative application for a certificate would be held up, delayed and possibly rejected. If a cooperative managed to obtain a certificate of exemption, like Damocles' sword, the possibility of the exemption being revoked would always hang over the head of the cooperative.

This legislation represents to us an extension of bureaucratic power which Congress never intended when it passed the exemption in 1935 and when it consistently broadened and strengthened the exemption over a period of many years. If the Congress had intended that the right to enjoy the exemption was to be solely dependent on a decision of the Interstate Commerce Commission it would have said so in the first place. We hope that this committee which has distinguished itself many times in considering the welfare of farmers will disapprove this legislation. We believe that the bill is not in the interest of farmers or the public or those engaged in the distribution and sale of farm commodities.

Senator LAUSCHE. Thanks very much, Mr. McDonald.

67-566—66——19

The next witness will be Mr. Garstang, general counsel, National Milk Producers Federation. Mr. Garstang, we will have printed in the record your full statement. Now you can proceed to read it or you can summarize the highlights of it and I would suggest the latter course.

STATEMENT OF M. R. GARSTANG, GENERAL COUNSEL, NATIONAL MILK PRODUCERS FEDERATION, WASHINGTON, D.C.

Mr. GARSTANG. Quite a bit of it I can summarize and I would like to do that.

First, I would like to say that the National Milk Producers Federation is a national farm organization of dairy cooperatives and that we are celebrating our 50th anniversary this year. We have been representing these cooperatives for a period of 50 yearsi n the Capital here.

All of the cooperatives which are members of the federation are qualified under the Agriculture Marketing Act and to the extent that any of them do general trucking operations, they are exempt under section 203(b)(5) of part II of the Interstate Commerce Act.

I would like to read the paragraph on "Why Agricultural" exemptions, which I don't think has been covered before.

Senator LAUSCHE. Proceed.

Mr. GARSTANG. The theory of the Interstate Commerce Act is quite opposite to that of free competition. Under the act, rates and routes are regulated, competition is restricted, and the transportation business is channeled to selected operators with the objective of providing dependable service by a limited number of strong carriers.

In the unregulated area, rates and adequacy of service are determined by factors of vigorous competition.

It should be emphasized that the issue involved in this hearing is strictly one of competition. The exempt operators are subject to the safety regulations of the Commission. The Commission and the regulated carriers are seeking to restrict the competition provided by the exempt operators.

When the motor carrier part of the Interstate Commerce Act was passed in 1935, agricultural leaders asked that rates and routes in the agricultural field be left unregulated and subject to open competition. This Congress granted, with language broad enough to permit some incidental backhauling of general freight on trucks used for hauling agricultural products to market, in the interest of economical use of equipment.

This program has operated effectively for more than 30 years. The great majority of truck operations are regulated to accomplish the objective of the Interstate Commerce Act. At the same time, a very small percentage of total operations have remained uncontrolled and subject to competition in the agricultural field. This has resulted in lower rates and more flexible service to farmers which is the objective Congress intended to accomplish by the exemption.

A study made by the Department of Agriculture in 1958 (Marketing Research Report No. 224), concerning the trucking of poultry, indicates that rates were approximately one-third less during a period when such trucking was unregulated as compared with a period when rates were regulated.

A similar study in 1959 (Marketing Research Report No. 316), concerning the trucking of frozen fruits and vegetables, indicates rates approximately one-fifth lower under free competition as against a regulated period.

In both cases, processors reported that service had improved during the period when the trucking was unregulated.

The National Milk Producers Federation opposed regulation of trucking in the agricultural field in 1935 when the basic law and the agricultural exemptions were first enacted. Lower costs of marketing agricultural products and greater flexibility of service were two of the points stressed in favor of exemptions for agriculture.

Thirty years of experience with part II of the Interstate Commerce Act and with the agricultural exemptions have not changed our position. During this period, we have consistently defended the exemptions against attacks upon them by the Interstate Commerce Commission and the regulated truckers. As recently as last November, our membership reaffirmed support for the agricultural exemptions.

The exemptions provide important benefits to agriculture with no substantial adverse effect on the regulated transportation industry.

In the next topic there are some figures there showing the use made by dairy cooperatives of trucks. About one-third of the trucks operated by cooperatives are operated by dairy cooperatives, so we are a very big factor in this field.

A large part of this is accounted for by the fact that milk is picked up at least every other day from the farms, so you have farm-to-plant trucking involved. Another large part of it is accounted for by the fact that some of the dairy cooperatives are in the distribution business and they have trucks on retail routes in the cities calling at individual houses and delivering milk.

On page 4 is a topic entitled "0.00027 of 1 Percent." In this topic, we have put together the various factors which show the amount of non-farm-related, nonmember business done by farmers' cooperatives in relation to the total trucking operations in the country.

We start out with the fact that about one-half of 1 percent of the trucking mileage is assigned to farmers' cooperatives. Out of that one-half of 1 percent, 72 percent is local pickup and delivery, so it is not involved in this proceeding. This leaves only 28 percent that is involved here as over-the-road trucking.

This survey shows on the basis of information obtained from 18 of the larger cooperatives doing over-the-road trucking that the cooperatives had backhauls on about 21.8 percent of their trips. In 93 percent of the backhauls, the cooperative was hauling its own goods. Goods of other cooperatives accounted for 5.9 percent of the backhauls and exempt agricultural commodities for three-tenths of 1 percent. Backhauls of the type complained about at this hearing, nonagricultural supplies hauled for nonmembers, accounted for only nine-tenths of 1 percent of the backhaul trips.

When these figures are all put together, we come up with a figure of 0.00027 of 1 percent of the total trucking operations that is represented by the backhauls by farmers cooperatives which are for nonmembers and non-farm-related goods.

Certainly this does not show any abuse by farmers cooperatives of the agricultural exemption granted them by Congress. Neither does it show any need for remedial legislation.

Senator LAUSCHE. This figure of 0.00027, does that embrace all of the trucking operations of the farm cooperatives or only of the milk cooperatives?

Mr. GARSTANG. Of all of the farmers cooperatives, and it is pinned down to the nonfarmer, non-farm-related business in relation to all trucking in the country.

I will not read the rest of that. It merely explains some of those figures.

On page 7, under the title of "Nonqualified Cooperatives," the only comment I want to make is that all of our cooperatives are qualified. We make no defense of the nonqualified cooperatives. They do not have an exemption. They are subject to being proceeded against under the present law. They should be proceeded against and they should not be permitted to utilize an exemption for which they do not qualify.

On page 8, the *Northwest* case has been discussed in some detail. We do not agree with the interpretation placed upon it by the Interstate Commerce Commission and the regulated truckers. We quote, in our statement, as other witnesses have, the language of the court, which says that the volume of nonfarmer, non-farm-related trucking can only be incidental and can in no conceivable circumstance approach 50 percent of the total of the cooperatives' business.

In conclusion, the right to backhaul general freight and thus make the most economical use of transportation equipment is important to farmers' cooperatives. All savings made in overall transportation costs through such backhauls are passed back to the farmers and result in lower transportation costs for moving agricultural commodities to market.

The agricultural exemption is limited to qualified farmers cooperatives. Nonqualified operators have no exemption and are subject to action by the Interstate Commerce Commission. Most of the complaints made at this hearing were directed against nonqualified operators. The present law provides a remedy for controlling such operations, and it should be enforced instead of attacking the framers cooperatives.

The volume, as I have said, of nonmember, nonagricultural freight hauled by farmers cooperatives is estimated at 0.00027 of 1 percent of total truck mileage. This is much too small to cause any adverse effect on the Nation's regulated transportation system or to justify legislation for the benefit of the regulated carriers at the expense of the American farmer.

The present system of regulating the great majority of truck transportation but leaving transportation in the agricultural field subject to the benefits of vigorous competition has worked well for 30 years, and it should be continued.

Mr. Chairman, I should like to comment on the questions that were raised in the early part of the hearing here with respect to the possibility that farmers cooperatives backhauling general freight might discriminate as between two merchants in the same town, for example, and cause an adverse competitive effect on one in favor of the other. I don't think that situation would ever occur for the following reasons:

One, we don't know of any case where such a discrimination has taken place and no instances were offered by the proponents when they made this proposal.

Two, there would be no incentive for the cooperative to discriminate. Its backhaul trips are generally irregular and it is difficult enough to pick up any freight to fill an empty truck that is going back when you serve everybody that you can and there certainly would be no incentive for the cooperative to favor one competitor in a town as against another.

Third, if there was any planned discrimination or any concerted action between one competitor in a town and the farmers cooperative to provide a discriminatory advantage through this hauling, both of them would be in trouble under the antitrust laws immediately.

I think that is the only comment I want to make other than that, if there is any question as to the lack of adequate subpena power on the part of the ICC, we have no objection to granting them whatever power they need. But we do think that ICC should have come in here and asked for that power instead of attacking the farmers.

Senator LAUSCHE. Thanks very much, Mr. Garstang, for your cooperation in presenting this matter to the committee.

(The full text follows:)

STATEMENT OF THE NATIONAL MILK PRODUCERS FEDERATION

THE FEDERATION

The National Milk Producers Federation is a national farm organization. It represents dairy farmers and the dairy cooperative associations which they own and operate and through which they act together to process and market, on a cost basis, the milk and butterfat produced on their farms.

Incidentally, the Federation was organized in 1916 and is celebrating its 50th anniversary this year.

Practically every form of dairy product produced in the United States in any substantial volume is produced and marketed through dairy cooperatives represented through the Federation.

These are farmers' cooperatives, exempt under section 203(b)(5) of part II of the Interstate Commerce Act and qualified under the Agricultural Marketing Act (12 U.S.C. Sec. 1141j).

These cooperatives are owned and controlled by the farmers they serve, and they are operated for the mutual benefit of such farmers. The cooperatives themselves can take no profit; and all earnings or savings made in the marketing of milk and dairy products, including any savings made in transportation, inure to the benefit of the farmers.

Dairy cooperatives are primarily marketing associations. However, many of them operate supply divisions through which supplies are purchased on a cooperative basis for their farmers.

WHY AGRICULTURAL EXEMPTIONS?

The theory of the Interstate Commerce Act is quite opposite to that of free competition. Under the Act, rates and routes are regulated, competition is restricted, and the transportation business is channelled to selected operators with the objective of providing dependable service by a limited number of strong carriers.

In the unregulated area, rates and adequacy of service are determined by factors of vigorous competition.

It should be emphasized that the issue involved in this hearing is strictly one of competition. The exempt operators are subject to the safety regulations of the Commission. The Commission and the regulated carriers are seeking to restrict the competition provided by the exempt operators.

When the motor carrier part of the Interstate Commerce Act was passed in 1935, agricultural leaders asked that rates and routes in the agricultural field be left unregulated and subject to open competition. This Congress granted, with language broad enough to permit some incidental back-hauling of general freight on trucks used for hauling agricultural products to market, in the interest of economical use of equipment.

This program has operated effectively for more than 30 years. The great majority of truck operations are regulated to accomplish the objective of the Interstate Commerce Act. At the same time, a very small percentage of total operations have remained uncontrolled and subject to competition in the agricultural field. This has resulted in lower rates and more flexible service to farmers which is the objective Congress intended to accomplish by the exemption.

A study made by the Department of Agriculture in 1958 (Marketing Research Report No. 224), concerning the trucking of poultry, indicates that rates were approximately one-third less during a period when such trucking was unregulated as compared with a period when rates were regulated.

A similar study in 1959 (Marketing Research Report No. 316), concerning the trucking of frozen fruits and vegetables, indicates rates approximately one-fifth lower under free competition as against a regulated period.

In both cases, processors reported that service had improved during the period when the trucking was unregulated.

The National Milk Producers Federation opposed regulation of trucking in the agricultural field in 1935 when the basic law and the agricultural exemptions were first enacted. Lower costs of marketing agricultural products and greater flexibility of service were two of the points stressed in favor of exemptions for agriculture.

Thirty years of experience with part II of the Interstate Commerce Act and with the agricultural exemptions have not changed our position. During this period, we have consistently defended the exemptions against attacks upon them by the Interstate Commerce Commission and the regulated truckers. As recently as last November, our membership reaffirmed support for the agricultural exemptions.

The exemptions provide important benefits to agriculture with no substantial adverse effects on the regulated transportation industry.

DAIRY COOPERATIVE TRUCKS

In a study made by the Department of Agriculture in 1963 (General Report 109), dairy cooperatives accounted for about one-third of all trucks reported by marketing cooperatives. This is partly due to the local retail delivery operations of many dairy cooperatives.

About half of the dairy cooperatives operate trucks. About six percent of them had fleets of over 25 trucks. About 25 percent of the dairy cooperative trucks were rated at 2½ tons and over. Seventy-four percent of the dairy cooperatives had no over-the-road trucking operations.

A follow-up study made by the Department of Agriculture in 1964 (General Report No. 121), is not broken down into type of cooperative. However, it shows that trucks operated by farmers' cooperatives had back-hauls on about one-fifth of their trips and that about 93 percent of the back-hauls were the cooperatives' own goods. The study indicates that general freight accounted for about .9 of 1 percent of the back-haul trips.

The study also shows that farmers' cooperatives are good customers of the for-hire motor-truck and rail carriers. Nineteen large cooperatives which operate trucks spent $100 million on transportation in 1962. $86 million of this went to the for-hire carriers with about $12 million incurred for transportation in the cooperatives own trucks.

In the case of dairy cooperatives, much of the equipment is not suitable for back-hauling general freight, and as indicated above, much of the space available on back-haul is needed for the goods of the cooperative.

But to the extent that dairy cooperatives can back-haul general freight and thus reduce the overall cost of transporting farmers' commodities to market, we want to retain the exemption which Congress provided.

.00027 OF 1 PERCENT

The volume of trucking involved in this hearing is estimated at .00027 of 1 percent of total trucking operations.

There are two fairly recent studies made by the United States Department of Agriculture which bear upon the volume of trucking operations performed by farmers' cooperatives. These are General Report 109, issued in February 1963, and General Report 121, issued in June 1964. Both are reports of actual surveys made by the Farmer Cooperative Service.

These reports were referred to by proponents of this legislation to emphasize the fact that as of January 1, 1961, cooperatives were operating an estimated 33,000 motor-trucks.

Failure to regulate these trucks, proponents argue, would impair the transportation industry of the country and cause great hardship to regulated carriers.

The reports show that in the 10-year period, 1951 to 1961, the number of trucks operated by cooperatives increased about 18 percent as against an increase in total truck registrations of about 32 percent.

The relative proportion of trucks operated by cooperatives is therefore decreasing, and the relative proportion of trucking business done by cooperatives today is probably less than the proportion indicated by the surveys.

In terms of trucks registered, the surveys show that in 1960, less than .3 of 1 percent of the total trucks registered were operated by cooperatives.

Truck mileage of all farmers' cooperatives in 1960 was estimated in the reports at about .5 of 1 percent of all truck mileage over rural and urban roads.

Out of the .5 of 1 percent of cooperative truck mileage, about 72 percent was local pick-up and delivery and movements from farms to local concentration points. In the case of dairy cooperatives, which account for a large proportion of total cooperative trucks, this would be hauling from farm to plant and on local distribution routes. This type of operation is not involved in this proceeding. Only about 28 percent of the cooperative trucking operations are over-the-road trucking.

The surveys show that information obtained from 18 of the larger cooperatives doing over-the-road trucking and back-hauls on about 21.8 percent of their trips. Smaller cooperatives would probably have less back-hauls, because their operations would be more irregular and back-hauls would be more difficult to arrange.

In 92.9 percent of the back-hauls, the cooperative was hauling its own goods. Goods of other cooperatives accounted for 5.9 percent of the back-hauls and exempt agricultural commodities for .3 of 1 percent. Back-hauls of the type complained about at this hearing, non-agricultural supplies hauled for non-members, accounted for only .9 of 1 percent of the back-haul trips.

Putting these figures together, we come up with the conclusion that the type of hauling done by farmers' cooperatives, about which the Interstate Commerce Commission and the regulated truckers are concerned, is approximately .00027 of 1 percent of the total trucking operations of the country.

Certainly this does not show any abuse by farmers' cooperatives of the agricultural exemption granted them by Congress.

Neither does it show any need for remedial legislation.

It has been suggested that non-member, non-agricultural back-hauls by farmers' cooperatives may increase following the decision in the Northwest Agricultural Cooperative case.

The over-the-road mileage of farmers' cooperative trucks is only about .14 of 1 percent of total truck mileage. If every outbound load were matched with an inbound load of non-member, non-agricultural freight, the business lost to regulated carriers would still be only about .07 of 1 percent of total truck mileage.

Furthermore, the U.S.D.A. surveys show that a high percentage of the back-haul trips of farmers' cooperatives are used in transporting the cooperatives' own goods and the goods of other cooperatives. These trips, of course, would not be available for other freight. Also, in many cases, the equipment is not suitable for back-hauling general freight, for example, milk tank trucks.

Although the volume of non-member, non-agricultural business handled by farmers' cooperatives is a very infinitismal part of total trucking operations, it is important to these farmers' organizations to be free of regulation by the Interstate Commerce Commission and to be able to do the most economical job possible in transporting farmers' products to market.

All savings made by utilizing trucks for back-hauls are passed back to the farmers, since the cooperative operates on a cost basis without profit to itself.

Even though the pending legislation might open a relatively small hole in the dike, we fear its passage would encourage the Interstate Commerce Commission to intensify its attacks on the whole agricultural exemption.

NON-QUALIFIED COOPERATIVES

Practically all of the testimony presented by proponents has been directed against the trucking operations of organizations which they allege are not qualified cooperatives.

There is very little complaint against the back-hauls of qualified farmer cooperatives of the type which we represent. In fact, how could there be where the percentage of general freight hauled by farmers' cooperatives is so very small.

Nevertheless, the legislation sought by the Interstate Commerce Commission and the regulated truckers attacks directly the farmers' agricultural cooperatives.

Similar attacks in the past have been leveled against other parts of the agricultural exemptions.

We are concerned that the proposed legislation is merely another attempt, in a long series of attempts on the part of the Commission and the regulated truckers, to undermine the agricultural exemptions.

We hold no brief for non-qualified organizations which seek to avoid the regulation of their trucking operations by claiming the cooperative exemption.

Such organizations are not protected under either the law or the court decisions. They are subject to action by the Interstate Commerce Commission, and the Commission has successful,y maintained actions against them.

The Commission complains that when one improper operation is stopped the same men set up another organization and resume the same type of operation.

We are not aware that other agencies have encountered similar enforcement difficulties. An injunction against the officers would appear to be adequate to put an end to similar operations under another name.

In effect, the Commission is proposing that it be relieved of the burden of proving that the guilty operator is guilty by requiring, instead, that all the innocent operators be required to prove their innocence.

In view of the long history of attacks by the Commission on the agricultural exemptions, this might prove to be the end of the practical value of the exemption if the Commission is given authority to determine the qualifications of the cooperative or the scope of the exemption.

The farmers' cooperative exemption should be left alone, and the Commission should enforce the present law against non-qualified organizations which have no valid exemption.

THE NORTHWEST CASE

Proponents of this legislation have relied heavily on the decision of the United States Court of Appeals in the Northwest Agricultural Cooperative Association case (350 F. 2d 252).

This decision, they argue, permits a farmers' cooperative to have non-member, non-agricultural freight in unlimited amounts so long as the total non-member business done by the cooperative does not exceed the total value of member business.

We are unable to find in the court's opinion anything which supports such an interpretation of the case.

The court was quite specific, it seems to us, in limiting the volume of such freight to that which is incidental to the agricultural objectives of the cooperatives. The issue in the Northwest case was whether a farmers' cooperative hauling agricultural products to market for its members could utilize its trucks on the return trips to haul non-farm related freight. The court held that such transportation was incidental to its agricultural objectives and therefore exempt from economic regulation by the Interstate Commerce Commission.

The court said (emphasis added):

* * * * * * *

"a cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, *and in no conceivable circumstances could non-farm related business approach fifty percent of the total and remain incidental and necessary to that which was farm-related.*"

* * * * * * *

"The construction which we give the term does not open the door to unrestricted competition by exempt cooperatives with regulated carriers. If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status as a 'cooperative association' and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act."

As we have pointed out elsewhere in this statement, even if every outbound load of agricultural products were matched with an inbound load of general freight, the volume involved would be less than .07 of 1 percent of total truck mileage.

CONCLUSION

The right to back-haul general freight and thus make the most economical use of transportation equipment is important to farmers' cooperatives. All savings made in overall transportation costs through such back-hauls are passed back to

the farmers and result in lower transportation costs for moving agricultural commodities to market.

The agricultural exemption is limited to qualified farmers' cooperatives. Non-qualified operators have no exemption and are subject to action by the Interstate Commerce Commission. Most of the complaints made at this hearing were directed against non-qualified operators. The present law provides a remedy for controlling such operations, and it should be enforced instead of attacking the farmers' cooperatives.

The volume as I have said of non-member, non-agricultural freight hauled by farmers' cooperatives is estimated at .00027 of 1 percent of total truck mileage. This is much too small to cause any adverse effect on the Nation's regulated transportation system or to justify legislation for the benefit of the regulated carriers at the expense of the American farmer.

The present system of regulating the great majority of truck transportation but leaving transportation in the agricultural field subject to the benefits of vigorous competition has worked well for 30 years, and it should be continued.

We, therefore, urge you not to report the proposed legislation.

Senator LAUSCHE. Mr. Charles B. Bowling, National Grange.

You may proceed, Mr. Bowling.

STATEMENT OF CHARLES B. BOWLING, NATIONAL GRANGE, WASHINGTON, D.C.

Mr. BOWLING. I, too, can offer excerpts for the record, and if you wish, to place the statement as it is.

Senator LAUSCHE. It will be so ordered. Yes, that would be highly acceptable, Mr. Bowling.

Mr. BOWLING. My name is Charles B. Bowling. I am transportation consultant of the National Grange with headquarters at Washington, D.C.

The Grange is a nonprofit farm organization with membership in 37 States. Many of its members are members also of cooperative marketing associations.

I have been directed by the Grange to record its opposition to S. 1729 or any similar bill that might be substituted for it.

This legislation has been drawn to benefit common carriers exclusively, and its enactment in present form, insofar as we can discover, holds no benefit for the farming community.

We oppose the move to require farmer cooperatives to secure certificates of exemption from the Interstate Commerce Commission in order for farmers to continue to have their products hauled by their own trucking organizations—a practice in which some have been engaged for quite a number of years.

We believe it is generally recognized that there are advantages for grower organizations in owning and operating their own trucks aside from the probable reduction in their transportation costs. As you are aware, transportation costs represent a great percentage of the value of farm products.

Indeed, there are doubtless farmer cooperatives whose entire present distribution system—both inbound and outbound—have been tailored to fit their specific needs, and these include their trucking operations. Considerable apprehension has been generated as to the probable operational breakdown which many such organizations may face by the enactment of the present legislation.

In the percentage column the tonnage hauled by farmer cooperatives is relatively small. As of January 1, 1961—the latest figures available—farmer cooperatives owned and leased an average of 3.5 trucks

per association. Approximately 56 percent of all cooperatives owned or leased trucks. Marketing associations accounted for 57 percent of all cooperative trucks then in use. Dairy cooperatives accounted for over a third of all trucks reported by marketing associations. (Authority U.S.D.A. Report 1963.)

In my opinion, motor common carriers know the preponderance, if not the entire number, of gray area carriers operating as competitors in their respective territories. They know to whom they are losing business. These, with little effort, could be reported to the Commission.

As you know, there was enacted during the 1st session of the 89th Congress Public Law 89–170. We believe that under this authority most gray area and other unlawful operators could be eliminated. A previous witness, Mr. John M. Kinnaird, appearing for the Committee on Transportation Practices, presented testimony that stated, among other things, that—

> However, the majority of the investigations have been conducted by men who have an extensive background in transportation, men who know both industry practices and regulations; in essence, men who are qualified to do the job.

Mr. Kinnaird did not mention, however, the report of his organization under date of June 15, 1966. Reference to it is made in a long article on page 19 of the July 9, 1966, issue of the Traffic World. In this article, and with reference to the passage of Public Law 89–170, Senator Warren G. Magnuson was quoted as stating—

> The passage of this law has paved the way for an all-out drive to eliminate illegal truck hauling.

Mr. Kinnaird is credited in the same article as saying—

> That at the time of the writing of the instant report, the COTP had caused 37 complaints to be filed; that 17 of these had been heard by the ICC; that 17 had been dismissed by the complainant "due to either (*a*) defendant out of business after complaint filed, or (*b*) defendant made suitable changes in operation," and that three complaints were awaiting hearing.

He also made mention of the fact that there has been an increase in enforcement activity by the various State enforcement agencies.

My point in quoting Mr. Kinnaird is to show that common carriers, with their complaints of unlawful operators, are not as helpless to cope with as some of their testimony presented to this committee indicated.

In conclusion, I suggest that this committee give consideration to the holding in abeyance of S. 1729 for sufficient time to permit the ICC to conduct its all-out drive. With its added powers extended by Public Law 89–170, illegal operators could be driven from the highways.

Thank you, Mr. Chairman.

Senator LAUSCHE. Thank you very much, Mr. Bowling.

(Complete text follows:)

STATEMENT OF CHAS. B. BOWLING ON BEHALF OF THE NATIONAL GRANGE

My name is Chas. B. Bowling. I am Transportation Consultant of the National Grange with headquarters at Washington, D.C.

The Grange is a non-profit farm organization with membership in 37 States. Many of its members are members also of cooperative marketing associations.

I have been directed by the Grange to record its opposition to *S. 1729* or any similar bill that might be substituted for it.

This legislation has been drawn to benefit common carriers exclusively, and its enactment in present form, insofar as we can discover, holds no benefit for the farming community.

We wish to thank the Committee for this opportunity to offer comments which are designed to assist you in acquiring a picture of the involved issues and to show at least to some extent, the anticipated effect upon farmer cooperatives as we foresee it if and when this legislation is enacted.

Some of our comments admittedly will be speculative. None of us will know exactly the total inconvenience, expense, and nuisance which will be created by probable practices of I.C.C. inspectors in conducting their investigations should the pending legislation become law.

We oppose the move to require farmer cooperatives to secure "Certificates of Exemption" from the Interstate Commerce Commission in order for farmers to continue to have their products hauled by their own trucking organizations—a practice in which some have been engaged for quite a number of years.

Pr esent statutes do not provide for farmer cooperative trucking organizations, as you know, to operate under the supervision of the Commission except to the extent of regulating hours of driver service and safety requirements. The Grange would much prefer a continuance of the present law.

We understand that S. 1729 was introduced at the request of the Interstate Commerce Commission. We recall that annual reports of the Commission have for many years contained a recommendation to the Congress which, if adopted, would narrow perceptibly the transportation operations of cooperative marketing associations. On of the Commissioners recently made a statement which included "The primary mission of the Interstate Commerce Commission, in the exercise of its economic regulatory powers, is not merely to preserve common carriage but to foster its growth, *even at the expense of private carriage.*" (Emphasis supplied.) This may explain the Commission's action.

In the final analysis the only reason proponents advance, so it seems to us, as their explanation for action, is that common carriers are losing tonnage in some instances to so-called gray area and exempt carriers. They generally omit reference to private carriers. Perhaps they decided to create difficulty to the fullest extent possible for the legitimate cooperative marketing associations along with simultaneous efforts to eliminate what they describe as unlawful or psuedo-cooperative carriers.

We believe it is generally recognized that there are advantages for grower organizations in owning and operating their own trucks aside from the probable reduction in their transportation costs. As you are aware, transportation costs represent a great percentage of the value of farm products.

Indeed, there are doubtless farmer cooperatives whose entire present distribution system—both inbound and outbound—have been tailored to fit their specific needs, and these include their trucking operations. Considerable apprehension has been generated as to the probable operational break-down which many such organizations may face by the enactment of the present legislation.

In the percentage column the tonnage hauled by farmer cooperatives is relatively small. As of January 1, 1961, (the latest figures available) farmer cooperatives owned and leased an average of 3.5 trucks per association. Approximately 56 percent of all cooperatives owned or leased trucks. Marketing associations accounted for 57 percent of all cooperative trucks then in use. Dairy cooperatives accounted for over a third of all trucks reported by marketing associations. (Authority U.S.D.A. Report 1963.)

In many instances farmer cooperatives use most of their trucks between nearby points in gathering service operations. As an example, the States of Washington, Oregon, California, and Nevada account for 14 percent of the total operated by farmer cooperative trucking organizations. The Southwestern States of Texas, Oklahoma, Arkansas, and Louisiana account for only 4 percent of the farmer cooperative total. (Authority U.S.D.A. Report 1963).

Another worthy reason for the operation of farmer cooperative trucks is because perishable products of agriculture require quick dispatch that often cannot be performed satisfactorily by common carriers. This is especially true during the peak harvest season and the meeting of established market arrangements.

Should the pending legislation be adopted, we could foresee in many instances gradual elimination of farmer cooperative trucks; but should cooperatives continue to operate, notwithstanding this new handicap of additional transportation charges, which additional charges would seem to be the certain result of their being required to use common carriers if and when available, the clear net result of all this would be the increase in the cost of getting these products of the cooperatives and their producer members to market. And we firmly believe there would also be a diminution in the promptness of service which would in turn lower the quality of many of the fresh fruits and vegetables thus delayed in their route to the ultimate consumer.

Indeed, it concerns us greatly as to the type of substituted service the common carrier would perform regularly following the elimination of farmer cooperative trucks. Remember that even in instances when farmers wish to patronize common carrier trucks, such are not always available. Not many common carrier trucks under normal conditions will leave their prescribed routes to pick up perishable agricultural tonnage, especially if such involves a pickup at a distant farm or packing shed. Exception may occur when there is slack movement of their regular type of freight haulage.

We wish to emphasize that our position in this matter is predicated upon what we believe to be consistent and justificable apprehension. Representations here are intended to show that the elimination of the farmer's own transportation facilities or those of the farmer producer's own cooperating marketing agency which in substantial measure lessen the effectiveness and proper timing and present availability of trucks for this vital transportation of these products. As was intended by the Congress in the Motor Carrier Act of 1935, this intent has been repeatedly challenged but has not been generally changed since that Act. Our statement then is predicated on our desire to protect the interests of producer members of these cooperatives, and also to protect consumer interests by providing the most efficient, effective transportation system available at a minimum cost.

We visualize the likely routine that farmer cooperatives would be required to follow as indicated in Section 2 of the bill. Application, following receipt of the forms from the ICC, would be submitted. When the Commission's investigations were completed (and this is where our great apprehension exists) and the Commission is satisfied that the applicant has met all conditions prescribed by Section 203(b)(5) of the Interstate Commerce Act, the Agricultural Marketing Act of 1929, and declared, in fact, a cooperative marketing association, a Certificate of Exemption would then be issued to remain in effect until revoked. This is an oversimplified explanation of the system as we understand it, but we are very much afraid that long delays on the part of the Commission are inevitable.

Here we are reminded of the passage of the Transportation Act of 1958 allowing for "Grandfather Rights" for certain types of carriers. Approximately eight years have passed since that event, and we have been informed that many applications under the 1958 Act are still pending—presumably the Commission is still investigating. There is no provision in S. 1729 of a guarantee that similar delays will not occur.

In my opinion, motor common carriers know the preponderance, if not the entire number, of gray area carriers operating as competitors in their respective territories. They know to whom they are losing business. These, with little effort, could be reported to the Commission.

As you know, there was enacted during the first session of the 89th Congress Public Law 89–170. We believe that under this authority most gray area and other unlawful operators could be eliminated. A previous witness, Mr. John M. Kinnaird, appearing for the Committee on Transportation Practices, presented testimony that stated, among other things, that "However, the majority of the investigations have been conducted by men who have an extensive background in transportation, men who know both industry practices and regulation; in essence, men who are qualified to do the job."

Mr. Kinnaird did not mention, however, the report of his organization under date of June 15, 1966. Reference to it is made in a long article on page 19 of the July 9, 1966, issue of the Traffic World. In this article, and with reference to the passage of Public Law 89–170, Senator Warren G. Magnuson was quoted as stating "the passage of this law has paved the way for an all-out drive to eliminate illegal truck hauling."

Mr. Kinnaird is credited in the same article as saying "that at the time of the writing of the instant report, the COTP had caused 37 complaints to be filed; that 17 of these had been heard by the I.C.C.; that 17 had been dismissed by the complainant 'due to either (a) defendant out of business after complaint filed, or (b) defendant made suitable changes in operation,' and that three complaints were awaiting hearing." He also made mention of the fact that there has been an increase in enforcement activity by the various state enforcement agencies.

My point in quoting Mr. Kinnaird is to show that common carriers, with their complaints of unlawful operators, are not as helpless to cope with as some of their testimony presented to this Committee indicated.

Our concern here, and the thought that we would like especially to leave with this Committee, is that the enactment of the proposed legislation will gradually wear down present distribution arrangements of many cooperative marketing associations that has taken some of them a long period of time to bring to its present status.

All that agriculture can seemingly inherit from this legislation, if enacted, is increased expenditure, great annoyance, possible harassment, and less income to farmers.

In conclusion, I suggest that this Committee give consideration to the holding in abeyance of S. 1729 for sufficient time to permit the I.C.C. to conduct its "all-out drive." With its added powers extended by Public Law 89-170, illegal operators could be driven from the highways.

Senator LAUSCHE. The hearings on this bill are now concluded. The record, however, will be kept open until August 5 for the insertion of any other documents that will be presented and that are pertinent to the issue.

With that, the meeting will stand adjourned.

(Whereupon, at 11:10 a.m., the subcommittee was adjourned.)

(The following statements, letters, etc., were received by the committee for inclusion in the record:)

SOUTHEAST MILK SALES ASSOCIATION, INC.
Bristol, Va., July 13, 1966.

Senator FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee, Washington, D.C.

DEAR SIR: This Association markets milk for its 1100 members located in Virginia, West Virginia, Tennessee, Kentucky and North Carolina. In order to best serve the membership and the general public, the Association operates farm to market pick-up trucks and milk transport equipment.

This hauling service which our members provide for themselves result in:

(1) The members obtaining efficient hauling service at cost, and

(2) The public obtains milk and dairy products with the least transportation cost possible.

Should S. 1729 become law, this cooperative and others like it will be unable to perform the present services for members and for the public. If the Interstate Commerce Commission Act is amended as proposed, the cost of transporting agricultural commodities will be raised without a doubt. These increases will be passed on to consumers.

We are unalterably opposed to S. 1729 and we ask that our letter be made a part of the record.

Very truly yours,

FRANK H. MCDOWELL,
Assistant General Manager.

MICHIGAN MILK PRODUCERS ASSOCIATION,
Detroit, Mich., July 14, 1966.

Hon. PHILIP A. HART,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Hearings are now being held on Senate Bill 1729 by the Surface Transportation Subcommittee of the Senate Committee on Commerce. This bill attacks the Cooperative exemption in the Interstate Commerce Commission Act and would do much to tear down the agricultural exemptions provided by that Act and extend the control of the Interstate Commerce Commission into the agricultural area.

Senate Bill 1729 would make the cooperative exemption dependent upon the granting of a certificate by the I.C.C. Before granting such a certificate the I.C.C. would determine whether the cooperative was qualified and whether those transportation activities were within the scope of the exemption.

There is no provision for any court review of the I.C.C. decision on this matter. We are not aware of any good reasons for a change in the I.C.C. regulations to, in effect, destroy the agricultural exemptions which have proven beneficial to farmer cooperatives and so we very strongly oppose the Senate Bill 1729.

We would appreciate your informing Senator Lausche, who is Chairman of the Subcommittee, and Senator Magnuson who is Chairman of the Commerce Committee, of our position.

Sincerely,

JACK W. BARNES, *General Manager.*

MODERN MILK MARKETING ASSOCIATION,
Cheshire, Conn., July 14, 1966.

Senator THOMAS J. DODD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR DODD: We respectfully urge that you oppose S. 1729, relative to Cooperative Exemption from I.C.C. Regulation.

The Interstate Commerce Act contains an important exemption for motor vehicles controlled and operated by cooperative associations. This is a part of the general exemption from regulation by the Interstate Commerce Commission which Congress extended to agricultural transportation.

S. 1729 would make the cooperative exemption dependent upon the granting of a certificate by the I.C.C. Before granting a certificate, the I.C.C. would determine whether the cooperative was qualified and whether its transportation activities were within the scope of the exemption. No court review of the I.C.C. decision is provided in the bill.

I.C.C. can now challenge whether the operations of a cooperative are within the exemption, but these decisions are subject to court review. The I.C.C. has tried to extend its power in several cases beyond the limits which the courts would sustain.

In addition, cooperatives would be subject to extensive investigation, audit, and examination of records by the I.C.C.

The passage of this bill would place an undue burden on cooperatives and indirectly reduce farmer incomes.

Sincerely,

WALTER M. BRYANT.

SIOUX CITY MILK PRODUCERS COOPERATIVE ASSN., INC.,
Sioux City, Iowa, July 15, 1966.

SENATOR F. J. LAUSCHE,
Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee, Washington, D.C.

DEAR SENATOR LAUSCHE: Our board of directors have requested me to convey to you our opposition to S. 1729 and that our opposing letter please be included in the hearing record.

We operate a fleet of some 14 trucks which are a very necessary and vital part of our business. The Constitutional right of our farmer dairymen to produce, sell, and deliver our milk would be impaired by this bill.

The ICC's authority to grant or not grant a certificate without the possibility of court review could seriously handicap the effectiveness to our members.

We must make reports and keep records on our operations now and any more would be oppressive.

We urge you and your colleagues not to grant to the ICC additional dictatorial powers. Further controls and tighter regulations granted in this bill would surely add expenses to our already strained farm economy and eventually find its way to higher milk costs to the consumer.

Senate 1729 is a bad bill, and we urge you and your colleagues to prevent its passage.

Thanks a lot.

Sincerely yours,

I. W. RECK, *General Manager.*

CLARK COUNTY DAIRYMEN, INC.,
Las Vegas, Nev., July 20, 1966.

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

DEAR SENATOR MAGNUSON: This letter is written to register our opposition to Senate Bill 1729.

We believe that if the cooperative exemption is made dependent on the granting of a certificate by the I.C.C., the practical value of the exemption will have been lost. We realize that the I.C.C. can now challenge whether the operations of a cooperative are within the exemption, but these decisions are subject to review

by the courts. We believe the proposed Bill S. 127 is detrimental to cooperative associations in that it does not provide for a court review of the I.C.C. decision.

Please include this letter in the hearing record.

Very truly yours,

MERLIN J. JONES.

[TELEGRAM]

JULY 24, 1966.

Senator FRANK J. LAUSCHE,
Senate Office Building, Washington, D.C.:

I am attorney for Northwest Agricultural Cooperative Association, Inc., and am scheduled to appear on behalf of my client before Surface Transportation Subcommittee in opposition to S. 1729 on July 25 or 26. Although I have attempted to secure space on any form of transportation to Washington, D.C., I have been unsuccessful. Because of airline strike there are few flights from West Coast to Washington and none from Northwest. Feel strongly that the *Northwest* case should be presented in proper prospective to the subcommittee. Respectfully request that another time be set at your convenience and when I can secure transportation for me to make an appearance.

CLIFFORD N. CARLSEN, Jr.

McDONALD COOPERATIVE DAIRY CO.,
Flint, Mich., July 20, 1966.

Senator FRANK J. LAUSCHE,
Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: I understand that hearings were held on July 14 and 15 on S. 1729 before the Surface Transportation Subcommittee of the Senate Commerce Committee. Will you please include this letter in the hearing records.

In the interests of this cooperative and its members, we are opposed to the provisions in this bill which would remove the exemption from Inter-State Commerce Commission jurisdiction of vehicles controlled and operated by cooperative associations.

McDonald Cooperative Dairy Company markets milk from approximately 600 dairy farmer members whose farms are located in 28 counties in Michigan. Our general office is in Flint with processing plants in Flint, Chesaning, and Saginaw and additional distribution branches in Lansing, Ann Arbor, Detroit, and Alpena. Transportation of dairy products from processing plants to distribution branches and from there to customers is handled by trucks owned and operated by this cooperative. We also make many deliveries of bulk quantities of partially processed dairy products to other processors by truck.

It is obvious that such a bill as this could substantially affect our operations.

Our objection to removal of this exemption is:

(1) This exemption was granted by Congress and should not be granted or removed by an administrative agency.

(2) The Inter-State Commerce Commission has over many years attempted to extend its control into the agricultural area by tearing down these and similar agricultural and cooperative exemptions. Congress has not been sympathetic to ICC, in that they have not approved such changes, and the courts have not upheld attempts by ICC to extend its powers in this area.

(3) S. 1729 would make the cooperative exemption dependent upon the granting of a certificate by ICC. Whether a cooperative meets or does not meet the requirements established by Congress has been left to the Department of Agriculture. If different facets of these qualifications are left to different agencies, they are certain to come up with different interpretations, and experience has shown in the past that these different interpretations may conflict. Furthermore, the bill provides for no court review of ICC decisions in this matter.

(4) ICC can now challenge whether operations of a cooperative are within the exemption. These decisions are subject to court review. In the past there have been several cases when ICC attempted to go beyond the limits that the courts would allow.

(5) The practical value of the exemption would be lost if it were dependent upon the granting of a certificate by ICC.

(6) Cooperatives would be burdened with the extensive investigation, audit, and examination of records by ICC. This would be a problem of both delay in

receiving the necessary approval and the time and work of making the records available. Our objections here are similar to those noted in paragraph three above.

In addition to many specific programs of government directed toward aiding agriculture, Congress has long encouraged farmers' self-help efforts through their cooperative associations. There is a long history of encouragement to agriculture and agricultural organizations extending at least as far back as some of the agricultural provisions of the Clayton Act of 1914, followed by the Capper-Volstead Act, the Cooperative Marketing Act, the Cooperative Farm Credit System, recognition of cooperatives in the Agricultural Marketing Agreements Act, and many other pieces of legislation passed through the years. The most recent statement of this policy is found in the report of the National Commission of Food Marketing in which the Commission notes that there is a frequent need for group action by farmers and recommends the cooperative approach to group action in the following words:

"COOPERATIVE AND BARGAINING ASSOCIATIONS

"The first is through producers' marketing cooperatives and bargaining associations, which already play a prominent part in food marketing. We believe that farmers do not yet fully appreciate the importance of cooperative action in marketing their products. We support all assistance government can reasonably give to producer cooperatives." (Commission report, p. 110.)

We most strongly urge that any legislation affecting agricultural cooperatives be considered in the light of the need of farmers for their cooperative marketing system and in the light of the overall policy of Congress to foster and encourage cooperatives for the general benefit of farmers and the entire population. The broad and general objectives should not be subordinated to the objectives of one specific federal agency with responsibilities in a limited area.

Yours truly,

GAR WAGNER, *General Manager.*

CENTRAL OHIO COOPERATIVE MILK PRODUCERS INC.,
Columbus, Ohio, July 20, 1966.

Hon. FRANK J. LAUSCHE,
Senator, State of Ohio,
Senate Office Building, Washington, D.C.:

We wish to express our opposition to S. 1729 which would probably destroy the present agricultural exemptions from I.C.C. regulation. The Act now contains an exemption for motor vehicles controlled and operated by a cooperative association. We believe this should be continued. We understand the S. 1729 bill would make the cooperative exemption dependent upon the granting of a certificate by the I.C.C. Before granting a certificate the I.C.C. would determine whether the cooperative was qualified and whether its transportation activities were within the scope of the exemption. No court review of the I.C.C. decision is provided in the bill.

It is our belief that the general exemption from regulation by the Interstate Commerce Commission which Congress extended to agricultural transportation is justified and should be continued. There is no useful purpose to be served by granting more power to the I.C.C. on this issue.

Central Ohio Co-operative Milk Producers would urge that you indicate our opposition to this bill and ask that this letter be included in the hearing record.

CHARLES H. GRUBE,
President of Board of Directors.
DONALD E. ZEHR,
General Manager.

PIGGY-BACK SHIPPERS ASSOCIATION OF FLORIDA, INC.,
Miami, Fla., July 21, 1966.

Senator FRANK J. LAUSCHE,
Chairman, Senate Commerce Surface Transportation Subcommittee,
Senate Commerce Committee, Washington, D.C.

DEAR SIR: This letter is in reference to a bill, S–1729, which has been heard by your Sub-Committee on July 14th and 15th, 1966.

I realize my letter is late and I was advised by Senator Smathers of the hearing, however, it was utterly impossible to write you in ample time for my comments to be considered. For what it is worth, I submit the following:

Reading from a transportation magazine, I quote, "The purpose of S–1729, said Mr. Bush, Chairman of the Interstate Commerce Commission, is to enable the Commission to cope more effectively with the activities of various groups and organizations which are siphoning off substantial amounts of traffic from authorized carriers by performing general transportation service".

Considering our geographical location, perhaps I can answer that quote better than most. Our own Association is a victim of, not the common carrier, but of the truck rental system, or gypsy trucks. Call it what you may. We are victims because we can not offer the service or compete with time, as can these trucks. Many of our own shippers use this type of transportation because there are several drop shipments on each truck load that leaves the State of Florida. Our Association utilizes TOFC and thus we can not meet the demands of our shippers. If these same shipments were given to motor carrier, it would take a week of Sundays for the final drop to reach its destination. The cost and damage incurred from re-handling, re-routing, etc., would force these shippers out of business.

If it were possible for your Committee to receive testimony from the shippers that utilize the agricultural cooperative trucks on their back haul, I feel certain that the facts in the aforementioned paragraph would fit more than the majority.

I grant you there is an exception to every rule. However, from our experience most of the shippers that use leased trucks or trucks of any nature, other than common carrier, have shipments going to points not covered by common carrier. The shipments would be consigned to offlying points, in most cases not served by the originating carrier, thus would create rehandling from carrier to carrier and in most cases would increase the cost as forementioned.

Mr. Bush testified of the tremendous growth of agricultural cooperatives over the past ten or fifteen years. His testimony also indicates the tremendous dollar value of these shipments. I construe Mr. Bush's testimony to mean only one thing. The American public is rebelling at the service and cost imposed by the common carriers today. Again, this is not true in all cases. On direct shipments from point of origin to point of destination the motor carrier offers good rates. For an example, here in the State of Florida we have several carriers that serve from Miami to Chicago on specific commodities, at a cost that cannot be equaled by any other method of transportation. The reasoning behind this move is to get their trucks back to the Chicago area where they can once again, return to the south with a real good "paying load".

If these same carriers were to take shipments that were destined for points outside of their rights, then they would have the problems of rehandling, changing from one carrier to another and again the time and cost would enter into the shipment. I sincerely believe that this is the freight that is being moved by your agricultural cooperatives, for the most part. Although I am being repetitious, I sincerely believe that if your committee were to hear testimony from shippers that use the cooperative trucks, you would find the aforementioned to be true facts.

I understand that Mr. James F. Pinkney, Chief Counsel—Public Affairs proposed an amendment in four parts:

1. It would require the Department of Agriculture to maintain a list of qualified farmer cooperatives—it would be the agency to determine the bona fides of such cooperatives, at least in the first instance.
2. It would provide that any farmer cooperative desiring to engage in interstate for-hire transportation of nonmember farmer freight file a notice of intent with the Commission so to do;
3. It would give the ICC the right to examine the records of the cooperative to see if it were complying with the law; and
4. It would identify the type of commodities the cooperative may transport for nonmember farmers in interstate commerce.

Mr. Pinkney asserted if the farmer cooperatives object to this bill, then what they are in fact demanding is the right to engage in common carriage without a show of public convenience and necessity. It is a known fact that if a cooperative applied for rights showing public convenience and necessity that their application would be opposed by every motor carrier and railroad in the country. The fact that the cooperatives grossed $19.26 billion and had a membership of 7.07 million, is indicative of public convenience and necessity. This of course, Mr. Pinkney failed to take into consideration in his testimony.

Reference is now made to the four amendments proposed by Mr. Pinkney. The undersigned agrees with the first three of his proposals. However, the forth proposal to the amendment is defeating the purpose of any cooperative, and is out of order.

Referring now to the third—"It would give the ICC the right to examine the records of the cooperative to see if it were complying with the law".—This amend-

ment is good, as far as it goes. I honestly believe the majority of your common carriers, agricultural cooperatives, shippers cooperatives and even the shippers themselves, want to be legal and are basically honest. However, when the ICC investigates the records of any firm, they will then instigate a hearing which results in a court case, which in turn costs thousands of dollars, which to a non-profit cooperative, is the means of putting them out of business. If the commission would investigate and then advise the parties involved that they are in error in certain procedures and request that they make the necessary corrections or face penalties, they would be welcomed with open arms. I would like to see this added to Mr. Pinkney's suggested amendments.

Referring now to our problems in the Southern Florida area whereas the majority of our freight moves by trucks that are considered to be in the grey area. Our shippers know that this type of transportation is being investigated by the ICC and they are also aware of the several fines imposed by the Public Service Commission of our State. However, they also realize that they must use this type transportation because each truck that is fully loaded leaving our State contains drop shipments to various warehouses, job sites, plants, distributiors etc. Because these shipments are so scattered, it is impossible to use common carrier.

I have written to Mr. Karl C. Grannan of the United States Department of Agriculture in Washington, seeking his advice as to how our Association could handle this freight for our members.

I have also written to Mr. George A. Meyer, Director of the ICC in Washington, regarding the same problem.

I took my problem up with Senator Smathers and a copy of his letter is enclosed.

Our Board of Directors has instructed me to exhaust every means available in order that we may legally handle the freight of our membership on a non-profit basis, be it by Piggy Back, air, or over the road equipment. Let it be understood that our Association does not and will not handle freight for non-members and do not hold ourselves out to the public.

We are approximately 500 miles to the border of our nearest State and therefore the cost of transportation imposed upon our shippers is more than any other place in the country. Our Association needs the authority, in the form of an exemption to Part II of the Act to handle the freight for our membership by over the road equipment on a non-profit basis to permit our shipping members to compete with the northern market.

The Commission suggests I file an application to do so. However, our Association would be opposed by every common carrier in the country, even though they are not handling the freight mentioned above.

For what it is worth, I believe the freight handled by agricultural cooperatives on their back haul is very similar to our situation, and I sincerely believe your investigation will prove it to be true.

I realize that I deviated somewhat from the agricultural cooperative case, however, I also believe that I enlighted you on the problems that exist in south Florida, insofar as transportation is concerned.

I would greatly appreciate any assistance that can be offered by your Committee and the Commerce Department that would enable us to solve the transportation problems of southern Florida.

Very truly yours,

FRANKLIN E. FREDERICK,
General Manager.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
July 22, 1966.

HON. FRANK LAUSCHE,
Chairman, Subcommittee on Surface Transportation,
Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: It is my understanding that the Surface Transportation Subcommittee of the Senate Commerce Committee is presently considering S. 1729, a bill which would provide for the issuance of certificates of exemption to cooperatives and shippers associations upon application and proof of eligibility.

I would like to take this opportunity to express my opposition to this proposal. Agricultural cooperatives and shippers associations have based their operations on the present agricultural cooperative exemption and any departure from this could

seriously affect their operations. I have been contacted by a number of the large cooperatives in North Dakota expressing their concern over this legislation. These groups have indicated that the only effect this legislation would have is to force them to do additional unnecessary book work and file time-consuming reports.

I feel that the agricultural cooperative exemption presently in effect has done much to strengthen and expand the transportation and marketing system available to agriculture and it would be a mistake to undertake any steps at this time which could reverse this progress.

With warmest personal regards,

Sincerely,

MILTON R. YOUNG.

[Telegram]

FRANKLINTON, LA., *July 25, 1966.*

Senator FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee, Washington, D.C.:

Gulf Milk Assn. strongly opposes S1729, passage of this bill would be a catastrophe; include this message in hearing records.

CARLTON TILLERY,
Transportation Manager, Gulf Milk Assn. Inc.

GEORGIA PUBLIC SERVICE COMMISSION,
Atlanta, Ga., August 2, 1966.

Hon. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Commerce Committee, Senate Office Building, Washington, D.C.

Dear Senator LAUSCHE: Please find enclosed two copies of the Statement of the Georgia Public Service Commission supporting the objectives of S. 1729 and suggesting certain amendments which we feel will strengthen and enhance the effectiveness of any legislation designed to control the abuse of Section 203(b)(5) of the Interstate Commerce Act.

The members of this Commission regret they were unable to appear before your Committee and present their views on this situation in person. It is our understanding that you have agreed to keep the record open for filing of statements until Friday, August 5, 1966. Consequently, we are availing ourselves of this method to advise our views on S. 1729.

Your consideration of our proposal is earnestly solicited by the members of the Georgia Public Service Commission.

Respectfully,

WALTER R. MCDONALD, *Commissioner.*

STATEMENT OF GEORGIA PUBLIC SERVICE COMMISSION

The Georgia Public Service Commission is a regulatory body existing under and by virtue of the Constitution of the State of Georgia, charged with, among other responsibilities, the duty of regulating intrastate activities of all railroads and motor carriers operating in the State of Georgia. It is authorized and obligated to require establishment and maintenance of such railroad and motor carrier service and facilities as may be reasonable and just at rates and charges therefor that are reasonable and just. Likewise, the Georgia Commission is charged with the duty of appearing before the Federal regulatory agencies and the Congress to participate in transportation proceedings wherein the interests of the citizens of Georgia appear to be involved.

The Georgia Commission supports the objectives of S. 1729 but hastens to point out to the Committee that the bill does not go far enough to properly control the transportation activities of either the *bona fide* farm cooperative associations or the *pseudo* farm cooperatives set up by clever promoters to circumvent Section 203(c) of the Interstate Commerce Act. This Section requires a certificate or permit be obtained from the Interstate Commerce Commission before engaging in any for hire transportation in interstate or foreign commerce on any public highway.

We will not here attempt to discuss the adverse effect on regulated rail and motor carriers of the recent decision by the United States Court of Appeals for the

Ninth Circuit in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission 350 F. 2nd 252,* as we feel this has been covered adequately by many witnesses testifying before this Honorable Committee. Suffice to say, it is our considered judgment, in light of the above-styled case, a farm cooperative or pseudo farm cooperative may engage in common carriage without the benefit of specific authority from the ICC, of *any commodity, at any rate, to, from* or *between any point, for any one* with only one restriction—that they do not exceed the non-member business limitation (50%) provided in the Agricultural Marketing Act of 1929. In addition, the Agricultural Marketing Act (50% criteria) does not apply to business done with the Federal Government, opening the door even further to the diversion of traffic from the regulated transportation industry of this country.

It is also our unswayed opinion that such transportation is an abuse of the statutory limitations of 203(b)(5) of the Interstate Commerce Act and the intent of the Congress at the time of the passage of the I.C. Act in 1935. Congress certainly did not mean to allow the unlimited entry into the common carrier transportation field by farm cooperatives and this is borne out by the very words of Representative Marvin Jones of Texas, who offered the exemption amendment on the floor of the House of Representatives (Vol. 79, Part II, Congressional Record 1935, PP 11218–22).

We also think the language is quite clear in the Agricultural Marketing Act of 1929, 12 USC 1141J, which provides in relevant part:

"Cooperative Association Defined" (a) As used in this subchapter, 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 the following * * *. Third. That the association shall not deal in *farm products, farm supplies,* and *farm business services* with or for non-members in any amount greater in value than the total amount of such business transacted by it with or for members * * *.

We cannot read into these statutes, 203(b)(5) of the I.C. Act or the Agricultural Marketing Act, any right granting such farm cooperative association an exemption to enter the general transportation business.

How is the State of Georgia affected? By the broadening or distortion of statutory exemptions, the common carrier industry is forced to operate in the face of unfair, unjustified competition that is not subject to rate regulation, and may cut rates to obtain lucrative traffic; that enjoys an unfair advantage derived from a reduced tax status; that will select nothing less than truckload traffic; that will transport only to areas where there is attractive backhaul traffic; that needs no terminals, traffic or sales departments and that has no responsibility to the general public to provide adequate and continuing transportation service. These operators have said, in effect, "we will serve who we want to, when we want to, where we want to and at what rate we decide and the rest of the public "be damned." If this is not "destructive competition" then we are at a loss to understand the term. Obviously, the strength and efficiency of our national transportation system is now endangered. Then everyone suffers—the carriers, the majority of shippers who depend on them for service and the public as a whole in a society where the entire economy relies on a sound, efficient national transportation system.

How can the State of Georgia protect her citizens?—the Georgia shipper who must compete at the distant market place with other shippers who would obtain an unfair price advantage by use of the "cut rate" service of these co-ops—the motor carriers serving our area who must contend with such unregulated competition and still provide regular and continuing service in Georgia while the cream of his traffic is drained off—or the little people of Georgia who must pay through the nose for transportation service when, like the camel, the common carrier system breaks down because the "last straw" of exemption has been piled on its back. *We cannot!*

Under present state registration acts we are able to arrest and convict immediately those truck operators using our highways without first having registered their Interstate Commerce Commission operating authority with the Georgia Commission. Not so with the so-called "co-op." They say, "We are exempt under 203(b)(5) of the I.C. Act. We don't need a certificate or permit from the ICC. Therefore, give us the registration permit as an exempt carrier or we'll

go into Federal Court and force you to grant us such a permit or enjoin you from interfering with our operation." Such is the case in Florida today (See Agricultural Transportation Association of Texas v. Wilbur C. King, C.A. Fla., 349 F. 2nd 873). Once such a permit is granted how then do we police such operation? We cannot go to Maine or Idaho to see if the "co-op" has exceeded the 50% criteria with a load of general commodities we find on his truck today. We do not know, at the time we stop a vehicle, whether this load is for a member or non-member of the co-op. We don't even know if the "co-op" is *bona fide* in the first instance.

With the passage of Public Law 89–170, Congress specifically recognized the important role the States must play in the maintenance of a sound common carrier system by providing for joint agreements between the several States and the Interstate Commerce Commission to enhance the enforcement of both State and Federal Motor Carrier economic and safety regulations (Section I–PL 89–170 amending 202(b)(2) of the I.C. Act). Such enforcement measures by the States are now completely blunted by the present decision in the *Northwest* Case and the present language of 203(b)(5) of the I.C. Act.

The hands of all State enforcement officials are tied unless Congress provides some relief and gives the States the necessary tools to properly enforce economic regulation of these farm cooperatives as was envisioned and intended by P.L. 89–170 passed only last year by the Congress to deal a death blow to unauthorized. transportation.

The *Northwest* decision has spawned a new "gray area" of transportation as witnessed by at least three new applications received by the Georgia Commission requesting registration permits to operate over our highways in interstate commerce as carriers exempted under 203(b)(5) of the I.C. Act. One has come from Florida, one from California and one from Texas. In addition, we have had several other inquiries as to our registration requirements from persons we believe are contemplating entering this field using the *Northwest* decision as a facade to provide common carriage service. We in Georgia have taken the position that such registration permits will not be issued unless and until we are provided with a specific authority from the ICC indicating proper certificates or permits are in effect with that body, or an indication from the ICC that such an organization in a *bona fide* co-op and their truck operations are exempt under the I.C. Act. We are not sure such a position will stand up in court. Further, such action penalizes the legitimate co-op who is truly responding to the needs and desires of its members.

Immediate action by the Congress is not only desirable but imperative. It has been our experience that the longer a bogus transportation company operates, the more entrenched it becomes in the transportation scheme of the country, and the more difficult it is to halt such illegal activities. It can be truly said the illegal truck operator learns from his mistakes and those of others in the same field and, therefore, establishes his operation in a pattern so closely paralleling or conforming with existing exemptions in the law that it is indeed difficult to determine when he has stepped beyond the law.

The Georgia Public Service Commission, therefore, respectfully submits that S. 1729 should be amended to accomplish the following:

(1) The Department of Agriculture should provide certification that a specific agricultural cooperative is *bona fide*, using as criteria the guidelines set forth in the 1929 Cooperative Marketing Act (12 U.S.C. 1141J).

(2) The cooperative should then file such certification, together with a notice of intent to transport for hire with the Interstate Commerce Commission, who in turn would issue a permit of exemption to be filed with the several States just as a certificated carrier now files copies of his Interstate Commerce Commission operating authority with the States in which he intends to operate. This is a sound principle designed to protect the right of every State to know who is using their highways and specifically recognized by Congress with the passage of Section II of P.L. 89–170. Such certificate should be renewed with the ICC on a yearly basis.

(3) The Interstate Commerce Commission should be given the authority to inspect the books and records of the cooperative at any time to determine if the co-op has exceeded the limitation of business done with or for non-members as provided in the Agricultural Marketing Act. If at any time, after reasonable opportunity of hearing, the Department of Agriculture determines that the co-op is not *bona fide* within the intent of the Agricultural Marketing Act, or the Interstate Commerce Commission determines the co-op has exceeded the 50% business criteria, such permit would be canceled and revoked and the exemption withdrawn.

(4) Commodities to be transported for non-members of a cooperative should be positively limited by description so there can be no doubt as to the validity of an

operation when the vehicle of a cooperative is stopped by a State law enforcement official. We think these commodities should be restricted to those items specifically set out in the 1929 Cooperative Marketing Act, to-wit;

"That the association shall not deal in *farm products, farm supplies* and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members"

The Georgia Public Service Commission urges the immediate passage of legislation designed to accomplish the foregoing.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., August 4, 1966.

Mr. STANTON P. SENDER,
Staff Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. SENDER: This will reply to your letter of July 28, 1966 (S. 1729), in which you advise that Senator Lausche requests any further comments which the Commission has to submit on the question of the present authority of the Commission to examine books and records of farmer cooperatives. The Commission appreciates this opportunity to add to our previous statements.

Almost without exception the witnesses who testified before the Committee on July 25 and July 26, 1966, expressed the view that any bona fide cooperative would voluntarily permit such inspection and that in any event through Commission or Court subpoena such records could be secured.

First let me say that to a considerable extent farmer cooperatives have permitted an examination of their records. At times such willingness has been limited to "representative samples" and at times there have been refusals. Our experience has been that the more doubt that exists as to the bona fideness of the cooperative the greater the resistance has been to the inspection of records.

It is true that by instituting a formal investigation proceeding the Commission could, in such a proceeding, issue subpoenas for the production of records. But the Commission has never entered into a formal investigation proceeding with the view of determining the lawfulness of the operations of a particular organizations operations unless prior thereto informal field investigation indicated a serious question as to the lawfulness of the activity. It is in securing this field investigation information that authority to inspect the records is necessary. The Commission has never in the past, and has no desire in the future, to institute formal investigation merely upon suspicion.

It is also true that a civil action could be filed in the Federal District Court and by the use of discovery procedures and subpoena powers of the Court the records could be secured. Such actions have never been instituted until the informal field investigation has established, to our satisfaction, that the operations appear to be in violation of the law. Court actions of this type have never been instituted on the basis of suspicion.

The lawfulness of operations under the present farmers cooperative (Section 203(b)(5)) calls for evaluation of all traffic transported, whether for members or non-members, the percentage of each class to the total, and many other details. This determination could never be made without an extended and intensive examination of all records. No other exemption in the Act requires this much detail. For this reason specific authorization to inspect and copy records seems essential to the proper performance of our duties.

Sincerely,

JOHN W. BUSH, *Chairman.*

MONTGOMERY, ALA., *August 3, 1966.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.:

We concur in the statement filed with you by the Georgia Public Service Commission in re Senate bill 1729.

EUGENE "BULL" CONNER,
President, Alabama Public Service Commission.

RICHMOND, VA., *August 4, 1966.*

Senator WARREN G. MAGNUSON,
Senate Commerce Committee, Washington, D.C.:

The Virginia State Corporation Commission concurs in the statement filed by the Georgia Public Service Commission in S. 1729 and urges the adoption of the recommendation of the Georgia commission in this matter.

H. LESTER HOOKER, *Commissioner.*

[Telegram]

LEXINGTON, KY., *August 5, 1966.*

Senator WARREN G. MAGNUSON,
Senate Commerce Committee, Senate Office Building, Washington, D.C.:

The Kentucky Railroad Commission concurs in the statement filed by Georgia Public Service Commission relative to needed legislation proposed in bill 1729.

KENTUCKY RAILROAD COMMISSION,
By FRANK L. MCCARTHY, *Chairman.*

[Telegram]

JEFFERSON CITY, MO., *August 5, 1966.*

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

This commission is vitally concerned with adverse effects on regulated transportation of decision in *Northwest Agricultural Cooperative* case and supports objectives of S. 1729. However, we concur with the Georgia Public Service Commission that the purpose of the bill could be better accomplished by the amendments which it has suggested, and urge their adoption.

WILLIAM R. CLARK,
Chairman, Missouri Public Service Commission.

[Telegram]

DES MOINES, IOWA, *August 5, 1966.*

Re S. 1729.

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

The Iowa State Commerce Commission concurs in the statement filed by the Georgia Public Service Commission and urges the adoption of the position outlined therein.

DICK A. WITT, *Chairman.*
B. J. MARTIN,
F. B. MEANS,
Commissioners.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., August 5, 1966.

Hon. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: We wish to submit certain data for inclusion into the record in S. 1729, the bill dealing with transportation by farmer cooperatives on which you held hearings last month.

These data are lists of Section 22 quotations filed with the Military Traffic Management and Terminal Service, the agency of the United States responsible for procuring transportation for the Department of Defense, by National Farm Lines, Inc., and American Farm Lines Co-op, Inc.

As the record indicates, both National Farm Lines and American Farm Lines Co-op claim to be bona fide agricultural cooperatives and ground their right to

perform the transportation covered by the quotations on the decision of the United States Court of Appeals for the Ninth Circuit in *Northwest Agricultural Coop. Assn.* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965).

It is evident from the quotations that they were made after careful consideration of the nature of the traffic moving between various points and the conditions under which it moves, and that the rates are designed to undercut those maintained by the motor common carriers.

These tenders make clear that at least these two cooperatives contemplate, not just an occasional back haul movement, but a full scale for-hire trucking operation.

May I also again point out that these cooperatives owe no obligation to serve the public generally and therefore can, by carefully selecting traffic, undercut the rates of responsible common carriers.

Respectfully submitted.

JAMES F. PINKNEY.

List of American Farm Lines Co-op, Inc., freight rate quotations offered the U.S. Government and submitted to the Military Traffic Management and Terminal Service, each bearing an effective date of May 9, 1966

ICC No.	Commodity	Between—	And—	Rates per hundredweight
1	Freight all kinds	All points in Kansas	All points in California	610 cents, TL 20,000; 426 cents, TL 30,000; 391 cents, excess over 30,000 in same vehicle.
2	do	do	All points in Washington	424 cents, TL 30,000; 391 cents, excess over 30,000 in same vehicle.
3	do	Kansas City, Mo. (including all points in Missouri (Kansas City area)).	All points in California	347 cents, TL 20,000; 298 cents, TL 25,000; 289 cents, TL 36,000.
4	do	St. Louis, Mo., and 75-mile commercial area.	do	541 cents, TL 20,000; 461 cents, TL 30,000; 400 cents, TL 36,000.
5	do	All points in Nebraska	do	550 cents, TL 20,000; 486 cents, TL 30,000; 400 cents, 40,000 or over, loaded in same vehicle.
6	do	All points in Oklahoma	do	350 cents, TL 20,000; 300 cents, TL 30,000; 250 cents, 40,000 or over, loaded in same vehicle.
7	do	do	All points in Washington	483 cents, TL 24,000; 441 cents, TL 30,000; 380 cents, 40,000 or over, loaded in same vehicle.
8	do	Rock Island, Ill	All points in California	461 cents, TL 25,000; 420 cents, TL 30,000; 336 cents 40,000 or over, loaded in same vehicle.
9	do	Lincoln AFB, Lincoln, Nebr.	Fairchild AFB, Wash.[1] Geiger Field, Wash.[1] Larson AFB, Wash.[3] McCord AFB, Wash.[4] GSA, Auburn, Wash.[3] Portland AFB, Oreg.[3] USAF, Seattle, Wash.[3] Walair AFB, Wash.[1]	$1,000; [1] [2] $1,035; [2] [3] $1,190.[2] [4]
10	Electrical appliances or instruments, NOI; radio receiving sets, NOI; radio receiving sets and talking machines, phonographs or wire or tape recorders combined; or amplifiers, preamplifiers or radio tuners; radio transmitting sets or radio transmitting and receiving sets combined; radio receiving sets.	Springfield, Ill	All points in California	500 cents, TL 20,000; 475 cents, TL 30,000.

[1] Effective June 30, 1966.
[2] Per vehicle charge for not exceeding 40,000.
[3] Effective June 28, 1966.
[4] Effective July 7, 1966.

List of National Farm Lines, Inc. (W. N. Tynant Co., Inc., agent for National Farm Lines), freight rate quotations offered the U.S. Government and submitted to the Military Traffic Management and Terminal Service, each effective as indicated

No.	Commodity	From—	To—	Rates per hundredweight
[1] 1	Bomb bodies, steel	Garden City, N.Y.	Coplant, Nebr.	$1.95, TL 40,000.
[1] 2	Aluminum powder, atomized	Union, N.J.	Grand Island, Nebr.	$2.25, TL 40,000.
[1] 3	Bomb or bomb parts, (empty)	Door Park, Long Island and Garden City, Long Island.	Parsons, Kans.	$1.95, TL 40,000.
[1] 4	Cartridge clips, or ammunition links, cannon or machinegun, steel.	Brooklyn, N.Y.	Lake City, Mo.	$2.40, TL 30,000; $2, on escess to 40,000.
[1] 5	Magnesium metal or magnesium metal alloys, powdered.	Centerbrook or Essex, Conn.	Crane, Ind.	$3.15, 25,000, $1.85, 50,000.[2]
[1] 6	Freight all kinds	New York, N.Y.	St. Louis, Mo.	$1.50, TL 40,000.
[3] 7	Sodium nitrate, packed in 55-gallon drums	Bogota, Lodi, Newark, N.J.	Crane, Ind.	$1.43, TL 40,000.
[4] 8	Cartridge shells, cartridge case, empty, not primed.	Philadelphia, Pa.	Burlington, Iowa.	$1.70, TL 35,000.
[4] 9	Ammunition, small arms, blank or loaded firearms, small arms.	Bridgeport, New Haven, Conn.	Lake City, Mo.	$2.45, TL 35,000.
[4] 10	Cartridge clips or ammunition links, cannon or machinegun, steel.	Philadelphia, Pa.	Lake City, Mo.	$2.05, TL 30,000; $1.98, TL 35,000; $1.80, TL 40,000.
[4] 11	Ammunition boxes (empty)	Maspeth, Long Island and Port Chester, N.Y.	Crane, Ind.	$1.40, TL 35,000.
[4] 12	do	do	Lake City, Mo.	$1.70, TL 35,000.
[4] 13	Cartridge case, cups	Meridan, Conn.	do	$1.65, TL 30,000; $1.60, TL 40,000.
[4] 14	Bomb bodies, bomb parts, NOI; iron or steel, aerial bombs empty or aerial bomb cluster adapters.	Brooklyn, N.Y.	Coplant, Nebr.	$1.95, TL 40,000.
[4] 15	Projectile parts, NOI iron and steel, further finished than rough machine.	Bogota, Lodi, Newark, N.J.	Crane, Ind.	$4.75, 10,000, exclusive use of truck; $4.25, excess on same vehicle.
[4] 16	Aluminum, extrusions	Philadelphia, Pa.	Indianapolis, Ind.	$1.70, TL 35,000.
[4] 17	Armor piercing, rocketheads	Lansdale, Pa.	Crane, Ind.	$1.25, TL 36,000.
[4] 18	Pumps, power NOI or parts	Metropolitan New York.	Granite City, Ill.	$1.80, TL 32,000.
[4] 19	Cartridges, small arms, blank or loaded	Bridgeport, Fairfield, Stratford, Conn.	Savanna Ordnance Depot, Savanna, Ill.	$1.40, TL 40,000.
[4] 20	Fuses, percussion, tracer, timer, or detonating, separate or combined (class C explosive).	Waterbury, Conn.	Joliet, Ill.	$1.80, 25,000; $1.50, excess of 25,000 on same truck.
[4] 21	Freight, all kinds	McGuire AFB, Wrightstown, N.J.	Tinker AFB, Midwest City, Okla.	290 cents, TL 30,000; 245 cents, excess on same vehicle.

[1] Effective June 30, 1966.
[2] Entire shipment must be tendered to carrier at 1 time and loaded on not more than 2 vehicles.
[3] Effective June 28, 1966.
[4] Effective July 7, 1966.

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MOTOR TRANSPORTATION,
Frankfort, August 9, 1966.

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

DEAR SENATOR MAGNUSON: Please find enclosed a statement representing the position of the Kentucky Department of Motor Transportation with regard to Senate Bill 1729.

We would appreciate the Committee's consideration of this statement. If your staff desires anything further from me or my department, please so advise.

Thanking you for your interest and your consideration, I am

Sincerely yours,

Ben M. COMBS, *Commissioner.*

STATEMENT OF BEN M. COMBS, COMMISSIONER, KENTUCKY DEPARTMENT OF MOTOR TRANSPORTATION ON S. 1729

The Kentucky Department of Motor Transportation is a statutory administrative agency charged with responsibility for regulation and taxation of all commercial motor vehicles operating on the public highways of Kentucky. Additionally, this department has the law enforcement responsibility in both the above areas, including vehicles operated in interstate commerce.

One of the responsibilities imposed upon the Kentucky Department of Motor Transportation is the administration of the motor carrier regulatory laws without discrimination, unfair advantage, or destructive competitive practices so that an adequate, efficient transportation service is maintained. All of the department's acts are aimed toward developing and maintaining a good transportation system by motor vehicles. In addition, the statutes impose upon the department the responsibility of complying with the Federal Motor Carrier Act insofar as possible. Kentucky takes the position that its regulation of motor carriers must be performed in cooperation with, and as an adjunct to, the regulation of motor carriers by the Interstate Commerce Commission.

Kentucky wants to be responsible in the regulation of motor carriers, and we will cooperate fully with our sister states and the Federal Government in the promotion and maintenance of an adequate transportation system. The Federal Government has a responsibility to the states, and the states have a responsibility to each other and to the Federal Government not to purposefully interfere with or weaken the existing enforcement of regulatory laws. None of us should require or ask the other to close his eyes to an improper operation or to do anything that would weaken the other's position so that proper law endorcement for the preservation of an adequate transportation system would be hampered.

We are concerned that the recent decision rendered by the United States Court of Appeals for the Ninth Circuit in *Northwest Agricultural Cooperative Association v. Interstate Commerce Commission*, 350 F 2d 252 will have an adverse effect on us in our attempt to carry out the declaration of policy set forth by our legislature, and we feel that S. 1729 is the proper vehicle to insure control of the transportation activities of bona fide agricultural cooperatives and the elimination of those who seek to make improper use of this exemption.

In our law enforcement experience, one of the most, if not the most, difficult problem we have encountered in recent years is the illegal truck operator claiming exemption under Section 203(c) of the Interstate Commerce Act. It has been accepted by the Interstate Commerce Commission and the Congress that much of the enforcement of the Interstate Commerce Act must take place at the state level. When faced with an application for interstate operation through Kentucky under this exemption, we are helpless. In no case are we able to determine whether the applicant is a *bona fide* farm cooperative even though in many cases we are convinced he is not.

We do not believe it was the intent of Congress to impose on the overall transportation picture a class of carrier requiring no authority and permitted to transport any commodity completely without regulation and with the further privilege of accepting only the freight which pleases him. Such unrestricted operation by these non-regulated carriers subvert the whole value and design of the Federal Motor Carrier Act and could easily destroy and bankrupt existing regulated carriers upon which the public must rely for motor transportation. The NACA decision points out a glaring omission in the ICC Act but S. 1729 offers an opportunity to correct this deficiency.

Few, if any, state law enforcement agencies are equipped to investigate a cooperative claiming this exemption, yet it is upon such state agencies that the bulk of the law enforcement responsibility falls. The determination of eligibility for the agricultural exemption should be made at the federal level by the Interstate Commerce Commission as should any periodic inspection to determine that 50% business criteria has not been exceeded. A certification of eligibility from that federal agency could then be made a prerequisite to qualification for interstate operation through any state that chose to impose that requirement.

The importance of law enforcement at the state level was recognized by Congress in the passage of PL 89–170. The pseudo farm co-op is the main unsolved problem in this enforcement effort, and this problem has been compounded by the NACA decision. The solution offered is simple, imposes no unreasonable burden on the true farm cooperative and will enable the states to put an end to illegal transportation activities conducted under the guise of the exemption provided by Section 203(c).

OLYMPIA, WASH., *August 11, 1966.*

Hon. WARREN G. MAGNUSON,
Old Senate Office Building,
Washington, D.C.:

Please refer to the statement of Georgia Public Service Commission concerning legislation proposed in S. 1729 in which it is urged that the provisions of S. 1729 (with amendments as proposed by the Georgia statement) are enacted into law. Please be advised that the Washington Utilities and Transportation Commission concurs in that statement.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,
FRANCIS PEARSON, *Chairman.*

[Editorial, Distribution Age]

RENDER UNTO CAESAR . . .

Even during the era when the government advocated a policy of laissez-faire economics, industries were protected by trade tariffs and other government controls.

It has long been generally accepted that some form of product or industry protection is needed to maintain a strong economy. These protections are seen in the form of trade tariffs, embargoes, price supports or regulatory acts. Today, only the degree of industry protection is argued by the politicians. Even here, there is little difference.

The Interstate Commerce Act was a splendid example of bilateral regulatory protection. It was originally intended that the Act should protect the public from unfair practice by carriers. On the other hand, it was also designed to protect regulated carriers from ruinous competition by other regulated and non-regulated carriers.

In looking over the court's changing views on the Act's agricultural exemption provision, I now wonder if it isn't becoming unilateral. Not only have the courts opened up the gate for traffic erosion by the "non-reg" truckers, but the "non-regs" have a powerful voice in the government.

The U.S. Department of Agriculture is out to open the agricultural gap wider. Apparently, besides being the protective angel for farmers, it has decided to take the non-regulated for-hire carrier under its wing. A recent example of its penetration into the grey area trucking hassle is seen in a study by a USDA economist, printed in the University of Wisconsin Press' publication "Land Economics." The report is an attempt to establish the solidarity and stability of "non-regs." The report, however, doesn't guarantee that the "non-regs" have given up hiding refrigerators under watermelons!

The USDA should remember that a "non-reg" hauling non-exempt cargo is the same in principle as a person smuggling Argentinian beef into the U.S. I'm certain the USDA would not appreciate a Transportation Regulatory Agency supporting the smuggling of juicy Argentinian steaks into this country just in order for a carrier to get a profitable backhaul. The cry would soon be heard from Old MacDonald's Farm—"Stop those smugglers, we can't compete with the Argentinian packing houses which don't have to meet U.S. health standards!"

What is the difference? Should the ICC conduct a study to find out why we can't have thick juicy steaks from the Rio de la Plata country? It is, indeed, unfortunate that the Agricultural Department's name appeared on the report.

Their weak explanation for spending the taxpayer's money for a study that is the prime responsibility of another agency is, "It was a by-product."

There is no argument that the USDA is authorized to study transportation and distribution related to the marketing of agricultural products. However, this does not extend into researching legal controversies for which the ICC and the courts are explicitly commissioned to study. If this type of information is needed for the USDA to function effectively, it should take care to protect its reports from public distribution. Someone could mistake this report as sound evidence and use it to sway legislative opinion. Of course, this could be the report's intent. The Washington grapevine has for sometime been oozing out a rumor that the USDA is pushing to get the exemption opened wider—even with a non-restrictive backhaul privilege.

I believe:

1. Our economy requires different types of carriers who offer a variety of services. This also includes non-regulated for-hire carriers. They plan an important role in the transport of agricultural products.
2. Discrimination against regulated carriers or the erosion of their traffic by government as subsidy to other types of carriers is wrong.
3. The comparative easy entry into "non-reg" carriage acts to create more available service than there is legal demand. This unbalance in the supply and demand scale breeds illegal hauling.
4. That any department or agency of Federal Government set up to protect an industry should weigh carefully any actions that would be injurious to another domestic industry.
5. Where transportation regulation needs study, the appropriate transportation agency should conduct or be an equal party to the study. Particularly when legislative or executive action is to be sought, this should be part of inter-departmental protocol.

RONALD G. RAY, *Editor.*

○