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AMENDING SECTION 22 OF THE INTERSTATE COMMERCE ACT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 754 and S. 1174

TO AMEND SECTION 13a OF THE INTERSTATE COMMERCE
ACT, AND FOR OTHER PURPOSES

JUNE 5 AND 6, 1967

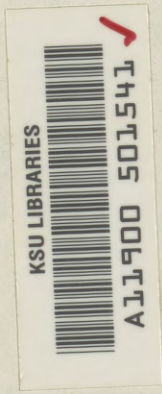
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AMENDING SECTION 22 OF THE
INTERSTATE COMMERCE ACT

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AMENDING SECTION 22 OF THE INTERSTATE COMMERCE ACT

MONDAY, JUNE 5, 1967

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

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

OPENING STATEMENT OF THE CHAIRMAN

Senator LAUSCHE. This is a hearing to be held before the Surface Transportation Subcommittee of the Commerce Committee on two bills, S. 754, introduced at the request of the Interstate Commerce Commission by Senator Magnuson and myself, and S. 1174, introduced by Senator Hart.

S. 754 proposes to amend section 22 of the Interstate Commerce Act so as to permit the performance of transportation services for governmental bodies free or at reduced rates only to the extent such services (1) are performed during war or national emergency or (2) involve transportation which remains exempt from economic regulation under part II (agricultural commodities) and part III (bulk commodities) of the act.

S. 1174 proposes to amend section 22 of the Interstate Commerce Act so as to permit the performance of transportation services for governmental bodies free or at reduced rates only to the extent such services are performed during war or national emergency.

It is pointed out by the Interstate Commerce Commission in its justification that adoption of its recommended bill, S. 754, would foster sound economic conditions in transportation and would encourage the establishment and maintenance of reasonable charges for transportation services without unjust discrimination, undue preference or advantages, or unfair and destructive competitive policies.

If there is no objection, there will be inserted in the record at this point copies of S. 754 and S. 1174, the Commission's statement of justification for S. 754, and the report of the Comptroller General received on these two bills.

(S. 754, S. 1174, and Comptroller General's statements follow:)

Staff member assigned to this hearing: Stanton P. Sender.

[S. 754, 90th Cong., first sess.]

A BILL To amend section 22 of the Interstate Commerce Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Interstate Commerce Act, is hereby amended:

By striking the first clause of the first sentence in subsection (1) and inserting in lieu thereof the following:

"That nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments either during time of war or national emergency as declared by Congress or the President or when such property consists of (a) ordinary livestock, fish (including shellfish) or agricultural (including horticultural) commodities (not including manufactured products thereof), as such property is defined in section 203(b) (6) of part II, or (b) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count; nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates during time of war or national emergency as declared by Congress or the President, or the issuance of mileage, excursion, or commutation passenger tickets;"

[S. 1174, 90th Cong., first sess.]

A BILL To amend section 22 of the Interstate Commerce Act to restrict certain authorization for free or reduced rate transportation of property or passengers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22(1) of the Interstate Commerce Act is amended by striking that part of the first sentence which precedes the first semicolon and inserting in lieu thereof the following: "Nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments during time of war or national emergency as declared by Congress or the President, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates during time of war or national emergency as declared by Congress or the President, or the issuance of mileage, excursion, or commutation passenger tickets".

ICC STATEMENT OF JUSTIFICATION FOR S. 754

SECTION 22 RATES

We recommend that section 22 be amended so as to permit the performance of transportation services for governmental bodies free or at reduced rates only to the extent such services: (a) are performed during war or national emergency or (b) involve transportation which remains exempt from economic regulation under Parts II and III of the Act.

Section 22 of the Interstate Commerce Act now permits, among other things, "the carriage, storage, and handling of property free or at reduced rates for the United States, State, or municipal governments" and "the transportation of persons for the United States Government at free or reduced rates". These provisions which apply to railroads and other common carriers subject to Part I of the Act, are also made applicable to motor common carriers by section 217(b), to water common carriers by section 306(c), and to freight forwarders as to transportation or service in the case of property by section 405(c).

Except for the enactment in 1957 of subsection (2) which requires carriers to file certain rates with the Commission, the provision of section 22 relating to Government traffic have remained essentially the same since passage of the origi-

nal act to regulate commerce in 1887. At that time the Government was a comparatively small user of freight or passenger services of the carriers. Today, however, it is the largest single purchaser of transportation services. According to a study prepared by the General Accounting Office dated August 15, 1961, during fiscal year 1959 the government paid line-haul transportation charges totaling \$184 million for shipments of 8 million tons of freight at reduced rates under section 22. This is indicative of the volume of freight moving under section 22 quotations and tenders.

The Commission has for many years been of the view that, except during time of war or national emergency, the Government should pay full tariff rates and charges for transportation services performed on its behalf, the same as any other shipper or user of common carrier services. A large percentage of Government traffic now moves at reduced rates under section 22 which, of course, are not available to the commercial shipper. This preferential treatment has a strong tendency to increase the cost of regulated transportation services to commercial users who, when their rates become too high, resort to private carriage. Such diversions of traffic are clearly detrimental to the maintenance of a sound common carrier system.

Our recommendation would not, however, completely eliminate Government reduced rate privileges under section 22. During time of war or national emergency, these privileges would still apply. In such times, it is required that commodities be moved, often secretly, over routes and between points as to which the applicable tariff rates may be considered to be unreasonable under the circumstances, or with respect to which there are no existing published rates, there being little likelihood in many instances of any commercial demand developing for the use of such routes or for other services. Accordingly, we feel that, in the interest of national defense, governmental bodies should retain section 22 privileges during the time of war or national emergency.

In addition, our recommendation contains a specific provision retaining reduced rate privileges in situations involving the transportation of bulk or agricultural commodities for governmental bodies. This provision is necessary in order not to aggravate existing competitive inequalities between carriers of different modes arising from the exemption in sections 203(b) (6) and 303 of the Act. However, we recognize that any change in the law respecting these inequalities may require a corresponding change in the proposed amendment to section 22.

We believe that this recommendation is especially timely. Recently the Department of Defense announced that it intended to route freight on farm cooperative trucks. This new policy of the Defense Department was made possible by a recent decision by the U.S. Court of Appeals for the Ninth Circuit in *Northwest Agricultural Cooperative Association, Inc. v. Interstate Commerce Commission*, 350 F 2d 252 (1965), cert. denied, 382 U.S. 1011 (1966). This decision established the right of agricultural cooperatives to backhaul non-farm commodities for non-members, such as the Department of Defense. This means that the Department can take advantage of free and reduced rates under section 22 as well as use farm cooperative trucks, both at the expense of the authorized for-hire motor carriers.

We believe that the adoption of this recommendation would foster sound economic conditions in transportation and would encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices.

Attached is a draft bill to implement the above recommendation.

A BILL To amend section 22 of the Interstate Commerce Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Interstate Commerce Act, is hereby amended:

By striking the first clause of the first sentence in subsection (1) and inserting in lieu thereof the following: "That nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments either during time of war or national emergency as declared by Congress or the President or when such property consists of (a) ordinary livestock, fish (including shellfish) or agricultural (including horticultural) commodities (not including manufactured products thereof),

as such property is defined in section 203(b) (6) of part II, or (b) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count; nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates during time of war or national emergency as declared by Congress or the President, or the issuance of mileage, excursion, or commutation passenger tickets;".

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 14, 1967.

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

DEAR MR. CHAIRMAN: We refer again to your letter of February 3, 1967, in which you asked for our comments on S. 754.

S. 754, which you introduced for yourself and Senator Lausche, proposes to amend section 22 of the Interstate Commerce Act, 49 U.S.C. 22, to limit the transportation of passengers and property free or at reduced rates for the United States, State, or municipal governments to time of war or national emergency declared by Congress or the President and to property consisting of agricultural commodities, livestock, fish and bulk commodities. This bill was drafted by the Interstate Commerce Commission, which has urged restriction of section 22 for some years, as have other interested parties, including those representing the motor carrier industry and Great Lakes port and other public and private interests.

Similar bills have been introduced in prior Congresses, most recently S. 2714, S. 1726 and H.R. 5868, 89th Congress, 1st sess.; and S. 2075, 88th Congress, 1st sess., on which the Subcommittee on Surface Transportation of your Committee held hearings in May 1964. Our comments on S. 2075 in our letter of September 30, 1963, B-97532, B-108119, and the testimony of a member of my staff are contained in a report of the hearings on S. 2075.

At the outset, we wish to make it clear that we have no serious quarrel with the philosophy behind efforts to insure that by section 22 the United States Government does not pay less for its transportation services than any other shipper. We so testified on S. 2075 on May 11, 1964, when we stated that we "have no basic objection to this type of legislation in principle." (Page 96 of the Report of the hearings.) What we have consistently opposed, in connection with S. 2075 and other bills of this type, is the impairment of the freedom of action afforded both carriers and responsible Government officials in the establishment of fair and reasonable section 22 rates and charges. And we continue to believe that on balance the United States pays as much as, if not more than, commercial shippers of the same volume of the same commodities between the same origins and destinations.

As we indicated in the course of the hearings on S. 2075, we are willing to participate in efforts to modify section 22 so as to permit some degree of oversight by the Interstate Commerce Commission. We would like to make it clear that our Office did not participate in a decision by other Government agencies in 1964 to discontinue efforts toward drafting a suitable substitute for or revision of S. 2075, consistent with the agreement of several Government witnesses at the hearings on that bill. This is not to say, however, that we think either the United States Government or the public interest would be well served by subjecting Government traffic to the complete economic regulatory scheme of the Interstate Commerce Act. Our remarks herein are therefore directed to consideration of the rate situation generally and of Government transportation procurement within the framework of section 22, with some analysis of the case against section 22 presented by the Interstate Commerce Commission and other interested parties.

Section 22 of the Interstate Commerce Act, provides, in part, that nothing in the act shall prevent the carriage, storage, or handling of property or the transportation of persons for the United States Government "free or at reduced rates."

The section applies to railroads and other carriers subject to part I of the act, to motor common by section 217(b), 49 U.S.C. 317(b), to water common carriers by section 306(c), 49 U.S.C. 906(c), and to freight forwarders by section 405(c), 49 U.S.C. 1005(c). This section was in the original Interstate Commerce Act passed in 1887. It represented no innovation in the law; it was rather declaratory of the common law right of carriers to grant preferential treatment to certain classes, including the sovereign, in certain cases. *Nashville, Chattanooga & St. Louis Railway Company v. Tennessee*, 262 U.S. 318 (1923). As a practical matter, the word "free" is surplusage in section 22, at least as far as the transportation of Government property is concerned. The presence of this word in the law possibly is sometimes used to emphasize the implication that, through section 22, the Government gets something for nothing—an implication far from fact.

Section 22 is permissive; carriers may establish preferential rates if they so desire, but they cannot be required to do so. *Nashville, Chattanooga & St. Louis Railway Company v. Tennessee*, *id.* page 323; *Tennessee Products and Chemical Corporation, et al. v. Louisville and Nashville Railroad Company*, 319 I.C.C. 497, 502 (1963); *Interpretation of Government Rate Tariff—Eastern Central*, 323 I.C.C. 347, 349 (1964); *Southern Motor Carriers—Agreement*, *id.* 396, 398 (1964). We emphasize the permissive character of section 22 because some proponents of limiting legislation assert that Government shipping agencies use pressure in some cases to obtain reduced rate quotations.

In its present state one of the most complex areas of the national economy is the transportation industry. A comprehensive, diversified and sometimes confusing rate structure has evolved within the context of the economic regulatory scheme contained in the Interstate Commerce Act, directed to the development and promotion of private domestic commerce. Basic to the rate structure is the general classification of commodities moving in commerce and the system of class rates which almost all carriers provide by tariff between all points on their routes. Ordinarily these class rates represent the maximum level of reasonable compensation for the service involved. *All Freight To Pacific Coast*, 248 I.C.C. 73, 86 (1941); *Foodstuffs From New York To Baltimore*, 66 M.C.C. 682, 683 (1956). Only a relatively small proportion of total tonnage moves at class rates. They are generally displaced by lower exception and commodity rates. *Class Rates, Mountain-Pacific Territory*, 296 I.C.C. 555, 654 (1955); *Class Rate Investigation 1939*, 262 I.C.C. 447, 479 (1945).

The lower commodity rates are established at the instigation of commercial shippers or on the carriers' own initiative to stimulate business in the area served, to create new demands, or, competitively, to retain traffic or attract it away from a competing mode of transportation. These rates clearly delineate established commercial traffic patterns—from producer to manufacturer, to wholesaler, to retail outlet, to consumer. Duly published and filed according to law, they are available to the general public and to the Government.

Government traffic patterns, however, do not always coincide with commercial patterns and may in fact run counter to them. The location of Government facilities depends upon geographic, economic, and safety factors and the intended use of the facility. Installations which include testing ranges for weapons systems, space vehicles, etc., are usually set up in remote, thinly populated areas; Government storage depots are located with regard not only to the areas they serve but possibly also with the view to conserving land which has potential industrial use. The economically depressed condition of an area may motivate establishment therein of a Government facility, all other conditions being equal. These factors and others militate against the flow of Government traffic in conjunction with commercial traffic.

Government traffic patterns also readjust to conform to changing international situations. Many of the commodities which the Government ships are unique to its needs and are seldom found in commercial channels; of such commodities as well as those commercially used, the Government often has sporadic large volume movements which run counter to commercial traffic flow and which lack the regularity which would justify establishing commodity rates in duly published and filed tariffs. In such situations, the maximum reasonable level class rates are often the only tariff rates available and for newly developed and unusual commodities there are no rates at all.

Another element—simplification of the rate-fixing process—must be considered. Even in peacetime, the efficient economical execution of Government pro-

grams generally requires expeditious movement of its goods. Thus, the means afforded by the Interstate Commerce Act for adjustments in the rate structure to accord with changed conditions and requirements and, therefore, help assure the maintenance of just and reasonable rates, are often not adequate to accommodate the peculiar needs of the Government. While this procedure is well designed to meet and reconcile as far as possible the interests of both competing shippers and competing carriers, prolonged complicated proceedings may occur which, if applied to special rates and provisions for the Government, might well frustrate the carrying out of the public business.

One example serves to illustrate this situation: the history of the so-called "Big Johns" are jumbo aluminum-covered hopper cars which can handle over 100 tons of grain each; they offer a much higher ratio of pay load to deadweight than conventional boxcar equipment and reduce grain transportation costs appreciably. The Southern Railway acquired 500 of these cars and published certain reduced rates, to become effective August 10, 1961, for multiple-car shipments of not less than 450 tons of grain to be carried in five of the jumbo cars. The Commission extended the rates initially for seven months but they became effective in 1962, after a temporary restraining order had been invalidated by the Supreme Court in *Arrow Transportation Company v. Southern Railway Company*, 372 U.S. 658 (1963). The rates were found lawful by a division of the Commission; this was reversed by the full Commission, whose holding was set aside by a district court, which permanently enjoined the Commission's order. The Supreme Court vacated this judgment and remanded for return to the Commission to reconsider in the light of the district court's earlier findings of fact and conclusions of law. 379 U.S. 642 (1965). The case was reopened in the Commission and the multiple-car rates were found reasonable. *Grain In Multiple-Car Shipments—River Crossings to the South*, 325 I.C.C. 752 (1965).

The "Big John" rates took four years and extended costly litigation before they were determined to be lawful. Even though they had been in effect since late 1962, since their lawfulness was in question, the carriers' right to retain revenues derived from those rates was not certain until the case finally ended.

Such situations point up a regulatory lag which could seriously hamper the conduct of Government business. Within the framework of section 22, which helps accelerate the rate-fixing process, procurement officials and common carriers are able to arrive at rates and charges which permit the Government's goods to obtain the specially adapted transportation services needed. We think these rates and charges are generally at the level that commodity rates would be if there were commercial traffic of the same nature in sufficient volume to warrant tariff publication of commodity rates. Government procurement officials are as interested as carrier representatives in arriving at charges fair to both parties not only because they are bound to those principles of fair dealing on which the Federal Procurement Regulations, 41 CFR 1-100 *et seq.*, and the Armed Services Procurement Regulations, 32 CFR 1.100 *et seq.*, are grounded but because the Government needs a healthy national transportation system to provide those services. Compare *Tennessee Products & Chemical Corp. v. Louisville & Nashville R. Co.*, 319 I.C.C. 497 (1963), wherein the Commission concluded that it lacked jurisdiction to consider whether the assailed section 22 quotation rates were unjust, unreasonable, unduly preferential and unduly prejudicial. If jurisdiction did lie, however, the Commission concluded that the rates were not unlawful.

Section 22 lends itself also to the adoption of new techniques in transportation pricing, to experiment and innovation. Following one of the recommendations for such experimentation in rates and services made by President Kennedy in his April 5, 1962, message to the Congress, House Document No. 384, 87th Cong., 2d sess., The Transportation System Of Our Nation, Government procurement officials and carriers have, for example, employed the flexibility of section 22 to try out the efficacy of all-commodity rates based upon average costs. Improved service and pricing, proved feasible under section 22, will, we think, eventually find their way into the commercial rate structure and thus inure to the benefit of private shippers.

When it became clear in the early 1950s not only that the United States was and would continue to be the largest single user of transportation, but also that section 22 was increasingly used in Government transportation, efforts began to be aimed at limiting the section drastically or repealing it outright. In 1955 and 1956, the Interstate Commerce Commission recommended amendments to

make section 22 quotations final as between the parties and to make the section inapplicable to shipments of used household goods. The Commission opposed complete elimination of section 22 on the ground that it "would [not] be equitable or in the interest of the national defense." House Report No. 2633, 84th Cong., 2d sess., July 6, 1956, page 8. In its 78th Annual Report for 1964, however, the Commission recommended amendment of section 22 substantially in the form proposed in S. 754. The rationale of the Commission's proposal, explained on page 61, seemed to be that section 22 was substantially unchanged from the 1887 enactment, when the Government was a comparatively small user, but since it is now the largest single shipper in the world it should no longer have the benefit of section 22.

This is the prevailing view of the proponents of legislation to limit section 22. Underlying it are two basic assumptions: (1) that the bulk of Government traffic moves under section 22 arrangements; and (2) that such arrangements inevitably involve reductions from published tariff rates. From these assumptions—demonstrably erroneous—the proponents conclude that the shipping and consuming public suffers higher costs by being compelled to make up the difference between what the Government pays and the tariff rates it allegedly should pay, that the higher rates supposedly charged commercial shippers are driving them to private carriage, and that payment of tariff rates by the Government would so augment carrier revenues as to alleviate some of their economic ills.

In the justification accompanying S. 754, the Interstate Commerce Commission stated:

"* * * According to a study prepared by the General Accounting Office dated August 15, 1961, during fiscal year 1959 the government paid line-haul transportation charges totaling \$184 million for shipments of 8 million tons of freight at reduced rates under section 22. This is indicative of the volume of freight moving under section 22 quotations and tenders." (Congressional Record, January 31, 1967, page S. 1144.)

This is not the whole story told by that study which we made in 1961 for your Committee. The study showed that during 1959, \$184 million in line-haul transportation charges were paid at rates authorized under section 22 for 8 million tons of freight moved on Government bills of lading. These shipments constituted 27 percent of an estimated total tonnage of 30 million tons shipped and 29 percent of the total transportation charges of \$631 million paid on Government bills of lading during fiscal year 1959. Since the Government's total annual transportation bill (including air, overseas and foreign transportation of goods and passengers) amounts to several billions of dollars, clearly the bulk of Government traffic does not move under section 22 arrangements.

Neither are section 22 arrangements necessarily reductions from tariff rates. Frequently they call for a type of service not held out to the public in tariffs. This is illustrated by the facts in *Louisville and Nashville Railroad Company v. United States*, 106 F. Supp. 999 (1952), affirmed 221 F. 2d 698 (1955), where the carriers had offered the United States a section 22 quotation covering the transportation of transformers containing a high percentage of silver wiring, a commodity for which no tariff rate was published, since railroads are not generally common carriers of precious metals. Again, a section 22 quotation may call for rates higher than those published in tariffs because the quotation rate includes a service not offered under the tariff rate. See, for example, *Chesapeake and Ohio Railroad Company v. United States*, 161 F. Supp. 403 (1958), wherein the court sustained the applicability of a section 22 quotation charge higher than the carrier's published tariff because the latter did not contemplate the car handling method used by the Government but the quotation did.

Fundamentally, then, all section 22 does is reserve to the carriers the freedom to arrange with the United States (among others) for the unique as well as the ordinary transportation requirements of the public business. Compare *Public Utilities Commission of California v. United States*, 355 U.S. 534 (1958).

By their emphasis on the status of the United States as the largest single shipper in the world, some proponents of restrictive amendment of section 22 seem to create the image of a Government colossus imposing its will on a weak, unhealthy transportation industry. This is hardly a true picture. We have endeavored to show how and why section 22 is used in Government transportation procurement and to what extent—29 percent of \$631 million paid in 1959 on Government bills of lading and far less than that of the Government's total transportation bill of several billions of dollars. And the transportation industry is

itself somewhat of a colossus. In 1965 it reportedly accounted for \$120 billion—\$1 out of every \$6 in the gross national product. Domestic surface transportation accounted for the greater share of that \$120 billion.

The Interstate Commerce Commission reports that regulated carrier revenues were at a record high of nearly \$24 billion for fiscal 1966; that over 1.6 trillion ton-miles of freight were carried in 1965 (including 1.9 million ton-miles of domestic air freight); that railroads had an absolute gain of 42 billion ton-miles between 1964 and 1965; and that motor carriers had an absolute gain of 20 billion ton-miles. 80th Annual Report of the Interstate Commerce Commission, pages 50 to 52. This suggests a strong and growing industry, able to prosper notwithstanding diversion of traffic to private carriage.

The Commission also reports that the central issue in most rate proceedings concerns low rates, not high rates, and that several proposed motor carrier general increases "were disapproved for lack of adequate evidence of revenue need." The report continues that the "general rate level has therefore continued downward due to continuing competitive reductions on specific movements." 80th Annual Report, pages 15 and 16. Again, these statements do not seem to support the charge that low rates on section 22 traffic are driving up the rates required to be paid by commercial shippers.

Representatives of Great Lakes port interests have been critical of section 22, asserting that carriers serving East Coast ports offer reduced rate quotations on commodities produced in the Midwest, causing their diversion from Great Lakes ports. In 1963 and 1964, a special Subcommittee of the Senate Committee on Commerce held hearings concerning the Great Lakes-Saint Lawrence Seaway. In the Subcommittee report a problem of the Lake ports was said to be the discriminatory use of section 22 by the railroads and the Subcommittee recommended that section 22 be "examined objectively and changed." Committee print, September 13, 1965.

The facts suggest that elimination of section 22 quotations would not necessarily serve to increase traffic through the Lake ports. On the one hand, possibly to avoid short-hauling themselves, the carriers maintain lower export rates by tariff to East Coast ports than the export tariff rates to the Lake ports. Even without section 22 quotations on Government traffic therefore, the general rate situation would be unchanged in the absence of changes by the carriers in their tariff rates. See, for example, the illustration used in a speech by the Executive Director of the Toledo-Lucas County Port Authority which appears in the Congressional Record for March 3, 1967, at page S3021. According to this illustration the export rail rate by tariff on cranes and draglines from Indianapolis, Indiana, to New York, 799 miles, is 80 cents per hundred pounds. The export rail rate by tariff to Toledo, 211 miles, is 98 cents per hundred pounds. Only published tariff rates are involved in the illustration; section 22 rates apparently had nothing to do with the imbalance in those tariff rates.

On the other hand, as pointed out in the special Subcommittee Report referred to above, at page 11, there is a scarcity of American flag vessels serving the Great Lakes. This scarcity is attributed to a variety of causes, among them, mechanical difficulties encountered by large U.S. flag vessels in navigating the Seaway canals and locks. Since, under the cargo preference laws, 10 U.S.C. 2631, 15 U.S.C. 616a, and 46 U.S.C. 1122b(a) and 1241(b), most Government-owned or Government-sponsored cargo is required to be moved in ships of American registry, that cargo must be transported to the ports where the ships are. In the 1967 shipping season this situation may be alleviated to some extent. The Maritime Administration has granted operating authority in the Great Lakes—Seaway trade to three U.S. flag operators, one of which must maintain a minimum sailing schedule. Congressional Record for March 8, 1967, pages S3372 and S3373.

It seems to us that the troubles of the Great Lake ports do not stem from the use of section 22 by Government shipping agencies and their cure does not lie in restriction of that use. As the Supreme Court said in *Interstate Commerce Commission v. Duffenbaugh*, 222 U.S. 42, 46 (1911), the Interstate Commerce Act "does not attempt to equalize fortune, opportunities or abilities." This statement is especially relevant here. The elimination of section 22, except in time of war or national emergency, would not operate to remove competitive advantages enjoyed by East Coast ports by virtue of published tariff arrangements. Neither would it necessarily impel American flag vessel operators to greatly increase service to Great Lakes ports.

We must point out also that S. 754, if enacted, apparently would have no immediate impact. S. 754 would continue section 22 availability in time of "national emergency declared by Congress or the President." President Truman declared the existence of a national emergency on December 16, 1950, proclamation 2914, 64 Stat. A 454. The continuance of the national emergency so proclaimed was recognized by President Eisenhower in 1960 and 1961 (Executive Order No. 10861, February 11, 1960, Executive Order No. 10905, January 14, 1961, 3 CFR 396, 436 (1959-63, Comp.)), and by President Kennedy in 1962 (Executive Order No. 11037, July 20, 1962, 3 CFR 621 (1959-63, Comp.)). There has been no Presidential proclamation terminating the national emergency so declared and its continued existence has been recognized by the Supreme Court. See *Zemel v. Rusk*, 381 U.S. 1, rehearing denied 382 U.S.C. 873 (1965).

In conclusion, the essential question here is whether Government traffic should move at rates comparable to the commodity rates generally applied on comparable movements of commercial traffic. We think it should. We agree that, for the transportation services it needs, the Government should pay charges at the same general level as those paid by commercial shippers; we do not think the Government should pay more.

For the foregoing reasons we recommend against favorable consideration of S. 754 by your Committee. But, as we stated, while we oppose impairment of the freedom of action section 22 affords carriers and Government to establish rates and charges at a fair and reasonable level, we are still willing to join in efforts to modify section 22 so as to permit some degree of oversight by the Interstate Commerce Commission.

Sincerely yours,

FRANK H. WEITZEL,
*Assistant Comptroller General
of the United States.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 14, 1967.

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

DEAR MR. CHAIRMAN: We refer again to your letter of March 6, 1967, in which you asked for our comments on S. 1174.

S. 1174, introduced by Senator Hart, proposes to amend section 22 of the Interstate Commerce Act, 49 U.S.C. 22, to limit the transportation of passengers and property free or at reduced rates for the United States, State, or municipal governments to time of war or national emergency declared by Congress or the President. Limiting the applicability of section 22 to time of war or national emergency is a change the Interstate Commerce Commission has urged for several years, as have other interested parties, principally those representing the motor carrier industry and Great Lakes port interests, some of whom have advocated outright repeal of section 22 insofar as it applies to transportation for the Government.

Similar bills have been introduced in prior Congresses, most recently S. 2714, 89th Congress, 2d sess.; S. 1726 and H.R. 5868, 89th Congress, 1st sess.; and S. 2075, 88th Congress, 1st sess., on which the Subcommittee on Surface Transportation of the Committee on Commerce, United States Senate, held hearings in May 1964. Our comments on S. 2075 in our letter of September 30, 1963, B-97532, B-108119, and the testimony of a representative of our Office are contained in a report of the hearings on S. 2075. There is also pending before your Committee a similar bill, S. 754, which you introduced at the request of the Interstate Commerce Commission. A companion bill to S. 754, H.R. 6534, is pending before the House Committee on Interstate and Foreign Commerce.

At the outset, we wish to make it clear that we have no quarrel with the philosophy which inspires efforts to narrow the scope of section 22—that the United States Government should pay as much for its transportation services as any other shipper. We so testified on S. 2075, when we stated that we "have no basic objection to this type of legislation in principle." (Page 96 of the Report of the hearings.) What we have consistently opposed, in connection with S. 2075 and other bills of this type, is the impairment of the freedom of action afforded both carriers and responsible Government officials in the establishment of fair and

reasonable section 22 rates and charges. And we continue to believe that on balance the United States pays as much as, if not more than, commercial shippers of the same volume of the same commodities between the same origins and destinations.

As we indicated in the course of the hearings on S. 2075, we are willing to participate in efforts to modify section 22 so as to permit some degree of oversight by the Interstate Commerce Commission. We would like to make it clear that our Office did not participate in a decision by other Government agencies in 1964 to discontinue efforts toward drafting a suitable substitute for or revision of S. 2075, consistent with the agreement of several Government witnesses at the hearings on that bill. This is not to say, however, that we think either the United States Government or the public interest would be well served by subjecting Government traffic to the complete economic regulatory scheme of the Interstate Commerce Act. Our remarks herein are directed to consideration of the rate situation generally and of Government transportation procurement within the framework of section 22, with some analysis of the case against section 22 presented by the Interstate Commerce Commission and other interested parties.

Section 22 of the Interstate Commerce Act provides, in part, that nothing in the act should prevent the carriage, storage or handling of property or the transportation of persons for the United States Government "free or at reduced rates." The section applies to railroads and other carriers subject to part I of the act, to motor common carriers by section 217(b), 49 U.S.C. 317(b), to water common carriers by section 306(c), 49 U.S.C. 906(c), and to freight forwarders by section 405(c), 49 U.S.C. 1005(c). This section was in the original Interstate Commerce Act passed in 1887. It represented no innovation in the law; it was rather declaratory of the common law right of carriers to grant preferential treatment to certain classes, including the sovereign, in certain cases. *Nashville, Chattanooga & St. Louis Railway Company v. Tennessee*, 262 U.S. 318 (1923). As a practical matter, the word "free" is surplusage in section 22, at least as far as transportation of Government property is concerned. The presence of this word in the law, possibly is sometimes used to emphasize the implication that, through section 22, the Government gets something for nothing—an implication far from fact.

Section 22 is permissive; carriers may establish preferential rates if they so desire, but they cannot be required to do so. *Nashville, Chattanooga & St. Louis Railway Company v. Tennessee*, *id.* page 323; *Tennessee Products and Chemical Corporation, et al. v. Louisville and Nashville Railroad Company*, 319 I.C.C. 497, 502 (1963); *Interpretation of Government Rate Tariff—Eastern Central*, 323 I.C.C. 347, 349 (1964); *Southern Motor Carriers—Agreement*, *id.* 396, 398 (1964). We emphasize the permissive character of section 22 because some proponents of limiting legislation assert that Government shipping agencies use pressure in some cases to obtain reduced rate quotations.

In its present state one of the most complex areas of the national economy is the transportation industry. A comprehensive, diversified and sometimes confusing rate structure has evolved within the context of the economic regulatory scheme contained in the Interstate Commerce Act, directed to the development and promotion of private domestic commerce. Basic to the rate structure is the general classification of commodities moving in commerce and the system of class rates which almost all carriers provide by tariff between all points on their routes. Ordinarily these class rates represent the maximum level of reasonable compensation for the service involved. *All Freight To Pacific Coast*, 248 I.C.C. 73, 86 (1941); *Foodstuffs From New York to Baltimore*, 66 M.C.C. 682, 683 (1956). Only a relatively small proportion of total tonnage moves at class rates. They are generally displaced by lower exception and commodity rates. *Class Rates Mountain-Pacific Territory*, 296 I.C.C. 555, 654 (1955); *Class Rate Investigation 1939*, 262 I.C.C. 447, 479 (1945).

The lower commodity rates are established at the instigation of commercial shippers or on the carriers' own initiative to stimulate business in the area served, to create new demands, or, competitively, to retain traffic or attract it away from a competing mode of transportation. These rates clearly delineate established commercial traffic patterns—from producer to manufacturer to wholesaler to retail outlet to consumer. Duly published and filed according to law, they are available to the general public and to the Government.

Government traffic patterns, however, do not always coincide with commercial patterns and may in fact run counter to them. The location of Government

facilities depends upon geographic, economic, and safety factors and the intended use of the facility. Installations which include testing ranges for weapons systems, space vehicles, etc., are usually set up in remote, thinly populated areas; Government storage depots are located with regard not only to the areas they serve but possibly also with the view to conserving land which has potential industrial use. The economically depressed condition of an area may motivate establishment therein of a Government facility, all other conditions being equal. These factors and others militate against the flow of Government traffic in conjunction with commercial traffic.

Government traffic patterns also readjust to conform to changing international situations. Many of the commodities which the Government ships are unique to its needs and are seldom found in commercial channels; of such commodities as well as those commercially used, the Government often has sporadic large volume movements which run counter to commercial traffic flow and which lack the regularity which would justify establishing commodity rates in duly published and filed tariffs. In such situations, the maximum reasonable level class rates are often the only tariff rates available and for newly developed and unusual commodities there are no rates at all.

Another element—simplification of the rate-fixing process—must be considered. Even in peacetime, the efficient economical execution of Government programs generally requires expeditious movement of its goods. Thus, the means afforded by the Interstate Commerce Act for adjustments in the rate structure to accord with changed conditions and requirements and, therefore, help assure the maintenance of just and reasonable rates are often not adequate to accommodate the peculiar needs of the Government. While this procedure is well designed to meet and reconcile as far as possible the interests of both competing shippers and competing carriers, it frequently results in prolonged complicated proceedings which, if followed by the Government, might well frustrate the carrying out of the public business.

One example serves to illustrate this situation: the history of the so-called "Big John" rate case. "Big Johns" are jumbo aluminum-covered hopper cars which can handle over 100 tons of grain each; they offer a much higher ratio of pay load to deadweight than conventional boxcar equipment and reduce grain transportation costs appreciably. The Southern Railway acquired 500 of these cars and published certain reduced rates, to become effective August 10, 1961, for multiple-car shipments of not less than 450 tons of grain to be carried in five of the jumbo cars. The Commission extended the rates initially for seven months but they became effective in 1962, after a temporary restraining order had been invalidated by the Supreme Court in *Arrow Transportation Company v. Southern Railway Company*, 372 U.S. 658 (1963).

These rates were considered and found lawful by a division of the Commission; this was reversed by the full Commission, whose holding was set aside by a district court, which permanently enjoined the Commission's order. The Supreme Court vacated this judgment and remanded for return to the Commission to reconsider in the light of the district court's earlier findings of fact and conclusion of law. 379 U.S. 642 (1965). The case was reopened in the Commission and the multiple-car rates found reasonable. *Grain In Multiple-Car Shipments—River Crossings to the South*, 325 I.C.C. 752 (1965).

The "Big John" rates took four years and extended costly litigation before they were determined to be lawful. Even though they had been in effect since late 1962, since their lawfulness was in question, the carriers' right to retain revenues derived from those rates was not certain until the case finally was closed.

Such situations point up a regulatory lag which could seriously hamper the conduct of Government business. Within the framework of section 22, which helps accelerate the rate-fixing process, procurement officials and common carriers are able to arrive at rates and charges which permit the Government's goods to obtain the specially adapted transportation services needed. We think these rates and charges are generally at the level that commodity rates would be if there were commercial traffic of the same nature in sufficient volume to warrant tariff publication of commodity rates.

Government procurement officials are as interested as carrier representatives in arriving at charges fair to both parties not only because they are bound to those principles of fair dealing on which the Federal Procurement Regulations, 41 CFR 1-1.00 *et seq.*, and the Armed Services Procurement Regulations, 32 CFR 1.100 *et seq.*, are grounded but because, since the Government vitally needs the services it seeks, it vitally needs a healthy national transportation sys-

tem to provide those services. Compare *Tennessee Products & Chemical Corp. v. Louisville & Nashville R. Co.*, 319 I.C.C. 497 (1963), wherein the Commission concluded that it lacked jurisdiction to consider whether the assailed section 22 quotation rates were unjust, unreasonable, unduly preferential and unduly prejudicial. If jurisdiction did lie, however, the Commission went on to consider the assailed quotation rates and concluded that they were not unlawful.

Section 22 lends itself also to the adoption of new techniques in transportation pricing, to experiment and innovation. Following one of the recommendations for such experimentation in rates and services made by President Kennedy in his April 5, 1962, message to the Congress, House Document No. 384, 87th Cong., 2d sess., The Transportation System Of Our Nation, Government procurement officials and carriers have, for example, employed the flexibility of section 22 to try out the efficacy of all-commodity rates based upon average costs. Improved service and pricing, proved feasible under section 22, will, we think, eventually find their way into the commercial rate structure and thus inure to the benefit of private shippers.

When it became clear in the early 1950s not only that the United States was and would continue to be the largest single user of transportation services, but also that section 22 was increasingly used in Government transportation, efforts began to be aimed at limiting the section drastically or repealing it outright. In 1955 and 1956, the Interstate Commerce Commission recommended amendments to make section 22 quotations final as between the parties and to make the section inapplicable to shipments of used household goods. The Commission opposed complete elimination of section 22 on the ground that it "would [not] be equitable or in the interest of the national defense." House Report No. 2633, 84th Cong., 2d sess., July 6, 1956, page 8. In its 78th Annual Report for 1964, however, the Commission recommended amendment of section 22 substantially in the form proposed in S. 1174. The rationale of the Commission's proposal, explained on page 61, seemed to be that section 22 was substantially unchanged from the 1887 enactment, when the Government was a comparatively small user, but since it is now the largest single shipper in the world it should no longer have the benefit of section 22.

This is the prevailing view of the proponents of legislation to limit section 22. Underlying it are two basic assumptions: (1) that the bulk of Government traffic moves under section 22 arrangements; and (2) that such arrangements inevitably involve reductions from published tariff rates. From these assumptions—demonstrably erroneous—the proponents conclude that the shipping and consuming public suffers higher costs by being compelled to make up the difference between what the Government pays and the tariff rates it allegedly should pay, that the higher rates supposedly charged commercial shippers are driving them to private carriage, and that payment of tariff rates by the Government would so augment carrier revenues as to alleviate some of their supposed economic ills.

In the justification accompanying S. 754, the Interstate Commerce Commission stated:

"* * * According to a study prepared by the General Accounting Office dated August 15, 1961, during fiscal year 1959 the government paid line-haul transportation charges totaling \$184 million for shipments of 8 million tons of freight at reduced rates under section 22. This is indicative of the volume of freight moving under section 22 quotations and tenders." (Congressional Record, January 31, 1967, page S. 1144.)

This is not the whole story told by that study which we made in 1961 for your Committee. The study showed that during 1959, \$184 million in line-haul transportation charges were paid at rates authorized under section 22 for 8 million tons of freight moved on Government bills of lading. These shipments constituted 27 percent of an estimated total tonnage of 30 million tons shipped and 29 percent of the total transportation charges of \$631 million paid on Government bills of lading during fiscal year 1959. Since the Government's total annual transportation bill (including air, overseas and foreign transportation of goods and personnel) amounts to several billions of dollars, clearly the bulk of Government traffic does not move under section 22 arrangements.

Neither are section 22 arrangements necessarily reductions from tariff rates. Frequently they call for a type of service not held out to the public in tariffs. This is illustrated by the facts in *Louisville and Nashville Railroad Company v. United States*, 106 F. Supp. 999 (1952), affirmed 221 F. 2d 698 (1955), where the carriers had offered the United States a section 22 quotation covering the transportation of transformers containing a high percentage of silver wiring, a com-

modity for which no tariff rate was published, since railroads are not generally common carriers of precious metals. Again, a section 22 quotation may call for rates higher than those published in tariffs because the quotation rate includes a service not offered under the tariff rate. See, for example, *Chesapeake and Ohio Railroad Company v. United States*, 161 F. Supp. 403 (1958), wherein the court sustained the applicability of a section 22 quotation charge higher than the carrier's published tariff because the latter did not contemplate the car handling method used by the Government but the quotation did.

Fundamentally, then, all section 22 does is reserve to the carriers the freedom to arrange with the United States (among others) for the unique as well as the ordinary transportation requirements of the public business. Compare *Public Utilities Commission of California v. United States*, 355 U.S. 534 (1958).

By their emphasis on the status of the United States as the largest single shipper in the world, proponents of restrictive amendment of section 22 seem to create the image of a Governmental colossus imposing its will on a weak, unhealthy transportation industry. This is hardly a true picture. We have endeavored to show how and why section 22 is used in Government transportation procurement and to what extent—29 percent of \$631 million paid in 1959 on Government bills of lading and far less than that of the Government's total transportation bill of several billions of dollars. And the transportation industry is itself somewhat of a colossus. In 1965 it reportedly accounted for \$120 billion—\$1 out of every \$6 in the gross national product. Domestic surface transportation accounted for the greater share of that \$120 billion.

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The Commission also reports that the central issue in most rate proceedings concerns low rates, not high rates, and that several proposed motor carrier general increases "were disapproved for lack of adequate evidence of revenue need." The report continues that the "general rate level has therefore continued downward due to continuing competitive reductions on specific movements," 80th Annual Report, pages 15 and 16. Again, these statements do not seem to support the charge that low rates on section 22 traffic are driving up the rates required to be paid by commercial shippers.

Representatives of Great Lakes port interests have been critical of section 22, asserting that carriers serving East Coast ports offer reduced rate quotations on commodities produced in the Midwest causing their diversion from Great Lakes ports. In 1963 and 1964, a special Subcommittee of your Committee held hearings concerning the Great Lakes—Saint Lawrence Seaway. In the Subcommittee report a problem of the Lake ports was said to be the discriminatory use of section 22 by the railroads and the Subcommittee recommended that section 22 be "examined objectively and changed." Committee print, September 13, 1965.

The facts suggest that elimination of section 22 quotations would not necessarily serve to increase traffic through the Lake ports. On the one hand, possibly to avoid short-hauling themselves, the carriers maintain lower exports rates by tariff to East Coast ports than the export tariff rates to the Lake ports. Even without section 22 quotations on Government traffic, therefore, the general rate situation would be unchanged in the absence of changes by the carriers in their published tariff rates. See, for example, the illustration used in a speech by the Executive Director of the Toledo-Lucas County Port Authority which appears in the Congressional Record for March 3, 1967, at page S3021. According to this illustration, the export rail rate by tariff on cranes and draglines from Indianapolis, Indiana, to New York, 799 miles, is 80 cents per hundred pounds. The export rail rate by tariff to Toledo, 211 miles, is 98 cents per hundred pounds. Only published tariff rates are involved in the illustration; section 22 apparently had nothing to do with the imbalance in those tariff rates.

On the other hand, as pointed out in the special Subcommittee Report referred to above, at page 11, there is a scarcity of American flag vessels serving the Great Lakes. This scarcity is attributed to a variety of causes, among them, mechanical difficulties encountered by large U.S. flag vessels in navigating the

Seaway canals and locks. Since, under the cargo preference laws, 10 U.S.C. 2631, 15 U.S.C. 616a, and 46 U.S.C. 1122b(a) and 1241(b), most Government-owned or Government-sponsored cargo is required to be moved in ships of America registry, that cargo must be transported to the ports where the ships are. In the 1967 shipping season this situation may be alleviated to some extent. The Maritime Administration has granted operating authority in the Great Lakes-Seaway trade to three U.S. flag operators, one of which must maintain a minimum sailing schedule. Congressional Record for March 8, 1967, pages S3372 and S3373.

It seems quite clear that the troubles of the Great Lake ports do not stem from the use of section 22 by Government shipping agencies and their cure does not lie in restriction of that use. As the Supreme Court said in *Interstate Commerce Commission v. Duffenbaugh*, 222 U.S. 42, 46 (1911), the Interstate Commerce Act "does not attempt to equalize fortune, opportunities or abilities." This statement is especially relevant here. The elimination of section 22, except in time of war or national emergency, would not operate to remove competitive advantages enjoyed by East Coast ports by virtue of published tariff arrangements. Neither would it necessarily impel American flag vessel operators to greatly increase service to Great Lakes ports.

We point out also that S. 1174, if enacted, apparently would have no immediate impact. S. 1174 would continue section 22 availability in time of "national emergency declared by Congress or the President." President Truman declared the existence of a national emergency on December 16, 1950, Proclamation No. 2914, 64 Stat. A 454. The continuance of the national emergency so proclaimed was recognized by President Eisenhower in 1960 and 1961 (Executive Order No. 10861, February 11, 1960, Executive Order No. 10905, January 14, 1961, 3 CFR 396, 436 (1959-63, Comp.)), and by President Kennedy in 1962 (Executive Order No. 11037, July 20, 1962, 3 CFR 621 (1959-63, Comp.)). There has been no Presidential proclamation terminating the national emergency so declared and its continued existence has been recognized by the Supreme Court. See *Zemel v. Rusk*, 381 U.S. 1, rehearing denied 382 U.S. 873 (1965).

In conclusion, the essential question here is whether Government traffic should move at rates comparable to the commodity rates generally applied on comparable movements of commercial traffic. We think it should. We agree that, for the transportation services it needs, the Government should pay charges at the same general level as those paid by commercial shippers; we do not think the Government should pay more.

For the foregoing reasons we recommend against favorable consideration of S. 1174 by your Committee. But, as we have stated, while we oppose impairment of the freedom of action section 22 affords carriers and Government to establish rates and charges at a fair and reasonable level, we are willing to join in efforts to modify section 22 so as to permit some degree of oversight by the Interstate Commerce Commission.

Sincerely yours,

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

Senator LAUSCHE. The first witness this morning is Chairman Tucker of the Interstate Commerce Commission.

Mr. Tucker, we would be delighted to hear your testimony.

STATEMENT OF HON. WILLIAM H. TUCKER, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, WASHINGTON, D.C.; ACCOMPANIED BY ALVIN CORBIN, DEPUTY DIRECTOR, OFFICE OF PROCEEDINGS; EDWARD COX, DIRECTOR, BUREAU OF TRAFFIC; AND ROBERT CALHOUN, LEGISLATIVE COUNSEL

Mr. TUCKER. Good morning.

My name is William H. Tucker. I am Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1967.

With me this morning is Director Edward Cox, of the Bureau of Traffic; Deputy Director Alvin Corbin, of the Office of Proceedings; and Legislative Counsel Robert Calhoun.

I appreciate this opportunity to testify on behalf of the Commission on two bills dealing with section 22 of the act. The first, S. 754, is a bill to amend section 22 of the act, introduced by Senator Magnuson. This bill implements one of the Commission's legislative recommendations transmitted to Congress on January 23, 1967.

The second bill, S. 1174, introduced by Senator Hart, amends section 22 to restrict certain authorization for free or reduced rate transportation of property or passengers.

Section 22 of the Interstate Commerce Act now permits, among other things, the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments and the transportation of persons for the U.S. Government free or at reduced rates. These provisions which apply to railroads and other common carriers subject to part I of the act are also made applicable to motor common carriers by section 217(b), to water common carriers by section 306(c), and to freight forwarders as to transportation or service in the case of property by section 405(c).

With the exception of certain changes made in the coverage of this provision by the Transportation Act of 1940 and the enactment, in 1957, of subsection (2) which requires carriers subject to the act to file all quotations or tenders of rates, fares or charges established under section 22 with the Commission, the provisions of this section have remained essentially the same since the passage of the original act to Regulate Commerce in 1887. While at that time government at all levels was a comparatively small user of both freight and passenger service, today it is the largest single user of transportation services by all modes.

Of all governmental units, the Federal Government is by far the largest single user of the Nation's transportation facilities. Some indication of the Federal Government's impact on the revenues of the carriers of all modes of transportation, regulated and unregulated, is indicated by the estimated amounts budgeted each year for transportation, particularly the transportation of property, usually called for budget purposes "the transportation of things."

In the fiscal year ending June 30, 1958, this item amounted to an estimated \$2.6 billion, or roughly 61½ percent of the Nation's estimated freight payments to all modes and classes of carriers. In the fiscal year ending this June 30, it is estimated that the Federal Government will spend in excess of \$3.9 billion for this same item. Since these expenditures cover payments to all modes of transportation whether subject to economic regulation or not, there is no way short of a detailed study of the Federal Government's traffic by the agencies responsible for managing such traffic to determine either the total amount of such traffic which moves by such regulated carriers or the percentage of this total which, in turn, moves under section 22 tenders or quotations. To be complete, such a study would also have to encompass the large amount of traffic moved by regulated carriers for State and municipal governments as well.

Although for these reasons we are not able to document the precise impact of section 22 on the revenues of carriers subject to our juris-

diction, the Commission has, nevertheless, believed for many years that, except during time of war or national emergency, the Government should pay full tariff rates and charges for transportation services performed on its behalf, the same as any other shipper or user of common carrier services.

Since a significant portion of Government traffic now moves at reduced rates under section 22, which are not available to the commercial shipper, this preferential treatment serves to shift the cost of regulated transportation services on to commercial users who, when rates become too high, may resort to private carriage. Such diversions of traffic are clearly not conducive to the maintenance of a sound common carrier system.

Neither S. 754 nor S. 1174 would, however, completely eliminate governmental reduced-rate privileges under section 22. During time of war or national emergency, these privileges would still apply. In such times, it is often necessary that commodities be moved, often secretly, over routes and between points as to which the applicable tariff rates may be considered too unreasonable under the circumstances, or which involve traffic for which there are no existing published rates. Accordingly, we feel that, in the interests of national security, governmental bodies should retain the benefits of section 22 during either time of war or national emergency.

The provisions of Senator Hart's bill, S. 1174, are identical to those in S. 754 except that S. 754 contains a specific provision retaining the reduced-rate privileges in their present form in situations involving the transportation of bulk commodities, as defined in section 303 of the act, and exempt agricultural products, as defined in section 203(b) (6) of the act. While we recognize that any change in the law respecting these exemptions may require a corresponding change in the amendment to section 22 proposed by S. 754, nevertheless, this provision is necessary in order not to aggravate the presently existing competitive inequalities between carriers arising from these two exemptions.

For this reason, we believe that S. 754 should be enacted rather than S. 1174. In our opinion, the enactment of S. 754 would foster sound economic conditions in transportation and would encourage the establishment and maintenance of reasonable charges for all users of the Nation's transportation system.

I will be happy to answer any questions the committee may have.

Senator LAUSCHE. You state that in your opinion.

The enactment of S. 754 would foster sound economic conditions in transportation and would encourage the establishment and maintenance of reasonable charges for all users of the Nation's transportation system.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. What is the reasoning upon which you come to that conclusion?

Mr. TUCKER. Since the Federal Government is our largest shipper, any great proportion of its freight that is shipped for the reduced rates available under section 22, results in higher rates to other commercial shippers. When rates by commercial carriers become higher, shippers tend to divert their freight to private carriers. This brings about a situation of inequality. Therefore we feel that we would have a sounder economic system with respect to rates if the larger shipper were required to pay the same rates as the others.

Senator LAUSCHE. What would be the position of the Commission in the event the carrier were allowed to give reduced rates to one shipper to the prejudice of another?

Mr. TUCKER. We would find that unlawful, Mr. Chairman.

Senator LAUSCHE. And you are applying that same principle to the U.S. Government as a shipper, that it should not be granted reduced rates when doing so causes the carrier to fix a higher rate for other shippers in the commercial industry?

Mr. TUCKER. That is exactly the case, Mr. Chairman, except in times of war or national emergency.

Senator LAUSCHE. That is, the bill which you recommend states that this giving of preferential rates to one shipper, whether it be a private enterprise or a government enterprise, should be discontinued except in a period of war or emergency?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. Getting to the Hart bill, you say it is identical to the bill recommended by the Commission except in two respects. Will you identify those two respects again?

Mr. TUCKER. S. 754, the Commission bill, exempts agricultural products—which are now exempt, pursuant to 203 (b) (6)—from the operation of the proposed bill. These rates are already exempt.

Bulk commodities, as defined in section 303, Mr. Chairman, are also exempt and can now be carried at reduced rates.

Senator LAUSCHE. Would that be continued under the Commission's bill?

Mr. TUCKER. That is correct.

Senator LAUSCHE. What happens to the right to give reduced rates for bulk commodities and agricultural products under the Hart bill?

Mr. TUCKER. Under the Hart bill I don't believe that reduced rates could be attained.

Senator LAUSCHE. It stops the granting of reduced rates?

Mr. TUCKER. That is right.

Senator LAUSCHE. You don't think that reduced rates for bulk commodities and agricultural products should be stopped?

Mr. TUCKER. No, sir, because the reduced rates are in effect on those products right now.

Senator LAUSCHE. Do railroads have the right to agree on reduced rates for bulk commodities?

Mr. TUCKER. No, not now, Mr. Chairman.

Senator LAUSCHE. What carriers do have that right?

Mr. TUCKER. Water carriers, Mr. Chairman. However, under the proposed bill we would exempt from operation of the proposed bill not the carrier but the commodities involved in each case. Right now 203 (b) (6) exempts agricultural products and fisheries from regulation, with respect to the trucking industry only. Bulk commodities are so exempted with respect to the water carrier industry only.

Under our proposal all of the carriers would be exempted from operation of the proposed section 22 with respect to agricultural and fishery products and bulk products.

Senator LAUSCHE. Your bill then would put all carriers on an equal basis with regard to bulk commodities and fish products and agricultural products?

Mr. TUCKER. That is correct, sir.

Senator LAUSCHE. Mr. Tucker, I have here a letter from Senator Magnuson asking me to put to you three questions: One, what were the so-called savings claimed by the General Accounting Office and the Department of Defense in the 1961 studies of Government traffic moving by rail under section 22 rates? Are you able to answer?

Mr. TUCKER. I understand it is \$57 million, Mr. Chairman.

Senator LAUSCHE. Are you certain that that is—

Mr. TUCKER. No, I am not. I get that from Director Cox.

Would you respond?

Senator LAUSCHE. You can check it out and give us the exact figure.

Mr. TUCKER. I will be glad to.

Senator LAUSCHE. My recollection is that the initial time when I heard the argument on section 22, it was claimed by the Department of Defense that the savings amounted to \$600 or \$700 million. But that amount since that time has been, by testimony, brought down closer to the level which you have just indicated.

Mr. Cox. That is the way I understand it, Mr. Chairman. Following those claims at that time, the Senate committee asked the General Accounting Office to make a study of this situation, which is embraced in the report of August 1961. That report shows that 29 percent, or 27 percent by number of shipments, of Government traffic moving on Government bills of lading moved under section 22 tenders. The difference between the charges based on the section 22 tenders and the tariff rates that would have applied amounted to \$57 million on those shipments.

Senator LAUSCHE. If you will check the figures and supply the exact conclusion reached by the General Accounting Office, we will appreciate it.

Mr. TUCKER. We will, Mr. Chairman. (See p. 135.)

Senator LAUSCHE. Question 2 by Senator Magnuson: Since 1961, there has been a greatly expanded movement of military traffic, and a greater utilization of section 22 rates by State and municipal government. If a study were to be done today on the same basis as the 1961 study, would it be a fair assumption that the so-called savings on rail traffic claimed through use of section 22 rates privileges could be double or even triple those claimed in the earlier studies?

Mr. TUCKER. I would like to reserve an answer on that, too, Senator, if I could.

Senator LAUSCHE. You may do so and supply the answer to the question. But now would you assume, on the basis of the increased traffic, that the savings are undoubtedly greater than the \$57 million just mentioned?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. You will supply for the record—

Mr. TUCKER. I will supply an opinion of what they might be, if we can reach one, sir.

Senator LAUSCHE. Question No. 3 by Senator Magnuson: In the 1961 report of the Commerce Committee Special Study Group on Transportation Policies in the United States, commonly referred to as the Doyle report, it is pointed out that to offset every dollar of so-called savings on Government rail traffic, it takes \$5 of commercial traffic revenues assuming an 80-percent rail operating ratio.

Under today's conditions would that same assumption as to the burden on other traffic of these so-called savings on Government rail traffic be correct?

Mr. TUCKER. Personally, Senator, I don't believe so. That is just from doing a little work on the Doyle report this weekend. I would like to get together with the staff and amplify on that question to see if we can give a collective opinion. Personally, I don't believe so.

I agree that the conclusions expressed in the Doyle report, beginning on page 504, are appropriate and I would generally adopt them or find them quite related to the issues today.

Senator LAUSCHE. What did the Doyle report recommend with respect to section 22?

Mr. TUCKER. It accepted that this type of legislation be enacted.

Senator LAUSCHE. For the record will you describe what the membership of the Doyle Committee was?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. How it was made up, representing segments of the industry?

Mr. TUCKER. The Doyle report was contracted by this full Committee. I don't know if I have the information. Perhaps Mr. Sender has the information.

Senator LAUSCHE. It begins on page 727, the legislative history. We will place this information in our subcommittee files.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. One more question by Senator Magnuson: What is the amount of additional commercial revenues sought by the Nation's railroads in the rate increase proceedings now pending before the Commission?

Mr. TUCKER. We have just received some pleadings that could suggest a figure of \$300 million, Mr. Chairman. I would like to check that personally. I got that information this morning quite by accident. It appears from the pleadings that that revenue, additional revenue, would be \$300 million. I would like to leave that figure subject to further verification.

Senator LAUSCHE. Has there at any time been brought to the attention of the Commission the claims made by shippers and port authorities on the Great Lakes that it costs more to ship a distance of 100 miles west of the Great Lakes to, say, Lake Erie, at Toledo, than it does for that shipper to pay for transportation from a point 100 miles west of Toledo to an Atlantic port?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. Do you know whether that is the fact under the right to negotiate rates?

Mr. CORBIN. That was the fact at the time that that complaint was made, sir. It was made by the Port of Toledo. And at that time, on the particular movement of the goods involved, the complaint was correct. But there was nothing that the Commission could do because the goods which were moving to Newport News were moving on a section 22 quotation.

Senator LAUSCHE. To repeat: It cost more to transport a commodity a distance of a hundred miles west of Toledo to a Toledo port, than it did from that same shipping point to the Atlantic coast?

Mr. CORBIN. It cost the shipper more, yes, sir.

Senator LAUSCHE. Did that induce, if you know, vessels not to go up the Great Lakes to pick up cargoes but rather to pick them up on the Atlantic coast?

Mr. CORBIN. I couldn't answer you, sir. I do not know that of my own knowledge. I would presume if they had lower rates to the Port of Toledo then the ships would have had more incentive to come into the port.

Senator LAUSCHE. To go into the ports of Toledo, Cleveland, Detroit, Chicago, and other places?

Mr. CORBIN. Yes, sir.

Senator LAUSCHE. Is there anything further you desire to say, Mr. Tucker?

Mr. TUCKER. No, Mr. Chairman.

Senator LAUSCHE. Have recommendations been made by previous commissions similar to the recommendation which you are making today?

Mr. TUCKER. Yes, sir; I think since right after World War II this recommendation has been made.

Senator LAUSCHE. Are you able to tell on how many occasions the Commission has recommended this elimination of section 22?

Mr. TUCKER. No, sir; except that I think we have recommended this as many times as any other legislation we have recommended without success.

Senator LAUSCHE. Do you know whether at any time since World War II the membership of the Interstate Commerce Commission reached a conclusion different than the one that you have reached?

Mr. TUCKER. To my knowledge they haven't reached any different conclusion than we have suggested here today, Mr. Chairman.

Senator LAUSCHE. That is, for a period of 22 years the membership of the Commission, though it has changed frequently, has uniformly been of the judgment that the section 22 rate should be preferentially changed?

Mr. TUCKER. I believe that to be correct, sir.

Senator LAUSCHE. If that is all you have to say, we thank you for your testimony.

Mr. TUCKER. Thank you, sir.

Senator LAUSCHE. The next witness will be Mr. Paul Rodgers, general counsel of the National Association of Railroad & Utility Commissioners.

Mr. Rodgers, your complete statement will be printed in the record. You may either read it or give the highlights of it. Since it is only three pages long I suggest that you read it.

**STATEMENT OF PAUL RODGERS, GENERAL COUNSEL OF THE
NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS,
WASHINGTON, D.C.**

Mr. RODGERS. Thank you, sir.

My name is Paul Rodgers. I am the general counsel for the National Association of Railroad & Utilities Commissioners (NARUC).

The NARUC was founded in 1889. Within its membership are the governmental bodies of the 50 States engaged in the regulation of

carriers and public utilities. The chief objective of the NARUC is to serve the public interest through the advancement of governmental regulation of carriers and utilities.

The members of the NARUC appreciate the opportunity you have given me as their spokesman to make their views known on S. 754 and S. 1174 which propose amendments to section 22 of the Interstate Commerce Act relative to ending the authority for carriers to extend free or reduced rate transportation to the Government, except in time of war or national emergency.

We have long supported the enactment of legislation of this nature. See: NARUC 69th Annual Convention Proceedings, 1957, page 40; and NARUC 68th Annual Convention Proceedings, 1956, page 455.

Section 22 of the Interstate Commerce Act now permits the transportation of properly free or at reduced rates for the Federal, State, or municipal governments and the transportation of persons for the Federal Government at free or reduced rates. These provisions, which apply to railroads and other common carriers subject to part I of the act, are also made applicable to motor common carriers by section 217 (b) of the act, to water common carriers by section 306(c), and to freight forwarders as to transportation or service in the case of property by section 405(c).

Section 22 stands as a striking anomaly in the broad range of Federal policy which generally seeks to stimulate the national economy. Section 22 gives an undue preference to Government and weakens our regulated common carrier system by encouraging "cut-throat" competition.

The Federal Government is the biggest user of transportation services in the Nation, and a high percentage of its traffic now moves at reduced rates under section 22. This preferential treatment increases the cost of regulated transportation services to commercial users who, when their rates become too high, resort to private or unregulated carriage. Such diversions of traffic are clearly detrimental to the maintenance of a sound common carrier system—a system which is an indispensable part of our national economy and defense.

When the Federal Government avails itself of a regulated transportation system, it should pay its fair share of the cost necessary to adequately maintain the system. The theory of the regulation of rates is to fix them at the lowest reasonable level necessary to maintain the economic stability of the industry regulated. Section 22 allows the tremendous economic force of the United States to penetrate the rate floors established by regulation and thereby weaken an entire industry.

In effect, section 22 produces a heavy economic depressant which operates on a national scale.

The Federal Government spends vast sums annually in countless ways to stimulate and strengthen all segments of the economy. In the field of Government procurement, the Congress has generally demonstrated that low cost is not the controlling consideration.

The Congress has often required the inclusion in Government contracts or terms not directly related to the interests of the Government as purchaser, which have the effect of increasing cost. For instance, the Walsh-Healy Act, 49 Stat. 2036, chapter 881, 41 U.S.C.A., section 35, requires the inclusion in Government contracts of provisions requir-

ing the contractor's adherence to prescribed minimum wages, maximum hours, restrictions on employment of child labor, and requirements for safety of working conditions.

An efficient and dynamic transportation system is vital to our domestic economic growth, productivity, and progress. The achievement of such a system means that, to the extent possible, the users of transportation services should bear the full costs of the services they use.

We believe the enactment of legislation of the nature of S. 754 and S. 1174 would strengthen our transportation system and would encourage the establishment of reasonable charges for transportation services without unjust discrimination or unfair or destructive competitive practices.

Thank you for your attention.

Senator LAUSCHE. Mr. Rodgers, you are the general counsel for the National Association of Railroad & Utilities Commissioners?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. Are these commissioners public officials in the 50 States of the Union?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. In some States do they have a commission dealing with railroads, separate from the commission dealing with other types of utility service?

Mr. RODGERS. Yes; and in those cases both commissioners are members of our association.

Senator LAUSCHE. Will you give an example of States which have separate commissioners for the railroads?

Mr. RODGERS. Kentucky has three commissions. It has the Kentucky Railroad Commission, the Kentucky Department of Motor Transportation, and the Kentucky Public Service Commission.

Alaska has two commissions: The Alaskan Transportation Commission and the Alaskan Public Service Commission.

Arkansas has two commissions: The Arkansas Commerce Commission and the Arkansas Public Service Commission.

Senator LAUSCHE. Ohio has one commission?

Mr. RODGERS. That is correct, sir.

Senator LAUSCHE. For all public utility services.

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. It is my understanding that your association, made up of either elective or appointed public officials of the 50 States of the Union, is recommending that preferential rates be given to no shipper, whether he be related to the private sector of our economy or be a governmental body.

Mr. RODGERS. That is correct, sir. This has been our standing for many years.

Senator LAUSCHE. You do understand that the bill recommended by the Commission allows preferential rates in a period of war or national emergency.

Mr. RODGERS. That is correct.

Senator LAUSCHE. And you subscribe to that?

Mr. RODGERS. Yes, sir. We subscribe to that.

Senator LAUSCHE. For how many years has this association of com-

missioners been of the view that giving preferential rates to one of necessity compels you to give a prejudicial discriminatory rate against another shipper?

Mr. RODGERS. On page 1 of my testimony I cite proceedings going back as far as 1956. It is my belief that our position is much older than that. I would think we have probably been in this position for many years. I can check and give you precisely the earliest days when we first took this position.

Senator LAUSCHE. Are you familiar with the Doyle study?

Mr. RODGERS. To some extent; yes, sir.

Senator LAUSCHE. My recollection is that in 1958 a special select committee of the Commerce Committee was appointed to make a study of how we could insure a sound transportation system having in mind the five bodies of transportation: air, railroad, water, pipeline, and trucks.

In that study the primary objective was to insure a system that would be capable of supplying the needs of the public. I think in your statement you have said that when you gave reduced rates to the Government you compel private industry to pick up the tab which the Government ought to pay.

Mr. RODGERS. That is correct, sir.

Senator LAUSCHE. Will you elaborate on that a bit, please?

Mr. RODGERS. It goes back to the part of my testimony which says that rate regulation, regulation of rates intended to produce the lowest reasonable rate necessary to compensate the carrier in the public interest.

If the Federal Government is allowed to penetrate that rate floor then it follows that the Federal Government is paying an unreasonably low rate and obviously it is going to cause other private shippers to have to pay more.

Senator LAUSCHE. The functions of the Interstate Commerce Commission are to fix rates which will give a reasonable return to the carriers, is that correct?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. And it has never been intended that the Commission shall fix rates that will be less than necessary to provide a reasonable return?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. So under section 22 there is an exception to the effect that the railroads may establish rates less than are reasonable even though that means that they have to increase the rates to other shippers?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. And do you not agree with that philosophy?

Mr. RODGERS. No, sir; we do not.

Senator LAUSCHE. Is there anything further you desire to add?

Mr. RODGERS. Yes, I have a resolution from the Arkansas Commerce Commission which supports your bill, S. 754. It is a short resolution. I would like to have this inserted in the record.

Senator LAUSCHE. Do you support S. 754 in all of its respects?

Mr. RODGERS. On the two aspects of S. 754 which vary from the Hart bill we take no position on that. Our primary concern is to

cut out the preferential treatment to the Federal, State and municipal governments.

Senator LAUSCHE. Thank you very much, Mr. Rodgers.
(The resolution follows:)

RESOLUTION OF THE ARKANSAS COMMERCE COMMISSION, LITTLE ROCK, ARK.

Whereas, The Arkansas Commerce Commission is the body politic in the State of Arkansas charged with the responsibility of the economic and safety regulation of all forms of transportation; and

Whereas, The State transportation policy adopted by the General Assembly declares it necessary in the Public interest to foster sound economic conditions, without unjust discriminations, undue preferences or advantages and unfair or destructive competitive practices; and

Whereas, It is the considered opinion of the Arkansas Commerce Commission that freedom of the transportation industry to offer free or reduced rates on government traffic provides an opportunity for undue preferences or advantages, and to promote unfair or destructive competitive practices which is contrary to the public interest; and

Whereas, There is now pending before the Senate of the United States S. 754 which would limit the transportation of government traffic, including passengers, at free or reduced rates to times of war or national emergency.

Therefore, be it resolved, That the Arkansas Commerce Commission strongly urges the enactment of S. 754; and

Resolved further, That a copy of this resolution be transmitted to the U.S. Senate Committee on Commerce, to members of the Arkansas Congressional Delegation, and to the National Association of Railroad and Utilities Commissioners.

This 26th day of May, 1967.

J. ORVILLE CHENEY, *Chairman.*
D. D. PANICH, *Commissioner.*
EDW. H. BOYETT, *Commissioner.*

Senator LAUSCHE. Mr. Louis C. Purdey, executive director, Toledo-Lucas County Port Authority.

Mr. Purdey, your full statement will be printed in the record. You may read the entire document or proceed to discuss the highlights of it.

I know that you have studied this extensively and in all probability have certain cardinal phases of it that you feel should be considered in connection with this bill.

STATEMENT OF LOUIS C. PURDEY, EXECUTIVE DIRECTOR, TOLEDO-LUCAS COUNTY PORT AUTHORITY, TOLEDO, OHIO

Mr. PURDEY. Yes, sir.

My name is Louis C. Purdey. I am executive director of the Toledo-Lucas County Port Authority, Toledo, Ohio. In addition to appearing on behalf of the Port of Toledo, my appearance here is as a fully accredited representative of a number of organizations. First is the Great Lakes task force, an informal organization composed of the International Association of Great Lakes Ports, the Council of Lake Erie Ports, the Great Lakes Commission, the Great Lakes Terminal Operators Association, and the Great Lakes Shipowner's Association. Each of these organizations has individually resolved in favor of the repeal of section 22 and has so stated in a number of hearings. In order that the time of this committee may be conserved, all of them have requested me to make this joint statement. In addition, it is my

privilege, as a past president and as a current members of its executive committee, to present a separate statement and resolution for the American Association of Port Authorities.

Senator LAUSCHE. At this point you are presenting a separate statement and resolution for the American Association of Port Authorities?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Are these port authorities made up of public officials, either elected or appointed by Governors or by county commissioners or otherwise?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. They are all public officials?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Proceed.

Mr. PURDEY. They are public officials representing 69 of the major port structures of the United States.

Senator LAUSCHE. That is, they are not representative of any private segment of our economy except insofar as their service relates to that private sector?

Mr. PURDEY. That is correct, sir.

Senator LAUSCHE. You then are in a position of saying that you are speaking in behalf of the public?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Proceed.

Mr. PURDEY. At this point, a statement of the purpose of a new Government agency should be stated as indicative of the actual will of Congress. The Department of Transportation Act outlines the purpose of this new Department specifically as follows:

Section 2. (a) The Congress hereby declares that the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources.

(b) (1) The Congress therefore finds that the establishment of a Department of Transportation is necessary in the public interest and to assure the coordinated, effective, administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service to be provided by private enterprise to the maximum extent feasible; to encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation; to provide general leadership in the identification and solution of transportation problems; and to develop and recommend to the President and the Congress for approval of national transportation policies and programs to accomplish these objectives with full and appropriate consideration of the needs of the public users, carriers, industry, labor, and the national defense * * *.

We are not here to talk about the Department of Transportation, but I intend to show that section 22 allows carriers to negate the above policies and declared aims of Congress.

In the original Interstate Commerce Act of 1887 there was included section 22 which provided that the railroads could, if they wished, provide reduced rates for the various local and State governments, as well as the Federal Government, and this was put into the act in order to allow those carriers which had not been given free land, to compete with those carriers which were required to give reduced rates. Although

the carriers complained about the land-grant rate for years and frequently asked for relief from its requirements, nothing was done about this until 1945, when Congress repealed the land-grant provision and stated that—

The full commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to the Interstate Commerce Act of any persons or property for the United States.

Although Congress had repealed the land-grant section, it neglected to repeal section 22, which was the equalizer section. As the Doyle report points out:

Section 22 became the means by which Government agencies could lawfully obtain rate concessions from regulated service carriers.

It should be pointed out that the Doyle report recommends repeal of section 22.

The vastly expanded Federal Government agencies found that the rail carriers were willing at this time to freely give great concessions for their own competitive reasons, and accordingly freely entered into negotiations with them. This type of rate handling led to criticism by shippers, motor carriers, pipelines, water carriers, and air carriers. The activity of the National Industrial Traffic League resulted in action by Congress in 1956, when it passed S. 939—Public Law 85-246. This bill required that all subsequent section 22 quotations be filed with the ICC unless they involved shipments affecting the national security. At this time the ICC was directed to make a study of these section 22 quotations to determine their effect on transportation generally. It should be noted that this filing has accomplished absolutely nothing to help the situation.

It is most significant that the change mentioned above was accomplished at the request of the National Industrial Traffic League. Why should the leading industries of the United States be disturbed? They, like everyone else, should have been elated over the fact that the Government was saving money by reducing freight costs and thereby holding down the tax rate. The industrial traffic men know that the U.S. Government has become the largest single shipper. Traffic men are not accountants or auditors, but they are trained professional transportation specialists. They must approve industrial transportation expenditures and have seen their freight bill rise annually. They also know that when a financially troubled industry makes price concessions to one segment of its customers it must raise prices to the balance.

Almost every session of Congress since World War II has had before it a bill to amend or repeal section 22. As the Government's share of the total freight movement grows, so does opposition to section 22. The list of organizations seeking justice now includes most of the major transportation groups, grain organizations, and some Government agencies.

Criticism of reduced rates under section 22 comes from shippers, motor carriers, pipelines, carriers by water and air. Their consensus is that the Government should not be treated any differently than commercial shippers.

Some of these organizations and businesses include the Interstate Commerce Commission; the Department of Commerce; the Hoover

Commission Task Force; the National Industrial Traffic League; the National Council of Farm Cooperatives; the Air Transport Association of America; the American Trucking Associations, Inc.; the Doyle Committee—special study group on transportation in the United States; the American Merchant Marine Institute; the Association of Oil Pipe Lines; the American Waterways Operators, Inc.; the Chamber of Commerce of the United States; the Irregular Route Common Carrier Conference, ATA; the Intercoastal Steamship Association; the Munitions Carriers Conference, ATA; the Regular Common Carrier Conference, ATA; the Tank Truck Common Carrier Conference, ATA; the Port and Seaway Committee, Detroit, Department of Commerce; and the American Association of Port Authorities.

The competitive abuse of section 22 has not been regarded lightly by members of the grain industry. In a statement submitted to the Under Secretary of Agriculture in December 1962, representatives of all segments of the grain merchandising and grain processing industries requested relief from the Government's monopolistic practice of undercutting the price structure of grain on the open market.

Associations which stated their views against section 22 were the Grain & Feed Dealers National Association, the National Federation of Grain Cooperatives, the Terminal Elevator Grain Merchants Association, the North American Export Grain Association, the Millers National Federation, the American Feed Manufacturers Association, the American Corn Millers Federation, the Chicago Board of Trade, the Kansas City Board of Trade, and the Minneapolis Grain Exchange.

The above organizations state that:

We submit that it is not ethical, justifiable, morally right, or in keeping with our free enterprise system for the Government, by taking advantage of section 22, to usurp the commerce in corn or other grains, and to deprive its citizens of the right to compete. We are unalterably opposed to the use of section 22 rates. Further drift in this direction by Government inevitably will eliminate the competitive grain merchandising system and be contrary to the best interests of grain producers, grain consumers, our private enterprise system and the Government.

This theory of private subsidization was clearly explained by James Fort, government counsel, public affairs, for the American Trucking Associations, Inc., who stated before the Surface Transportation Committee on February 8, 1961:

It (section 22) allows discrimination between commercial and Government shippers. It imposes a burden on commercial shippers who must necessarily pay higher rates to offset the effects of unrestrained rate reductions to the Government.

The Great Lakes' interest in section 22 is threefold: (1) Its effect on the movement of military traffic, (2) its effect on the movement of Government-owned grains, and (3) its effect on the commerce of the United States.

(1) The 11 States surrounding the Great Lakes constitute the industrial strength of the United States. These industries are all located within 300 miles of a major Great Lakes port. Commercial traffic through these ports has shown a constant growth factor but shipments of Government-owned military traffic have been totally inconsistent. The eastern railroads which have constantly cried about their poor financial condition, have consistently cut rates to entice Government

traffic to coastal ports, while at the same time they have failed to give comparable rates to the lake ports. The selective pricing by the carriers allows some manufacturers to obtain Government contracts at the expense of others who have not been so favored. The manufacturer so out-manuevered has no redress. In cases of commerce discrimination he has redress through the Interstate Commerce Commission. Under section 22 he has no recourse. As a matter of fact, this is probably the only law in the entire structure of the United States where an injured party has never been able to secure any relief. Never in the history of section 22 has any complainant been afforded relief from a discriminatory practice under section 22.

Senator LAUSCHE. Earlier you were present when I put a question to representatives of the Interstate Commerce Commission dealing with the Toledo situation?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. One of the representatives of the Commerce Commission said that they were helpless to do anything about those preferential and discriminatory rates. Is that what you are trying to illustrate by this statement?

Mr. PURDEY. Yes, sir. We have no redress whatsoever. We go to the Interstate Commerce Commission and tell them about this discriminatory rate structure. They have no power to demand that it be changed or to cancel the rate.

Senator LAUSCHE. Proceed.

Mr. PURDEY. (2) The Commodity Credit Corporation use of section 22 rates to bypass the economic regulatory machinery of the ICC is well known and has repeatedly been called to the attention of the Congress. Since most Great Lakes ports are gateways for the millions of bushels of grain produced in their hinterland, they have a vital concern in this subject.

(3) The most important effect of railroad-sponsored section 22 reductions is on the freight rates of commercial shipping. Today the ICC has before it a proposal by the American railroads for a general rate increase. The increases, which all railroads say are an absolute necessity, are planned to apply on all commercial traffic.

Pardon me, sir, since that time I believe there have been some exceptions filed by a number of railroads to the applicability of that request for increase. The largest single shipper in the country—the U.S. Government—will largely be unaffected. Industry will be forced to bear almost the entire burden. American manufacturers trying to compete in the foreign markets will have their delivered prices raised at a time when they are finding it difficult to compete with manufacturers of similar products in Europe, Japan, and South America, at a time when our balance of payments is in a most precarious position.

Our exporters are going to have to be burdened with an increase far greater than necessary. If the railroads had not been given a free hand to cut rates under section 22, and if they had not been so prolific with these quotations, it would not be necessary to raise commercial rates.

There is only one way to stop the constantly expanding use of section 22 quotations and that is by sensible legislation. The railroads and certain Government agencies and departments are the only ones who want to continue section 22 quotations, and unfortunately the law permits their continuance.

The only study which showed that the Government saved a large sum of money by using section 22 had some very glaring defects in a number of ways. First, the saving was shown as the difference between the first-class rate and the section 22 rate. Even the people who made the study knew that the result of this method could not be factually correct. Second, no consideration was given to the large costs involved in Government agencies to keep up to date a full and complete record of rates that were separate and apart from the normal structures maintained by ICC.

At this point I would like to introduce into the record two studies made by the staff and consultants of the Toledo-Lucas County Port Authority, one in February 1963, entitled "A Report on the Inequalities Created by Section 22 of the Interstate Commerce Act," and the other in September 1963, entitled "Section 22 of the Interstate Commerce Act—And Analysis of Arguments Pro and Con."

Congress has always intended that an equitable proportional rate structure be maintained, and has designated the ICC to administer their intent. Congress cannot know the magnitude of completely uncontrolled traffic that has grown in the past few years and which has placed an unsupervised burden on a transportation network already in a dangerously unbalanced condition.

We urge wholehearted support for some such measure as one of the Senate bills before the committee to again place transportation in a properly controlled and nondiscriminatory status.

I would like to make one correction, there are two of the organizations represented in my primary statement that are private organizations.

Senator LAUSCHE. But I was speaking of the port authorities.

Mr. PURDEY. The port authorities are all public officials.

Senator LAUSCHE. These exhibits A and B will be made a part of the file. They will not be transcribed into the record because of their voluminous size.

You heard my discussion of what I thought was an indisputable disparity in rates charged by railroads in the Toledo vicinity for shipping 100 miles and shipping 500 or 600 miles?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Are you familiar with the actual situation that I have in mind?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Will you discuss it please?

Mr. PURDEY. Yes, sir.

Over 6 years ago we went into the reason why combat tanks which were going overseas and were being manufactured at Center Line, Mich., were not being shipped over the docks at Detroit, Mich., which was only 15 miles from Center Line, Mich.

Failing any reason why the cranes or the other handling equipment on the Detroit dock were not considered to be adequate for this purpose, we also went into the rate structure from Center Line to Toledo, and from Center Line to Hampton Roads.

We found a very peculiar situation in that the commercial rate structure which was quoted from Center Line to the dock at Detroit was 52 cents per hundredweight.

Senator LAUSCHE. That was for a distance of how many miles?

Mr. PURDEY. Fifteen miles.

Senator LAUSCHE. 52 cents per hundredweight?

Mr. PURDEY. Yes, sir. We also found that the commercial rate to Toledo, which is 55 miles was 67 cents per hundredweight and that the rate to Hampton Roads was approximately \$1.27. The ratio is about right between the 67 cents and the \$1.27. I cannot remember that penny figure exactly on the commercial rate to Hampton Roads. However, a section 22 rate was put into effect from Center Line to Hampton Roads of 50 cents per hundredweight.

Senator LAUSCHE. How did that compare? What is the distance from Center Line to Hampton Roads?

Mr. PURDEY. Approximately 700 miles.

Senator LAUSCHE. Under section 22 the rate for those 700 miles was fixed at what price?

Mr. PURDEY. 50 cents per hundredweight.

Senator LAUSCHE. The rate not under section 22—the tariff rate from Center Line to Detroit, a distance of 15 miles, was fixed at what?

Mr. PURDEY. 52 cents.

Senator LAUSCHE. And the distance of 55 miles from Center Line to Toledo was 67 cents?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. So the rate to ship 700 miles to the Atlantic coast was 2 cents less than to ship 15 miles, and 17 cents less than to ship 55 miles?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. What did you try to do about that?

Mr. PURDEY. After we attempted to get the Department of the Army—at that time it was the Military Traffic Management Service, MTMS, I believe—it was the predecessor to the current MTMTS.

We attempted to get them to request a new section 22 rate from Center Line to either or both Detroit and Toledo docks. We had no success whatsoever with this. So then calculating that the Toledo-Lucas County Port Authority was a public agency and as such conceivably had the right to request a section 22 rate for itself, we requested a section 22 rate specifically of 16 cents per hundredweight to Toledo from Center Line. That rate was granted, a rate of 16 cents was granted. Unfortunately it was granted after the contract for tanks had expired.

I am not making a statement that those two things coincide. These just happened.

Senator LAUSCHE. Yes. How does this application of section 22 rates fixed by railroads through agreement and not through Interstate Commerce Commission control affect the economy of, say, the inland area in the Great Lakes?

Mr. PURDEY. I think that there is one very specific way in which it has affected the economy, and that is in the giving of tenders for supply. We have a steel company in Toledo that for many long years has attempted to get contracts with a lot of arsenals that are located in the eastern seaboard area. Due to the fact that they are not given

any benefit of a section 22 rate statement before they quote, their statement must include the cost of the material plus the cost of transportation at a commercially published tariff rate.

They have informed me that almost invariably they are quite a few cents a hundredweight above the winning quotation on a number of those contracts. This has been 3 or 4 years since I have been in discussion on this particular portion of it. And I do not know what the situation is currently. But this was the original statement that was made to me.

Senator LAUSCHE. Is it a fact or not that the inland cities on the Great Lakes have been attempting to get American bottoms to come into the inland area with greater frequency than they are now coming?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Have you succeeded in a degree which you believe is commensurate with the facilities that you have to provide?

Mr. PURDEY. Senator, I am terribly sorry to have to say to you that we have had no success whatsoever of any type, style, or magnitude. The service today is less than it was 5 years ago.

Senator LAUSCHE. And does the fact that section 22 rates are granted duplicating what you just described here a moment ago, constitute an inducement for the American bottoms not to go up into the Great Lakes?

Mr. PURDEY. It very definitely does because we see constantly, Senator, material that is manufactured in Michigan, Indiana, Illinois, we see this material going through the rail yards of Toledo, which is as you know a rail crossroads, on its way to the east coast.

Senator LAUSCHE. Let me stop you at this point. Why don't you use the foreign bottoms to ship the tanks and other military equipment?

Mr. PURDEY. Because up until last year nobody had ever given any permission to ship cargo of the U.S. Government in anything other than American-flag vessels.

Senator LAUSCHE. It is still not allowable, is it?

Mr. PURDEY. They allowed two ships to go out with cargo last year.

Senator LAUSCHE. By special authority?

Mr. PURDEY. Yes, sir, by special authority.

Senator LAUSCHE. I thought there was a law which said all military and strategic materials connected with war must be shipped in American bottoms because of the security involved?

Mr. PURDEY. There is, but there is also a saving paragraph in the law which permits emergency shipments.

Senator LAUSCHE. Under that saving language you say two ships went up into the lakes?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Therefore, only two ships since the St. Lawrence Seaway has been opened have come up into the Great Lakes to pick up military cargoes to be shipped abroad?

Mr. PURDEY. I think that is correct on the Port of Toledo.

Senator LAUSCHE. On the Port of Toledo?

Mr. PURDEY. Yes, sir.

I also heard the comments in regard to the questions Senator Magnuson asked about the GSA study.

Senator LAUSCHE. If you want to comment on them we would like to hear you.

Mr. PURDEY. I would appreciate your permission.

Senator LAUSCHE. Please do.

Mr. PURDEY. We made a detailed study of that particular report. The net saving was stated as \$57 million. The mere fact that they used the first class rate as the upper rate and determined the difference between that class rate and the section 22 rate to be saving, indicates that the \$57 million stated is far in excess of what the actual was on this selective traffic that they examined, because no traffic man ever sends anything on a class rate if there is any possible way to avoid it. He also negotiates a commodity rate. In a number of instances on some of the commodities which were shown in that particular study, the actual commodity rate could have been negotiated in our principal at a lesser figure than the section 22 rate.

Senator LAUSCHE. Let's assume that the amount is much greater than \$57 million. What is the justification of shifting that cost on to private shippers as distinguished from governmental?

Mr. PURDEY. There is no justification whatsoever, sir.

Senator LAUSCHE. You made some mention of it affecting our ability to compete in the world markets.

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. Will you elaborate on that issue?

Mr. PURDEY. Yes, sir. I think that by virtue of excessive transportation charges being saddled on the backs of over 40 percent of our industry which sustains a great proportion of our export movement of cargo, that they, by virtue of that, are forced to hold at a higher price level in the international market than they would have to do otherwise.

Senator LAUSCHE. Have you been in contact through your office as a executive director of the Toledo Port Authority with prospective foreign buyers of products in the Toledo area, and the use of the Toledo Port?

Mr. PURDEY. Yes, sir.

Senator LAUSCHE. What contacts have you made in your official capacity in foreign countries?

Mr. PURDEY. I have made 12 trips to Europe in the past 7 years, and on each of those trips have called on as many people in the import-export trade, freight forwarders, shipping line agents, as the timer pattern would permit.

And that includes Britain, Scandinavia, the major countries of Europe and the Mediterranean.

In a number of those places we have received complaints about transportation costs on material that they were purchasing from the United States.

I must say that a large proportion of the complaints was on their ability to be able to secure an exact rate quotation.

In the cases where specific cost of transportation was mentioned as something that they could not stand on a competitive basis, I can give you one example. A machinery wholesale house in Rotterdam, this machinery wholesale house in 1960, on the floor of their five-story build-

ing where they have all kinds of machinery from a number of different countries on display, they had over 50 pieces of machinery from the United States as a part of their stock that they were attempting to sell. As of 2 years ago that had shrunk and there were only three pieces of American machinery in that entire building.

I asked the traffic manager why and he said because the transportation cost is so high that we have turned to German machinery because that can be sent here at a very low cost in transportation. This is just as close as I can get to an exact example to answer your question.

Senator LAUSCHE. Are you of the opinion that if a situation developed under which more American bottoms and foreign bottoms were available on the Great Lakes seaports that the cost of transportation would be reduced?

Mr. PURDEY. I think that the cost of transportation in the export trade would be reduced on a comparative basis.

Senator LAUSCHE. Is there anything else you would like to say.

Mr. PURDY. I would like to present the statement of the American Association of Port Authorities, if I may.

Senator LAUSCHE. It will be transcribed into the record.

Mr. PURDEY. May I merely qualify myself and state that this is a statement written by Mr. W. J. Amoss, president of the American Association of Port Authorities and that he is in favor of such legislation as represented by these two bills, and he attaches the formal resolution of the American Association of Port Authorities adopted at their annual meeting in Detroit, Mich., September 15, 1966.

Senator LAUSCHE. What is Mr. Amoss' occupation?

Mr. PURDEY. Mr. Amoss is the executive director of the Port of New Orleans.

Senator LAUSCHE. And he is the president of the American Association of Port Authorities?

Mr. PURDEY. Yes, sir; he is.

Senator LAUSCHE. How many commissioners do you have in the Toledo Port Authority?

Mr. PURDEY. I have nine.

Senator LAUSCHE. Do you all become members of the Association of Port Authorities indirectly?

Mr. PURDEY. Each port as a unit has a unit membership in the association, and the executive director of each of the ports is the representative of that port to the association, so this is the highest port body representation that there is in the United States.

Senator LAUSCHE. How many port authorities are there in the United States?

Mr. PURDEY. There are approximately 106, and 69 of the largest ones are the members of the American Association.

Senator LAUSCHE. Do you have anything further?

Mr. PURDEY. No, sir.

Senator LAUSCHE. I am very grateful for your testimony, Mr. Purdey. I want to comment you for your detailed knowledge of this subject and the great work that you are doing as a representative of all of the Great Lakes ports.

Mr. PURDEY. Thank you, sir.

(The statement of Mr. W. J. Amoss follows:)

STATEMENT BY W. J. AMOSS, PRESIDENT, THE AMERICAN ASSOCIATION OF PORT AUTHORITIES, INC., AND CHAIRMAN, COMMITTEE ON NATIONAL TRANSPORTATION POLICY, AAPA

My name is Walter J. Amoss. I am president of The American Association of Port Authorities and, also, Chairman of its Committee on National Transportation Policy. These positions are elective and appointive respectively on a national industry basis. My regular occupation is that of Director of the Port of New Orleans.

The American Association of Port Authorities consists of 69 United States members who operate the public port and marine terminal facilities on all sea-coasts of the United States. The membership of 69 are exclusively state and local government agencies which are port operators. This membership represents all United States seaports of commercial consequence.

We estimate that these city, state and local port district entities have a total investment of approximately \$4½ billion of nonfederal public funds in marine terminal and related structures essential to the flow of U.S. commerce and trade. According to figures supplied by the United States Maritime Administration to the Subcommittee on Economic Progress of the Joint Congressional Economic Committee in a Committee report released late last year, the 1965 replacement cost of these facilities is rated at almost \$7 billion.

Because this entire structure of local public investment in port facilities was built on a system of healthy competition as between ports and port areas, our United States member ports have been increasingly concerned about the exemption of rates on U.S. Government traffic from regulation by the Interstate Commerce Commission. It is obvious that the United States Government, long the nation's biggest shipping entity, is moving ever increasing quantities of grades for its own account, under various programs, through the normal channels of transportation.

That it does so in a climate of negotiated rates which in turn are unregulated is in our opinion one of the basic transportation ills of the nation.

Our position as public port agencies is as follows:

"The American Association of Port Authorities, in the interest of fair transportation rates and practices, favors and endorses legislation which would amend Section 22 of the Interstate Commerce Act to bring rates on U.S. Government traffic under regulation by the Interstate Commerce Commission with respect to undue preference and prejudice as between ports, localities, etc., and require that notice of quotation and acceptance of such rates by the Government be filed with the Interstate Commerce Commission on reasonable notice."

A copy of our formal resolution to that extent, adopted September 15, 1966, is attached. This Association finds itself in solid support of S. 1174 and urges adoption of this legislation.

RESOLUTION OF THE AMERICAN ASSOCIATION OF PORT AUTHORITIES CONCERNING TRANSPORTATION RATES ON U.S. GOVERNMENT TRAFFIC

Whereas, U.S. Government traffic moves in overseas commerce in substantial volume, and the ports of our several coasts are highly competitive for this traffic; and

Whereas, under the provisions of Section 22 of the Interstate Commerce Act, inland rates on this traffic are exempt from regulation by the Interstate Commerce Commission; and

Whereas, this exemption of such rates from regulation can and does result in unfair and destructive rate practices as between ports of the United States, contrary to the declaration of the Congress in the National Transportation policy provision of the Interstate Commerce Act against "unfair or destructive competitive practices";

Now, therefore, be it resolved, That The American Association of Port Authorities, in the interest of fair transportation rates and practices, favors and endorses legislation which would amend Section 22 of the Interstate Commerce Act to bring rates on U.S. Government traffic under regulation by the Interstate Commerce Commission with respect to undue preference and prejudice as between ports, localities, etc., and require that notice of quotations and the acceptance of such rates by the government be filed with the Interstate Commerce Commission on reasonable notice; and

Be it further resolved, That the Committee on U.S. National Transportation Policy be and it is hereby authorized to take such action from time to time with respect to the subject matter of this resolution as it may deem appropriate within the framework of the Association policy expressed herein.

(Unanimously adopted by United States Corporate Members of The American Association of Port Authorities 55th Annual Meeting—Detroit, Mich., September 15, 1966.)

Senator LAUSCHE. The next witness will be John H. Frazier, speaking on behalf of the National Grain & Feed Dealers Association.

You may proceed.

STATEMENT OF JOHN H. FRAZIER, JR., GENERAL MANAGER, P. R. MARKLEY, DIVISION OF BUNGE CORP., PHILADELPHIA, PA., ON BEHALF OF THE GRAIN & FEED DEALERS NATIONAL ASSOCIATION; ACCOMPANIED BY WILLIAM J. KEATING, COUNSEL FOR PUBLIC AFFAIRS

Mr. FRAZIER. Mr. Chairman, I am John H. Frazier, Jr., and I am general manager of P. R. Markley, division of Bunge Corp., Philadelphia, Pa. I have with me William J. Keating, who is the association's legislative counsel.

Today I am appearing in behalf of the Grain & Feed Dealers National Association as third vice president and chairman of the transportation committee.

This national association is an organization of grain and feed firms ranging in size from the smallest country elevators to the largest grain and feed complexes. The membership includes 1,700 direct memberships held by individual firms plus 54 State and regional associations representing 15,000 grain and feed firms.

We appreciate this opportunity to appear before your committee to express our views on S. 754 and S. 1174, amending section 22 of the Interstate Commerce Act.

In time of war or national emergency, we support such measures as necessary for the Government to take to meet the emergency. We would also expect the Government on a limited basis to continue to obtain favorable rates for charitable purposes. However, we strongly oppose the use of section 22 rates for any other purposes.

The Grain & Feed Dealers National Association's position is based on the policy resolution adopted by the membership at the annual convention in 1964, which is: "Oppose preferential treatment offered to Government when Government is engaged in competitive enterprises with the industry."

Congress has shown a sincere interest in preventing undue and unwarranted interference by Government in the normal channels of commerce. By calling these hearings, this committee has recognized the difficulties which develop when private citizens must compete commercially with their own Government.

Our opposition to the use of section 22 rates by Government agencies is based on the following points:

(1) Section 22 rates have been used by the Commodity Credit Corporation to move grain to the disadvantage of the private trade. When a competing seller of grain—as the Government-owned Commodity Credit Corporation which has a borrowing power up to \$14.5 billion—

is free to obtain lower rates without prior notice to other sellers and which are not available to other sellers of grain, such governmental action usurps our markets, defies sound economic principles and inflicts financial burdens on commercial sellers.

Reduction of CCC inventories and past petitions of the private grain and feed trade have reduced the need of CCC using section 22 rates to the disadvantage of the private trade. However, our proposal to limit the use of section 22 is to prevent future programs which usurp the price mechanism as an allocator of resources and which create unfair price relationships. If governmental agencies continue to receive preferential treatment, grain and feed firms cannot make economical market decisions.

(2) Section 22 rates is one of the tools which CCC can use to bypass the normal channels of trade. The engagement of CCC in these types of sales activities has been criticized by many Members of Congress. The Commodity Credit Corporation Charter Act, section 5, states that it is to utilize the usual and customary channels, facilities and arrangements of trade and commerce in the conduct of its business.

Furthermore, Congress reinforced in the Food and Agriculture Act of 1962, section 402, its longstanding policy of favoring the use of governmental agencies of the usual and customary channels, facilities, and arrangements of trade and commerce. Section 402 also directs the Secretary of Agriculture and the Commodity Credit Corporation to encourage orderly marketing of farm commodities through private and competitive trade channels. Elimination of section 22 rates, except for declared emergencies and for charitable purposes, would equalize transportation rates for the private trade and CCC.

(3) Section 22 rates also are inconsistent with national transportation policy 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.

(4) Section 22 rates are not cost saving. Governmental agencies claim that they save millions of dollars annually through the rate deals which are provided via section 22 of the Interstate Commerce Act. If that is the case, then other shippers are paying rates that are higher than necessary, or the Government is being granted uneconomic rates which the shipping and consuming public is making up in the transportation of other commodities. The lower rates to the Government is an unseen tax on other shippers. In fact, the railroads now have a petition before the Interstate Commerce Committee asking for a general freight rate increase.

The use of section 22 rates by the Government creates hardships for private industry and it is unfair and discriminative to grain and other shippers. We believe it is unwarranted that the Government should take part in freight rate discrimination against regions, ports, and shippers in the movement of its traffic.

In conclusion, the Grain & Feed Dealers National Association opposes S. 754 and strongly supports S. 1174. We support that policy

objective in S. 1174—because the Government should have available section 22 rates: (1) during time of war or national emergency as declared by Congress or the President, or (2) for charitable purposes.

Senator LAUSCHE. Will you explain in greater detail or by illustration how the CCC is competing with the grain dealers?

Mr. FRAZIER. Yes, sir. Let's use the State of Ohio, for example. The grain business is one where the grain merchant adds time and place utility to the grain. Grain is harvested at one time of the year. Corn is harvested in the fall. That grain must be carried and spread out for use throughout the year so everybody has something to eat for the whole 52 weeks. It would be normal for a terminal such as Columbus for storing, Toledo, to fill up during the harvesttime, and throughout the year they would use what is called a hedging mechanism so that they can spread those shipments throughout the year and be paid for carrying that grain in their own elevators. In other words, keeping the grain there so it can be shipped where and when it is wanted.

Year after year the normal channel is that the harvest comes in, the elevators fill up and spread this out through the year.

This costs money, it costs interest, it costs operating charges and the operation of the elevator costs money.

CCC could, taken, by getting a section 22 rate, ship at a far under the market price to the normal marketing areas where these terminals would have normally shipped their grain. CCC can and has done this to these terminals. They took the market right away. Therefore the private trade, which has been in existence for hundreds of years, can no longer function in its normal manner.

Senator LAUSCHE. Do they call that dumping the grain?

Mr. FRAZIER. You could call it dumping the grain; yes, sir.

Senator LAUSCHE. Into the market?

Mr. FRAZIER. Yes, sir.

Senator LAUSCHE. To retard prices?

Mr. FRAZIER. Yes, sir. That has been done.

Senator LAUSCHE. And it is in that respect that you say that the Government is in the business of selling grain and therefore competing with the private sector?

Mr. FRAZIER. Yes, sir.

Senator LAUSCHE. Where are the principal offices of your association?

Mr. FRAZIER. Washington, D.C.

Senator LAUSCHE. And how many members do you have?

Mr. FRAZIER. We have 1,700 direct members and we represent 15,000 affiliate members.

Senator LAUSCHE. Are you the central office or the largest one connected with the grain industry?

Mr. FRAZIER. Yes, sir; I believe so.

Senator LAUSCHE. And you speak in behalf of these members?

Mr. FRAZIER. Yes, I do.

Senator LAUSCHE. As you present your case today?

Mr. FRAZIER. Yes, I do.

Senator LAUSCHE. Thank you very much.

Is there anything further you desire to say?

Mr. FRAZIER. No, sir.

We believe, however, that in the Toledo statement which referred to grain, we believe that the grain industry needs S. 1174 because we have 1174 to protect it.

Senator LAUSCHE. Thank you.

Mr. FRAZIER. Thank you, sir.

Senator LAUSCHE. Mr. Schumacher, president of the Household Goods Carriers' Bureau, accompanied by F. L. Wyche, executive secretary.

STATEMENT OF E. W. SCHUMACHER, PRESIDENT, HOUSEHOLD GOODS CARRIERS' BUREAU, WASHINGTON, D.C., ACCOMPANIED BY F. L. WYCHE, EXECUTIVE SECRETARY

Mr. SCHUMACHER. Mr. Chairman, my name is E. W. Schumacher. I am president of the Household Goods Carriers' Bureau, and I am also president of Global Van Lines, Inc., of Anaheim, Calif.

Senator LAUSCHE. Your statement will be fully printed in the record. You may read it, or you may deal with the highlights of it.

Mr. SCHUMACHER. Thank you. With me is Mr. F. L. Wyche, executive secretary, Household Goods Carriers' Bureau.

The Household Goods Carriers' Bureau is a nonprofit corporation organized and existing under the laws of the District of Columbia, with its principal place of business at 1424 16th Street NW., Washington, D.C. It is an association comprised of approximately 1,700 motor carriers, all of whom hold certificates of public convenience and necessity from the Interstate Commerce Commission to engage in the transportation of household goods. The bureau is the ratemaking and tariff publishing instrumentality of its members. I am authorized to present this testimony on behalf of the membership of the bureau.

Global Van Lines, Inc., is typical of the larger household goods carriers. It is not one of the industry's giants, but it does have nationwide rights and in 1966 its gross revenues were approximately \$16 million.

Thus, I speak not only as an officer of a leading association of household goods carriers but also as a person engaged day after day in endeavoring to operate a household goods carrier profitably in this bitterly competitive industry. The task is not an easy one. For the year 1966, the operating expenses before taxes of all class I and class II household goods carriers—those whose gross revenue exceed \$200,000—was 96.7 percent of operating revenues. Such a high operating ratio is not a sound economic condition for a major segment of the national transportation system.

We believe that section 22 of the Interstate Commerce Act contributes substantially to the financial difficulties facing this industry. That is why we are here testifying in support of S. 754 and S. 1174.

Incidentally, this testimony is also offered in connection with S. 1174, since both of them seem to apply in accomplishing our objectives.

Approximately 35 percent of all household goods traffic moving today in interstate commerce is transported for the account of the U.S. Government pursuant to rates established under section 22. All household goods carriers engaged in interstate commerce participate in section 22 rate tenders submitted to the Government. The standard,

continuing section 22 tender, applicable between any two points in the United States, currently provides for rates $8\frac{1}{2}$ percent below the rates available to the general public as published in tariffs on file with the Interstate Commerce Commission. Considering that this industry has an average operating ratio of 96.7 percent, it is self-evident that a rate $8\frac{1}{2}$ percent below the published tariff rate does not cover the full cost of providing the transportation.

But the standard, section 22 rate tender at $8\frac{1}{2}$ percent below the published tariff rates does not tell the full story. The Department of Defense controls routing of the vast preponderance of household goods shipments moving for the Government under section 22 rates. At 25 or more major military installations in this country, the Department of Defense has accepted filings from individual household goods carriers at substantially lower rates under section 22 tenders—ranging from $10\frac{1}{2}$ to 37 percent or more below the rates available to the public for the same service in the published tariffs on file with the Commission. Those extremely low section 22 tenders are in effect today.

But even this does not tell the whole story. Whenever the Department of Defense has a volume move of household goods, usually 120,000 pounds or more, from one installation to another, it solicits and obtains bids under section 22, from individual carriers. Competitive bidding for such movements is invariably intense, and the rate submitted by the successful bidder barely covers out-of-pocket costs in performing the required services.

The intent of Congress in enacting the Motor Carrier Act of 1935, part II, Interstate Commerce Act, was to eliminate the economic chaos in the motor carrier industry caused by just such cut-throat rate competition in obtaining traffic. Today, under rate regulation by the Interstate Commerce Commission, the industry has achieved rate stability in all respects except one service performed for the Government. Economic chaos still prevails in the handling of Government traffic because of section 22. In the household goods industry, because of the high percentage of total industry traffic represented by Government movements, the effect of section 22 is to perpetuate a state of financial instability, to the detriment of the 2,800 certificated household goods carriers in this industry, as well as to the detriment of the general shipping public.

The necessity for modification of section 22 has long been recognized, but nothing has been accomplished. Except for enactment in 1957 of subsection 2 which requires carriers to file certain section 22 tenders for public inspection, the provisions of section 22 of the Interstate Commerce Act relating to Government traffic have remained essentially the same since passage of the original act to regulate commerce in 1887.

The Senate and House committees of the Congress having legislative jurisdiction over interstate commerce have considered amendment of section 22 on other related legislation on a number of occasions.

The 79th Congress in 1946 adopted Public Law 600 removing the Federal Government as a shipper of household goods for its civilian employees and substituted therefor an allowance for moving expense of employees.

Provisions of Public Law 600 have been successful in their limited application. The 79th Congress in 1946 also adopted Public Law

604—now Public Law 351, 81st Congress, first session 1949—providing in its pertinent part that household goods shipments may be made for members of the armed services by rail, water, or van without regard to comparative cost, however, the remaining privilege under section 22 has permitted persistent conflict, confusion, and destructive competition.

In the 82d Congress, second session, June 1952, the Senate committee favorably reported on S. 2653—Report No. 1625. The reported bill provided that section 22 of the Interstate Commerce Act shall not apply to the transportation of household goods. This bill could not be brought up for Senate action before adjournment of the 82d Congress.

Again during the 83d Congress on July 14, 1954, the Senate Committee on Interstate Commerce favorably reported S. 904—Report No. 1803—a similar bill to the one reported in the 82d Congress. This bill failed to pass on the Senate Consent Calendar and was not reached for regular consideration prior to the adjournment of the 83d Congress.

In the 84th Congress the House Committee on Interstate and Foreign Commerce, after lengthy hearings, favorably reported H.R. 525—Report No. 2633. The purpose of this bill was to prohibit common carriers from granting reduced rates to U.S. Government property or personnel. The bill failed to get floor action prior to the adjournment of the 84th Congress.

In the 85th Congress the House Committee on Interstate and Foreign Commerce favorably reported on H.R. 3233—Report No. 677—which bill prohibited the transportation of household goods for the U.S. Government at less than published tariff rates. This bill, despite favorable committee action, was not acted upon by the House.

In the 89th Congress bills S. 1726 and H.R. 5868 were introduced pursuant to recommendation of the Interstate Commerce Commission, and S. 2714 by Senator Hart. Those bills, which were not acted upon, provided for amendment of section 22 to prohibit free or reduced rate transportation for the Government, except during time of war or national emergency, just as the presently pending bills provide.

The support for repeal or modification of section 22 has not been confined to the common carriers. There has been widespread support for such action by Government agencies and the public, as evidenced by the testimony or written statements submitted by the following organizations in support of the aforementioned bills in recent years:

Government agencies: Interstate Commerce Commission; Department of Commerce; National Association of Railroad and Public Utility Commissioners; American Association of Port Authorities; Port and Seaway Committee, Detroit Department of Commerce; and the Toledo-Lucas County Port Authority.

Commercial shipper organizations: National Industrial Traffic League; Chamber of Commerce of the United States; National Council of Farmer Cooperatives; Grain & Feed Dealers National Association; and the Millers National Federation.

Common carriers by air, water, motor, and pipeline have strongly supported the proposed legislation, as is evidenced by the testimony in recent years submitted by the following carrier organizations: Air

Transport Association of America; American Trucking Associations, Inc.; Association of Oil Pipe Lines; Irregular Routes Common Carrier Conference, ATA; Inter-Coastal Steamship Association; Munitions Carrier Conference, ATA; Regular Carrier Conference, ATA; Tractor-Truck Common Carrier Conference, ATA; and the Household Goods Carriers' Bureau.

For the past 16 years, household goods carriers certificated by the Interstate Commerce Commission have urged Congress to grant relief from the destructive competitive practices that are encouraged under section 22 and that have plagued this industry. The reduced rates extended under section 22 in response to Government requests are not subject to the jurisdiction of the Interstate Commerce Commission. There are no provisions for protesting those rates and requiring the proponents to justify their reasonableness. There is no way to stop the destructive competitive practices of carriers who, in their eagerness to obtain Government traffic, submit bids far below their full costs of providing the service, and frequently below their out-of-pocket costs.

The Government agencies claim that they save millions of dollars annually by these rate deals, but it is simple economics that transportation provided for the Government below cost must be paid for by someone, or the carriers will soon find themselves bankrupt. Obviously, the shipping public must bear the burden of making up the deficit created by the uneconomic transportation of Government traffic. In the case of household goods traffic, with the Government shipments representing approximately 35 percent of the total, it is self-evident that the typical householder, moving from one place to another in connection with a change of job or some similar reason, must pay a substantially higher rate for his move than if the Government was bearing its fair share of the total transportation costs when it employs the services of household goods carriers.

Senator LAUSCHE. At this point, Mr. Schumacher, when the Government advertises for bids, who are the normal bidders for the transportation service?

Mr. SCHUMACHER. There are several procedures, sir. The so-called military rate tenders are normally filed on domestic traffic by rate bureaus such as the Household Goods Carriers' Bureaus. Those rates are supplied on movement of traffic throughout the United States, whenever it moves throughout the States. Those are standard quotations and relate to the 8½ percent differential I spoke of earlier.

The second is when there is a mass movement. Whenever there is an aggregate of shipments moving from one installation to another installation or locality that exceeds 120,000 pounds, letters are written to individual carriers who are qualified by their ICC certificate to perform that service. And the letter suggests that the carriers may desire to submit a quotation which is below their tariff quotation. In fact, it even recites certain of the conditions which they feel should be met in order for that carrier to qualify, such as the limits on the amount of assessorial costs on the charge.

Senator LAUSCHE. What is the mode of transportation of the carriers that compete? Rails? Trucks?

Mr. SCHUMACHER. This is entirely motor carriers of household goods.

Senator LAUSCHE. Entirely motor carriers of household goods?

Mr. SCHUMACHER. Motor vans, truck carriage.

Senator LAUSCHE. Proceed.

Mr. SCHUMACHER. Not only must the ordinary shipper of household goods make up the operating cost deficits created by the large volume of Government traffic moving at uneconomically low rates, but the very fact that his rates are high in order to cover these deficits causes him to reduce the size of his shipment by selling a portion of his personal effects rather than moving them, or, as an alternative, providing a portion of his move himself through the use of rent-a-truck or trailer or other do-it-yourself methods. Such reduction or diversion in the volume of traffic moving at commercial rates necessarily means that the Government traffic becomes an ever-increasing percentage of the total volume of traffic. Thus, the commercial rates must be raised again and again as the level of section 22 rates on Government traffic continues its downward course. This upward spiral of commercial rates can only lead to increasing financial difficulties for the household goods carrier industry since it tends to alienate a sizable segment of commercial account customers. The Interstate Commerce Act was and is intended to achieve financial stability in the transportation industry by regulating rates in accordance with a standard of reasonableness to be applied by the Commission, rather than permitting cut-throat rate competition to operate unchecked. Section 22 defeats this paramount intent of the Interstate Commerce Act. It is indeed ironic that the Government itself should be the instrumentality that is undermining this basic objective of the act.

The only economic justification for a reduced rate for the account of a particular shipper, such as the Government, would be that such shipper is prepared to tender shipments to the carrier in such size or quantity that the carrier can effect an economy in its operation when transporting such shipments. In the case of household goods traffic, however, the contents of individual homes are being handled. Even though the Government may request a large number of families to be moved over a period of time, the fact remains that the contents of each home must be handled individually out of the one house and into the other. Thus, household goods traffic does not ordinarily subject itself to the volume considerations of other types of traffic. The expense per hundred pounds to handle a 12,000 pound shipment of household goods is practically the same as handling a group of shipments totaling 120,000 pounds. Thus, there is no economic justification for the practice of the Department of Defense to request competitive bids from household goods carriers whenever the total volume of traffic to be moved during a particular period from a particular installation is 120,000 pounds or more. Yet, the section 22 bidding procedures results in rates more than 35 percent below the published tariff rates. In many instances it is doubtful that such rates even cover the out-of-pocket expenses of the carrier submitting the low bid and receiving the contract.

The existence of section 22 rates does not increase total volume of Government traffic, does not produce volume loads insofar as household goods is concerned, but does encourage destructive rate competition. The movement of personal effects of a military member or a Government employee is no different than the movement of the per-

sonal effects of the general shipping public. Each household goods shipment is handled individually, it is a call-and-demand service over irregular routes. There is no economy in the movement of personal effects of a group of individuals moving between the same two points. This is generally more costly to movers as they must deadhead their equipment to the point of origin to handle the group movement and upon arrival at destination they have a number of moving vans that must be dispersed empty to various points for the handling of further shipments. In other words, volume movement of household goods between the same two points increases the number of empty miles.

The Department of Defense and the military services is the largest household goods shipper, however, there is no proven significant difference in the cost of handling shipments of household goods for the military services as compared to corresponding shipments for the general shipping public. There is more paperwork involved in the handling of Government shipments, carriers wait from 30 to 90 days to receive payment, constant contact must be made with transportation officers and military members, also the military requires expedited service or deliveries within a specified period of time. When these conditions are requested by the general shipping public, additional tariff charges are applicable.

Retention of section 22 is not necessary in order to afford the Government reduced rates under circumstances when such reduced rates are economically justified. The carriers can always file a special tariff with the Commission providing reduced rates for the Government under appropriately specified conditions. Unless the Commission finds such rates to be unreasonably low or unduly discriminatory, they can then be utilized. This is the technique employed by the airlines in dealing with the Government in the handling of military traffic. There is no section 22 type provision in the Federal Aviation Act of 1958. All rates for domestic air transportation, whether provided for commercial shippers or the Government, are subject to the jurisdiction of the Civil Aeronautics Board. Yet, the Department of Defense has long enjoyed special reduced rate tariffs for persons and property moving by air. The difference between that arrangement, and the situation under the Interstate Commerce Act, is that the Civil Aeronautics Board makes certain that airlines are not outbidding one another for Government traffic to the point where unduly low rates for the Government would burden commercial traffic. Rates for Government traffic under the Interstate Commerce Act should be handled in the same manner.

The present bill, S. 754, and/or S. 1174, if enacted, would accomplish this most necessary reform in the regulation of common carrier transportation. The movers, members of the Household Goods Carriers' Bureau, urge its adoption.

Senator LAUSCHE. Is it your understanding that under present law the carrier can file a special tariff with the Commission providing for reduced rates for services rendered to the Government if the conditions are of a specified nature and warrant a special tariff?

Mr. SCHUMACHER. Yes, sir.

Senator LAUSCHE. And that special tariff, unless the Commission finds it to be unreasonably low or unduly discriminatory, can be utilized?

Mr. SCHUMACHER. That is correct, and to my knowledge they have never found it to be so.

Senator LAUSCHE. Do you state that under the Federal Aviation Act of 1958, all rates for domestic air transportation, whether provided for commercial shippers or Government, are subject to the jurisdiction of the Civil Aeronautics Board?

Mr. SCHUMACHER. That is correct.

Senator LAUSCHE. And all rates under section 22, when services are rendered to the Federal Government or any other government, can be negotiated?

Mr. SCHUMACHER. It is my understanding that if they establish that the rates are appropriate and not discriminatory, that they are then approved.

Senator LAUSCHE. You state that the Department of Defense has long enjoyed special reduced rate tariffs for persons and property moving by air under the Federal Aviation Act of 1958.

Mr. SCHUMACHER. That is my understanding; yes, sir.

Senator LAUSCHE. And though the Federal Aviation Act contains no provision similar to section 22, the Department of Defense has found that they are able to live under the provisions of the Federal Aviation Act?

Mr. SCHUMACHER. That is correct.

Senator LAUSCHE. Do you support fully S. 754?

Mr. SCHUMACHER. Yes, sir.

Senator LAUSCHE. I am grateful for your testimony, Mr. Schumacher.

Mr. Wyche, do you desire to say something?

Mr. WYCHE. No, sir. I think Mr. Schumacher covered it.

Senator LAUSCHE. Thank you very much for your help.

Mr. SCHUMACHER. Thank you, sir.

Senator LAUSCHE. Mr. John Ivory, of Warren, Mich., connected with the Three Ivory Bros. Moving Co.

I have a call from Senator Hart stating that he would like to be here at the time you present your testimony but previous engagements and circumstances make it impossible.

Mr. Ivory, will you proceed with the presentation of your statement?

**STATEMENT OF JOHN F. IVORY, THREE IVORY BROS. MOVING CO.,
WARREN, MICH.**

Mr. IVORY. I am John F. Ivory. My residence is located at 2976 Masfield Drive, Bloomfield Hills, Mich. I am a 50-percent stockholder of the Three Ivory Bros. Moving Co., 21703 Mound Road, Warren, Mich. Our company also operates a 60,000-square-foot warehouse at 8711 Grand River, Detroit, Mich. The remaining 50 percent of the stock is owned by my brother, Mr. Robert J. Ivory.

Our company is engaged in local moving, local storage, intrastate moving and storage in the State of Michigan, operating under a public service certificate of the State of Michigan. We also have filed for

a certificate to operate within the exempt zone of the city of Detroit and are preparing tariff filings for such local moving and storage.

We also operate as an agent for Allied Van Lines, Inc., who have interstate rights in 48 States plus Hawaii.

We are a small business. We do operate in all phases of the local moving and storage, plus the interstate characteristics. Much of the movement of the local part of our business becomes interstate.

For the record I will try to bring out why we have more or less gone out of the business of servicing the military. We feel that we have a service which the military needs but our costs are going up and we are just not in a position to give the service that we do give to the general public. We don't think the general public should pay for the other reduced costs.

It is the announced policy of the present administration to develop a transportation policy that will place maximum reliance on unsubsidized, privately owned transportation facilities, operating under the incentives of private profit and adequate to our national security demands in normal times and in times of emergency. To accomplish this, the Government must assume its responsibility to foster a transportation system based on a firm financial foundation encouraged to make long-term capital investments to keep pace with the public need by offering the shippers facilities to move their goods in the most efficient and most economical manner possible and offering the transportation industry an opportunity to make such operations profitable.

1. This cannot be done unless the Federal Government begins to pay its fair share of the transportation costs by paying full tariff rates. Presently, the general public, by paying full tariff rates, is subsidizing the loss resulting from the payment of section 22 and its depressed rates by the Government. The announced policy and the continuance of section 22 are completely and utterly inconsistent.

2. The present policy of the Department of Defense and the military services encourages destructive rate practices because of the requirement that shipments be awarded to the lowest cost carrier. Such rates become noncompensatory and threaten the financial stability of the competing carriers. These destructive and unlawful practices are ignored by enforcement agencies because the Government is getting the benefit of reduced rates under section 22.

3. The Government, through interpretations, has gradually extended the application of section 22 rates to nonmilitary traffic moving on commercial bills of lading on the rather thin theory that the ultimate saving resulting from the reduced rate eventually inures to the Government and, therefore, section 22 rates are not only acceptable but are required to be utilized by companies with contracts involving products which eventually are purchased by the Government. Carriers are forced to reduce their rates to remain competitive. Others initiate unreasonable rate reductions to "corner" the transportation market for these products.

I might say that in the past 2 years this practice started. Many times we were offered shipments which we thought were a commercial shipment and perhaps 2 or 3 weeks after its movement we received notice from the commercial traffic manager that it was a section 22 rate, and therefore it moved at a reduced rate. Since section 22 rates are

rates that we can neither accept or deny, on the one hand we had accepted them and on the other hand we had accepted a letter price for it. This is becoming more established now. That was the history as to when it started.

4. When shipments are awarded to the carrier submitting the lowest bid, all incentive for high-quality service is lost. When rates are reduced, costs must be reduced proportionately, resulting in a minimal standard of service. The lower the rate, the lower the standard of service.

I might say that I can probably produce for the committee statements from our local moving bureau who feel the same way. The last two paragraphs are the real reason why I am here.

For example, in the 1950's our company enjoyed many local services as a terminal operator and as an origin operator in Government traffic. In 1960, destructive rates for overseas traffic became so competitive that our participation as a local warehouseman was reduced to practically nothing.

Very frankly, our unwillingness to participate in this traffic was the result of a reduced rate for the services that we were performing for the Government. We found, on the one hand, rising costs in material and labor and, on the other, a reduced return for the services we performed.

We cannot jeopardize our service to the general public by continuously increasing charges to them and then reducing them to the military. I think this is most important for the small business person. Many are family operators. In our company I have a brother, a daughter and two sisters who work for us. We are typical of moving persons, as Mr. Schumacher stated.

For the record, many local operators and warehousemen cannot understand that it takes more paperwork, more personnel, and a longer period for payment when the military moves personnel under section 22 as compared to the move of John Q. Public where less paperwork is involved and payment is made more readily. Fewer people are involved in its processing. As a matter of fact, reasons so stipulated tends to give the serviceman a lesser quality type of move than John Q. Public because of the rate differential.

For these reasons we support both of the proposed bills, S. 754 and S. 1174.

Senator LAUSCHE. Thank you very much, Mr. Ivory.

Mr. IVORY. Thank you, sir.

Senator LAUSCHE. The next witness is Mr. Melvin Lievense of the Brown Co., and a member of the American Paper Institute.

STATEMENT OF MELVIN LIEVENSE, THE BROWN CO., AND MEMBER OF THE AMERICAN PAPER INSTITUTE, NEW YORK, N.Y.; ACCOMPANIED BY JOHN ARCHER, COMMITTEE EXECUTIVE, TRANSPORTATION COMMITTEE

Mr. LIEVENSE. I am Melvin Lievense, manager, transportation and physical distribution for the Brown Co., and a member of the Transportation Committee of the American Paper Institute on whose behalf I am testifying today.

The American Paper Institute is the national trade association of the pulp, paper, and paperboard industry. It is a nonprofit organization that numbers approximately 250 companies in its membership (see attached exhibit A). The American Paper Institute is regarded as the association representative of the entire pulp and paper industry in this country. The industry operates more than 800 pulp, paper, and paperboard mills and over 5,000 converting plants located in nearly every State of the Union.

INTEREST OF THE AMERICAN PAPER INSTITUTE

The 1963 Census of Transportation, statement TC-63-C-3-1, reported 61,363,000 tons of pulp, paper, and allied product shipments throughout the United States.

Our industry shipped approximately 55 million cords of round wood and chips, approximately 1.3 billion tons, into primary mills during the year 1966. The paper industry also uses approximately 30 million tons per year of raw materials such as alum, caustic soda, chlorine, kaoline clay, corn starch, coal, fuel oil, latex, lime, sulfur, limestone, salt, salt cake, ash, soda ash, and sulfuric acid.

Basically the paper industry is rail oriented because its raw materials, that is, pulpwood, coal, chemicals, wastepaper, and other supplies, move in railroad service. Due to the substantial volume of tonnage that moves to and from paper mills, our industry also utilizes for-hire motor carriers, freight forwarders, and water carriers, and we are interested in the financial stability and levels of rate structure provided by all modes of transportation.

POSITION OF THE AMERICAN PAPER INSTITUTE ON S. 754

The position of the paper industry in the United States is that the provisions in the act which permit "the carriage, storage, and handling of property free or at reduced rates for the United States, State, or municipal governments" and "the transportation of persons for the U.S. Government free or at reduced rates" should be limited to use only in times of war and national emergency.

Because our industry is vitally concerned with the freight rate structure level of the various media of transportation—rail, motor carriers, water carriers, and freight forwarders—it feels strongly that traffic handled for the United States, State, or municipal governments should move at the same freight rate levels as those accorded shippers generally except during war or national emergency.

It is the duty and responsibility of the Interstate Commerce Commission to protect the interests of the public in all matters of transportation under their control. The section 22 rates place a substantial portion of traffic in a nonregulated or separate category. These section 22 rates, now being published, are not related to the general structure of rates which creates an imbalance in the overall transportation cost structure. We as shippers view section 22 rates as a hidden colossus which must affect the transportation economy but its effects are unknown and uncontrolled.

It is the considered judgment of the industry that the normal rate structures under which business in general moves, are in effect sub-

siding the rates under section 22 when those freight rates are substantially lower than rates available to the public. Furthermore, we feel the resulting effects are potentially, if not actually, adverse to the public interest. We offer here as an example the extensive use of private carriage in the United States which, in part, is caused by the level of freight rates offered by the for-hire carriers. If, in fact, section 22 rates place a burden on the general public rate structure, the for-hire carriers will find it more difficult to compete with private carriage costs.

SUMMARY

The Transportation Committee of the American Paper Institute feels the principle involved in S. 754 is so basic to the transportation industry as a whole and therefore to our interests, that it unanimously supports this bill. We urge you to recommend it favorably.

(Exhibit A to the statement follows:)

EXHIBIT A

AMERICAN PAPER INSTITUTE, NEW YORK, N.Y., MEMBERSHIP LIST, 1966

Albermarle Paper Mfg. Co., Richmond, Va.
 Alton Box Board Co., Alton, Ill. 62004.
 American Can Co., New York, N.Y.
 American Forest Products Corp., San Francisco, Cal.
 American Greetings Corp., Cleveland, Ohio.
 American Paper & Plastic Products, Milwaukee, Wis.
 Amesbury Fibre Co., Amesbury, Mass.
 Appleton Coated Paper Co., The, Appleton, Wis.
 Austell Box Board Corp., Austell, Ga. 30001.
 Baldwinville Products, Inc., Baldwinville, Mass.
 Banner Fibreboard Co., Wellsburg, W. Va. 26070.
 Bay West Paper Co., Green Bay, Wis.
 Bemis Co., Minneapolis, Minn.
 Gen-Mont, Bennington, Vt.
 Bergstrom Paper Co., Neenah, Wis.
 Berwick Textile Products Co., Inc., New York, N.Y.
 Bird & Son, Inc., E. Walpole, Mass. 02032.
 Blandin Paper Co., Grand Rapids, Minn.
 Boise Cascade Corp., Boise, Idaho.
 Bowaters Southern Paper Corp., Calhoun, Tenn.
 Brown Co., New York, N.Y. 10017.
 L. L. Brown Paper Co., Adams, Mass.
 Brownville Paper Co., Brownville, N.Y.
 Buckeye Cellulose Corp., Memphis, Tenn.
 Budd Co., Newark, Del.
 Burrows Paper Corp., Little Falls, N.Y.
 J. D. Cahill Co., Hampton, Mass.
 Geo. S. Carrington Co., Leominster, Mass.
 Carolina Paper Board Corp., Charlotte, N.C. 28201.
 Case Bros., Inc., Manchester, Conn.
 Case & Risley Press Paper, Inc., Oneco, Conn.
 Cel-Fibe, Milltown, N.J.
 Cellu-Products Co., Patterson, N.C.
 Champion Papers, Inc., Hamilton, Ohio.
 Chase Bag Co., New York, N.Y. 10017.
 Chatfield & Woods Sack Co., Cincinnati, Ohio.
 Chesapeake Corp. of Virginia, The, West Point, Va.
 Chesapeake Paperboard Co., The, Baltimore, Md. 21230.
 Cleo Wrap Corp., Memphis, Tenn.
 Coates Board & Carton Co., Inc., Garfield, N.J.
 Colonial Board Co., Manchester, Conn.

AMERICAN PAPER INSTITUTE, NEW YORK, N.Y., MEMBERSHIP LIST, 1966—Con.

- Columbia Corporation, The, Chatham, N.Y. 12037.
 Combined Paper Mills, Inc., Combined Locks, Wis.
 Consolidated Packaging Corp., Chicago, Ill. 60603.
 Consolidated Papers, Inc., Wisconsin Rapids, Wis.
 Container Corp of America, Chicago, Ill. 60603.
 Continental Can Co., Inc., New York, N.Y.
 Continental Paper Co., Ridgefield Park, N.J. 07660.
 Cottrell Paper Co., Inc., Rock City Falls, N.Y.
 CPS Industries, Inc., Chicago, Ill.
 Crane & Company, Inc., Dalton, Mass.
 Cromwell Paper Co., The, Chicago, Ill.
 Crown Paper Board Co., Inc., Philadelphia, Pa. 19148.
 Crown Zellerbach Corp., San Francisco, Cal.
 Crystal Tissue Co., Middletown, Ohio.
 Curtis Paper Co., Newark, Del.
 Daring Paper Mills Div., United Container Co., Downingtown, Pa. 19335.
 Deerfield Glassine Co., Inc., Monroe Bridge, Mass.
 C. H. Dexter & Sons, Inc., Windsor Locks, Conn.
 Diamond National Corp., New York, N.Y. 10017.
 Doll Paper Co., Patterson, No. Carolina.
 Domtar Pulp and Paper, Ltd., New York, New York.
 Downingtown Paper Co., Downingtown, Pa. 19335.
 Dunn Paper Co., Port Huron, Mich.
 Eastex, Inc., Silsbee, Tex.
 Eaton-Dikeman Co., The, Mount Holly Springs, Pa.
 Electric City Paper Mills, Inc., No. Tonawanda, N.Y. 14121.
 Elk Paper Manufacturing Co., Childs, Md. 21916.
 Endicott Johnson Corp., Johnson City, N.Y.
 Erving Paper Mills, Erving, Mass.
 Esleeck Mfg. Co., Turners Falls, Mass.
 Falulah Paper Co., Fitchburg, Mass.
 Federal Paper Board Co., Inc., Bogota, N.J. 07603.
 Fibreboard Corp., San Francisco, Cal. 94119.
 Finch, Pruyn & Co., Inc., Glens Falls, New York.
 Fitchburg Paper Co. (Div. of Litton Industries), Fitchburg, Mass.
 Flambeau Paper Co. (Div. of Kansas City Star Co.), Park Falls, Wis.
 Fleming & Sons, Inc., Dallas, Tex. 75221.
 Fort Howard Paper Co., Green Bay, Wis.
 Foster Paper Co., Inc., Utica, N.Y.
 Fox Paper Co., The, Lockland, Ohio.
 Fox River Paper Corp., Appleton, Wis.
 Fraser Paper Limited, New York, N.Y. 10017.
 French Paper Co., Niles, Mich.
 Gardiner Paper Mills, Inc., Trenton, N.J. 08605.
 General Bag Corp., Cleveland, Ohio.
 S. George Company, Wellsburg, W. Va.
 Georgia-Pacific Corp., Portland, Ore. 97204.
 Gilman Paper Co. (St. Marys Div.), New York, N.Y. 10020.
 P. H. Glatfelter Co., Spring Grove, Pa.
 Great Northern Paper Co., New York, N.Y. 10035.
 Great Southern Land & Paper Co., Cedar Springs, Ga. 31732.
 Great Plains Bag Co., Des Moines, Iowa.
 Green Bay Packaging, Inc., Green Bay, Wis. 54302.
 Gulf States Paper Corp., Tuscaloosa, Ala.
 Halltown Paperboard Co., Halltown, W. Va. 25423.
 Hamersley Mfg. Co., Garfield, N.J.
 Hammermill Paper Co., Erie, Pa.
 Hampden Glazed Paper & Card Co., Holyoke, Mass.
 Harding-Jones Paper Co., Middletown, Ohio.
 Harley Bag Co., Spartanburg, S.C.
 Hawthorne Paper Co., Kalamazoo, Mich.
 Hazen Paper Co., Holyoke, Mass.
 Hennepin Paper Co., New York, N.Y. 10017.

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Hoerner-Waldorf Corp., Keokuk, Iowa. 52632.
 Hoffmaster Company, Inc., Oshkosh, Wis.
 Hollingsworth & Vose Co., East Walpole, Mass.
 Holyoke Card & Paper Co., Springfield, Mass.
 Hudson Pulp and Paper Corp., New York, N.Y. 10017.
 Inland Container Corp., Indianapolis, Ind. 46206.
 Inland Empire Paper Co., Millwood, Wash.
 International Paper Co., New York, N.Y. 10017.
 Interstate Folding Box Co., The, Miamisburg, Ohio 45342.
 George O. Jenkins Co., Bridgewater, Mass.
 Kennebec River Pulp and Paper Co., New York, N.Y.
 Ketchikan Pulp Co., Bellingham, Wash.
 Percy Kent Bag Co., Inc., Kansas City 25, Mo.
 Keyes Fibre Co., Waterville, Me.
 Kieffer Paper Mills, Ewing, Ind. 47233.
 Kimberly-Clark Corp., Neenah, Wis.
 Knowlton Bros., Inc., Watertown, N.Y.
 Lawrence Paper Co., The, Lawrence, Kans. 66044.
 J. P. Lewis Co., Inc., Beaver Falls, N.Y.
 Longview Fibre Co., San Francisco 4, Cal.
 Loroco Industries, Inc., Lancaster, Ohio 43130.
 Lowe Paper Co., Ridgefield, N.J.
 Ludlow Corp., Needham Heights, Mass.
 MacAndrews & Forbes Co., Camden, N.J. 08104.
 Marcal Paper Mills, Inc., East Paterson, N.J. 07407.
 Massillon Paper Company, The, Massillon, Ohio 44646.
 McIntyre Bros. Paper Co., Inc., Fayetteville, N.Y.
 John A. Manning Paper Co., Inc., Troy, N.Y.
 Mead Corporation, The, Dayton, Ohio.
 Menasha Corporation, Menasha, Wis. 54952.
 Merrimac Paper Co., Inc., New York, N.Y.
 Michigan Carton Company, Battle Creek, Mich. 49014.
 Millen Industries, Inc., New York, N.Y. 10016.
 Millers Falls Paper Co., Millers Falls, Mass.
 Milton Leather Board Co., Milton, N.H.
 Mohawk Paper Mills, Inc., Cohoes, New York.
 Monadnock Paper Mills, Inc., Bennington, New Hampshire.
 Morris Paper Board Co., Inc., Paterson, N.J. 07500.
 Mosinee Paper Mills Co., Mosinee, Wis.
 Mystic Novelty Mills, Inc., Wakefield, Mass.
 National Vulcanized Fibre Co., Parsons Paper Div., Holyoke, Mass.
 Nekoosa-Edwards Paper Company, Port Edwards, Wis.
 The B. F. Nelson Mfg. Co., Minneapolis, Minn. 55413.
 Newark Boxboard Co., Newark, N.J. 07105.
 The New Haven Board & Carton Co., Inc., New Haven, Conn. 06058.
 Newman & Co., Inc., Philadelphia, Pa. 19135.
 Newton Falls Paper Mill, Inc., Newton Falls, N.Y.
 New York & Pennsylvania Co., Inc., Philadelphia, Pa. 19105.
 Nicolet Paper Co., West DePere, Wis.
 C. H. Norton Company, North Westchester, Conn.
 Olin (Ecusta Paper & Film Div.), Pisgah Forest, N.C. 28768.
 Orange Pulp & Paper Mills, Inc., L.I.C. New York.
 Owens-Illinois, Toledo 1, Ohio.
 Oxford Paper Company, New York, N.Y. 10017.
 Packaging Corporation of America, Evanston, Ill. 60204.
 Paper Products, Inc., Long Beach, Cal.
 Joseph Parker & Son Co., Inc., New Haven, Conn.
 Paterson Pacific Parchment Co., Sunnysvale, Cal.
 Paterson Parchment Paper Co., Bristol, Pa.
 Payne-Jones Company, Lowville, N.Y.
 Pejepscot Paper Div, The Hearst Corp., Brunswick, Me.
 Penacook Fibre Co., Penacook, N.H.
 Peninsular Paper Co., Ypsilanti, Mich.

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Penobscot Company, Boston, Mass.
 Perkins Paper Products, Ltd., Quebec, Canada.
 Ponderosa Paper Products, Inc., Flagstaff, Arizona.
 Port Huron Paper Co., Port Huron, Mich.
 Potlatch Forests, Inc., San Francisco, Cal. 94111.
 Prairie State Paper Mills, Inc., Joliet, Ill. 60433.
 Proctor & Gamble Company (Charmin Distributing Co.), Cincinnati, Ohio.
 Quaker Oats Company, The, Chicago, Ill. 60654.
 Rayonier Incorporated, New York, N.Y. 10017.
 C. A. Reed Co., Williamsport, Penn.
 Rhode Island Card Board Co., Pawtucket, R.I.
 Riegel Paper Corp., New York, N.Y. 10017.
 Rising Paper Company, Housatonic, Mass.
 Rite Paper Products, Ltd., Chomedey, Quebec, Canada.
 Riverside Paper Corp., Appleton, Wis.
 Robertson Paper Box Company, Inc., Montville, Conn. 06353.
 Rochester Paper Co., Rochester, Mich.
 Rogers Corp., Rogers, Conn.
 Rogers Fibre Co., Inc., Kennebunk, Me.
 Rondout Corporation, Nanapanoch, N.Y.
 R. W. Paper Company, Longview, Wash.
 St. Joe Paper Company, Jacksonville, Fla. 32202.
 St. Regis Paper Company, New York, N.Y. 10017.
 Scott Paper Company, Philadelphia, Pa. 19113.
 Seaboard Bag Corp., Richmond 6, Va.
 Seaman Paper Co., Baldwinville, Mass.
 Shawano Paper Mills, Green Bay, Wis.
 Sherman & Company, Belfast, Maine.
 Simpson Lee Paper Co., Vicksburg, Mich.
 H. P. Smith Paper Co., Chicago 38, Ill.
 Sonoco Products Co., Newton Paper Co. Div., Holyoke, Mass.
 Sorg Paper Co., The, Middletown, Ohio.
 Southern Specialty Paper Co., Chattanooga, Tenn.
 Southland Paper Mills, Inc., Lufkin, Tex.
 Southwest Forest Industries, Phoenix, Ariz.
 Southworth Company, West Springfield, Mass.
 Spaulding Fibre Co., Inc., Tonawanda, N.Y. 14152.
 Spaulding Div. of Publishers Paper Co., Newberg, Ore.
 Springfield Coated Paper Corp., Camden, N.J.
 Standard Packaging Corp., New York, N.Y. 10017.
 Standard Paper Mfg. Co., Richmond, Va.
 Stirling Converting Co., Inc., Bound Brook, N.J. 08805.
 Stone Container Corp., Chicago, Ill. 60601.
 John Strange Paper Company, Menasha, Wis. 54952.
 Strathmore Paper Company, West Springfield, Mass.
 Straubel Paper Co., Green Bay, Wis.
 Sullivan Paper Co., Inc., West Springfield, Mass.
 Tennessee Paper Mills, Inc., Chattanooga, Tenn. 37405.
 Tennessee River Pulp and Paper, New York, N.Y. 10017.
 Tennessee Tissue Mills, Inc., Nashville, Tenn.
 Thimany Pulp and Paper Co., Kaukauna, Wis.
 Tileston & Hollingsworth Co., Boston, Mass.
 Tomahawk Power & Pulp Co., Tomahawk, Wis.
 Toronto Paperboard Co., The, Toronto, Ohio 43964.
 Tuttle Press Company, The, Appleton, Wis.
 Union Camp Corp., New York, N.Y. 10007.
 Union Mills Paper Mfg. Co., New Hope, Pa.
 United Board & Carton Corp., New York, N.Y. 10016.
 Valentine Pulp & Paper Co., Lockport, La. 70374.
 S. D. Warren Company, Boston, Mass.
 Wausau Paper Mills Co., Brokaw, Wis.
 Werthan Bag Corp., Nashville 1, Tenn.
 West Carrollton Parchment Co., West Carrollton, Ohio.

AMERICAN PAPER INSTITUTE, NEW YORK, N.Y., MEMBERSHIP LIST, 1966—Con.

Western Fibre Co., Caseyville, Ill.
 Western Kraft Corp., Portland, Ore.
 Westfield River Paper Co., Inc., Russell, Mass.
 West Virginia Pulp and Paper, New York, N.Y. 10017.
 Weston Paper & Mfg. Co., The, Terre Haute, Ind. 47808.
 Byron Weston Co., Dalton, Mass.
 Weyerhaeuser Company, Tacoma, Washington 98401.
 Whippany Paper Board Co., Inc., Whippany, N.J. 07981.
 Whitestone Prod. Corp., Farmingdale, N.Y.
 Geo. A. Whiting Paper Co., Menasha, Wisc.
 Wyomissing Paper Company, Div. of Wyomissing Corp., Reading, Pa.
 Yorktown Paper Mills, Inc., York, Pa. 17405.

Senator LAUSCHE. Mr. Lievense, do you ship bulk commodities quite extensively?

Mr. LIEVENSE. We ship bulk commodities to the extent of pulpwood chips, which is probably the only bulk commodity.

Senator LAUSCHE. What mode of transportation is used primarily?

Mr. LIEVENSE. That moves both by rail and by motor carriers.

Senator LAUSCHE. You heard Mr. Tucker describe that this bill contemplates giving to railroads the same rights that are now given to inland water carriers in the movement of bulk commodities. Are you familiar with that phase?

Mr. LIEVENSE. Yes, I am.

Senator LAUSCHE. What is your view on it?

Mr. LIEVENSE. I think that is proper.

Senator LAUSCHE. That is, the rights that are given to the inland water carriers should also be given to the railroads?

Mr. LIEVENSE. Yes.

Senator LAUSCHE. Can you visualize any rationalization that would justify one course of treatment for the inland water carriers, and another for the railroads on this right to negotiate rates on bulk commodities?

Mr. LIEVENSE. No, I don't believe so. I think that they ought to compete on the same grounds.

Senator LAUSCHE. I tried to find some reason why there should be a differentiation, and I can't do it.

Is there anything further you desire to say?

Mr. LIEVENSE. I don't believe so. Thank you.

Senator LAUSCHE. Thank you, Mr. Lievense.

Mr. Caughey Culpepper, general manager of the Atlanta Freight Bureau.

Mr. Culpepper, we will be glad to hear your testimony.

STATEMENT OF CAUGHEY CULPEPPER ON BEHALF OF GEORGIA PUBLIC SERVICE COMMISSION

Mr. CULPEPPER. Thank you, Mr. Chairman.

Senator LAUSCHE. Have you appeared before this committee at some time in the past?

Mr. CULPEPPER. I certainly have, yes, sir. And I remember the wonderful reception I have always gotten from you, sir. I have been here before.

I am general manager of the Atlanta Freight Bureau. My name is Caughey Culpepper. I have been in the transportation business since 1921, starting with the Southern Railway.

I have been general manager of the bureau since 1951. I have also been asked to speak for Mr. Walter McDonald, a member of the Georgia Public Service Commission, who subscribes to what I have to say.

I have no prepared statement. I am not going to burden the committee with any of the technical question that you have gone so thoroughly into already. I would like to present as our view that it is not so much a question of discrimination against one method of transportation in favor of another as it is the fact that the application of section 22 rates undoubtedly means that the general shipping public, the commercial shipper, is forced to pay more money than he would if the Government did not have the advantage of a section 22 application.

It has been advanced by the proponents of section 22 that the Government uses this in an effort to reduce the cost of the operation of Government and therefore it undoubtedly has an effect upon our taxes by keeping them lower. I fail to see that.

I fail to think that that actually works out. Theoretically that is fine, but it doesn't work out that way.

As has been said here, unquestionably when the Government, one of the largest users of transportation, has a preferential rate, the railroads, trucklines or whoever grants those section 22 rates, must recover that lost revenue somewhere. And they go to the commercial shippers to get it.

My organization has 550 members in 16 States in the United States. Not all of them are susceptible of the use of section 22 rates. Some of them are, if they were generally applicable. Not all of them are heavy shippers, some of them are.

Undoubtedly, as we have gone along the use of section 22 on the part of the Government has made it necessary for the railroads and the trucklines to maintain a higher level of rates to the general shipping public.

The Georgia Public Service Commission has been constant and persistent in its approval of the abrogation of section 22 rates, and Mr. McDonald, speaking for the commission asked me to apprise you of the fact that the ideal bill that we would like is probably S. 754, with only the retention of the Government having the privilege of section 22 rates in time of war or national emergency, and without any reference to the bulk rates or the use of the exempt carriers being in the bill.

Nothing except that section 22 would be repealed except in time of war or national emergency. I subscribe to that.

Mr. McDonald and the Georgia Public Service Commission subscribe to it.

I would like to point out something which has been mentioned here several times, and that is the recent request by the railroads for a general across-the-board increase in freight rates.

They claim they have to have some more money. And it is ironical to me, as I figure the money involved, that the general increase that they are asking for, according to my figures is almost identical with

the yearly savings that the Government makes with reference to the use of section 22 rates.

Consequently, I come to the conclusion that if they had not been giving the Government section 22 rates, they would not be faced with this general increase today.

That is all that I have to say except that I support for myself and for the Georgia Public Service Commission, S. 754 properly amended to where section 22 would be applicable only in case of war or national emergency.

Senator LAUSCHE. Mr. Culpepper, you state that it is wrong to shift the cost of transporting to the Government on a lower rate to the general shipping public. Is it a fact that the shipper who doesn't do business with the Federal Government is the one that most unjustly has to carry the burden of the cost?

Mr. CULPEPPER. Mr. Chairman, I am glad you asked me that for the simple reason that that is exactly what I was trying to say.

Senator LAUSCHE. I did say it.

Mr. CULPEPPER. My members, those of my members of the Georgia Freight Bureau that can't use section 22 rates, do no business with the Government, have to pay for the savings effected through the application of section 22. Is that what you want?

Senator LAUSCHE. Yes. And that means that the shipper who doesn't sell to the Government, his freight rates go up and become a benefit to the carrier and to the shippers who do use those rates?

Mr. CULPEPPER. Yes, sir.

Senator LAUSCHE. I believe that is wrong.

Mr. CULPEPPER. I know it is wrong. I don't believe it, I know it.

Senator LAUSCHE. Thank you very much, Mr. Culpepper.

Mr. CULPEPPER. I am indebted to you, sir, and to the committee. Thank you again.

Senator LAUSCHE. Hearings on these bills will be continued tomorrow morning at 9 a.m. We stand in recess until that time.

(Whereupon, at 11:53 a.m., the hearing was adjourned to reconvene the next day at 9 a.m.)

AMENDING SECTION 22 OF THE INTERSTATE
COMMERCE ACT

TUESDAY, JUNE 6, 1967

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

The subcommittee met, pursuant to notice, 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.

There has been received by the committee, a letter from the Office of the Secretary of Transportation, signed by John L. Sweeney, Assistant Secretary for Public Affairs, opposing the bill.

Also, a letter from the General Services Administration dated June 5, likewise in opposition to the proposal. (See p. 125.)

The hearings will be continued this morning. The first witness is Edwin W. Cimokowski, Assistant General Counsel, General Accounting Office.

Mr. Cimokowski?

STATEMENT OF EDWIN W. CIMOKOWSKI, ASSISTANT GENERAL COUNSEL, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY PAUL T. SMITH, CHIEF, SPECIAL REPORTS BRANCH

Mr. CIMOKOWSKI. I have with me Paul Smith of our Transportation Division, Mr. Chairman.

Senator LAUSCHE. Yes, sir.

Now, your statement will be placed in the record, if you will. You may read it, or you can discuss the highlights of it, if you so desire.

Mr. CIMOKOWSKI. We would like to summarize it, if we may, please.

Also, we would ask permission to incorporate our previous letters on these two bills dated April 14, 1967. We would like them included in the record.

Senator LAUSCHE. They have already been made a part of the record.

Mr. CIMOKOWSKI. Thank you, sir.

We appreciate this opportunity to appear before your committee to present our views on these two bills.

We do not believe that section 22 privileges should be seriously curtailed as proposed in these bills. And, we are not convinced that there is justification or need for such a change in the law at this time.

First, before we take up a few of the points that we have made in

our statement, I would like to explain some of the background of our interest in the matter.

The GAO has been charged with the audit of Government transportation accounts as well as others since the establishment of the Office in June 1921. At that time we were performing a prepayment audit of the transportation accounts; that is, before the transportation bills of the Government disbursing officers were paid, they were required to be sent to the GAO and adjustments would be made, and then the bills would be returned to the disbursing officers for payment.

In 1940 when section 322 of the Transportation Act of 1940 was enacted (54 Stat. 955), there was a required postpayment audit technique that has been utilized since then. This involves the prompt payment of transportation bills by the Government disbursing officers with subsequent referral to the General Accounting Office for examination of the rate and charge aspects.

In examining these bills, our auditors find overcharges and the carrier is notified. The carrier either voluntarily refunds, or the money is recovered by setoff.

In the calendar year 1966, our Office recovered about \$13 million in overcharges on its examination of about 8 million Government bills of lading and transportation requests.

This audit is handled by about 750 people; 350 of these are rate experts. The rate experts find it much more convenient and capable of more accurate verification, if they have section 22 quotations to resort to.

There might be in such a case a few pages, three or four pages, of rate and other explanatory technical information, whereas, in the case of tariffs, there might be in some cases hundreds of pages to check and crosscheck.

Rate experts are in short supply in industry as well as Government. They are getting older and scarcer. Anything that can be done, or continued, as a means of facilitating rate audit would, we think, be in the interest at least of auditing, although we might say in the event all rates were put in tariffs, or to the extent the bills would require, our audit functions would be discharged, we believe, as efficiently, even though it might take more time.

We have several points which we considered in reaching a position of opposition to these bills. And, again, we might interject that our opposition is of a compromising or limited nature; that is, we are willing to consider possible review by the ICC to some extent.

First of all, I think that the opponents and proponents of changes in section 22, are probably agreed on at least one thing, that the Government should pay at least as much as any other shipper. There is a parting of the ways when they come to the point of considering whether or not the Government actually is paying as much as any shipper. We think that the Government gets no better bargain than any other shipper, and, furthermore, we don't believe it has been satisfactorily proven that the Government is paying less than other shippers.

The ICC, in its 80th annual report, which covers the fiscal year ending in June of 1966, said that the general common carrier rate level has been continuing downward; and the Commission has more prob-

lems, it seems, in considering and disapproving proposals for rate reductions, general rate reductions, than proposals for increases.

Senator LAUSCHE. Do you take the categorical position that the Government should not be given preferential rates so as to produce a result that is prejudicial to the general shipper?

You said that you agree on the principle that there should be equality of rates, but you part company when they claim that the Government is paying less, and, therefore, the private shipper is paying more.

Mr. CIMOKOWSKI. Yes, Mr. Chairman.

On the whole, we think the Government pays as much as the private shipper. We really have no categorical position of opposition or otherwise to revision of section 22. As another point that we have taken into consideration in arriving at the conclusion that the section should be continued as it is; we feel that the Government traffic patterns don't always coincide with the commercial traffic patterns.

The Government also ships many commodities that are peculiar to the needs and uses of the Government itself. And if there were no section 22 rates, at least under present conditions, the Government would be stuck with the class rates in the tariffs. To use an example, the Defense Department ships a lot of bombs and missiles, and weapons of war, which the Government itself buys and uses, and pays for. No commercial shipper ships anything comparable to these kinds of explosives and bombs. The tariff classification basis on volume movements—explosives or bombs—is generally first class or 100 percent.

Where commercial shippers are involved, we find it true that most of the time they enjoy tariff commodity rates which are considerably lower than the first-class rates available in published and filed tariffs.

I think that about 40 percent of first class conceivably would not be unduly low insofar as the general level of commodity rates on certain kinds of explosives is concerned; that is, in volume movements.

The carriers, incidentally, are always quite willing to give something considerably better than first class on carload and truckload movements of explosives and bombs.

As another point, we feel that some weight should be given to the fact that section 22 arrangements are reflective of the trend toward and help advance the cause of simplification in carrier rate structures; and we feel that they do or will facilitate the billing, pricing, and payment operations.

In our reading on the subject of computerization of tariffs; for example, we find that there is considerable reservation about the likelihood in the near future of complete computerization, because of the complexity of our tariffs structures. And, before electronic data processing can be fully utilized, and made to work for business so as to produce more efficient and economical administrative operations and to produce data and information retrieval for management purposes, there will have to be considerable simplification in tariff composition.

As I say, we believe that in the case of section 22, there is that simplicity that contributes toward the adaptation to computer techniques.

As a fifth point we would like to throw out that we stand ready to join in any proposal to give the ICC some review power. We said this several years ago, when we were testifying on S. 2075, a bill which did

lay out to a considerable extent, review authority in the ICC. That bill, as I recall, did not get out of committee.

We believe, also, before we go into the consideration of our entertainment of proposals for giving the ICC review power, that in the simplification of these tariffs the third party beneficiaries eventually will be the commercial shippers themselves, because the trend is in the direction of removing some of the serious complications that exist in tariff composition today.

We have several suggestions on the idea of giving the ICC some oversight power and one of them, we think the simplest one, might be worthy of consideration. In this instance, we would preserve section 22 as it now stands, but we would preface the section with a clause of several words, reading—

Senator LAUSCHE. Where are you reading from now?

From a separate memorandum?

Mr. CIMOKOWSKI. I will read from the bill and add the words I have.

Suppose I take S. 1174, which is the simpler of the two bills. In line 6, page 1, we have the quote, "Nothing in this part shall prevent the carriage." Preliminary to this "Nothing in this part," we would suggest the insertion of "Subject to the Commission's power to determine and prescribe just and reasonable minimum rates for the future," and then we would proceed with "Nothing in this part shall prevent."

The reason we suggest this is because we feel that most of the attacks on section 22 in the years that we have been listening to the arguments concerning the pros and cons are directed to the undue low level of section 22 rates.

Some criticism has been made, considerable criticism I think, that section 22 rates, in many instances, are noncompensatory, or so low as to be unreasonable and, therefore, unlawful.

If the Commission had this elective power or authority which could be exercised at their discretion or on the complaint of some interested party under such rules, special or existing rules, as the Commission might adopt, we feel that it would represent some movement in the direction of regulation of the rates applied to Government traffic.

This may not be as complete as some of the critics would like it, but we think it covers considerable ground, since it would give the Commission some experience in the future as to whether or not there are in fact various unduly low section 22 rates. Such a showing would serve to support allegations that the shippers are suffering by reason of such unduly low rates inasmuch as they would have to pay higher rates because of the burden placed upon them.

One other suggestion with regard to the present state of the bills. Each of the bills concludes with some reference to, I believe, excursion or commutation passenger tickets. We feel that something additional might be useful and that is a further provision, possibly subsection 3, to the effect that "All existing agreements or arrangements made under the authority of this section shall remain in effect until withdrawn or canceled by the parties thereto, or until 1 year from the effective date of this act, whichever is earlier."

Senator LAUSCHE. Why do you suggest that?

Mr. CIMOKOWSKI. This would provide for orderly transition from the existing situation to the situation which would be brought about by the sudden change in the requirements.

I might say this is not a new idea. I have seen it in the so-called Doyle report, I believe on page 506 of the Doyle report.

This concludes our statement.

Senator LAUSCHE. Mr. Cimokowski, as I understand it, you are speaking for the General Accounting Office this morning?

Mr. CIMOKOWSKI. Yes, sir.

Senator LAUSCHE. And the highlights of the argument of the General Accounting Office are, one, that it has no quarrel with the philosophy behind efforts to insure that under section 22, the Government does not pay less for its transportation services than any other shipper would pay for similar service?

I am paraphrasing your paragraph 1?

Mr. CIMOKOWSKI. Yes, sir.

Senator LAUSCHE. It is the beliefs of the General Accounting Office that preferential rates should not be given to the Government merely because it is the Government?

Mr. CIMOKOWSKI. I believe that is correct, sir.

Mr. LAUSCHE. No. 2, the General Accounting Office believes that overall the Government pays as much as, if not more than, commercial shippers of the same volume of comparable commodities between the same origins and destinations?

Mr. CIMOKOWSKI. Yes, sir.

Senator LAUSCHE. That is a continuation of the principle underlying your first statement that you believe that there should be equality of rates for shipments under similar circumstances?

Mr. CIMOKOWSKI. Yes, Mr. Chairman.

Senator LAUSCHE. And that similar circumstances would include volume?

Mr. CIMOKOWSKI. Yes, sir.

Senator LAUSCHE. No. 3, Government transportation procurement patterns do not always coincide with commercial patterns and many of the commodities which the government ships are unique, and seldom found in commercial channels.

Thus, commercial tariffs frequently do not provide commodity rates on Government traffic and without the benefit of section 22, rates on Government shipments would have to move at higher class rates. That still adheres to the principle that there should be equality of rates?

Mr. CIMOKOWSKI. Yes, sir.

Senator LAUSCHE. But, you contend that you have nothing comparable in private shipments and the rates therefore fixed in private shipments would not be applicable to this governmental carriage.

Mr. CIMOKOWSKI. May we give an example, sir?

Mr. Smith may wish to explain at this point.

Mr. SMITH. Mr. Chairman, I would like to cite one example of the Government operation. For instance, the movement of military equipment and personnel during the Cuban crisis, I believe, was one of the largest single operations in transportation history. There, practically overnight, the need arose for the Government and the carriers to arrange for and move thousands of carloads of combat equipment and personnel without any segregation of commodities, without any consideration to classification, packaging as required by the commercial tariffs, and without any separate billing of each commodity loaded

onto each car. The cars were loaded without any consideration given to the usual commercial tariff provisions or requirements.

By this procedure the rail carriers received the benefits of the heavy loading, and relief from the usual requirement of having to bill each separate commodity shipped. Under section 22 it was necessary only to bill one carload or one trainload of combat equipment.

We believe there were definite advantages afforded the carrier industry under this method; also, we feel that, there were corresponding advantages to the Government.

Fortunately, the carriers and the Department of Defense, had the foresight before the Cuban crisis to anticipate this type of situation arising. There was no war declared, and no national emergency as such, to my knowledge. Yet the Department of Defense officials and the carrier industry, particularly the railroads, operating under section 22 authority, were permitted to make arrangements for the loading and billing of Government freight under such conditions. As it turned out, I think the whole transportation operation during the Cuban crisis was a credit to the carrier industry as well as to the Government. And, I think that both received equal consideration through the use of section 22.

Senator LAUSCHE. Yes.

Do the provisions in the pending bills, where they make nonoperative this major change in times of national emergency or war, protect the Government in getting agreed rates under the circumstances that existed in the Cuban crisis?

Mr. CIMOKOWSKI. May I answer that?

At the present time, there is in existence a declaration of national emergency, which began and has been continued from the time of President Truman. So, technically, the national emergency, such as is contemplated by the provisions of the bills, would authorize the carriers and the Government to get together under section 22. The situation could have been different.

This is about all we can say in relation to the Cuban situation.

I might give another example, because it is one of such long standing—

Senator LAUSCHE. Before you proceed, the President declares the emergency, doesn't he?

Mr. CIMOKOWSKI. Yes, sir.

Senator LAUSCHE. Does the law outline the conditions or delineate the conditions under which he may declare the emergency?

Mr. CIMOKOWSKI. Well, I am probably a little confused about that. I can say, however, that the President does declare the existence of a national emergency, and I think this would be compatible with the provisions of these bills insofar as they might be considered applicable.

In other words, section 22 would be available to the parties.

Senator LAUSCHE. What I had in mind is, must the President find that certain conditions exist, or does he have unlimited discretionary power?

Mr. CIMOKOWSKI. I believe that the Executive orders involved usually are prefaced with some declaration of conditions.

Now, what those conditions are, I can't say at the moment, but they probably are to a certain extent of a standard nature; that is, that our

efforts must be directed in the national defense, and the public interest; and mention may be made of the threat of war, or the need for assisting in the adjustment of differences that exist elsewhere in the world, and so on.

Senator LAUSCHE. In your opinion, with the emergency still in existence, the language contained in the present two bills would enable the carriers and the Government to enter into negotiated prices on shipments?

Mr. CIMOKOWSKI. That is correct, sir.

Senator LAUSCHE. Such as occurred in the Cuban situation?

Mr. CIMOKOWSKI. Yes, sir; this is true.

We hope one of these days that the national emergency can be declared ended. We have had some serious problems, of course, since the end of World War II.

And, from where we sit, we can't envision an early termination of the national emergency, things popping all over the world the way they are.

Senator LAUSCHE. All right.

I interrupted you.

Mr. CIMOKOWSKI. I was going to give an additional example. Perhaps we are taking too much time, but, if I may, I would like to outline a situation which arose during World War II.

The Government, of course, then shipped a lot of materials overseas, and it was interested in obtaining the benefit of the export rates, particularly through the west coast ports. The export rates for material were lower than the domestic tariff rates. The export tariffs contained certain technical conditions which could not be satisfied by the Government; for example, the Government could not, as required by the tariff, deliver direct to common carriers by ocean in most instances.

Most of the material that was being sent overseas to battle zones in various parts of the world went through Army and Navy controlled docks and facilities, and the cargo was loaded on vessels either controlled or owned by the United States or by foreign powers such as the Soviet Union.

There was a serious question in those instances, that the vessels used could be classified as common carriers by ocean. So, the Office of Defense Transportation started a proceeding in the ICC to have the conditions in these export tariffs, the suspect conditions, declared unjust and unreasonable.

The proceedings progressed for a while until the parties were persuaded to negotiate a section 22 basis arrangement, which gave the Government the export rates not subject to land-grant deductions—the big rub at that time was that where the export rates were available by tariff to the Government, they were subject to land-grant deductions, which in the case of transcontinental business could be a healthy slice of the tariff rate.

Well, land grant has gone out of being since October 1946; the statutory provisions requiring land-grant deductions was repealed effective at that time. But nevertheless, the same, or essentially the same section 22 quotation is in effect today to cover the transportation for the Government by the rail carriers to the west coast ports for export; that is, over Government docks and facilities.

In this case, the Government receives the benefit of the export rate without complying with the technical conditions of the tariff. Or, if the domestic rate is lower, which doesn't very often happen, the Government may avail itself of that domestic rate.

Senator LAUSCHE. Now I have covered three of your principal reasons, and I now go to the fourth of your arguments.

Four, section 22 arrangements are reflective of the trend toward and help advance the cause of simplification in carrier rate structures and the facilitation of transportation pricing, billing, and payment procedures.

Do you hold this to be a very important reason for not changing the law?

Mr. CIMOKOWSKI. I think it is significant, but of course, it isn't all overbearing. There is much talk and more and more emphasis is being placed on the simplification of the common carrier rate structure; and common carrier procedures and operations are tuned more and more to electronic data processing requirements.

Senator LAUSCHE. Yes.

Now, No. 5, it is the opinion of the General Accounting Office that the present law, at the least, ought to be amended so as to give the ICC jurisdiction in determining whether the rates fixed under section 22 are reasonable.

Mr. CIMOKOWSKI. We don't assert this as a positive position, Mr. Chairman. We say that we do not feel that the law need be changed at this time. But, if it is, then we are willing to go this far.

Senator LAUSCHE. Now, how much was recovered by the General Accounting Office, as you related here?

Mr. CIMOKOWSKI. For the calendar year 1966, a little over \$13 million in overcharges, that is, charges in excess of the tariff published basis or the section 22 basis.

Senator LAUSCHE. And, how many employees are in that division?

Mr. CIMOKOWSKI. There are, altogether, 750, of which 350 are rate experts. We are having trouble getting rate and tariff technicians, incidentally. At the present time we need more because of the increase in Government shipping activity.

Senator LAUSCHE. Do you know what the cost is of administering that office?

Mr. CIMOKOWSKI. I haven't seen any recent budget figures. It is not really in my province. I could furnish them for the record.

Senator LAUSCHE. Provide it for the record.

Mr. CIMOKOWSKI. Yes, sir.

Senator LAUSCHE. Approximately what would they be?

Mr. CIMOKOWSKI. I would feel the operation of the Transportation Division would be, would cost under the recovery figure. But, this is not the important feature in itself. There is a deterrent effect, produced by the pinpointing of management deficiencies. We have review procedures which consider traffic management operations of various agencies in the Government. Several of our people are in Europe today examining into records which reveal how certain operations were carried out.

Senator LAUSCHE. Yes. Well, I recognize that.

In looking at the fact that there are 750 employees, I calculated, if their average salary was \$15,000—it wouldn't be that, would it?

Mr. CIMOKOWSKI. No, sir. Maybe Mr. Smith has a better figure than I have on that.

Mr. SMITH. I would say it would be closer to \$7,000.

Mr. CIMOKOWSKI. Yes, sir; I think it is closer to a grade GS-7 average level.

Senator LAUSCHE. Then it would cost you about \$5 million for salaries alone?

Mr. CIMOKOWSKI. Probably a little more because of overhead and various things.

Senator LAUSCHE. Yes.

You will provide the figures?

Mr. CIMOKOWSKI. Yes, sir.

(Cost information figures follow:)

The total expenditures charged to the Transportation Division, General Accounting Office, during the calendar year 1966 were \$6,090,000. Of this amount \$4,285,000 was allocable to the audit of transportation payments; \$737,000 was allocable to the processing and settlement of claims; \$426,000 was allocable to the review of and reporting on various Government agency traffic management operations; \$409,000 was allocable to the function of developing and acting upon records and information relative to suits and debt cases involving the United States, and \$233,000 was allocable to forms and systems analysis work.

Senator LAUSCHE. Mr. Sender would like to ask you some questions.

Mr. SENDER. Under the Federal Aviation Act, we were informed yesterday, there is no section 22. Would you comment as to why it is necessary to save section 22 to handle surface movements, when there is apparently no need for it in handling air movements?

Mr. CIMOKOWSKI. Well, in the Federal Aviation Act there is a provision which gives the Civil Aeronautics Board the authority to the extent necessary, to exempt from the requirements of that act or any rule, regulation or condition or term prescribed thereunder, any carrier, or carriers, if it finds the enforcement of the act is or would be an undue burden on such carrier or carriers by reason of the limited extent of or unusual circumstances affecting the operations of such carrier or carriers, and is not in the public interest.

The code provision is 49 U.S.C. 1386(b) (1).

There is another section in the Federal Aviation Act (49 U.S.C. 1373(b)), which specifies certain other conditions under which free or reduced rate transportation may be given certain kinds of persons, as airline officers and employees.

In my observation, the CAB exercises this power to a rather significant extent, where Government transportation is involved, particularly in the case of overseas movements of cargo and personnel, Government personnel. There are at the present time, large volume movements of troops and military cargo moving to various overseas points, particularly to the Far East. The rate arrangements are usually worked out expeditiously, and it seems all concerned are satisfied with the exemptions which are granted under 49 U.S.C. 1686(b) (1).

Mr. SENDER. The CAB fixes the minimum rate levels for those charges, isn't that correct?

Mr. CIMOKOWSKI. Yes. At the time, frequently, and this is true today, it may remove the requirement for filing any rates which may be agreed upon between the Government and the carriers with the CAB.

There is a tariff filing requirement in the Federal Aviation Act. So, it is necessary in order that applicable tariff rates be superseded, where there are existing tariff rates, for the CAB specifically to remove this requirement for tariff publication and filing.

Some years ago, there was a rather important case, from our point of view, the so-called *Associated Air Transportation* case (275 F. 2d 827), in which the dispute was over whether or not the Government was entitled to certain contract rates when at the same time tariff rates were filed with the CAB for the same service. The Court of Appeals for the Fifth Circuit decided the tariff rates were exclusively applicable, and that the Government wasn't entitled to the lower cost special arrangements made under the contracts.

Senator LAUSCHE. Just one further question.

Since we have gotten into the airlines, the passage of either of these bills would not at all affect the right of military men to be given reduced rates, when space is available on planes, and they are there as standby.

Is that correct?

Mr. CIMOKOWSKI. It is correct. The reduced rates are authorized either by tariff, in particular individual tariffs, or agency airline tariffs, or under the arrangements which the Government has made with the air carriers, with the approval of the CAB.

Senator LAUSCHE. Thank you very much for your testimony.

(The prepared statement of Mr. Cimokowski follows:)

STATEMENT OF EDWIN W. CIMOKOWSKI, ASSISTANT GENERAL COUNSEL, UNITED STATES GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY PAUL T. SMITH, CHIEF, SPECIAL REPORTS BRANCH

Mr. Chairman and members of the committee, we appreciate the invitation to appear before your committee to present our views on S. 754 and S. 1174. As we indicated in our letters of April 14, 1967, to the Chairman of this Committee, we do not believe that section 22 privileges should be as seriously curtailed as proposed in S. 754 and in S. 1174 which has the same general purpose; moreover, we are not convinced, as are some of the industry proponents of this type of proposed legislation, that there is either adequate justification or need for such a change in the law at this time.

In reaching a position of opposition to these bills we have considered the following points:

1. We have no quarrel with the philosophy behind efforts to insure that by section 22 the Government does not pay less for its transportation services than any other shipper would pay for similar services.

2. We believe that overall the Government pays as much as, if not more than, commercial shippers of the same volume of comparable commodities between the same origins and destinations.

- a. It has not been satisfactorily proven that the Government pays less for its transportation than the shipping public generally pays for the same service.

- b. Common carriers are prospering. The Interstate Commerce Commission in its 80th Annual Report, covering the fiscal year ending June 30, 1966, has said that general rate level has continued downward due to continuing competitive reductions on specific movements. This statement apparently relates to commercial traffic subject to tariff published and filed rates, although it is possible that Government traffic subject to section 22 quotation rates might have been considered.

3. Government transportation procurement patterns do not always coincide with commercial patterns and many of the commodities which the Government ships are unique and seldom found in commercial channels. Thus, commercial tariffs frequently do not provide commodity rates on Government traffic and, without the benefit of section 22 rates, Government shipments would have to move at higher class rates.

a. For example, the Department of Defense has reported that for the fiscal year 1966 it spent a total of \$351,982,000 for the transportation of major commodities of freight shipped in the United States on Government bills of lading. Of that total \$92,873,000 was spent for the transportation of ammunition and explosives. This is about 26 percent of the transportation expenses for the major commodities taken into account. Most of the ammunition and explosives involved are shipped only by or for the Government at Government expense; commercial movement is considerably less significant and tariff published rates are not valid for comparison against section 22 rates under which most Government ammunition and explosives move.

4. Section 22 arrangements are reflective of the trend towards, and help advance the cause of, simplification in carrier rate structures and the facilitation of transportation pricing, billing, and payment procedures.

a. Section 22 arrangements encourage the adaptation of pricing and payment techniques to computer operations. For example, the Department of Defense and the General Services Administration have negotiated "all freight" quotations with various motor carriers. These quotations reflect average tariff costs determined by computer runs on a year's traffic.

5. We are willing to participate in efforts to modify section 22 so as to permit some degree of oversight by the Interstate Commerce Commission, not including exercise of its suspension power or upward adjustments in rates during the life of a particular section 22 quotation. This position does not necessarily oppose prospective revisions in particular section 22 quotations unless the military departments certify that revision would jeopardize the national interest or security.

To give some background for our interest in these measures, the General Accounting Office has been charged with the responsibility for auditing payments on Government transportation since the establishment of the Office in June 1921. What started out as a prepayment audit became, after the Transportation Act of 1940, a postpayment audit with resultant speed-up in the payment of carrier bills. Under the law the procuring Government agencies generally are required to pay their freight and passenger bills without a prior rate audit to determine whether the collecting carrier's charges are properly computed in accordance with the right tariffs or special quotations.

The Government disbursing officers send the paid bills to our Office with their monthly or quarterly accounts; our rate examiners or auditors then look over the records and check the rate authorities covering the transportation involved. The discovery of overcharges in the audit, after notice to the carriers concerned, leads to voluntary refund by the carrier or to collection by deduction from unpaid bills submitted on current traffic. For the calendar year 1966 we recovered overcharges of 13.2 million dollars derived from the audit of about 8.1 million Government bills of lading and transportation requests.

Almost 750 persons, including 350 rate experts, are employed in our Transportation Division auditing Government transportation accounts. Rate and tariff experts are in short supply in both Government and industry; they are getting older and scarcer. While tariffs are abundant, even more numerous than ever, and tariff provisions proliferate, without getting less complicated or more easily understood, the Government (and the carrier) rate auditor's job can be made more effective if applicable technical rate and related information is placed in section 22 quotations. In such cases the procedure for filing and verifying rate information often is reduced to checking the few pages of a section 22 quotation as compared to frequently checking and cross-checking many pages in various tariffs (some hundreds of pages long and having numerous supplements) to make certain of the lowest applicable rate.

More and more emphasis is being placed today upon the need for the simplification of the common carrier rate structure, as common carrier procedures and operations more and more are tuned to the labor and money-saving magic of electronic data processing.

Transportation service procurement on a section 22 quotation basis fits into the overall pattern of simplifying the methods of doing business. As compared to recourse to regular tariff publication it is demonstrably quicker to formalize rate arrangements under section 22; it is easier for an auditor to find the lowest applicable section 22 rate;—his search is limited to a short and simply worded document; and much less space is needed to contain the files of current section 22 quotations.

Still, we do not endorse section 22 rates because of convenience alone to the makers, users and filers. We believe that the present form of section 22 law is advantageous to the carriers as well as the Government in providing, on the whole, revenue to the carriers to cover all costs and to afford a reasonable margin of profit, while, at the same time, giving the Government required services—often having no commercial counterpart—at reasonable rates.

We have consistently maintained, since the early Fifties when carrier and industry criticism of section 22 increased and when efforts to restrict or repeal the section became more noticeable, that the section should be left unchanged. We have been struggling with the problem, studying reasons given for and against continuing section 22 in its present form; and preparing, in 1961, a rather extensive statistical study for this Committee.

We are not against change; we are against an almost complete reversal of conditions which have proved advantageous to the Government (and the carriers) for over three-quarters of a century. Thus, in 1964 we were not against the objective—oversight by the Interstate Commerce Commission—of such a bill as S. 2075, 88th Congress, 1st Session. As we then reported, and as we now feel, we do not resist efforts to provide oversight of section 22 quotation arrangements by the Commission (except where the military or naval authorities certify that publication of particular quotations would jeopardize the national security). In other words, we would not object to a bill which would authorize (not require, except on complaint by interested parties) the Commission to exercise some review functions over section 22 quotations. This does not mean a power of suspension, but a power to analyze particular rates or rate scales or rules or regulations made available in selected section 22 quotations, and to determine, on the basis of specific facts and circumstances and in accordance with existing or specially adopted rules of procedure, whether or not such rates, rules or regulations conform to the generally accepted standards of lawfulness.

As in previous years we are willing to cooperate in the formulation of an appropriate bill designed to specifically give the Commission some form of review power which, after sufficient experience, may enable a compilation of information and data for guidance as to such further changes, if any, in the law as may be shown justified. This proposal, we believe, represents a middle ground between the opinions of those organizations and persons who would remove or seriously restrict the scope of section 22 and those who would preserve it as it has been since the Interstate Commerce Act became effective in 1887.

Senator LAUSCHE. The next witness will be Richard Harris, assistant attorney general of Virginia, on behalf of Gov. Mills Godwin.

STATEMENT OF RICHARD N. HARRIS, ASSISTANT ATTORNEY GENERAL OF VIRGINIA, FOR HIS EXCELLENCY MILLS E. GODWIN, JR., GOVERNOR OF THE COMMONWEALTH OF VIRGINIA; PRESENTED BY JIM MARTIN, NATIONAL GOVERNORS' CONFERENCE

Senator LAUSCHE. Your statement will be completely placed in the record, Mr. Harris.

Mr. MARTIN. Mr. Chairman, I am Jim Martin, with the National Governor's Conference and I am here to submit Mr. Harris' statement.

The Governor couldn't be with us this morning and Assistant Attorney General Harris called last night and said he still has a major case in the Virginia Supreme Court and he asked that I come and submit his statement for the record.

I would like to compliment your staff for their patience in our change in testifying this morning. He asked that I note only one thing in his prepared testimony and that is that the office of the Governor, the office of the attorney general, the Virginia State Corporation Commission, and the Virginia State Port Authority are all agreed on opposition to the repeal of section 22.

Senator LAUSCHE. They are in opposition to the repeal. That would mean they are in opposition to these two bills?

Mr. MARTIN. Yes, sir.

Senator LAUSCHE. And the reasons for their opposition are set forth in the statement?

Mr. MARTIN. Yes, and there is a statement at the end of Mr. Harris' statement, a letter from the Virginia Corporation Commission and the Virginia Port Authority.

Senator LAUSCHE. Yes.

Mr. MARTIN. Thank you very much.

Senator LAUSCHE. Thank you.

Mr. MARTIN. Mr. Chairman and members of the committee, I am appearing on behalf of and at the request of His Excellency Mills E. Godwin, Jr., Governor of the Commonwealth of Virginia.

I am Richard N. Harris, an assistant attorney general of Virginia. Virginia is unequivocally opposed to Senate bills 754 and 1174. These bills would repeal section 22 of the Interstate Commerce Act as that section now applies to the State and municipal governments, except in time of war and national emergency.

The provisions of section 22, permitting reduced freight rates of shipments to State and municipal governments have a long history. They have been in our law since 1887—80 years—and during this time literally millions of dollars have been saved by State and local taxpayers whose governments have been receiving goods on section 22 shipments.

We, in Virginia, have made an analysis of some of our savings and, as a sample, have chosen the year 1966. Of course, not all of the goods purchased by Virginia and her local governments are delivered by motortruck. Many arrive by rail.

However, we find that section 22 quotations are much more frequent on motor carrier shipments than on rail shipments, so that the moneys saved by the Commonwealth are saved primarily in connection with motortruck shipments.

The State agency which is the largest dollar volume importer of goods is the Virginia Alcoholic Beverage Control Board. During 1966, that board purchased a total of \$97,172,334 worth of packaged alcoholic beverages for resale in State-operated retail stores. The board does not use section 22 on rail shipments.

However, it consistently uses section 22 on its motor carrier shipments—62.22 percent of the goods purchased by the ABC board entered Virginia by motor carrier. This represented a total dollar volume of \$60,460,630.

By the use of section 22 on these motor carrier shipments, the board has computed that during 1966 it saved the sum of \$372,547. This represents the additional sum that would have been paid for freight charges if section 22 rates had not been in effect.

This same relative saving can be repeated throughout Virginia's agencies. We have a central purchasing system, a department of purchases and supply. About \$14 million worth of the goods purchased by that department came to Virginia by interstate motor carrier on section 22 quotations.

This resulted in a saving of an estimated \$84,000. The department of highways is estimated to have saved about \$150,000 in freight charges

on goods delivered to it by common carrier during 1966. Other institutions and agencies which purchased goods independently are estimated to have saved, collectively, a total of approximately \$120,000.

All of these figures together represent an approximate saving to the Commonwealth of Virginia during 1966 of a total sum of \$725,000, and this from State governmental operation alone.

When we add to that the savings to local governments using section 22, we find an additional sum estimated to be in excess of \$350,000, making an estimated total statewide annual saving of something between \$1½ million as a result of the use of section 22.

I have not attempted to do so, but I would imagine that from these figures a per capita average saving could be computed and used to determine estimated savings in all States, bearing in mind that savings would be greater in urbanized States than in rural States simply because more goods would be purchased by the urban States and their subdivisions.

I have not heard the testimony of the proponents of these bills. I would imagine, however, that they have stressed the competitive disadvantage which they feel is created by the existence of section 22. They probably argue that section 22 permits carriers to attempt to undersell each other in bidding for Government shipping and carriage of goods. I would imagine that they have argued that they would prefer a standard rate so that competition would exist as to quality and timeliness of service and not as to the price of it.

The argument has probably also been made that Government shipments are made at the expense of commercial shipments, for which the published rates must be paid.

All of these arguments, it seems to me, beg the question and ignore the most important element in section 22. That element is the fact that the carrier is permitted to provide reduced rates—not required to do so. He has the complete and absolute right of refusal and may insist on shipment only at the published rates.

Thus, what the proponents essentially want is the removal of the temptation to compete. They want the price to be stabilized so that they will no longer be subjected to competitive temptations. By supporting this legislation, the transportation industry admits that it needs to be protected from itself—a rather startling confession, to say the least.

I think what we all forget is that for 80 years section 22 has resulted in large profits for the common carriers, while at the same time achieving enormous savings of public funds.

And, after all, these are public funds with which we, at all levels of government, are dealing. Sometimes it would appear that the more distant we are from local government, the more readily we tend to think that there is some inexhaustible supply of such funds. We tend to lose touch with the man in the street who provides these funds.

In my own county, the most difficult task of government is finding qualified persons who are willing to serve on our countywide governing body. Many aspire to be Congressmen or Senators or members of the Virginia Legislature, but very few want to be constantly under the direct gun of their constituents, as is every county supervisor or commissioner because he is the elected representative closest to the people.

I ask you to place yourselves in the shoes of these local officials. These bills would greatly increase the expenditure of public funds and, in my opinion, this is the most compelling reason why they should be defeated.

Additionally, I understood that the National Association of Railroad & Utility Commissioners has appeared as a proponent of this legislation. In Virginia, the commission concerned with common carrier and utility control is the State corporation commission. Its three commissioners are members of the national association to which I refer. The Virginia State Corporation Commission is opposed to these bills—in no uncertain terms—as is clearly indicated by the letter to this committee from our commissioners which I would like to file for the record.

Thus, they disagree entirely with the position taken by the national association, as I am sure is probably the case with many other State utility and common carrier control commissions.

When the national association presumed to speak on behalf of its members in favor of these bills, it was taking a position precisely contrary to that of one of its members—the State Corporation Commission of Virginia.

The same is true of the American Association of Port Authorities and the North Atlantic Ports Association, Inc. The Virginia State Ports Authority is a member of both of these organizations.

I understand that the American Association and the North Atlantic Association are both on record, on behalf of their members, as favoring the repeal of section 22. The Virginia State Ports Authority has never taken any position on attempts to repeal or weaken section 22 and takes none on the present attempt.

Thus, the American and North Atlantic Associations do not speak for the Virginia State Ports Authority. In that connection, I have a letter from the Virginia Authority, which I request be filed in the record, clearly indicating their position.

(The letter referred to above is as follows:)

COMMONWEALTH OF VIRGINIA,
STATE CORPORATION COMMISSION,
June 1, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation of the Senate Committee on Commerce, Washington, D.C.

DEAR SENATOR LAUSCHE: On June 5 and 6, 1967, your Subcommittee will hold hearings on Senate Bill 754 and Senate Bill 1174 amending Section 22 of the Interstate Commerce Act to restrict certain authorization for free or reduced rates for the transportation of property or passengers.

The State Corporation Commission of Virginia has an interest in these Bills and is the agency in this State having to do with transportation matters. This Commission desires to advise your Subcommittee that it opposes the Bills and asks that the Subcommittee not act upon them favorably.

The State of Virginia in many of its activities is able to secure substantial savings because of the present laws. These savings, of course, are passed on to the people of this State and are of substantial benefit with the large tonnage moving in interstate commerce.

Both the National Government and the State Government should and must operate at the lowest cost to their peoples. With the present Section 22 of the Interstate Commerce Act, savings have been made in transportation costs which have provided more service to the people of the State. Because of the tonnage involved, the carriers can well afford to apply a reduction in rates to the State and they welcome the chance to transport the State's goods.

This Section has been in effect for a long period of time, and to limit the applicability during time of war or national emergency is not, in our opinion, in the interest of the economy of the Nation or the States.

We sincerely voice our opposition to the two Bills and request that the Subcommittee not pass them.

Very truly yours,

H. LESTER HOODER, *Chairman.*
JESSE W. DILLON, *Commissioner.*
RALPH T. COTTERELL, *Commissioner.*

COMMONWEALTH OF VIRGINIA,
VIRGINIA STATE PORTS AUTHORITY,
Norfolk, Va., June 1, 1967.

RICHARD N. HARRIS, Esq.,
Assistant Attorney General, Commonwealth of Virginia,
State Capitol Building, Richmond, Va.

DEAR MR. HARRIS: Pursuant to our conversation today, please be advised that the Board of Commissioners of the Virginia State Ports Authority has never taken any position with respect to proposed legislation which would amend Section 22 of the Interstate Commerce Act to limit free or reduced rate transportation of property or passengers for the United States and local governments to time of war or national emergency.

While certain members of the staff in the past may have testified before Congressional committees concerning this type legislation, their statements were not made in their official Authority capacities, but were presented on behalf of port organizations such as the American Association of Port Authorities or North Atlantic Ports Association, Inc.

We understand that the Subcommittee on Surface Transportation of the Senate Committee on Commerce will soon hold hearings on two current Section 22 bills. The subject of the proposed legislation, S. 1174 and S. 754, is not on the agenda for our next Board meeting and there is no indication that a change in its position will be forthcoming.

Sincerely yours,

BLAIR P. WAKEFIELD,
Acting Executive Director.

Senator LAUSCHE. Do you desire to say something?

STATEMENT OF G. LLOYD NUNNALLY, REPRESENTING THE NATIONAL ASSOCIATION OF PURCHASING AGENTS, THE NATIONAL INSTITUTE OF GOVERNMENT PURCHASING, INC., AND THE NATIONAL ASSOCIATION OF STATE PURCHASING OFFICIALS

MR. NUNNALLY. I am Lloyd Nunnally, and I am not trying to jump the gun here, Senator, but they gave me permission to come up because Mr. Harris could not be here.

I am director of purchasing for the Commonwealth of Virginia, but my capacity here this morning is designed to make a statement on behalf of representing the National Association of Purchasing Agents, the National Institute of Governmental Purchasing, and the National Association of State Purchasing Officials.

Mr. Chairman and members of the committee, I am appearing on behalf of and at the request of the Public Purchase Officers of America as represented by the above-mentioned associations, and we are unequivocally opposed to Senate bills 754 and 1174. These bills would repeal section 22 of the Interstate Commerce Act as that section now applies to the State and municipal governments, except in time of war and national emergency.

It is my understanding that the provisions of section 22 permitting reduced freight rates on shipments to State and municipal governments have a long history. They have been in our law since 1887—80 years—and during that time literally millions of dollars have been saved by State and local taxpayers whose governments have been receiving goods on section 22 shipments.

The attention of our members has been called to the fact that the subject bills introduced in the 90th Congress are designed to amend section 22 of the Interstate Commerce Act to restrict certain authorization for free and reduced rate transportation of property or passengers.

Our State and local governments have benefited substantially through reductions in freight rates obtained under the Interstate Commerce Act as it presently exists. The proposed amendment would prevent lower prices under ordinary circumstances and deprive State and local governments of these benefits, thereby increasing costs in our local government.

As public purchase officers, it is encumbered upon us to, at all time, endeavor to obtain the greatest value for the tax dollar.

We, therefore, respectfully register our objection to this proposed legislation.

Senator LAUSCHE. With whom are you associated at present, Mr. Nunnally?

Mr. NUNNALLY. I am director of the Department of Purchasing and Supplies for the Commonwealth of Virginia.

Senator LAUSCHE. That is, you do the purchasing and it is your responsibility to see that the goods are delivered?

Mr. NUNNALLY. Yes, sir.

Senator LAUSCHE. Then you also are speaking here on behalf of—

Mr. NUNNALLY. Sir, I am speaking in behalf of our association of which I am a member of the board of each of the associations listed.

I am an immediate past president of NAPA, that is, the National Association of Purchasing Agents.

I am a former past president of the National Institute of Governmental Purchasing and I am currently a member of our National Association of State Purchasing Officials.

I am not speaking in behalf of the State of Virginia; I am speaking in behalf of these associations. That was the intent.

Senator LAUSCHE. Well, you spoke representing the Governor?

Mr. MARTIN. Yes, the Governor of Virginia, Mr. Harris' statement.

Senator LAUSCHE. And you are from where?

Mr. NUNNALLY. I am from the State of Virginia, and I thought this was going to be confusing.

Senator LAUSCHE. He presented his paper, so the Governor of Virginia is against these bills. And you, speaking in behalf of the National Associations of Purchasing Agents, and the National Institute of Governmental Purchasing, Inc., and the National Association of State Purchasing Officials express their opposition to these bills?

Mr. NUNNALLY. Absolutely, yes.

I have one more little statement and then I will conclude.

To give you some idea, during the year 1966 it has been determined that the State of Virginia alone the savings to the taxpayer as a result

of the use of section 22 was in excess of \$1 million. Also, it is my understanding that the carrier under section 22 is permitted to provide reduced rates, but not required to do so.

I have quite a lot of other information which I am sure has been brought to your attention that Mr. McHugh gave to our association about this section and our purchasing agents across the Nation are very much concerned that if you do approve these bills, recommend approving the bills, a large sum of savings now being benefited to the taxpayer might go by the board.

Thank you very much.

Senator LAUSCHE. What do you say about the argument that has been made that the moneys which you save through reduced rates by compulsion must be loaded on to private shippers harassing and hindering them in their competitive efforts to sell goods?

Mr. NUNNALLY. I don't subscribe to that and our counsel for the State of Virginia, Mr. Harris, has a very fine statement in there concerning his feelings on that representing the Governor.

Senator LAUSCHE. Yes, all right.

Mr. MARTIN. The Assistant Attorney General Harris has asked Mr. John Hardy on my left, who represents the alcoholic beverage commission in Virginia, who can speak to any points in Mr. Harris' statement, if you have any questions about Mr. Harris' statement—

Senator LAUSCHE. I have no questions.

Do you desire to offer any supplemental statement?

STATEMENT OF JOHN W. HARDY, MEMBER OF VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

Mr. HARDY. My name is John W. Hardy, a member of the Virginia Alcoholic Beverage Control Board for a period of 30 years. The only comment that I desire to make, Mr. Chairman, is in reference to the statement in Mr. Harris' remarks here on page 2, and that is affecting the Virginia Alcoholic Beverage Control Board.

I wish to point out the Virginia Alcoholic Beverage Control Board uses section 22 entirely for the purpose of equalizing rates.

We do not use section 22 as far as the movements of merchandise by rail, but as a rule the published tariff rates of trucking company, the rates are higher than the published tariff rates of rails.

In our operation, in the warehouse in which all of this merchandise is delivered to, we have rail and truck delivery facilities. We think it is incumbent upon us to try to equalize the movements of this merchandise as much as possible by freight and by rail and yet at the same time we do not think we should place ourselves in the position of being accused of paying one mode of transportation a higher cost than another mode of transportation. Therefore, when we move merchandise by truck and the trucking companies solicit the business from the board, that the trucking company will file a section 22 that equals the published tariff rate of the rail movement.

Therefore, any freight rates that we pay are not lower than the published tariff rates of the rails. In that way, we avoid paying the trucking companies a higher movement cost than we would pay the rails for the same merchandise.

In the last calendar year, the Virginia Alcoholic Beverage Control Board saved a sum of \$371,547.71 by moving merchandise by truck under section 22, this being the difference between the quotation under section 22 and the published trucking rate. But it is the same rate that the rail rate would be.

In other words, we would have spent, if we moved this merchandise by published trucking tariff rates, we would have spent \$371,000-some-odd more than if we moved the same merchandise by rail.

Senator LAUSCHE. What is your answer to the argument that has been made by the Interstate Commerce Commission members that when you gave a reduced rate, let's say to this board operating the alcoholic sales in Virginia, you of necessity compel the carrier to charge private shippers more, so as to make up the savings which was given to you?

Mr. HARDY. Mr. Chairman, we do not look upon it in that manner. We don't compel the trucking companies to do this. I don't think we could compel the trucking companies to do this.

Every one of these rates that are filed under section 22 are voluntarily done by the trucking companies. They have different reasons for doing this. These trucks will move from the Middle West to Richmond, Va.; they move from New England to Richmond, Va., and it is an advantage to these people to make arrangements for a section 22 tariff, to have the return load of merchandise so the truck does not go back empty.

Senator LAUSCHE. And, therefore, instead of it being a loss, it is a—

Mr. HARDY. It is a profit to the trucking company, yes.

Senator LAUSCHE. All right.

Is there anything further?

(No response.)

Senator LAUSCHE. Thank you very much for your presentation.

State Senator Donald Potter, State of Michigan.

STATEMENT OF HON. DONALD POTTER, STATE SENATOR, STATE OF MICHIGAN, ON BEHALF OF THE MICHIGAN MUNICIPAL UTILITIES ASSOCIATION; ACCOMPANIED BY ROBERT SPARBEL, MICHIGAN LIQUOR CONTROL COMMISSION

Mr. POTTER. Mr. Chairman, I am S. Don Potter, representing the Michigan Municipal Utilities Association, based in Lansing, and composed of 35 municipally owned utilities scattered throughout the State of Michigan. With me is Mr. Robert Sparbel, of the Michigan Liquor Control Commission. The commission shares our concern relative to proposals to modify section 22 of the Interstate Commerce Commission law.

It is not our purpose today to be repetitious, but since we don't know what the thrust and direction of yesterday's testimony was, if I could beg your indulgence and cover some of the ground we think is very important in Michigan.

Senator LAUSCHE. Yes.

Mr. POTTER. If it is admitted that the role of government in times of economic downturn is to pump new life into the economy through

accelerated spending for public works, then the proposed modification runs counter to that generally accepted proposition. In simple terms, adoption of this modification would further limit the ability of government to level the business cycle, long an accepted objective.

We recognize the asserted position by the carriers that the present language of section 22 permits a certain competitive advantage to certain governmental activity that might be construed to be in competition with the so-called free enterprise section of the economy.

This assertion is without tangible basis. In the first place, the carriers well know that there is nothing in the law that requires them to handle the freight business of Government at a reduced rate. Our records and experience show clearly that not one of the agencies I represent has ever coerced, attempted to play one carrier against the other, or ever demanded a favorable rate. Indeed, the rates have been offered, and willingly, by the carrier. The chief of the purchasing division of the State of Michigan, Mr. P. H. Anderson, has stated in letters to both Senator Hart and Senator Griffin that carriers have utilized the provisions of section 22 to establish a profitable business, particularly in the area of backhauls into Michigan, where otherwise these carriers would be running empty. Much of the business of the State is carried on a backhaul basis. In other words, the carriers would be going back to Michigan empty. So it is not a case of operating at a reduced rate in an unfair competitive advantage, because certainly something is better than nothing.

Now there has been use of the word "discrimination." It is our contention that the 35 public utilities I represent cannot compete with the giants of the power industry because we simply cannot negotiate on the basis of these trainload rates. I suppose the next legitimate question as we point out in our statement is well, if you can't compete, why don't you get out of business. But Senator Lausche, as you well know, the justification for a municipal utility in many cases is because it is not profitable to operate so far as private utilities are concerned in that particular area.

As you know, being a neighbor of ours, Michigan is a very diverse State. And we have some areas such as in the Upper Peninsula, the northern part of the Lower Peninsula, where we simply do not have enough people to justify the expenditure of huge sums of money to bring a private utility in, but we can operate at a reasonable basis on a public utility basis.

Senator LAUSCHE. How many municipalities are there that—

Mr. POTTER. Thirty-five, sir.

Senator LAUSCHE. And they are small ones in the main?

Mr. POTTER. All except—I would think the only sizable utility we have in the State of Michigan is the city of Lansing. And in regard to that, the board of water and light in the city of Lansing has recently cut its rate largely through a negotiation conducted to bring coal in at reduced rates, and this saving, because Lansing is the State capital, resulted in \$46,000 in savings in electric power to the State of Michigan alone, based right in Lansing and about \$33,000 savings for the board of education.

With the modification of section 22, the board of water and light estimates they will have increased costs of \$300,000.

In that connection, Senator Lausche, I would like to point out that many times the argument is made on a municipal utility that one of the reasons they are able to complete is because they don't pay taxes.

Well, our position is this, that we would certainly be very happy to present our books to any committee of the Congress or to any committee of the State legislature and we think we can demonstrate that the municipal utility by and large, except the very small marginal operations where there is a general understanding that this is a marginally economic operation, do in fact in terms of goods and services deliver to the people of the municipality in excess of what their total tax burden would be. I would be the first to admit in the case of the board of water and light in Lansing that the amount of local tax paid would be disproportionate to the amount of Federal taxes. But in the total amount of goods and services rendered, it would be equal to what the total tax burden of the board of water and light would be if it were a privately owned utility.

And this is reflected in rates. The electric rates in Lansing are lower than in any other area in the State. But after all, this is not a profit-making proposition either. Because of the large amount of governmental activity that takes place in Lansing, the benefits flow to all of the people in the State in the long run.

Senator LAUSCHE. How long has Lansing had the municipally operated light plant?

Mr. POTTER. Since the inception of the electric light, which would go back to the late 1800's.

Senator LAUSCHE. Cleveland has one, too, as you probably know, that goes back to about the early 1900's.

Mr. POTTER. Yes.

Senator LAUSCHE. Are you opposed to the bills, both of them, as they stand?

Mr. POTTER. That is correct, Senator.

Senator LAUSCHE. That is, you believe it is in the interest of the general public to have governmental agencies have the benefit of reduced rates provided under authority of section 22?

Mr. POTTER. That is correct, sir. And I might enlarge on this—

Senator LAUSCHE. These figures which you gave about the savings, are they annual savings?

Mr. POTTER. Yes, sir.

Senator LAUSCHE. That was the board of education, and—

Mr. POTTER. Board of education and the State of Michigan itself.

Senator LAUSCHE. How much did you say the State saved in 1 year?

Mr. POTTER. The State, as a result of the latest rate reduction only, the latest rate reduction, saved \$46,000.

Senator LAUSCHE. Under section 22?

Mr. POTTER. This was directly as a result of the savings. Now the alternative, sir, is if section 22 is modified and repealed, the board of water and light in Lansing alone will bear an extra \$300,000 in operation cost. And since the Government is one of our largest customers, I am quite certain we won't be able to hold the rate.

Senator LAUSCHE. All right. You may proceed.

Mr. POTTER. Thank you, sir. I think at this stage it would be well to point out that the problem of the municipal utility and the problem

of the State liquor control commission is that it is not operated on a profitmaking basis. So you have a difficult comparison to make when you are talking about public carriers or public customers and private customers. This is not an easy comparison. I don't think these are comparable at this point in our economic development.

In the State liquor control commission there is another unique problem because here the State legislature back in 1933 decided Michigan would be a monopoly State. So there is really no competitive factors involved here. And Mr. Sparbel, who is in charge of this particular area of transport for the State liquor control commission has worked with us and I think you must understand the profits from the liquor monopoly in the State of Michigan provide roughly 10 percent of the total budget of the State of Michigan.

Senator LAUSCHE. How much is that?

Mr. POTTER. Approximately \$1 million.

Senator LAUSCHE. Oh, it is more than that.

Mr. POTTER. \$100 million I should say. There is a mistake here.

Senator LAUSCHE. It is even more than that I would imagine.

Mr. POTTER. I am afraid not. We must not drink too much.

Senator LAUSCHE. All right. That is a profit of \$100 million a year from the sale of liquor?

Mr. POTTER. That is correct.

Senator LAUSCHE. How much do you make through the savings in transportation through section 22?

Mr. POTTER. Well, sir, the best analysis we can draw here is that during the last fiscal year before section 22 quotations were effected, a period from July 1, 1956, to June 30, 1957, the commission handled 4,079,709 cases at an average freight cost per case of 36 cents a case, roughly.

In the first full year of section 22 quotations 3,951,154 cases were shipped at approximately 27 cents a case. The rate differential then is approximately 9 cents a case. Then in 1966 we handled 5,456,667 cases which at the differential would have cost the State of Michigan \$503,000-plus. However, that is not the whole story, because the State law requires 46 percent markup. And this would result in an increase of \$735,000.

Now, Senator Lausche, I am sure that the figure of three-quarters of a million dollars as it lays out doesn't really sound very impressive in many ways. However, there is a factor there that we would like to emphasize and that is that it has been our experience that increases in costs increase our bootlegging in the State of Michigan. Now Michigan has been beset with recurrent fiscal crises and during the last one we had it was the decision of the legislature to raise the price of alcoholic beverages and there was a disproportionate increase in the amount of bootlegging that took place in the State.

So we think it is a crime problem as well as an economic problem in the State of Michigan based on our experience.

Now I have heard some statements about the carriers and I think it would be well to point out at this stage of the proceeding just where the carriers are going as far as the State liquor control commission in Michigan.

In 1966 they realized gross sales of \$1,368,000. But because of the efficient operation we have in the State liquor control commission, the

losses were small; \$1,313,000 represents a claim-free freight figure which I think the point we make is if the carriers cannot make a profit on that sort of volume, there is something radically wrong and the flaw is not within the framework of section 22.

Now let me summarize exactly what our position is and I think we can probably save some time.

In summary we see no need for revision of section 22 at this time. There is nothing compulsory about its provisions. No one forces a carrier to negotiate under section 22. There is no element of unfair competition because those agencies now availing themselves of section 22 provisions are conducting the business of the people, they are not in search of profit, but are in search of providing the best possible service at the lowest possible cost.

The proposed modification would produce these results: It would raise the cost of Government services, it would lower the utilization of available carrier facilities. I think this point has not been emphasized to any great degree so far that I have heard. I think utilization of available carrier facilities is a valid point, since governmental agencies would demand the same quality of service should the rates be equal.

In the State of Michigan today our purchasing policy in general government purchasing has not been to demand service equal to that enjoyed by the private customer. And we think it would prevent the possibility of carriers, it would present the possibility of carriers subsidizing private customers at the expense of public customers, just the reverse of what we have heard here today, and in general damage and destroy the balance that now exists between governmental and private shipping contractors.

We do think a balance does exist, sir.

Senator LAUSCHE. All right. Do you desire to supplement what has been said, Mr. Sparbel?

Mr. SPARBEL. You raised the question on \$100 million. I would like to clarify that. That is not a \$100 million profit as such. There is a \$54 million profit on merchandising, and the balance is licensing. So it is split, the \$100 million is split between merchandising profit and licensing. The \$100 million into the general fund is a valid figure.

Senator LAUSCHE. How would you answer someone who challenged the right to run a liquor department by a subsidization of the Government through reduced transportation rates?

Mr. POTTER. At the outset I would deny that is the case. I would deny we are being subsidized by anyone, because in the operation of the liquor control commission the negotiation of the rates is such that no one is subsidizing anyone to the best of my knowledge and belief.

Senator LAUSCHE. How much do you save through the reduced rates that are given to you as distinguished from rates that are given to other shippers?

Mr. POTTER. Well, that is difficult to say, because the question is if we had to pay the going rate, as the phrase goes, we would certainly demand a different level of service.

So the question is How much would the railroads profit? But the question of how much we would save, because of the peculiarity of the

State law, and there is no sentiment to change the law at this time, because of the 46-percent markup. I think it would be fair to say we save out-of-pocket perhaps as much as \$500,000, but the consumer would pay three-quarters of a million dollars.

Senator LAUSCHE. The consumer of the liquor?

Mr. POTTER. Yes, sir. And then we get into this problem of increased bootlegging which is becoming a severe problem in Michigan, because our prices are not competitive with let's say Ohio, Indiana, and Illinois.

Senator LAUSCHE. All right. Is there anything further?

Mr. SPARBEL. I was going to suggest the method by which these section 22 quotations were negotiated.

To begin with, the railroads offered a tariff, a commodity tariff on alcoholic liquors at what they call an incentive rate, the first 28,000 pounds in a boxcar at one rate, the balance of what was loaded in the car at 70 percent of that rate.

The trucklines, to compete with that rate, issued section 22 quotations. The railroads then came along and said well, instead of our commodity tariff, we also will issue section 22 quotations. And they offered me this quotation at 5 percent less than the truckline quotations, which I refused and told them I would accept their quotations equal to the truckline section 22 quotations.

In other words, we started out with a tariff rate. Now the difference between then and now is general rate increases, ex parte increases, which have raised tariff rates, but the carriers haven't seen fit to make any increases in their section 22 quotations.

So our advantage is we have been able to hold the line, not that we have undercut any rates.

Mr. POTTER. Senator, if I could make one other point here, in our review of the Michigan Utilities Association operation and the review of the State of Michigan's operation and the review of the Michigan Liquor Control Commission's operation, we have yet to uncover one case of where carriers were whipsawed.

Senator LAUSCHE. Now yesterday there was presented testimony about a situation that existed in Centerline, Mich. I think it is about 15 miles from Detroit. And it is about 70 miles from Toledo. And the testimony was that under section 22 the rate of hauling cargo from Centerline to Detroit, 15 miles, or Centerline to Toledo, 60 miles, was greater than the rate of hauling it to an Atlantic seaport 700 miles away.

Now that occurred because the Interstate Commerce Commission had no jurisdiction over the discretionary judgment of the railroad to reduce its rate down to a point where the shipments went to the coast.

Do we have the figures available on that? Would you read the figures, please?

Mr. SENDER. The figures are that the rate from Centerline to Detroit, which is 15 miles, was 52 cents per hundredweight. The rate for 55 miles to Toledo was 67 cents per hundredweight. And the rate quoted to Hampton Roads was \$1.27 per hundredweight.

Senator LAUSCHE. Under the tariff.

Mr. SENDER. That is the tariff rate. Under section 22 the rate was quoted as 50 cents per hundredweight to Hampton Roads, which is 700 miles, a rate less than the 15-mile rate of 52 cents per hundredweight.

Senator LAUSCHE. It was admitted by the Interstate Commerce Commission that the situation existed and it had no power to deal with it.

That is, in your own State, the Detroit Port was trying to get that business, 15 miles away, and the cost of transporting the 15 miles was greater than the cost of transporting it 700 miles to an Atlantic coast city.

Mr. POTTER. Senator Lausche, I don't know all of the facts in the case. But I would point out this was a negotiated rate and I am sure that no one from our organization took the railroad agent into the backroom and threatened him with mayhem if he didn't grant the rate.

Senator LAUSCHE. Now we better get this clear in the record. Were the rates from Centerline to Detroit on one hand and Centerline to Toledo the fixed tariff rates, while the 700-mile charge was under section 22? Is that correct?

Mr. SENDER. That is correct, sir.

Senator LAUSCHE. Well, I am glad to receive your testimony on this matter, and I can understand how these savings that you achieve are highly desirable. I commend you for your efforts in making them.

What the ultimate outcome of the bill will be I cannot say yet, of course.

Mr. POTTER. If I could reemphasize something I said earlier, in regard to the municipal utility, because of the nature of the utilities, and many of them as I said before are marginal, we cannot deal on full trainloads and we simply cannot, we aren't big enough, our utilities are not big enough, and there is no cooperative means by which we can get a full trainload and this can be negotiated by the private utility.

So we would be at an extreme competitive disadvantage because even with section 22 our rates are higher than full trainload rates.

Senator LAUSCHE. Mr. Sender?

Mr. SENDER. Did I understand your testimony correctly that you expect and receive poorer service under section 22 than under the regular tariff rates?

Mr. SPARBEL. Let's don't put it that way. We don't demand the services that private industry does, such as the automobile industry does demand. We are able to get along with a different service than the automobile industry, in schedules and things of that kind.

Mr. SENDER. Schedules?

Mr. SPARBEL. Schedules, time, time in transit.

Mr. POTTER. As we said earlier, we use a lot of backhaul in order to save money.

Senator LAUSCHE. Thanks very much.

(The complete prepared statement of Mr. Potter follows:)

STATEMENT BY S. DON POTTER, MICHIGAN MUNICIPAL UTILITIES ASSOCIATION

Mr. Chairman and members of the committee. I am S. Don Potter, representing the Michigan Municipal Utilities Association, based in Lansing, and composed of

thirty five municipally owned utilities scattered throughout the state of Michigan. With me is Mr. Robert Sparbel of the Michigan Liquor Control Commission. The Commission shares our concern relative to proposals to modify section 22 of the Interstate Commerce Commission law.

As we understand the proposal offered by Senator Hart of Michigan, Section 22 would be so amended as to eliminate the right of federal, state, and local governments to negotiate freight rates at somewhat below the tariff rates. We note with interest that the proposal would not affect these negotiations in time of national emergency declared by Congress or the President.

This leads us to the consideration of the economic reasoning behind Senator Hart's proposal. We cannot determine any valid economic basis for asserting that negotiating lower rates in times of national emergency has any particular value. However, it would appear that if there is some economic reasoning to support the national emergency thesis, then conditions in Viet Nam and the Middle East today are such that the forces that would produce such a justification are now at work, regardless of the absence of Congressional or Presidential definition. Thus, the need for this legislation at this time is obscure.

We would further submit that if it is admitted that the role of government in times of economic downturn is to pump new life into the economy through accelerated spending for public works, then the proposed modification runs counter to that generally accepted proposition. In simple terms, adoption of this modification would further limit the ability of government to level the business cycle, long an accepted objective.

We recognize the asserted position by the carriers that the present language of Section 22 permits a certain competitive advantage to certain governmental activity that might be construed to be in competition with the so-called free enterprise section of the economy.

This assertion is without tangible basis. In the first place, the carriers well know that there is nothing in the law that requires them to handle the freight business of government at a reduced rate. Our records and experience show clearly that not one of the agencies I represent has ever coerced, attempted to play one carrier against the other, or ever demanded a favorable rate. Indeed, the rates have been offered, and willingly, by the carrier. The Chief of the Purchasing Division of the State of Michigan, Mr. P. H. Anderson, has stated in letters to both Senator Hart and to Senator Griffin that carriers have utilized the provisions of Section 22 to establish a profitable business, particularly in the area of back hauls into Michigan, where otherwise these carriers would be running empty. Let me repeat that there is no obligation on the part of any carrier to accept business.

There has been use of the word "discrimination." We would ask discrimination against whom? The proposed revision of Section 22 does not prevent the negotiation of train load rates which are used extensively by our competitors in Michigan, the private power companies. Even with the protection of the present Section 22, very few of the thirty five public utilities I represent can compete with the giants of the power industry in the matter of freight rates for the simple fact that we are not large enough to obtain coal at train load rates.

So the question may be legitimately asked: If you can't compete, why don't you get out of the power business? Michigan's municipally owned utilities have existed for a number of reasons, but not the least is the fact that the services have been performed in many cases in areas where it is not economically feasible for private enterprise to function.

Please keep in mind the unique position of the municipally owned utility. It is exactly what its title indicates. It is owned by the people of the city or the village, is operated on behalf of the people of that community, the rates are dictated by the operational success of the utility, the ultimate decisions relative to policy reside in the hands of the people, and indeed, the life of the municipal utility is dependent upon the service rendered to the people, because the utility can be sold to a private company any time a majority of the people in the municipality so decide.

Elimination of the privilege of negotiating freight rates really amounts to taxing the consumer for the benefit of the carrier, and ultimately, for the benefit of the private customer of the carrier. On the matter of taxes, let us set to rest once and for all the myth that the only reason municipally owned utilities are competitive is because they don't pay taxes. Any time this committee or any other committee of the Congress or the Michigan legislature so desires, we would

be delighted to open our books. When the millions of dollars of goods and services rendered to municipalities in lieu of taxes are considered, this argument often advanced falls flat on its face.

It is true that efficient management practices have enabled many of our municipal utilities to cut rates. Recently, the Lansing Board of Water and Light reduced rates, resulting in a saving to the State of Michigan of over \$46,000 annually, and to the Lansing Board of Education of \$33,000. No matter how you slice it, this represented a tax cut for the people of Michigan and the residents of the Lansing School District. The proposed modification of Section 22 will cost the Lansing Board of Water and Light \$300,000. We know that should this come about, the recently enacted rate cut will not stand, and since government is one of our largest customers, we know where a good share of the increased cost will fall.

Let us turn now to the problem of the State Liquor Control Commission. The Michigan State Legislature in its wisdom decided in 1933 that Michigan would be what is commonly known as a monopoly state. There is no sentiment in the legislature to change that position. As a former State Senator, I know full well what it means to have nearly one million dollars in revenue supporting the functions of the state. Profits from the liquor monopoly in Michigan provide nearly ten per cent of the services the people of the state have, and must continue to have.

Michigan's model Civil Service system has developed an efficient Liquor Control Commission operation that ranks as one of the very best in the nation. Even so, we must be very conscious of costs, for we also know that should the price of alcoholic beverages rocket out of sight, then the increase in the illicit liquor traffic will also rocket. Even the slight increases in prices we were forced to make a few years ago brought about stimulation of bootlegging.

What does Section 22 mean to the Michigan Liquor Control Commission? During the last fiscal year before Section 22 quotations were effective, a period from July 1, 1956 to June 30, 1957, the Commission handled 4,079,709 cases, at an average freight cost per case of \$0.364273, or 36 cents a case. The first full year Section 22 quotations were effective, 3,951,154 cases were handled at an average freight cost per case of \$0.271991, or 27 cents a case.

The rate differential before Section 22 and after was \$0.092282. In 1966, 5,456,667 cases were handled, which at that differential would have cost the State of Michigan \$503,552.14. But that's not the whole story. State law requires a 46% markup, and that markup applies to freight costs as well as other costs. If Michigan had been forced to pay the long freight rate, the cost to the consumer would have been \$735,186.12. The figure of three quarters of a million dollars means little as stated. The real story is that our experience has shown us that such an increase would have meant increased bootlegging, and reduced legitimate sales.

Very well, what about the carriers? From the State Liquor Commission in Michigan in 1966, they realized gross sales of \$1,368,000 and once again, thanks to the efficient nature of the operation, claims were very low. Of the previously quoted figure, \$1,313,000 represents claim free freight. If the carriers cannot make a profit on that sort of volume, there is something radically wrong, and the flaw is not within the framework of Section 22.

In summary, we see no need for revision of Section 22 at this time. There is nothing compulsory about its provisions. No one forces a carrier to negotiate under Section 22. There is no element of unfair competition, because those agencies now availing themselves of Section 22's provisions are conducting the business of the people, they are not in search of profit, but are in search of providing the best possible service at lowest possible cost. The proposed modification would produce these results: It would raise the cost of government services; would lower the utilization of available carrier facilities, since governmental agencies would demand the same quality of service should the rates be equal; would present the possibility of carriers subsidizing private customers at the expense of public customers; and in general damage or destroy the balance that now exists between governmental and private shipping contractors.

Senator LAUSCHE. Mr. Stover, the administrator, Maine State Liquor Commission and Robert Wright, general counsel, National Alcoholic Beverage Control Association.

STATEMENT OF H. D. STOVER, ADMINISTRATOR, MAINE STATE LIQUOR COMMISSION; ACCOMPANIED BY ROBERT WRIGHT, GENERAL COUNSEL, NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION; AND DOROTHY L. KELLY, EXECUTIVE VICE PRESIDENT, NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION

Mr. STOVER. Mr. Chairman, members of the subcommittee, my name is Herman D. Stover, administrator of the Maine State Liquor Commission, having served in that capacity since 1953.

The opportunity to appear before this committee to register opposition in the strongest possible terms to S. 1174 and S. 754 is sincerely appreciated.

The Maine State Liquor Commission is duly established and organized by statute as a department of Maine State government. Maine is one of the 18 so-called control States, wherein the purchase, distribution, and sale of spirituous and vinous liquors are functions of the State through the State liquor commission.

This means, of course, that all shipments into the State of Maine from distillers, vintners, and import houses are consigned to the State's warehouse in Augusta for distribution to the State's 86 retail stores. These shipments are brought in under section 22 rates which, during calendar year 1966, represented a saving to the State in excess of \$70,000. Further, because of section 22, we have a permissive provision in our own Public Utility Regulations whereby intrastate carriers may quote reduced rates to State and local governments and these rates on shipments from our warehouse to the stores saved an additional \$30,000 during 1966. In addition to the \$100,000 saving to the State liquor commission, the State highway commission and its local counterparts realized savings in excess of \$160,000 on shipments of road salt and road surfacing materials into the State. In these two areas of State and local government alone, then, we would be facing increased freight costs in excess of a quarter of a million dollars annually if section 22 should be amended or abolished as set forth by the two bills in question. Inasmuch as the State of Maine operates on a biennial basis, an accrued deficit of more than a half million dollars for the budget period would result.

Although our neighboring control States, New Hampshire and Vermont, are not personally represented here today, they have requested that I speak in their behalf. Annual freight savings in their liquor control operations alone amount to \$92,000 and \$60,000 respectively, with similar amounts being saved on shipments of commodities brought into their States by other departments. Again, we are dealing with amounts that have a crucial impact on State departmental operating budgets.

While the foregoing amounts are not large from the standpoint of Federal budgeting, be assured that they are hard-to-come-by dollars in our respective States. While we are probably more abundantly blessed with year-around livability midst mountain, seashore, field and stream than any other section of the country, this does not hold true in the realm of economic resources. Any loss of this magnitude

would necessitate replacement by increased taxation or other means.

Senator LAUSCHE. May I interrupt.

I concur with what you just said. I think what you just said is equally applicable to the Federal Government, except those of us who run the Federal Government aren't cognizant of the fact.

Mr. STOVER. Thank you. I see your point.

It is noted from Senator Hart's remarks at the time he introduced S. 1174 on March 3, 1967, that he referred to the special reduced rates accorded the various levels of government under section 22 as being discriminatory and unfair. This thought was emphasized most strongly by all who testified at yesterday's hearing and I would find myself in hearty accord were it not for the fact that little or no mention was made of the most important factor of all; that is, that the provisions of section 22 are entirely permissive in nature rather than being mandatory. No carrier is obliged to solicit Government tonnage at reduced rates but it is most important to note that the competition for it is tremendously keen. The fervor with which the transportation companies solicit and compete for this business should indeed dispel any element of hardship that is supposedly inflicted on the carriers by the reduced rates.

Further, the voluntary quoting of reduced rates to the various levels of government differs not from the reduced commodity prices which are quoted by manufacturers to the General Services Administration, the military and other branches of Federal, State, and local governments. In this instance, the business volume generated by Government orders enables the manufacturers to spread their tooling, production, and operating costs over a substantially increased quantity of manufactured units, thereby reflecting a reduced unit cost to the commercial or private enterprise customer.

This principle holds true in the transportation industry as well and, contrary to prevailing testimony at the June 5 hearing, should tend to hold general rates down rather than forcing them up. An honest appraisal of history casts strong doubt on the claim that the elimination of section 22 rates would occasion a general rate reduction to nongovernment accounts.

It was also evident from the proponents' testimony that their particular complaint centered around the Federal Government and its agencies. Inasmuch as my concern is essentially directed to State and local governments, it would perhaps be reasonable to stay within my own realm and advocate that State and local governments be accorded exemption along with those exemptions already provided for by S. 754 and S. 1174. I can truthfully state that no carrier has ever complained that the section 22 rates enjoyed by the Government agencies which I represent are either discriminatory or unfair.

From another standpoint, completely, I wish to point out that much has been said during the current session of Congress concerning relief or assistance to the States through income tax sharing, grants, or other means. It seems incongruous, then, that good conscience could permit passage of legislation which would in itself be economically harmful to the States. We respectfully request that this factor be given strong consideration in your disposition of Senate bills 754 and 1174.

In conclusion, I would be remiss to confine my appeal to only the States of Maine, New Hampshire, and Vermont. Through many years of close association with officials of 18 of our 50 States, constituting the membership of the National Alcoholic Beverage Control Association, these people have become personal friends and respected colleagues. In behalf of all, then, my remarks are directed.

Thank you.

Senator LAUSCHE. Thank you very much, Mr. Stover.

We will hear you now, Mr. Wright, and your views about the matter.

Mr. WRIGHT. Thank you, Senator.

I am general counsel for the association of which Mr. Stover's State is a member, and Ohio and Michigan are also members.

I would like to introduce Mrs. Dorothy Kelly, who is the executive vice president of our association.

We have a prepared statement from our president, which we are submitting, together with a resolution that the association passed, and I don't see any need to read those. And I have a written statement, which, of course, I assume will go into the record without any reading it.

Senator LAUSCHE. It will.

Mr. WRIGHT. All I wanted to do was simply to make one point, and then subside.

That is that the approach of these bills is a kind of shotgun one to a very specific problem. All of the testimony you had yesterday dealt with section 22 rates on Government traffic.

If there is an abuse, that is where it is. Federal Government traffic. That Centerline example you gave relates not to any State or municipal shipments, but the Government shipments. And you will find that in this very large Doyle report there isn't a single example there of rate discrimination as a result of the provision of section 22 on State or municipal shipments. It is all Defense Department GSA shipments, as you heard the other day, Commodity Credit Corporation.

Now what these bills do to get at this problem of discrimination as a result of applying section 22 to Government traffic, as the thought is behind the bills I gather if you subject that Federal Government traffic to ICC jurisdiction, it will be able to do something about the situation such as you have described in the Centerline, Mich., and Toledo port situation that it can't do now. And if there is a case for sweeping that Government traffic under commercial regulations, that is one thing. But no case has been made, nobody has even attempted to make a case for extending this ICC rate control jurisdiction to these municipal and State rates.

Now, there are very sound grounds for treating them differently. None of these States, none of these municipalities is big enough or has enough traffic volume by itself to exert the kind of pressure on carriers that has resulted in these alleged abuses of section 22 which involve Federal traffic where the Federal Government, of course, I suppose has a volume of more than a hundred times that of any of our largest States and certainly compared to these municipalities that are being swept under this regulatory scheme, the disparity is even greater.

So this is why you have no carriers complaining about the State and municipal rates, you have no carrier associations, no shippers, who have suggested that they are being discriminated against by those rates.

Now, the Commission itself hasn't really offered you any case for extending their regulatory jurisdiction to a State and municipal rate.

All that Chairman Tucker told you was he didn't know anything about what the impact of those rates is. They don't know how much volume moves on section 22 rates applied to State and municipal shipments. Now, if a study were made, if somebody gave you some facts about these State and municipal applications, I would think the Commission itself might very well conclude that it doesn't want their jurisdiction added to the jurisdiction necessary to solve the problem presented to you, which has been entirely confined to Federal Government traffic.

Now, I notice in the Commission bill they don't take the position, or are modest enough to assume they don't have to regulate everything in order to have an efficient transportation system. They have in their bill exemptions of agricultural commodities, bulk commodities, and I would think it would be quite probable if anybody took a close, hard look at the matter that you would also exempt State and municipal traffic.

Now, there is one other aspect here that I think ought to be considered. It hasn't been mentioned. When you are dealing with the Federal traffic, you are dealing with revenues that the Congress itself pretty much controls. But when you move in on the States and the local municipalities, and extend this Commission regulation to them, you are, as has been pointed out here today, substantially reducing their revenues and you are not in a position to make it up.

The people who have to solve the revenue problems there, not the Federal Congress, but the State and local governments. There is already, as you know, very pervasive Federal regulation of what used to be regarded as local and State interests. But every time that has happened, some kind of a factual case has been made for it. That is why we have it. But here there is no factual case that has been offered to this committee for subjecting these relatively unimportant State and municipal rates to Federal regulation.

This thing, the bill, is phrased in these terms simply because that is the way section 22 is phrased. I think nobody has thought of whether or not it is desirable to extend this Federal regulation to those municipal and State rates.

At least, there is no study or no facts, nothing the Commission has given you that suggests that they have given any thought to the problem, know what the problems are, or what they can do about them.

I would suggest that it would be time enough to worry about section 22 applications to State, extending Commission jurisdiction to State and municipal traffic, after you find out what they do about the problem that has been presented to you, which is entirely concerned with Federal traffic.

So it seems to me it would be appropriate to delete from these bills the references to the State and municipal governments, even assuming you are persuaded by all of the evidence that has been given to you

that section 22 has been abused, because it is perfectly clear that the abuse, if any, has been confined entirely to Federal traffic.

Thank you very much.

(The prepared statements referred to follow:)

STATEMENT OF ROBERT L. WRIGHT, GENERAL COUNSEL, NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION, INC.

Mr. Chairman and Members of the Surface Transportation Subcommittee of the Senate Commerce Committee, my name is Robert L. Wright, and I am General Counsel for the National Alcoholic Beverage Control Association. I am submitting a written statement by our President, Mr. A. D. Cohn, and a copy of a resolution against repeal of Section 22 adopted by our Association on May 10, 1967. Mr. Stover has appeared here to supply data as to the savings realized by the liquor control systems of Maine, New Hampshire and Vermont, from the use of Section 22 rates. Mr. Harris in his statement supplied similar figures for Virginia. The purpose of my appearance is to present figures as to similar savings by our Control States and to comment on the testimony offered yesterday by proponents of the bills you are considering.

The savings for the year 1966 realized as a result of the application of Section 22 rates to shipments of wine and spirits made to the agencies responsible for liquor control for the year 1966 were approximately \$687,000 for Ohio, \$620,000 for Michigan, and \$200,000 for Washington. The savings for these three states alone thus exceeded a million dollars. Iowa's rates, by its use of Section 22, are more than 50 per cent lower than regular commercial rates. Oregon estimates that Section 22 rates on alcoholic beverage shipments allow it to save from \$4,500 to \$5,000 per month. For the reasons noted by our President, Mr. Cohn, in his statement, our state control systems see no equitable reason why they should not continue to receive these reduced rates.

I listened carefully yesterday to the testimony presented in support of the two bills you are considering and heard no complaint about reduced rates granted to state or municipal shippers. The ICC makes no claim that Section 22 rates granted to state liquor control agencies or to any other state agencies have had any adverse effect on the overall rate structure. No carrier has suggested that Section 22 rates on state shipments are unprofitable or that they are so low that they create a burden on other shipments. The states our Association represents are not in competition with any other shippers and no other shipper claims that these reduced rates are discriminatory. The case for repeal of Section 22 rests entirely on alleged abuses that result from reduced rates on shipments by agencies of the Federal Government. Yet, both of the bills you are considering would deprive state and municipal governments of Section 22 rates.

There are sound reasons for retaining Section 22 rates on state and municipal shipments that do not apply to shipments for the Federal Government. First, the volume of this traffic is relatively low and none of these public agencies has the extraordinary power to dictate low rates that the Federal Government has. Second, there has been no showing that the burden on state revenues that would result from losing reduced rates would be compensated for by any benefit to these states or to the transportation systems that serve them.

The ICC's sponsored bill, S. 754, recognizes that it is not necessary for the Commission to regulate all rates in order to have an efficient transportation system. Its bill, therefore, exempts bulk shipments and certain agricultural commodities. The volume of these exempted shipments may well exceed shipments made for states. We don't know what the probable effect of a similar exemption of state and municipal shipments might be because neither the ICC nor any group of carriers or shippers has been sufficiently concerned about state and municipal Section 22 rates to make a study of them. If this Committee should conclude that Section 22 ought to be repealed as to shipments for the Federal Government but that no case has been made for depriving state or municipal governments of reduced rates, the words "State or Municipal Governments" should be omitted from line 8 of S. 1174 and from line 9 of S. 754. If so amended, these bills would correct all of the evils that have been presented at this hearing without compelling state and municipal governments to forego reduced rates that no one is complaining about.

Thank you for your attention.

STATEMENT OF A. D. COHN, PRESIDENT, NATIONAL ALCOHOLIC BEVERAGE
CONTROL ASSOCIATION

Mr. Chairman and members of the Surface Transportation Subcommittee of the Senate Interstate Commerce Committee, my name is A. D. Cohn and I am a Member of the Pennsylvania Liquor Control Board. I am also President of the National Alcoholic Beverage Control Association which represents on this legislation all eighteen states and Montgomery County, Maryland, that have established a system of alcoholic beverage control under which the state is the only wholesaler of wine and distilled spirits. These members are Ohio, Pennsylvania, Michigan, Maine, Mississippi, New Hampshire, Vermont, Virginia, West Virginia, North Carolina, Alabama, Iowa, Montana, Wyoming, Utah, Idaho, Oregon and Washington. Montgomery County, Maryland, which has a similar system of alcoholic beverage control, is also a member.

In these states and this county the net revenue from the wholesaling of alcoholic beverages is an important part of their total revenue available for schools, police protection, and all of the other public services that they provide. In Pennsylvania, for example, our net revenue from the sale of wine and distilled spirits was about 48 million dollars last year, and this was approximately 10% of Pennsylvania's total revenue.

Our interest in the bills you are considering arises from the threat to these public revenues that repeal of Section 22 would pose. In operating our systems of liquor control, our members pay very substantial freight charges. While some use contract carriers to obtain economical transportation instead of Section 22 rates, I am sure that the availability of Section 22 rates means that all of our members' freight bills are lower than they would be if Section 22 were repealed. Its repeal would, in my opinion, substantially decrease the net revenues of all of our members' liquor control systems.

I believe that the same kind of reasoning that gave our states exclusive control of the wholesaling of wine and distilled spirits underlies their right to receive reduced freight rates. The Congress seems to have authorized reduced freight rates, where public agencies are the shippers, on the theory that the contribution of the general public to our transportation system, through grants of public land for railroad rights of way, highway construction and maintenance, etc., should be compensated for in part by reduced transportation rates. In other words, these reduced rates have been used to build and extend our transportation system.

A substantial contribution to transportation revenue in our states has also been made possible by our systems of liquor control. The legalization of drinking alcoholic beverages, and with it the return of lawful transportation of alcoholic beverages in our states, after the 21st Amendment repealed the 18th, occurred only because these states were made exclusively responsible for wholesaling distilled spirits and wine. Our systems of state control, therefore, haven't displaced any private enterprises and have been of substantial benefit to all carriers of freight operating within their borders.

It seems, therefore, peculiarly appropriate that the alcoholic beverage control authorities I am speaking for should continue to receive the benefit of reduced transportation rates; since there would be no liquor shipments in our states from which any lawful transportation revenue could be derived if those public agencies did not exist. Even with reduced rates in effect, I do not believe that any carrier fails to make a profit in serving us. At least, they all seem anxious to continue to serve us at the existing rates. I, therefore, see no equitable reason why the unique contribution these public agencies make to the maintenance of common carrier service should not continue to be recognized by reduced rates on their own shipments.

Senator LAUSCHE. As I summarize your testimony, you feel if a case has been made, it has not been against the State and local governments, but against what has been done in the Federal transportation service under section 22?

Mr. WRIGHT. Precisely, sir.

Senator LAUSCHE. And, therefore, you feel there should be a distinction made between the two on the basis of the testimony offered?

Mr. WRIGHT. The problems are quite different, yes, indeed.

Senator LAUSCHE. Would you distinguish further and conclude that there should be a distinction between genuine governmental needs by State and local government as differentiated from the operation of a liquor department, which is private enterprise?

Mr. WRIGHT. Well, this, Senator, I think I would have to differ with you on the suggestions that these State liquor operations are private enterprise. They are, as has been pointed out, very important sources of State revenue.

They are a control measure. You don't have the—the only reason that these State liquor authorities are in business in any of these States is that this is the only way that those dry States could become wet again, when the 21st amendment replaced the 18th. It was a question not of displacing any private enterprise of all, but the voters decided they were not willing to bring liquor back except under this kind of State control and that is why you have it.

But there is no shipper discrimination as far as they are concerned, because there are no private shippers that are in competition with them.

Senator LAUSCHE. Well, all right.

Thank you very much for your help.

Mr. STOVER. Could I read into the record a letter from David Stevens, the chairman of the Maine Highway Commission addressed to yourself, Senator?

Senator LAUSCHE. Yes, sir; you may proceed.

Mr. STOVER. I would like to read it not just because of its contents as concerns the State of Maine, but because I feel it is so typical of the problem faced in nearly all of the States.

DEAR CHAIRMAN LAUSCHE: It has come to our attention that your Subcommittee will hold hearings on June 5 and 6 on legislation identified as S. 754, which will amend Section 22 of the Interstate Commerce Act to limit transportation of Government traffic at free or reduced rates to time of war or national emergency and to bulk or agricultural commodities.

The performance of my duties makes it impossible for me to appear personally to testify before your Committee. However, we wish to make known to you our opposition to the proposed amendment. It is my understanding that Mr. Herman Stover, Administrator of the Maine State Liquor Commission, will testify on this amendment and that he has been authorized to also express the opposition of this agency.

As you are aware, the Maine State Highway Commission is responsible for the construction and maintenance of state, federal aid and state aid highway systems in this state.

The highway system in Maine consists of approximately 21,000 miles, of which 85% is paved or hard surface highway.

Because of the geographical location of our state, its long winters with heavy frost conditions and the general soil structure, construction costs and maintenance costs are necessarily high, which must be spread over a tax base of something less than one million people. We believe we have made great strides in our highway improvement program and its continued development requires a maximum amount of accomplishment at the lowest possible cost. At the present time, we are purchasing from New York origins approximately 87,000 tons of bulk rock salt annually, which is used in a mixture with sand to control ice and snow conditions on our highways.

There is a minimum of another 75,000 tons consumed for the same purpose and generally purchased from the same points by cities and towns in Maine and the main turnpike authority.

The vast majority of this tonnage is presently being transported under rates offered jointly by the Eastern Railroads to the State of Maine, its cities and towns, and the main turnpike authority under provisions of Section 22.

The rates which the rail carriers have offered constitute a reduction in transportation costs to the State of Maine of \$87,000 annually, and on all state and

local government purchases for highway use, this figure would approach \$162,000 on an annual basis.

Thus, it can readily be seen that the savings accruing to taxpayers of Maine are of vital importance to them. It is also important to note that the rail carriers themselves freely and willingly participate in the negotiations of these rates in order to avoid the threat of foreign rock salt through local ports.

The compensatory nature of these rates is, we believe, adequately demonstrated by the volume of tonnage, all of which moves within a three-month period, much of it in multiple car shipments, with an average weight per car of 60 tons and the persistent solicitation which the rail carriers make to retain the movement of this traffic from domestic origins.

Thus, we submit that the existing provisions of Section 22 of the Interstate Commerce Act do not constitute a burden on the commerce of the United States and the rates offered thereunder are not unduly low nor unduly discriminatory against commercial users.

We respectfully urge your Committee to carefully consider the conditions under which most Section 22 rates are established, noting the opposition of the Maine State Highway Commission to the proposed amendment as set forth in S-754.

Very truly yours,

DAVID A. STEVENS,
Chairman, Maine State Highway Commission.

Senator LAUSCHE. To just compact what you have said, what will be the additional expense of Maine?

Now, you have three items as I understand it, which you gave.

Will you summarize them?

Mr. STOVER. In summary, to the overall section 22 relief afforded in Maine, it would be a little over a half million dollars per biennium budget.

Senator LAUSCHE. How do you reach that figure?

Mr. STOVER. \$100,000 annually on shipments by the Maine State Liquor Commission, \$162,000 annually on the material mentioned in Chairman Stevens' letter, and on a biennial budget basis that takes us well over the half million dollars for the budget period.

Senator LAUSCHE. That is on a 2-year period?

Mr. STOVER. Yes, sir. That is the basis on which we operate in the State of Maine.

Senator LAUSCHE. Yes. Because I had figures of \$70,000 on one item; \$30,000 on another; and \$160,000 on the third a year.

So it would be \$520,000 in the biennium?

Mr. STOVER. Yes, sir. As yet, our legislature meets only every other year.

Senator LAUSCHE. All right.

Thank you very much.

Mr. WRIGHT. Senator, I would like to add a letter from Donald Cook, the Ohio liquor director.

Senator LAUSCHE. All right.

It will be placed in the record.

(Letter referred to is as follows:)

STATE OF OHIO,
DEPARTMENT OF LIQUOR CONTROL,
Columbus, Ohio, May 22, 1967.

DOROTHY L. KELLY,
Executive Vice President, National Alcoholic Beverage Control Association, Inc., Washington, D.C.

DEAR VICE PRESIDENT KELLY: The Ohio Department of Liquor Control hereby opposes the Hart Bill (S. 1174) and the Magnuson Bill (S. 754), which are scheduled for hearing before the Senate Commerce Subcommittee on June 5th and 6th.

For the year 1966, the Department of Liquor Control of the State of Ohio was able to save \$687,302.12 on freight charges through the use of rates authorized by Section 22 of the Interstate Commerce Act.

Respectfully yours,

DONALD D. COOK, *Director.*

Senator LAUSCHE. The next witness will be Noel Painchaud, port director, city of Cleveland.

Is Mr. Painchaud present?

(No response.)

Senator LAUSCHE. The next witness is Charles M. Donley, chairman, Special Committee on Government Rates Under Section 22, National Industrial Traffic League.

STATEMENT OF CHARLES M. DONLEY, CHAIRMAN, SPECIAL COMMITTEE ON GOVERNMENT RATES UNDER SECTION 22, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE; PRESENTED BY LESTER DORR, EXECUTIVE SECRETARY; AND JAMES BARTLEY, ASSISTANT SECRETARY OF THE LEAGUE

Mr. DORR. Mr. Chairman, my name is Lester Dorr. Mr. Donley could not be here today; he had prepared the statement and he asked that I submit it for him.

Senator LAUSCHE. You may proceed. The statement will be transcribed into the record. Do you want to read it or do you want to discuss it?

Mr. DORR. I would like to comment on one or two points he makes. This is Mr. James Bartley, assistant secretary of the league.

Senator LAUSCHE. First of all, are you in opposition to the bills?

Mr. DORR. No, in support of the bills, sir. And our statement so shows.

To identify myself, I am the executive secretary of the National Industrial Traffic League and have been since 1952.

The league is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, traffic, and transportation.

The members of the league are located throughout the United States; they consist of enterprises that are large, medium, and small, and they use all modes of transportation, by land, sea, and air.

Carriers are ineligible for membership in the league. League members collectively pay millions of dollars to all modes of transportation.

I would like at this point to state that the league was probably one of the first organizations to attend to the problem of section 22 rates, based on complaints from members—and this goes back to 1951 and 1952. The league in 1953 established a policy on section 22 rates.

If I may, I would like to read into the record that policy as it now reads, but it was adopted as long ago as, I say, 1953.

Federal, state and municipal governments should be required to pay the full applicable commercial rates, fares or charges for transportation of persons or property by any common carrier subject to the provisions of the Interstate Commerce Act provided however that where existing commercial rates are not considered appropriate or satisfactory for movement of government freight, or where the movements of persons or property do not have the usual characteristics of commercial freight, like movements of troops and equipment,

agreed rates may be established, but they should be set forth in published tariffs filed with the Interstate Commerce Commission on statutory notice or short notice if allowed by the Commission, and subject to the provisions of Section 6 of the Act.

One more point here is that we have heard claims and counter-claims of the savings that are made under section 22 rates.

We feel, shippers feel that there should be no difference in the rate whether it is a car of coal for example bought by the Government or whether it is bought by industry. It costs so much to transport a car of coal or 10 cars of coal and these cars are moving sometimes on the same train. The rates ought to be the same.

We see no justification for difference in rates on moving the same commodity.

Another point. We have heard a lot here today about section 22 being necessary for all of these things. We feel that the Government, State governments, have competent rate men and they should be in a position to negotiate commodity rates the same as our industrial commercial traffic executives.

The so-called incentive rates, they are made available to industries large and small and there is no reason why government, Federal, State, or municipal, could not achieve the same results.

Now we make this distinction. In times of war or national emergency, we realize that there is not time to go through the regular procedures. And we feel that these bills make allowance for that, and we support them heartily.

Now finally, because of the confusion as we see it that exists and the lack of specific information, we would suggest, and we spell this out clearly here, the Department of Transportation be requested to make a study which will for all time settle the dust and let us know what are the facts and factors about whether section 22 rates are paying their way or not paying their way, whether they are discriminatory or just what they are.

This thing has been a problem for a long time, it is about time we did something to get it settled.

That is all I have to add, Mr. Chairman.

Senator LAUSCHE. What was the rationalization of those who made your study back in 1954 supporting the conclusion which they reached? Why did they feel the change should be made?

Mr. DORR. The rationalization as I recall it was simply this, Mr. Chairman. We had at that time quite a few of our members who were very active—I can think of the movement of aluminum ingots, one for stockpiling by the Government and one for commercial movement, all moving on the same train, yet one moving on section 22 rates, the other moving on commercial rates. And at that time industrial shippers did not know what the rates were. We at least back in 1958 had an improvement when the carriers were instructed to file their rates with the Commission. At least you can find out what the rates are now. But that was the rationalization.

We felt if section 22 rates are depressed, they must be being made up by the commercial industrial shipper.

Senator LAUSCHE. That is the argument that has been advanced throughout this, if you give a reduced rate to one shipper and the carrier is expected to earn a general reasonable return, in order to

earn that return he inevitably must pick up what was given to one by getting it from another.

Mr. DORR. That has been our rationale.

Senator LAUSCHE. Is there anything further you desire to say?

Mr. DORR. No, just to emphasize that point again, if carriers—we heard a lot today that these agencies do not solicit these section 22 rates. Someone said we didn't get them in a back room and threaten them with mayhem and we got these rates out of them. That doesn't make sense for the simple reason that section 22, if they are willing to establish section 22 rates on a voluntary basis, which is what we hear, then there is no reason why carriers cannot voluntarily establish commodity rates under accepted procedures.

Senator LAUSCHE. Just as a matter of information, would cases of liquor come under bulk commodities?

Mr. DORR. You could have commodity rates established on liquor or on alcohol or hair tonic.

Senator LAUSCHE. Thank you very much for your help.

(The complete prepared statement of Mr. Donley follows:)

STATEMENT OF CHARLES M. DONLEY, CHAIRMAN, SPECIAL COMMITTEE ON GOVERNMENT RATES UNDER SECTION 22, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. Chairman, members of the subcommittee, my name is Charles M. Donley, business address Gulf Building, Pittsburgh, Pa. 15219. I am Chairman of The National Industrial Traffic League's Special Committee on Government Rates Under Section 22. I am President of Charles Donley and Associates. My firm has been engaged for almost 50 years in the fields of general freight traffic management, consultation, and transportation research.

My statement supports S. 1174 and S. 754 on behalf of The National Industrial Traffic League.

The National Industrial Traffic League (which I shall sometimes refer to as the League) is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation. The members of The National Industrial Traffic League, are located throughout the United States, consist of enterprises large, medium and small, and use all modes of transportation, by land, sea and air. Carriers are ineligible for membership in the League. League members collectively pay to all modes of transportation a substantial portion of the billions of dollars expended annually for surface transportation in the United States.

In every Congress since 1954, bills have been introduced in the Senate and House that would provide for a basic reform of practices of governmental agencies which utilize the privileges of Section 22 of the Interstate Commerce Act. Section 22 permits federal, state, and local governmental agencies to solicit and receive from regulated carriers concessions in the form of reduced freight rates, a privilege afforded no one else. The seeking and granting of these concessions which are lower than the rates in the published tariffs is, because of Section 22, beyond any normal administrative restraints of the law.

The League has long been concerned with the matter of Section 22 rates and has adopted the following policy:

"Modification of Section 22. Federal, state and municipal governments should be required to pay the full applicable commercial rates, fares or charges for transportation of persons or property by any common carrier subject to the provisions of the Interstate Commerce Act, provided, however, that where existing commercial rates are not considered appropriate or satisfactory for movements of government freight or where the movements of persons or property do not have the usual characteristics of commercial freight (like the movement of troops and equipment), agreed rates may be established, but should be set forth in published tariffs filed with the Interstate Commerce Commission on statutory notice (or short notice, if allowed by the Commission) subject to the provisions of Section 6 of the Act."

We here urge favorable action on S. 1174 or S. 754, introduced by Senators Hart and Magnuson respectively, which would provide for special rates for the government *only* in time of war or national emergencies as declared by the Congress or the President, with specific exceptions to which we have no objection.

The League is deeply concerned that the privileges afforded by Section 22 are subject to wide abuse. Discrimination against particular shippers, localities, and ports can readily be practiced by indiscriminate use of the privilege. Vivid descriptions of how this discrimination can operate are a part of Senator Hart's remarks offered upon introduction of his bill (S. 1174) and are quoted in the "*Congressional Record—Senate*" of March 3, 1967. There is no need to repeat these observations here.

The Interstate Commerce Act forbids unjust and unreasonable rates, unjust discrimination, and undue preference and prejudice. Yet Section 22 gives license to employees of federal, state, and local governments or municipalities, openly to solicit and obtain bargain basement rates many of which under the Interstate Commerce Act otherwise could be condemned as unjust and unreasonable, unjustly discriminatory, and unduly preferential or prejudicial. Section 22 sets the stage for solicitation by a preferred shipper and granting by a "persuaded" carrier of concessions that could be forbidden by law to all others.

The shipper community, represented by the League, must pay the cost and absorb the burden of unjustly low and discriminatory rates so made and used by governmental agencies. We have no remedy for this wrong.

Governmental agencies claim they "save" millions of dollars annually by use of Section 22 rates. If the government is being granted uneconomic or discriminatory rates, the shipper community, paying normal and higher rates arrived at through accepted procedures subject to the Interstate Commerce Act, is paying an unseen tax.

Information as to the precise form or measures of harm and discrimination to the public occasioned by indiscriminate use of Section 22 rates has always been elusive. One reason for the paucity of information may be that aggrieved parties who could complain factually are concerned that they might face swift and subtle retaliation from those who consider themselves the beneficiaries of the rates. Public Law 89-670, 89th Congress, H.R. 15963, enacted October 15, 1966, established the Department of Transportation. In addition to requiring that the Secretary exercise leadership in transportation matters affecting the national defense and the development of national transportation policies, Section 4. (a) of P.L. 89-670 confers broad powers on the Secretary to consult with the heads of other departments and agencies on the transportation requirements of the government and undertake appropriate studies and research relevant thereto.

The League suggests that the Department of Transportation be requested by the Congress to undertake an immediate study concerning the practices and procedures followed by governmental agencies in seeking Section 22 quotations and into the corresponding response of regulated carriers in granting them. Among other matters, the study should give particular attention to (1) the existence of Section 22 rates that might unjustly discriminate against particular persons, localities or ports, e.g., rates that might otherwise be condemned under the Interstate Commerce Act, (2) the nature and characteristics of the bargaining processes that are followed by governmental agencies and carriers in negotiating Section 22 rates and (3) the number of Section 22 quotations on file and never used by the government. This study should also be structured so as to investigate the extent of possible abuses of the statute.

We appreciate this opportunity of presenting the League's views and in conclusion we urge favorable action on either S. 1174 or S. 754.

Senator LAUSCHE. Mr. Brooks, of the National Grain Trade Council.

STATEMENT OF WILLIAM F. BROOKS, NATIONAL GRAIN TRADE COUNCIL, WASHINGTON, D.C.

Mr. Brooks. Mr. Chairman, my statement has two attachments but I will only read the main statement.

I am William F. Brooks, president and general counsel of the National Grain Trade Council. The council's offices are at 725 15th Street

NW., Washington, D.C. A list of the council's members, organized grain exchanges and national grain industry associations, is attached to this statement and made a part thereof.

The council favors the enactment of S. 1174. The council does not favor the enactment of S. 754 since under its terms the Department of Agriculture might continue to avail itself of section 22 rates to the disadvantage of the grain marketing industry, grain producers, and grain consumers.

Recently the Department of Agriculture has not had occasion to take advantage of section 22 rates. This has been due in part to the rather low inventory of Government-owned grain and in part to the resale price restrictions for Government-owned grain which were set down in the extension of Public Law 480 in the last Congress. We believe, however, that this Congress should limit the use by the Department of Agriculture of section 22 rates in order that at a later date or later dates, the Department will not again be able to obtain concessional rates to the detriment of the producers, consumers and handlers of grain.

In our judgment, the use of section 22 rates by the Department of Agriculture, gives to the Department an unfair advantage amounting to the sort of discrimination which the Interstate Commerce Act was enacted not only to prohibit but to make illegal. The grain industry has consistently contended that section 22 rates should not be granted to the Department of Agriculture, that the Department of Agriculture should not seek them, and to the extent that railroads attempt to grant them, then the Department of Agriculture should not accept them.

On those occasions when the Government has availed itself of section 22 rates, a relatively small number of people, if any, have benefited for a short time as compared to many others who have suffered after they had taken a calculated risk on market conditions without recognizing that the Department of Agriculture might lower a boom on their operations by making use of section 22 rates.

The Department of Agriculture made a rather substantial use of section 22 rates early in 1962.

These rates were used to move corn from a number of river points such as Cincinnati, Louisville, and Evansville into a substantial number of destinations served by the Southern Railroad. The decision to use these rates was made without any warning to persons whose customary business it is to sell and to move corn into the Southeast. The decision, incidentally, was made at a time when the Interstate Commerce Committee had under study the propriety of rates which had been proposed to move corn into these areas and the section 22 rates accepted by the Government were identical to those then under study by the Commission.

Attached is a copy of the March 30, 1962, Council Newsletter commenting on these rates; on their adverse effect on producers, consumers, and the grain marketing system; and on a meeting at the Department of Agriculture to protest the use of section 22 rates.

Our experience has been that when the Department of Agriculture uses section 22 rates to the apparent benefit of one section of the country or of one sector of the economy, requests mount from other sections and sectors that similar rates be obtained to move Department-

owned grain to equalize apparent benefits. It is to avoid any requests for special treatment that we recommend that the ability of the Department of Agriculture to obtain section 22 rates be severely limited.

Senator LAUSCHE. You support S. 1174 over and above S. 754, is that correct?

Mr. BROOKS. Yes, sir.

Senator LAUSCHE. And you do so because S. 1174 would not give the Department of Agriculture the right to obtain negotiated rates under section 22?

Mr. BROOKS. That is correct.

Senator LAUSCHE. Is it your judgment that S. 754 does permit a continuation?

Mr. BROOKS. Yes, there are two exemptions, one for bulk commodities, and the second for agricultural commodities.

Senator LAUSCHE. And it is your judgment that that right should not be continued in any segment of the economy. What about the bulk commodity, what is your view on that?

Mr. BROOKS. I don't have any view on it as such. I prefer the second bill to the first, particularly because of this agricultural difference.

Senator LAUSCHE. Well, the Hart bill does take away the right on bulk commodities, and on agricultural commodities?

Mr. BROOKS. Yes, sir.

Senator LAUSCHE. All right. Is there anything further you desire to say?

Mr. BROOKS. No, sir.

Senator LAUSCHE. Thank you very much, Mr. Brooks.

(The attachments to the prepared text follow :)

NEWSLETTER OF THE NATIONAL GRAIN TRADE COUNCIL, WASHINGTON, D.C.,
MARCH 30, 1962

THE GRAIN MARKETING AND PROCESSING INDUSTRIES' POSITION ON PREFERENTIAL AND
DISCRIMINATORY SECTION 22 RAIL RATES

With Commodity Credit Corporation able to use cheap preferential rail rates to ship corn into the Southeast and with the Eastern and Transcontinental Railroads considering the possibility of granting preferential and discriminatory rates to CCC over their lines, the grain marketing and processing industries have urged the Department of Agriculture to cancel its Section 22 arrangements with the Southern Railway and to abandon present and possible future negotiations with the other carriers lest the availability of Section 22 arrangements spread.

Under these arrangements CCC receives preferential, discriminatory rail rates—rates available to no private shippers of grain. If CCC as a shipper of grain continues to use these rates, the elimination of the competitive grain merchandising system is threatened, all to the detriment of grain producers, grain consumers, our private enterprise system, and the government.

For the grain marketing and grain processing industries, Carl Farrington, submitted to the Honorable Charles Murphy, Under-Secretary of Agriculture, the views of these industries on the use by CCC of Section 22 rates. These views are as follows:

"The use of exclusive cut-rate freight charges to move CCC-owned grain creates a government monopoly and will destroy our competitive private enterprise grain marketing system. This is the issue presented by the request for, and use by, the Department of Agriculture of sharply reduced rail freight rates applicable only to government-owned grain under Section 22 of the Interstate Commerce Act.

"Reduced rail rates under Section 22 granted exclusively and retroactively to CCC on shipments of corn into the Southeastern states and requests by CCC for similar rates to ship corn into the Northeastern states and for special export rates to ship wheat and other grain to the West Coast constitute flagrant misuse of

power by one government agency to destroy private enterprise, to create a monopolistic situation, and to thwart the purposes of other government agencies directed by Congress to promote fair competition and prevent monopolies.

"We, as representatives of all segments of the grain merchandising and grain processing industries, submit that it is not ethical, justifiable, morally right, or in keeping with our free enterprise system for the government, by taking advantage of Section 22 to usurp the commerce in corn or other grains, and to deprive its citizens of the right to compete. The Interstate Commerce Act was designed to prohibit this type of discrimination or favoritism and declared it illegal. Further, for the Department of Agriculture to accept, seek, or obtain Section 22 rates does violence, in our opinion, to the requirements of the Charter under which the CCC operates and which requires that in its operation the Corporation shall use the customary and usual channels of trade and commerce.

"We have considered the arguments made by the Department in an attempt to justify its action in requesting and using drastically reduced rail freight rates applicable since February 1, 1962, to CCC corn shipped into the Southeastern states and in requesting similarly reduced rates for shipment of CCC corn to the Northeast. We have also reviewed our own sales experience and records for these areas this year and in prior years. We submit that the facts do not support the Department's contentions that there is any emergency or abnormal situation such as to justify the action taken. There had been no abnormal or unusual advance in prices. Plentiful supplies are and have been available to all areas at competitively determined prices and margins.

"The action taken was not required by any commitments that had been made in connection with the 1961 Feed Grain Program. This government action was particularly unfair after the grain merchandising and grain processing industries had acquired substantial inventories of corn and other grains, much of which had been purchased from the government and some of which had been obtained for movement into areas where the government has now usurped the market or contemplates usurping the market.

"The present approach of the Commodity Credit Corporation in creating a monopolistic situation through the utilization of Section 22 is not only destructive of the free enterprise marketing system for grain and other agricultural products, but it will severely distort historic agricultural marketing patterns, cause an extreme dislocation of the feed, grain processing and milling industries, create uneconomic adjustments in the various industries serving the agricultural sectors of the economy, and nullify the advantages in agricultural production inherent in the various geographical areas of this country.

"We, representing the competitive grain industry—both cooperative and proprietary—are unalterably opposed to the use of Section 22 rates by the Department in moving grain and other common articles of commerce. We urge the Department to void its arrangement with the Southern Railway and abandon its negotiations with other carriers for extension of this policy. Further drift in this direction by government inevitably will eliminate the competitive grain merchandising system and be contrary to the best interests of grain producers, grain consumers, our private enterprise system, and the government."

This statement was submitted in behalf of Grain & Feed Dealers National Association, National Federation of Grain Cooperatives, National Grain Trade Council, Terminal Elevator Grain Merchants Association, North American Export Grain Association, Millers National Federation, American Feed Manufacturers Association, American Corn Millers Federation, Chicago Board of Trade, Kansas City Board of Trade, Minneapolis Grain Exchange, and other grain exchanges, organizations, firms and individuals as listed in attendance.

THE AMERICAN FARM BUREAU FEDERATION ON SECTION 22 RAIL RATES

The Board of Directors of the Farm Bureau, after mature consideration, have resolved—"The practice of using Section 22 for lowering freight rates for government-owned commodities to be sold on the open market be discontinued."

CONGRESS ON SECTION 22 RAIL RATES

Pending before the Senate Committee on Interstate and Foreign Commerce, is a bill S. 1145, which would, if enacted, eliminate the mischief now permitted by USDA's use of Section 22.

"This measure if enacted", according to Senator Smathers, Chairman of the subcommittee to which the bill has been referred, "would not allow government

agencies to get free or reduced rates unless the nature of the cargo requires that its identity not be disclosed for national security reasons. It would appear that in the case of grain the exception would not apply and government agencies would have to ship on the same tariff as do commercial shippers."

MEMBERSHIP OF THE NATIONAL GRAIN TRADE COUNCIL

Barley and Malt Institute, Crystal Lake, Illinois.
 Grain and Feed Dealers National Association, Washington, D.C.
 North American Export Grain Association, New York, N.Y.
 Terminal Elevator Grain Merchants Association, Minneapolis, Minnesota.
 Amarillo Grain Exchange.
 Baltimore Chamber of Commerce.
 Denver Grain Exchange.
 Des Moines Grain Exchange.
 Duluth Board of Trade.
 Enid Board of Trade.
 Fort Worth Grain Exchange.
 Hastings Grain Exchange, Inc.
 Indianapolis Board of Trade, Inc.
 Lincoln Grain Exchange.
 Los Angeles Grain Exchange.
 Lubbock Grain Exchange.
 Memphis Board of Trade.
 Merchants Exchange of St. Louis.
 Milwaukee Grain Exchange.
 Minneapolis Grain Exchange.
 New Orleans Board of Trade, Ltd.
 New York Produce Exchange.
 Northern California Grain Exchange.
 Omaha Grain Exchange.
 Peoria Board of Trade.
 Commercial Exchange of Philadelphia.
 Portland Grain Exchange.
 Salina Board of Trade.
 Sioux City Grain Exchange.
 Toledo Board of Trade.

Senator LAUSCHE. Mr. Pinkney.

STATEMENT OF JAMES F. PINKNEY, CHIEF COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D.C.

Mr. PINKNEY. Thank you, Mr. Chairman. My statement is short and I believe I might save time by sticking to the text of it, so I shall read it.

My name is James F. Pinkney, and I appear for the American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C. 20036.

The American Trucking Associations, Inc., supports S. 1174 which, if enacted, would remove the preferential rates now in use for transportation of goods for the Federal, State, and municipal governments. It would place such transportation under the regulated rate structure—just as is the traffic of the private segment of the national economy—except in time of war or national emergency. We also support the Interstate Commerce Commission bill, S. 754, but with reservations because of its exceptions which will be discussed later.

The fundamental rationale underlying opposition to the principle of section 22 rates for governments can be best explained after a brief examination of the philosophy of the laws regulating common carriers.

The national transportation policy set forth by the Congress in the Interstate Commerce Act includes as one of the aims of regulation: "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." This, the Commission attempts to do in making a finding that a rate is just and reasonable for the service provided. Therefore, the rates and charges as developed under Commission supervision should properly distribute the cost of the service provided equitably among the users of the service. Among the reasons for regulation have been the desire to remove unhealthy destructive competitive practices, the need for a sound adequate nationwide common carrier system, and, above all, the requirement that the rates and charges for services be reasonable, nondiscriminatory, and nonpreferential. The present application and use of section 22 violates all of these concepts and policies.

The tremendous growth of governmental traffic which need not move at established just and reasonable rates has tended to undermine the very principles of the regulated common carrier system. As competitive rates develop for government traffic, the commercial segment of the carrier's traffic must bear a disproportionate share of the expense. It follows to me as the night the day. When this disproportionate share gets too great, one result is private carriage. Indeed, the shipper may be forced into private carriage to maintain competitive prices with other producers. The end result is less traffic from the private sector for the regulated common carrier and increased costs which must be borne by the remaining segment of the private shipper's traffic. The overall effect may soon be felt by the governments as well because as governmental traffic becomes a greater and greater percentage of total traffic moved by the regulated common carrier, the cost to the governments will necessarily increase proportionately. Will the Government as well be forced into private carriage?

Consideration of section 22 rates merely from the point of policy clearly indicates their impropriety. They provide a statutorily sanctioned discrimination in favor of governmental bodies and against the shipping public. And, indeed, discrimination does take place as the Government shipping agencies feel constrained to seek and accept the lowest rate they can get. They feel that they are not bound by the same limitations that apply to commercial shippers. They feel they do not have to adhere to the provisions of the national transportation policy of the Congress.

Yet, Government shipping agencies should be the first to admit that they cannot control the downward spiral of rates which they request or which are voluntarily tendered to them by the carriers under section 22. They should also be the first to admit that they cannot prevent carriers from injuring themselves through destructive rate cutting. Yet, while these uncontrolled, destructive section 22 practices can be corrected only through legislation, Government shipping agencies strongly resist any attempts at correction.

Section 22 rates are fundamentally a violation of the Interstate Commerce Act and do not follow the intent of the national transportation policy.

The U.S. Government is now the country's largest shipper and continues to grow in size. The tremendous pool of freight controlled by the Government must be included in the total of all freight moved by common carriage for ratemaking purposes and for constructive legislation and procedures. The constantly increasing labor and total operating costs of the motor carriers on the one hand must be compensated for by increased tonnage being handled under reasonable compensatory rates in accordance with the provisions of the Interstate Commerce Act without regard to whether the shipper is the Government or a private concern.

The motor carriers are faced with the necessity of handling ever increasing volumes of small shipments, including an increasing percentage of light and bulky ones brought about by new materials and packaging methods on a less-than-truckload basis. This total also includes less-than-truckload shipments previously handled by the railroads that they are now permitted to avoid because they have found it uneconomical to make these small, costly deliveries. The carriers must obtain a proper amount of revenue on government freight if they are to be expected to furnish necessary service in other areas. The constant increase in private carriage indicates that the general public is no longer willing to subsidize government shipments whether they be under the protection of section 22 or any other device of law which permits the charging of rates other than those in the published common carrier tariffs.

The Government has previously contended that the ICC ratemaking procedures are too rigid, too time consuming, and too complicated to meet their needs. If government traffic were brought under regulation the same as the traffic of all other shippers, Government shippers could exert constructive influence in all areas where transportation research would open new doors for all shippers and carriers alike. The fear that the Government transportation bill would be substantially increased is not necessarily true. However, it is an undeniable fact that the increasing amount of government freight moving in interstate commerce at rates below those offered the general public is weakening the common carrier system. Experience has shown that common carriers can operate most successfully where all shippers are treated alike and we believe the Government has men of ability, transportation experience, and know-how sufficient to adequately protect their interests in an open transportation market. The best interests of the Government are protected by a strong common carrier system, which is being systematically destroyed by cutthroat competition, sanctioned by law for their largest single customer.

No reasons exist which rationally support the continuation of these unwarranted rate concessions to the governments. And S. 1174 clearly and succinctly removes these rate concessions except in the time of war and national emergency. S. 754 does so as well, but it continues the section 22 rate practices on agricultural commodities and bulk commodities, regardless of war or national emergency—these continued concessions seem unnecessary and are not substantially explained in the ICC justification sent to the Congress with S. 754. If the evils of section 22 are to be erased, there is no reason to continue them in a limited way.

May I add that at that point at first glance it appears the omission of unmanufactured agricultural commodities and bulk commodities is a logical and proper one, inasmuch as the transportation of the former, the unmanufactured agricultural commerce, is exempt under part II of the act, and of the latter, the bulk commodities, is exempt under part III of the act.

It seems to me this oversimplifies the problem, which is that the evils of section 22 will be preserved and continued with respect to all bulk shipments, such as petroleum and its products, chemicals, cement, possibly liquor in bulk, all of which—these bulk commodities, except grain, are fully regulated when transported by rail and motor carriers, but not when presently transported by water under certain conditions.

But the competitive situation, as far as the ground as opposed to water carriers are concerned, is exactly the same and we would hope that if section 22 is to be repealed it would include this area, too.

Senator LAUSCHE. Include what area?

Mr. PINKNEY. That there would not be an exception made to agricultural commodities or to bulk commodities.

Senator LAUSCHE. Would you go so far as to take away the right to negotiate by the water carriers?

Mr. PINKNEY. Well, I think our general policy would compel me to answer "Yes" to that question. We feel in the motor carrier industry, Senator, that all of these exemptions, and section 22 is in effect an exemption, that all of them are bad and economically unsound.

Senator LAUSCHE. Now, the motor carrier industry does not have the right to negotiate prices on farm products?

Mr. PINKNEY. Unmanufactured agricultural commodities.

Senator LAUSCHE. And on bulk commodities?

Mr. PINKNEY. No, sir; not on bulk.

Senator LAUSCHE. What rights do the railroads have?

Mr. PINKNEY. The railroads have the right, do not have the right to negotiate on either unmanufactured agricultural commodities or bulk commodities, those bulk commodities exempt by water.

Senator LAUSCHE. What are the water carriers' rights?

Mr. PINKNEY. The water carriers have the right to transport bulk commodities when no more than three bulk commodities are moving in a single tow. That is the limitation I referred to.

Senator LAUSCHE. Comparing the three, the liberal latitude is allowed to the water carriers?

Mr. PINKNEY. On the bulk.

Senator LAUSCHE. Yes. Is your power to negotiate greater than that of the railroads? That is, is the trucking industry power greater than that of the railroads?

Mr. PINKNEY. It is in the area of unmanufactured agricultural commodities, which move at tariff rates by rail. But actually, Senator, I don't believe in that particular area that there is a section 22 problem. Those rates are presently so very low that our regulated carriers haul very, very small amounts of the unmanufactured agricultural commodities. They are being moved by the so-called agricultural movers and gypsies.

Senator LAUSCHE. It is the position of your trucking industry that these special rates ought to be denied to all?

Mr. PINKNEY. Right. That is our overall position.

Now, there are certain minor qualifications such as we recognize there is a problem of getting farm produce out of the fields, and we would not carry regulation necessarily to that extreme.

Senator LAUSCHE. All right, you may proceed.

Mr. PINKNEY. Now, the transportation of grain is exempt under both parts I and II of the act and consequently the action recommended under the ICC proposal, S. 754, would do nothing to alleviate the problem referred to by the grain dealers, and the witness who just preceeded me, as well as a part of the problem discussed by the Great Lakes ports witnesses.

A considerable part of that problem as I understand it from conversations a year or two ago was in the area of the movement of grain into the ports along the Great Lakes. But as I say, the movement of grain is not of major concern to the trucking industry. There is a great deal of it moved by truck, but mainly by the private trucks on backhauls.

Now, let me continue with my statement here. Finally, let me point out that far more than defense and other Federal Government traffic is involved. There is a tremendous amount of State, county, and municipal traffic being moved under so-called section 22 rates. Good examples are liquor for State sales systems, building materials, and so forth. These movements are routine and the Federal arguments about emergency military movements do not apply.

I would like to comment briefly on that and say that I was somewhat astonished at some of the testimony we heard this morning coming from the States.

It seems to me first that they were asserting they need section 22 rates so as to compete with private enterprise. That is what the Michigan witness stated in effect.

As I say, that comes to me as a sort of a shocking idea. And second, both the Michigan witness and—

Senator LAUSCHE. Why?

Mr. PINKNEY. It seems to me that if a State is going into business, it should be willing to compete on an equal basis with private industry. It should not be given any undue advantages and should not ask any or seek them.

Senator LAUSCHE. What is the undue advantage it is getting or that it asks?

Mr. PINKNEY. Section 22 rates. And the second thing, both the Michigan and the Virginia witness talked of backhauls, that this wasn't costing the carriers anything because these movements were backhauls.

Well, there is an old saying in the trucking industry that everybody's backhaul is somebody's forward haul, and if everything becomes a backhaul—and that is what this type of ratemaking will lead to—you are going to destroy your carrier system.

We have gotten away from the old value-of-service theory of ratemaking. People say it is dead. Well, it is not yet dead. It is still necessary for public carriers to haul certain traffic at rates that do not pay their way.

The best example I know of is these small shippers. Some other traffic has to pay, those who can afford to pay have to pay more so the carrier may take care of the poor traffic as well as the good traffic. The best traffic, because it is a luxury item, is the liquor traffic. It has always had high rates. This proposal of the States, and what they are doing is driving those rates down, down, down, throwing more and more and more burden on for example the small shipments area and that is why we have a problem there, we are having to ask for more money to balance the loss of rate on the commodities that can afford to pay the higher rates.

We do not have much data on the extent of the problem at the State level. One of the reasons is that when the law was amended, I think in 1957, to provide that the tenders, section 22 tenders, had to be filed with the Interstate Commerce Commission, so the data could be gathered, that requirement was only that they be filed on Federal Government traffic. So we have no records, no clean records on the amount of State traffic. But certainly the principle is exactly the same at the State level as it is with the Federal Government in our judgment.

Senator LAUSCHE. The requirement of filing is different?

Mr. PINKNEY. Well, I say the requirement for filing section 22 tenders is different. They are not filed, the States do not have to file them at the Federal level.

Now just one other minor comment. Just a personal thought that occurred to me. And that is that the Michigan witness states that this will contribute to crime, because the higher liquor prices are made necessary by paying the tariff rates in Michigan and will lead to bootlegging. Michigan is apparently in competition as a State concern with the private systems in Ohio, Indiana—I assume they are private from what was said—and it would seem to me Michigan could counter that problem by simply reducing the charges it makes on the liquor to correspond with those in its sister States.

Senator LAUSCHE. In Ohio the State is the distributor to the taverns and retail houses and the individual can buy from a State store. The State is the initial distributor to retailers and to consumers.

Mr. PINKNEY. But the retailers I take it will fix their own prices, whereas the State would fix the prices in Michigan.

Senator LAUSCHE. Yes, I believe so.

Mr. PINKNEY. That concludes my statement, Mr. Chairman.

Senator LAUSCHE. Now you state:

Among the reasons for regulation have been the desire to remove unhealthy destructive competitive practices, the need for a sound adequate nationwide common carrier system and above all the requirement that the rates and charges for services be reasonable, nondiscriminatory and nonpreferential.

Are these expressions excerpts from the preamble of any of the acts under which this joint effort to create an adequate transportation system were written?

Mr. PINKNEY. It almost might be said to be a paraphrase of what appears in the national transportation policy, a small part of which I quoted from.

But if I may, I might elaborate for a moment on the thing, because among the reasons has been the desire to remove unhealthy destructive competitive practices.

We can go back to the beginning on that one, Senator. The problem in the 1880's was not so much monopoly as it was the fact that the carriers were cutting each other to pieces through destructive rate cutting and it became necessary in the interest of a sound balanced transportation system to control competition. And to bring it to the end that there might be fair and equitable rates. Otherwise there was monopoly at certain points, they were being gouged, and at other points where there wasn't monopoly they were getting the benefit of tremendously cheap rates, creating economic imbalance.

It seems to me that is an essential. Then, of course, the reasonable nondiscriminatory and nonpreferential, particularly the latter two, are the same thing. That is, you have got to have regulation if you are going to have equal treatment as between and among shippers, communities, areas, that sort of thing.

Senator LAUSCHE. That is, if you don't you can begin building up one community and destroying another?

Mr. PINKNEY. Right.

Senator LAUSCHE. You can help one vendor while you destroy another, and so forth, I suppose.

Mr. PINKNEY. Right. The antitrust laws came into existence as a result of just that sort of practice.

Senator LAUSCHE. All right. Thanks very much.

Mr. James M. Souby, Jr., chairman and counsel, Executive Committee, Western Railroad Traffic Association, Union Station, Chicago, on behalf of Association of American Railroads, Transportation Building, Washington, D.C.

STATEMENT OF JAMES M. SOUBY, JR., CHAIRMAN AND COUNSEL, EXECUTIVE COMMITTEE, WESTERN RAILROAD TRAFFIC ASSOCIATION, CHICAGO; ON BEHALF OF ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D.C.; ACCOMPANIED BY LEONARD HILL, ASSISTANT TO THE CHAIRMAN, WESTERN RAILROAD TRAFFIC ASSOCIATION, WASHINGTON, D.C.

Mr. SOUBY. Mr. Chairman, I have a lengthy statement and I intend to read only excerpts from it.

Senator LAUSCHE. Your entire statement will be printed in the record. You have heard the discussion here all morning. You are familiar with this subject. Having in mind that your statement will be in the record, it would be accommodating if you would discuss what you believe are the highlights of the issues and your views upon them.

Mr. SOUBY. Yes, Mr. Chairman. I anticipated a good many of the statements which were given and my prepared statement attempts to answer them. I will brief it.

Senator LAUSCHE. First of all identify your associate, please.

Mr. SOUBY. You indicated I was chairman and counsel. This Western Railroad Traffic Association consists of the chief traffic officers of 29 railroads operating in the western territory. By chief traffic officers. I mean for the most part the vice presidents in charge of traffic of those railroads. Now I have asked Mr. Leonard Hill, who is assistant to the chairman of the Western Railroad Traffic Association, with

headquarters here in Washington, to accompany me. Mr. Hill's office has been in charge of negotiating to a considerable extent the rates which the western lines have negotiated with the governmental agencies. And he is prepared to answer questions which I cannot answer.

The Western Railroad Traffic Association is a nonprofit organization which operates under an agreement approved by the Interstate Commerce Commission under section 5(a) of the Interstate Commerce Act. And Mr. Hill's operations and my operations are pursuant to the procedures prescribed in that agreement.

I am appearing here however, Mr. Chairman, on belief of the Association of American Railroads by authority of the board of directors. I assume the reason they asked me to appear was my close association with section 22 matters.

The Association of American Railroads have authorized me to state that the association opposes both S. 754 and S. 1174. Either bill, if enacted, would amount to virtual repeal of the section 22 of the Interstate Commerce Commission Act and I call it virtual repeal, because we have limited relief remaining; that is, during time of war or national emergency as declared by Congress or the President, and also 754 as you have indicated, Mr. Chairman, gives us privileges in respect to transportation of bulk and agricultural commodities.

However, 1174, as I read it, does not give us those privileges. Now I have been with the Western Railroad Traffic Association since early 1961 and during that 6-year period I have been very close to the activities of the Western Railroad Traffic Association in its negotiation with Government agencies for rate adjustments tendered under section 22 of the act. During that time we negotiated for section 22 rates with the Department of Defense, General Services Administration, the Post Office Department, the Department of Agriculture, the Commodity Credit Corporation, and the Atomic Energy Commission.

I listened to the testimony and it seemed to me the principal thrust of the testimony in support of these bills was that section 22 rates are and have been preferential and that they are casting a burden on commercial traffic. As the Interstate Commerce Commission witness put it, Chairman Tucker, the alleged preference shifts the cost of regulated transportation services on to commercial users.

Insofar as the railroads are concerned, we wholly disagree with that position. In my opinion the facts associated with the issuance of section 22 quotation to U.S. governmental agencies will not support either the conclusion as to preferential treatment or as to the alleged tendency of the section 22 rates to increase costs of transportation to commercial shippers. That is based on my 6-year experience and my discussions with Mr. Hill, who has been associated in this work for some 14 years.

Now we have to take into consideration in reaching that evaluation that U.S. shipments are not the same as shipments of other shippers or users of transportation. The conditions surrounding them are considerably different from ordinary commercial shipments.

Now in its recommendation the Commission refers to a large percentage of Government traffic moving at reduced rates. In order to understand the conditions under which rate agreements with governmental agencies are entered into, I think it imperative to deal with

the two fundamental structures of published tariff rates which exist throughout the United States for use by all shippers, commercial as well as the Government.

A proper understanding of these two structures will dispel the false impression that the rates tendered the Government in section 22 quotations amount in fact to reduced rates in the sense of the relationship of these rates to the rate structures that move general commercial traffic. Before I go into these structures, I would like to mention a misconception, which seemed to be held by two of the witnesses yesterday. They mentioned that the railroads were proposing a general freight rate increase and that is correct. But there seemed to be the idea that these increases would not be applied to section 22 rates. That is incorrect.

The general increases historically have been applied to section 22 quotations to the same extent as commercial traffic. And we intend to follow that practice in the current situation.

Now I think also there is a basic misconception as to just what the railroads are doing in respect to section 22 rates and if I can go into these two basic structures, I think I can show you just where the misconception lies.

Now around 95 percent of the commercial carload traffic throughout the United States moves under a structure known as the commodity rate structure. The remainder of the traffic moves under a structure known as the class rate structure.

A proper understanding of these two structures will dispel the false

In other words, it is 95 percent moving under the commodity rate, 5 percent on the class rates. In order to maintain a system of rates for every conceivable movement, the railroads maintain this class rate structure between every railroad point in the United States. The railroads interpret the Interstate Commerce Commission Act as requiring them to be able to quote a published rate to a prospective shipper on any article to any point in the United States. Since it is impossible to put a transportation price tag on each and every article, the commodities which move in commerce have been classified according to percentage ratings. These percentage ratings indicate the proportion of a basic class rate which should be charged on the articles governed by that rating.

To cite a popular example, one that was given in a court proceeding in California, it is obvious there would be no movements of oranges from Maine to Florida yet there has to be an applicable basis of charge for such a movement. Now it is fundamental that the class rate structure of the United States be designed around occasional or sporadic movements with the level of the rates set at a maximum reasonable level.

As a matter of fact, the basis for the class rate structure today is a mileage scale prescribed on a maximum reasonable basis by the Interstate Commerce Commission. The percentage ratings which have been assigned to the various commodities have been assigned with the view that each represents a maximum reasonable basis for the handling of the commodity to which it refers under conditions of infrequent movement and low volume movement. The conditions which go into determining classification percentages which are known as classifica-

tion ratings assigned to each of the commodities or groups of commodities are usually the basic factors inherent in the commodity itself. These are value, weight density, packaging or loading characteristics, and a few other comparable characteristics.

These elements must be distinguished from volume of movement, competitive conditions, market considerations, economic necessities, and other variables which are ignored when the percentage ratings used in classifying the articles of commerce are determined. As a matter of fact, the cost of service except as it may be affected by the inherent characteristics of the commodity, is not a consideration which is scrutinized by the committee which determines the classification percentages.

The commodity rate structure which moves 95 percent of the commercial traffic grew up over a period of years to afford industry's transportation costs geared to the needs and characteristics of commerce. This structure gives effect to virtually all of the items which are ignored in making classification ratings.

Something was said about pressures exerted by the United States in beating down the rate structure. When a governmental agency comes to the railroad with a request for adjustment of rates under section 22 of the act, by and large it is asking for rates on a lower basis than would be charged under the system of class rates and classification ratings, which as I indicated is the very maximum lawful basis which the railroads may charge anybody, the Government included.

More often than not the movements included in the governmental request is between points where there is little or no commercial movement of the involved commodity and accordingly there has been no occasion to establish a commodity rate in a published tariff. If any appreciable movements had developed between those points, there would undoubtedly have been an application filed for a commodity rate with the railroad rate association having territorial jurisdiction over the traffic.

With that background, I think it is at least understandable that it is the policy of the railroads to treat the matter of rates on Government freight in the same manner as commercial traffic and to subject these rates to the same tests as would be applied to commercial shipments of like commodities moving under like circumstances.

Some of the tests, of course, do not apply to the Government. For one thing, market competition—rarely, if ever, as I understand it, would it apply to governmental shipments. However, intercarrier competition very definitely applies to Government traffic and that is one of the considerations, one of the tests, which we must use in determining what level of Government rates are to be made.

The railroads have taken the position in recent years that if a governmental agency comes before one of their rate associations with a situation which would justify a commodity rate adjustment for commercial traffic, then a section 22 quotation lower than the class rate basis should be accorded. I say this, and I emphasize that such rate would be no lower than would be granted a commercial shipper under the same or similar circumstances. And this has certainly been true during my tenure with the Western Railroad Traffic Association.

As a matter of fact, it is my opinion that the rates which we have

tendered the Government and which have been accepted by it through section 22 quotations are on approximately the same level on balance as those which would be, or are, paid by commercial shippers of like commodities under like circumstances.

Occasionally the Government will request a rate lower than an existing commodity rate. This is rare in my experience, but when it does happen, it usually happens that the commodity rate that is in effect is out of line with other commodity rates of the same commodity moving under like circumstances. So what the Government is doing there is trying to bring a rate for its business in line with other commodity rates that would apply on similar shipments. And we very often decline these requests. We find that the conditions aren't similar as alleged by the Government and they are very often declined. We usually grant the requests, I might say, where the only rate in existence is the class rate and the Government is seeking a commodity rate.

Senator LAUSCHE. It is your position that under commodity shipments you apply to the private shipper the same formula as you do to the governmental agency under section 22 in determining the rate to be charged?

Mr. SOUBY. Yes, that is correct. Now I might say this, that when you have no competition in the picture, and we are dealing with the Government as a commercial shipper, seeking an ordinary commodity rate, they merely want a rate lower than the class basis on some reasonable level, we probably would go higher for the Government than we would for commercial shipments, because we have found by experience that in connection with commercial shipments we tend to have a regular and continuous movement, whereas with the Government we are dealing with a heavy volume movement, but a movement of shorter duration.

So we will tend to put a rate a little higher there. However, on balance that might be knocked out by the fact that we encounter such severe competition for Government traffic that occasionally we are obliged to go rather low to keep the traffic on the railroads.

Now this gentleman yesterday from Toledo spoke about a rate from Centerline, Mich., to Detroit and Toledo, I guess, versus the rate to Hampton Roads, I believe was the actual point. I am not entirely familiar with that situation, but I do know some of the circumstances that arose, and I am not sure that Mr. Purdy is in possession of all of the facts, because I think there were rates in effect to Detroit considerably lower than he quoted under an available section 22 quotation.

As a matter of fact, the rate in existence, if I recall correctly, to Hampton Roads, was \$1.24 plus the 9-cent port charge. That would make \$1.33.

The rate to Detroit under a section 22 quotation on army tractor tanks was I believe 42 cents. He said 52, but my figures show 42. That is a section 22 quotation, however, on army tractor tanks. That is to Detroit.

Now then to Toledo there is a 47-cent rate. I believe; yes, 47 cents. And there again that is in the section 22 quotation on army tractor tanks which, incidentally, is a basis which extends throughout the United States between all points.

We found there is a tremendous movement of these tanks, they can go anywhere, so we put in this quotation. Now what happened in the Centerline situation was there a motor carrier, heavy hauler, willing to haul the tanks to Detroit at a very low basis, which if added to the seaway charges produced a rate lower than the rate through Hampton Roads. Now at that time one of the things I don't think Mr. Purdy recognized, there was a very low rail rate on tractor tanks into Detroit of \$200 a car. You could load as much as you wanted on the car, provided you could get the equipment. Now in order to meet that heavy hauler situation, however, the New York Central and the Norfolk & Western decided they had to go down to 61 cents and they tried it and found they weren't going to get the business at 61 cents, the hauler was going to take it even as against this \$200 per car rail rate to Detroit, so they went down to 50 cents.

However, the two railroads exacted from the Government a high minimum rate, 182,000 pounds, which would produce revenue of around \$910 a car, which these lines considered very attractive revenue. Therefore it was a question of \$910 a car, to Hampton Roads, versus \$200 a car to Detroit.

In addition the ocean shipping charges came into the picture, plus the St. Lawrence Seaway toll. So it became cheaper for the Government to ship through Hampton Roads on the \$910 rate than to ship on a \$200 rail rate into Detroit or to use the heavy hauler, who was going to get the business, as I understand it, otherwise the railroad would never have gone down to 50 cents on that rate.

Now that is my understanding of the facts of that case and I though it well in passing to clear the matter up.

Senator LAUSCHE. I am glad to have your views.

Mr. SOUBY. Now for the Commission's contention that the level of section 22 rates tends to increase the transportation charges of private shippers: I think it is important to recognize that the level of the majority of rates on all traffic whether published for general use by the public or offered to the Government is effected by competition among the various forms of transportation. There are as a result constant adjustments of rates, both by the railroads and other modes of transportation, which are designed to keep the involved carriers in a competitive position so that they will not be priced out of the transportation market.

We don't deny that competition affects Government traffic as much as it affects commercial traffic. It may affect it a little more. But we have no reason to believe that the competition, the carrier competition creates a higher or less competitive level of rates for commercial traffic than for Government traffic.

In other words, when we encounter this competition on commercial shipments, we attempt to meet it just as vigorously as if it comes about in respect to Government shipments. Now we think we hold the volume of our total traffic up by the substantial amounts of Government traffic which we are able to keep on the railroads. If we do that, we think we have a broader base over which to distribute our overhead costs and our return on investment. If we lost this Government traffic altogether, then the overhead that it was carrying would have to be cast back on the commercial shipper and he would get a higher rate rather than a

lower one from the loss of Government business, and this might occur from increases in rates to a level beyond which the Government wouldn't ship the traffic by rail.

Now I want to stress this, that on Government traffic, as well as on commercial traffic, the railroads are careful to quote rates which meet out-of-pocket costs, plus at least some contribution to overhead and return on investment. The various cost formulas that come into the picture are arguable. But we are not in business to lose money, so we attempt to set the rate as high as it can be above the out-of-pocket costs and still keep the traffic on the railroad.

During my association with section 22 matters, I never encountered a section 22 rate which I suspected of being below out-of-pocket costs or even a borderline case. I was suspicious of the 50-cent rate to Hampton Roads until I found out the minimum weight was 182,000 pounds per car, which gave a revenue of \$910 a car. That is very good revenue, Mr. Chairman, on handling freight traffic from a point like Centerline to Hampton Roads. We have a profitable rate, at least we think it is profitable, from New York to Los Angeles on forwarder traffic that is only \$932 a car. So we think that \$910 rate compares very favorably.

I believe it has been brought out that Government traffic even though it moves in large volume often moves at unpredictable times. I feel and the railroads generally feel in order for the regulated modes of transportation to maintain their dominant role in the handling of Government business—and I am not sure it is dominant any more—we must have the same flexibility as unregulated modes of transportation.

I have found no laws which require the United States, the States or municipalities, to favor regulated carriers as against other forms of transportation which can offer comparable service at lower costs. The present policies of the various agencies to use common carriage can be changed overnight if there is sufficient economic incentive warranting such a change.

It is true that until recently it was the policy of most governmental agencies to utilize regulated carriers. The recent action of the Department of Defense in soliciting section 22 quotations from agricultural cooperatives for nonagricultural traffic confirmed the ever-present possibility that there can be a shift in governmental policy in respect to use of unregulated forms of transportation, where it might be economical to do so.

Senator LAUSCHE. Has there been any legislation introduced dealing with that decision which allowed cooperatives to transport outside of the realm of their own membership?

Mr. SOUBY. There may have been, Mr. Chairman. I am not familiar with it, but I know there was agitation for it in the industry. There is a bill pending, is there?

Senator LAUSCHE. Yes. It is by Senators Magnuson and Lausche.

Mr. SOUBY. I am happy to hear it has been introduced. If we could be sure that this bill would cure everything, then I wouldn't have any point here. But I am not sure it would cure everything, because we would still have private carriage, the Government procures a lot of supplies from manufacturers and they are at liberty to use their own vehicles if they find transportation costs have gotten out of hand.

I point out that it is highly desirable to permit the railroads to establish and tender section 22 rates without delays which are legally required in connection with conference ratemaking on commercial traffic. That is one of the big bugaboos in my association, the delays we are obliged to suffer as a result of the requirements of section 5(a) and the agreements which have been approved by the Interstate Commerce Commission.

The very nature of a large proportion of Government traffic dictates expedited handling. On military movements, for example, it is impossible to predict very much in advance the points between which transportation will be needed or the commodities which will be handled. If the Government is to have commodity rates on these movements, the volume of which usually warrants it, the cumbersome legal requirements associated with railroad ratemaking procedures on commercial traffic must be dispensed with.

Repeal of section 22 would oblige the Government either to pay the high-class rates or to find alternate means of transportation. Today the Armed Forces uses military-owned transportation to a minimum extent and only where commercial transportation cannot meet the requirements of the particular traffic involved. However, if they are burdened with the cumbersome procedures required by law for commercial ratemaking, in order to avoid paying class rates, they might find themselves disposed to a great extent to use their own vehicles or to use unregulated modes of transportation.

Repeal of section 22 as proposed in both bills would eliminate retroactive application of rates on emergency and other movements for which rates cannot be established in advance even under present streamlined procedures for negotiation of rates on Government traffic. The current practice in such cases is to make negotiated rates applicable back to the beginning of the movement in question.

Both S. 754 and S. 1174 would retain the privileges of section 22 ratemaking during war or national emergency as declared by Congress or the President. In my opinion this would not satisfy the needs of the military agencies who are the principal beneficiaries of the emergency procedures which the carriers follow under section 22.

There is a definite need for the military authorities to be able to sense a national emergency far in advance of the conditions which would require issuance of a Presidential proclamation. Moreover, the military agencies ought to have the flexibility to anticipate emergencies which may never come to pass.

I point out in my statement that a good example of emergency ratemaking took place during the Cuban crisis. That was discussed by the witness for the General Accounting Office, so I won't go into it, other than to say that my associate, Mr. Hill, and I, negotiated for some months after—not after the crisis, but after the movement—working out reasonable bases of rates on those shipments. You can be well assured we weren't giving railroad money away when we negotiated those retroactive adjustments.

There is some argument as to whether Mr. Truman's Presidential Proclamation 2914 would have protected us in the Cuban crisis. Technically speaking, it would appear that it would. It was a national emergency declared by the President, it had not been nullified or with-

drawn. But it was related to another crisis, so it might have been argued if this bill had been in effect that proclamation wouldn't have protected us on shipments on account of the Cuban crisis or the Vietnam crisis.

Mr. Cimokowski referred to rate simplification experimentation. He said it was not earth shaking. We regard them in the railroad industry, these experiments, as very important. We think there is much to be gained, many savings in costs to be made through the simplification of these rate adjustments in such a way that we can avoid substantial administrative and clerical costs and also printing costs in connection with the tariffs.

I think that the rate adjustment that the witness for the General Accounting Office was talking about was an adjustment which we put in on military impedimenta which comprises all of the gear that the military moves in its so-called organizational movements. It includes ammunition in small quantities, clothing, provisions, and whatnot. We worked out a basis that was predicated on a statistical average of the rate adjustments on all of these commodities, and we think that we came out with no loss of revenue and with a considerable saving in administrative and clerical costs by having established that military impedimenta basis.

We are working now on an adjustment on freight, all kinds, which would embrace a great number of commodities which the Government ships between military installations or from supply depots to military installations.

Senator LAUSCHE. Let us have a brief recess. I want to make a call. We will finish the hearing this morning, however.

(A short recess was taken.)

Senator LAUSCHE. You may proceed.

Mr. SOUBY. Yes, Mr. Chairman.

For several years it has been mandatory for us to file our section 22 rates with the Commission. It seems logical that if any commercial shippers were suffering material disadvantages they would have complained to the carriers citing specific rates. There may have been a few such complaints, but none of them have come to my attention.

I know that in the public hearings before the rate bureaus and in rate litigation published tariff rates furnish the principal basis for allegations by shippers that undue preference and prejudice exists in given situations.

Very often, a shipper who cites a rate in support of some proposition or other has no concept whatever as to the conditions which brought about the level of the cited rate or the reasons for its publication.

We feel that if we are required through repeal of section 22 to publish rates which have been adjusted to fit the peculiarities of Government traffic we would set the stage for endless controversy.

We think that also we would find ourselves embroiled in considerable litigation over Government rates.

In other words, shippers would see these rates in commercial tariffs; they would have no way of knowing that these rates were adjusted for the peculiarities of some Government movement, we would find them used as a basis to obtain lower rates in situations that didn't fit the circumstances. We have found that to be true very often in connection

with other commercial rates. For example, we will make a rate, a truck competitive rate, and then we will find in areas where there is no competition whatever tremendous pressure to reduce the rate level. We feel obliged to do that if there is any market competition between the shippers and we do do it.

But where there is no relationship whatever between one situation on one hand, and another on the other hand, we would be giving money away, if we just made a reduction because someone found a rate in a tariff somewhere.

In my opinion, the necessity of publishing Government rates in the tariffs would possibly or very likely would discourage us from granting the Government rates which they are entitled to have.

Senator LAUSCHE. Why?

Mr. SOUBY. On the theory that we fear we were setting precedents for situations which were not similar at all to the situations which we find in connection with the handling of Government traffic.

Very often, we will have Government movements in which we will have five and six cars switched in and out of a Government installation at one time. That would warrant a lower basis than a situation in which one car is moving out at a time, because we have to bring a switch engine in and out on several occasions. We can make deals to cover specific movements, tailored to fit specific movements with the Government, because we can negotiate those by agreement.

We can't do that with commercial shippers. We have to put a rate in the tariff and it has to apply whether the shipper is shipping one car every 2 weeks or 10 cars a day.

I think I have covered my points. I can summarize by saying that my principal concern, which I believe to be the main concern of the railroad industry, in connection with the efforts to repeal section 22, lies in the potential diversion of substantial tonnages to other forms of transportation and I have in mind particularly the unregulated modes of transportation of which—

Senator LAUSCHE. What do you include under that category?

Mr. SOUBY. I included not only the agricultural cooperatives who are handling Government traffic on backhauls, but I included private carriage. There would be an encouragement of manufacturers to use their own equipment, there would be encouragements for the Government to use its own equipment.

As I say, the policy now is against that. They want to encourage common carriage. But that could change if we have our rates up too high, then the Government would find itself disposed to use its own equipment.

The military authorities have considerable equipment which could be used. And they could augment it. And I don't fear this agricultural situation as much as some people do, because I think our commercial rate levels are so low on the grain and its principal commodities that are moving and also on many of the bulk commodities that the Government could do very well with those rates. I think the section 22 rate has been used very infrequently in connection with agricultural traffic.

The rate adjustment that was referred to this morning was an unusual situation in the South. The Southern Railway had put in these low grain rates—they called them the Big John rates—on commercial

traffic. The Commission put them under investigation and they were suspended in the meantime.

The Southern Railway felt its rates were proper, so they made them available for the governmental agencies. They were later proved correct, the rates were allowed to go into effect, so that actually the Southern Railway's action was vindicated in that situation. I think that if our industry allows its rates on Government traffic to increase, it will be very much like we ran into in the fifties, when we allowed our commercial rates to increase too much through the general freight rate increases.

We found that we lost a lot of tonnage we could never regain and we are now fearful that we will lose a lot of Government business primarily to the unregulated carriers.

We feel we are at somewhat of a disadvantage as against the regulated forms of transportation.

Senator LAUSCHE. Will you identify the respects in which you are at a disadvantage?

Mr. SOUBY. We are at a disadvantage in respect to the motor carriers in that they are not obliged to observe section 4 of the Interstate Commerce Act as we are. They are exempt—

Senator LAUSCHE. What is section 4?

Mr. SOUBY. The long- and short-haul clauses requiring us to charge no more for movements between intermediate points than we charge for movements between so-called terminal points.

It is a technicality. In many cases, there are no shipments that actually move between the intermediate points, but we are obliged in our tariff to show charges which observe section 4. And it requires a considerable amount of administrative work and it could, I suppose, result in loss of revenue in those situations where you have an unusual or sporadic movement between an intermediate point that wouldn't justify a low basis of rates.

But by and large the problem is administrative there. The technicalities have resulted in suspension of rates, the Commission has suspended them because they violated section 4 when there was no real potential movement between the intermediate points.

Senator LAUSCHE. My question was, In what respects are you at a disadvantage?

Mr. SOUBY. Yes. As I say, the motor carriers, as was brought out earlier, have the use of the agricultural exemption; we do not. I know that Mr. Pinkney's people are not in favor of that, and I think we are all in agreement on that score; we are in agreement on elimination of the agricultural exemption and elimination of the bulk exemption. But the fact remains that the motor carriers have it and we don't. And it involves an important element of traffic.

But as I say on our grain traffic we already are obliged to put our grain rates so low in order to meet the unregulated transportation that possibly section 22 wouldn't make too much difference to us in that area.

However, we wouldn't want to lose the authority to make reduced rates for the Government in any area, including the agricultural or bulk area.

Senator LAUSCHE. Mr. Hill, do you desire to say anything?

Mr. HILL. I have nothing to add to Mr. Souby's statement.

Senator LAUSCHE. Do I understand it to be your position that the charges of giving preferential rates and discriminating cannot be sustained because when you try to compare rates you find that the Government shipments are of such a peculiar nature that normally you can't find a comparable situation?

Mr. SOUBY. Well, that is part of it. There are such situations as that. But I think that in many cases you can find comparable situations and justify the position that I have expressed.

Senator LAUSCHE. That is what I mean. That is, where the rate is supposedly low, it is low because of a peculiar condition that exists?

Mr. SOUBY. Precisely.

Senator LAUSCHE. Wherever the circumstances are comparable then the rates are equal to the private and the Government shipper?

Mr. SOUBY. That is correct. I have sat in many conferences on these rate negotiations and the thrust of the discussions is what are the level of the commercial rates for comparable movements and we attempt if we can to find comparable commercial movements and set the Government rate on that level.

When we have a competitive situation then we have to ignore the commercial situation and look to costs and to the level of rates that will keep the traffic on the railroad.

That is the way we make our rates for the U.S. Government.

Mr. Hill reminds me when the Government presents a proposal to us they accompany that proposal with reasons for the rate, and they ordinarily give us as many facts as they can to support the rate level they seek. And very often we don't give it to them. We very often give them a higher basis and sometimes we have found it necessary to go below what they suggest.

As a matter of fact, in this freight-all-kinds situation we have been inclined to go below the level of the rate scale which has been suggested by the Government because we feel we have got to keep ourselves in competition with other modes of transportation.

Senator LAUSCHE. Is it fair to say you are in substantial accord with the testimony of the Counsel of the General Services Administration that the claim that you are charging preferentially lower rates cannot be supported when the facts are fully examined?

Mr. SOUBY. That is right. That is our position. And we haven't seen anything that indicates anything to the contrary, any kind of a study which has been authenticated.

Now the study that was submitted by Mr. Purdey referred to some work that had been done in I believe 1963.

In any event, if it is the same study that we looked at in some hearings involving the Great Lakes-St. Lawrence Seaway held in 1963 and 1964, we think that study was refuted by a witness in those hearings, a witness Clifford O'Hara who was the past president of the North Atlantic Ports Association. His testimony appears at page 546 in the hearings before a special subcommittee of the Committee on Commerce, U.S. Senate, in connection with a study of transportation on the Great Lakes-St. Lawrence Seaway.

The hearings were held February 26, 1964, in Detroit, Mich., and May 12, 1964, in Baltimore, Md.

Senator LAUSCHE. Now I have Mr. Cimokowski's paper before me. He states, speaking for the General Accounting Office:

We believe that overall the Government pays as much as if not more than commercial shippers of the same volume of comparable commodities between the same origins and destinations.

Is that your view?

Mr. SOUBY. Yes, in the situations I am familiar with, but I would prefer to take the position that the general level of our Government rates are on approximately the same or somewhat higher level than the general level of commercial rates.

I think you will find perhaps discrepancies here and there. You might find a rate between two points where the Government rates are lower than the commercial. But I think it would be rare. But you might. On the other hand, you will find movements where the Government rate is higher.

I am saying on balance that would be true.

Senator LAUSCHE. What is your final conclusion, that they are comparable?

Mr. SOUBY. That they are comparable overall.

Senator LAUSCHE. He further states that:

The General Accounting Office is of the opinion that it has not been satisfactorily proven that the Government pays less for its transportation than the shipping public generally pays for the same service.

Mr. SOUBY. Those views are mine precisely, based on my experience.

Senator LAUSCHE. It is all predicated upon the proposition that where the circumstances are peculiar and that fact has to be taken into consideration, the rates may differ, but they differ because of the abnormality of the situation that prevails?

Mr. SOUBY. Yes, sir; that is correct.

Senator LAUSCHE. All right.

Mr. Hill, you have nothing further to add?

Mr. HILL. No, sir.

Senator LAUSCHE. Thanks very much, Mr. Souby.

Mr. SENDER would like to ask you a question.

Mr. SENDER. Would you care to comment on the situation with regard to section 22 rates for State and local governments? Your testimony concerned mainly the Federal Government.

Mr. SOUBY. Yes. Well, I am just trying to think. I know the subordinate bureaus in my association have received a number of requests from State organizations. I think the competition there is a little more severe than you find on the Federal Government in the highway area, because you have the bulk truckers who can take the material to the job site.

I would say this, that my views are identical in that respect, in respect to the State and municipal governments, in that their rates are viewed as though they were commercial rates.

In other words, the same considerations that determine the level of commercial rates would determine the level of section 22 rates accorded State and municipal governments.

Now there is an exception, I must say, and I am not sure this bill takes care of it, in connection with charitable operations, where we do sometimes—not always—go down below a level that we have given

the commercial shipper, as an example for museums and educational projects. But on ordinary State operations, according to my recollection, we have used the same tests as we have used in the commercial traffic or Government traffic.

Senator LAUSCHE. All right, Thanks very much.

(The prepared statement of Mr. Souby follows:)

STATEMENT BY JAMES M. SOUBY, JR., ON BEHALF OF THE ASSOCIATION OF
AMERICAN RAILROADS

My name is James M. Souby, Jr. I am Chairman and Counsel of the Executive Committee-Western Railroad Traffic Association, with headquarters at Chicago, Illinois. This Committee consists of the Chief Traffic Officers of 29 railroads operating in Western Territory. The Executive Committee embraces all of the large railroads in the Western part of the United States and the Association membership embraces many others, some of which are so-called short lines.

The Western Railroad Traffic Association is a voluntary, unincorporated association operating under a rate conference agreement which sets forth its Articles of Organization and Procedure. The agreement including the complete text of the Articles has been approved by the Interstate Commerce Commission under the provisions of Section 5a of the Interstate Commerce Act.

I am a lawyer by profession and since World War II have specialized in transportation law, more particularly practice before the Interstate Commerce Commission and state regulatory bodies in the area of railroad freight rates and associated matters. I have been with the Western Railroad Traffic Association since early 1961 and prior to that time I was associated with one of the large railroad companies in the West.

My appearance here is for the Association of American Railroads by authority of its Board of Directors. This Association is an unincorporated voluntary association of railroads whose members operate 96 per cent of the railroad mileage in the United States, whose revenues amount to 96 per cent of railroad revenues in the United States, and whose employees constitute 95 per cent of the railroad workers in the United States.

The Association of American Railroads has authorized me to state that the Association opposes both S. 754 and S. 1174. Either bill, if enacted, would amount to a virtual repeal of that portion of Section 22 of the Interstate Commerce Act which permits rail carriers to carry, store and handle property free or at reduced rates for the United States, State, or municipal governments, and which permits the transportation of persons for the United States Government free or at reduced rates. I say virtual repeal because both bills would permit carriage free or at reduced rates only *during time of war or national emergency* as declared by Congress or the President. S. 754 also retains Section 22 privileges in respect to transportation of bulk and agricultural commodities.

S. 754 follows verbatim the draft of bill attached to the legislative recommendation in respect to Section 22 of the Interstate Commerce Act. It shall be my purpose to deal with the reasons for the recommendation advanced by the Commission and also to deal generally with the desirability of continuing Section 22 in its present form.

As I indicated previously, I have been associated with the Western Railroad Traffic Association since early 1961. During that six year period I have been very close to the activities of the Western Railroad Traffic Association in its negotiations with Government agencies for rate adjustments tendered under Section 22 of the Act. These adjustments are known as "Section 22 quotations". My office participated in the exchanges of correspondence which led to many of the important Section 22 quotations issued by the Western railroads during this period. Also, my office participated in negotiations for most of the Section 22 quotations issued jointly by the Eastern, Western and Southern lines in the past six years. We maintain a permanent office in Washington, D.C., headed up by the Assistant to the Chairman of the Executive Committee—Western Railroad Traffic Association. One of the functions of the Washington office is to keep abreast of rate matters arising under Section 22 of the Interstate Commerce Act and to inform Association officers and member railroads.

During the time that I have been with the Western Railroad Traffic Association negotiations for Section 22 rates have been conducted with the Department

of Defense, the General Services Administration, the Post Office Department, the Department of Agriculture, the Commodity Credit Corporation and the Atomic Energy Commission.

The recommendation of the Interstate Commerce Commission which resulted in its draft bill which was introduced as S. 754 reads as follows:

"We recommend that section 22 be amended so as to permit the performance of transportation services for governmental bodies free or at reduced rates only to the extent such services: (a) are performed during war or national emergency or (b) involve transportation which remains exempt from economic regulation under Parts II and III of the Act."

In support of this recommendation, the Commission made the following statement:

"The Commission has for many years been of the view that, except during time of war or national emergency, the Government should pay full tariff rates and charges for transportation services performed on its behalf, the same as any other shipper or user of common carrier services. A large percentage of Government traffic now moves at reduced rates under section 22 which, of course, are not available to the commercial shipper. This preferential treatment has a strong tendency to increase the cost of regulated transportation services to commercial users who, when their rates become too high, resort to private carriage. Such diversions of traffic are clearly detrimental to the maintenance of a sound common carrier system."

It is my opinion, based on my experience, first, that the Government is not "the same as any other shipper or user of common carrier services", but, more important, that the facts associated with the issuance of Section 22 quotations to the United States governmental agencies will not support the Commission's conclusions either as to preferential treatment of the Government or as to the alleged tendency of Section 22 rates to increase the costs of transportation to commercial shippers.

The Commission refers to a large percentage of Government traffic moving at "reduced rates". In order to understand the conditions under which rate agreements with governmental agencies are entered into, I think it imperative to deal with the two fundamental structures of published tariff rates which exist throughout the United States for use by commercial shippers. A proper understanding of these two structures, in my opinion, will dispel the false impression that the rates tendered the Government in Section 22 quotations amount in fact to "reduced rates" in the sense of the relationship of these rates to the rate structures that move general commercial traffic. In summary, it is my contention, which I know to be shared by most if not all of the Traffic executives of the railroads in the United States, that the United States Government is not obtaining from the railroad industry a preferential or "cut rate basis" as compared with the structure of rates utilized by the nongovernment shippers.

The two basic structures of rates that I have in mind are the class rate structure and the commodity rate structure. Approximately 95 percent of the commercial carload traffic throughout the United States moves under the commodity rate structure. However, in order to maintain a system of rates for every conceivable movement, the railroads maintain a structure of class rates between every railroad point in the United States. As a matter of fact, the railroads interpret the Interstate Commerce Act as requiring them to be able to quote a published rate to a prospective shipper on any article to any other point in the United States. Since it is impossible to put a transportation price tag on each and every article, the commodities which move in commerce have been classified according to percentage ratings, such percentages indicating the proportion of a basic class rate which should be charged on the articles governed thereby. To cite a popular example, it is obvious that there would be no movement of oranges from Maine to Florida, yet there has to be an applicable basis of charge.

To clarify the matter further, class rates are graduated upward or downward from a basic rate known as the Class 100 rate. Class 85, for example, would mean 85 percent of the basic Class 100 rate. Class 70 would be 70 percent, and so on down to the very low percentages. Class 150 would mean 150 percent of the basic Class 100 rate, and so on up to Class 400 and possibly even higher. Virtually every commodity which moves or is likely to move via any form of transportation is given a classification percentage rating for use in connection with the basic structure of class rates.

It is fundamental that the class rate structure of the United States be designed around occasional or sporadic movements with the level of the rates set at a maximum reasonable level. As a matter of fact, the basis for the class rate structure is a mileage scale of rates prescribed on a *maximum* reasonable basis by the Interstate Commerce Commission and the percentage ratings which have been assigned to the various commodities have been assigned with the view that each represents a *maximum* reasonable basis for the handling of the commodity to which it refers under conditions of infrequent movement.

The considerations which go into determining classification percentages (which are known as classification ratings) assigned to each of the commodities or groups of commodities are usually the basic factors inherent in the commodity itself, such as value, weight density, packaging or loading characteristics and a few other comparable characteristics. These elements are to be distinguished from volume of movement, competitive conditions, market considerations, economic necessities and other variables which are ignored when the percentage ratings used in classifying the articles of commerce are determined. As a matter of fact, cost of service, except as it may be affected by the inherent characteristics of the commodity, is not a consideration scrutinized by the committee which determines the classification percentages.

On the other hand, the commodity rate structure, which grew up over a period of years to afford industries transportation costs geared to the needs and characteristics of commerce, gives effect to virtually all of the items which are ignored in the making of classification percentage ratings. For the most part, commodity rates are not set up in terms of percentages of the basic scale of class rates, but very often are specific figures. Sometimes scales of commodity rates are worked out on the basis of mileage. However, these scales are usually limited in their territorial application and often are published in the tariffs as point to point rates throughout a given area. Commodity rates tend to be limited in territorial application and in commodity coverage, whereas class rates have nationwide application and classification percentages ratings often embrace groups of commodities.

The principal considerations which give rise to the level of commercial commodity rates are volume of movement, competitive conditions, market considerations, economic necessities and other variables applicable in varying degrees in limited areas. As I indicated, these are the very considerations which tend to be ignored in determining the levels of class rates and the level of classification percentage ratings.

When a governmental agency comes to the railroad with a request for an adjustment of rates under Section 22 of the Act, by and large it is asking for rates on a lower basis than would be charged under the system of class rates and classification ratings which is the very maximum lawful basis which the railroads may charge. More often than not, the movement involved in a governmental request is between points where there is little or no commercial movement of the involved commodity, and, accordingly, there has been no occasion to establish a commodity rate in a published tariff.¹ It is true, of course, that if through some freak of circumstance a commercial movement had taken place between points involved in a Government request, where there were no commodity rates, the commercial shipper would have been obliged to pay the class rate. On the other hand, if any appreciable commercial movement had developed between those points, there would undoubtedly have been an application filed for a commodity rate with the railroad rate association having territorial jurisdiction over the traffic.

With the foregoing background, it is at least understandable that it is the policy of the railroads to treat the matter of rates on Government freight in the same manner as commercial traffic and to subject these rates to the same tests as would be applied to commercial shipments of like commodities moving under like circumstances. Thus the railroads in recent years, at least, have taken the position that if a governmental agency comes before one of their rate associations with a situation which would justify a commodity rate adjustment for commercial traffic, a Section 22 quotation lower than the class rate basis should be accorded. Such rate would be no lower than would be granted a commercial

¹ To paraphrase remarks of a former executive director of the traffic management agency of the Department of Defense, the Government does things differently than the commercial shipper. The way the Army is obliged to do things, it would ship oranges from Alaska to Florida and sealskins from Florida to Alaska.

shipper under the same or similar conditions. This has certainly been true during my tenure with the Western Railroad Traffic Association. The governmental agencies know of this policy, and based upon it, support their requests with sound reasons for the level of rates sought. Thus, when a particular agency files its request for a Section 22 quotation it ordinarily supports its request with information concerning the frequency or volume of movement, the necessity for the lower basis of rates and the relative level of the rates requested as compared with commercial tariff rates or other Section 22 rates moving under comparable conditions. Most of us in the railroad industry believe, and it is very definitely my opinion, that the rates which we have tendered the Government and which have been accepted by it through Section 22 quotations are on approximately the same level as those which would be or are paid by commercial shippers of like commodities under like circumstances.

Occasionally the Government will request a rate lower than an existing commodity rate. In my experience this has never been done unless there has been submitted a logical supporting reason. Usually the existing commodity rate in the published tariff is out of line with the general level of commodity rates in other areas. These requests are invariably declined by the carriers if they conclude that the conditions do not warrant the lower basis. They are only granted on a clear showing that the existing commodity rate level is obsolete or otherwise fails to satisfy the circumstances under which the Government traffic will move. In my opinion, it would be a very rare event if the carriers granted a Government request for a lower rate level than a current operative commodity rate basis. I am not familiar with any instance in which this has occurred. Of course, there are instances in which the carriers on their own initiative have made lower Section 22 rates to meet particularly severe competition from other agencies of transportation. This action is not different from that taken in respect to commercial traffic moving under severe competitive conditions.

A matter which I should emphasize is that the level of commodity rates extended commercial traffic is invariably lower than that of the class rates which would otherwise apply. As I indicated, the overwhelming preponderance of commercial carload traffic in all sections of the United States moves under the lower commodity rate levels. Thus, from a technical point of view, commercial traffic is moving under "reduced" rates very much in the same way that it is claimed governmental traffic moves under "reduced" rates. In other words, rates accorded the Government in Section 22 quotations are no more preferential than rates accorded commercial shippers in commodity rate tariffs.

As for the Commission's contention that the level of Section 22 rates tends to increase the transportation charges of private shippers, it is important to recognize that the level of the majority of rates on all traffic, whether published for general use by the public or offered to the Government, is affected by competition among the various forms of transportation. There are, as a result, constant adjustments of rates both by the railroads and other modes of transportation which are designed to keep the involved carriers in a competitive position so that they will not be priced out of the transportation market. Undoubtedly, this competition affects Government traffic as importantly as it affects commercial traffic, but there is no reason to believe that it creates a higher or less competitive level of rates for commercial traffic than for Government traffic.

As a matter of fact, if volume of total traffic of a given carrier is held up by substantial amounts of Government traffic, that carrier has a broader base over which to distribute its overhead costs and its return on investment. Accordingly, it is better able to maintain its commercial rates on a low level than if it permitted the Government traffic to be diverted to other forms of transportation. In my opinion, the existence of Section 22 enables the railroads to maintain a higher volume of business than if they were not permitted the ratemaking flexibility which this provision affords. It is axiomatic in railroad thinking that when you cut volume of business you create pressure for increased rate levels. Accordingly, I believe the carriers under Section 22 are better able to establish low competitive commercial rates and perhaps also to maintain the rates on the less competitive commercial traffic on a relatively low level. I would like to stress in this connection that on Government traffic as well as on commercial traffic the railroads are careful to quote rates which meet out-of-pocket costs plus some contribution to overhead and return on investment. During my association with Section 22 matters, I have never encountered a Section 22 rate which I suspected of being below out-of-pocket cost, or even a borderline case.

It is the competitive aspect of Government traffic which makes the flexibility afforded by Section 22 of the Interstate Commerce Act virtually a necessity from the standpoint of affording the regulated modes of transportation an opportunity to compete with unregulated modes and thereby maintain adequate volumes of Government traffic. Government traffic, although it often moves in large volume, often moves at unpredictable times between a given number of points. In order for the regulated modes to maintain their dominant role in the handling of this business, they must have the same flexibility as the unregulated modes. I have found no laws which require the United States, the states or the municipalities to favor regulated carriers as against other forms of transportation which can offer comparable service at lower cost. The present policies of the various agencies to use common carriage can be changed overnight if there is sufficient economic incentive warranting such a change.

It is true that until recently it was the policy of most governmental agencies to utilize regulated carriers. The recent action of the Department of Defense in soliciting quotations from agricultural co-operatives for non-agricultural traffic confirmed the ever present possibility that there can be a shift in governmental policy in respect to use of unregulated forms of transportation where it might be economical to do so.

Although S. 754 recommended by the Interstate Commerce Commission would retain Section 22 privileges in respect to bulk and agricultural commodities, this is no protection to the carriers against the type of transportation which is afforded by the agricultural co-operatives, the contract carriers or the so-called private carriers. These largely unregulated modes are not limited to the handling of bulk or agricultural commodities. Thus, if denial to the railroads of the rate-making flexibilities accorded by Section 22 were to inflate artificially the rate levels on Government traffic, the result could well bring about governmental policy changes which would mean deflections of tonnage to the unregulated modes. This would operate to the detriment of commercial shippers as well as to the railroads.

While on the subject of unregulated competition, one of the statements in the Commission's recommendation warrants comment. The Commission says:

"We believe that this recommendation is especially timely. Recently the Department of Defense announced that it intended to route freight on farm co-operative trucks. This new policy of the Defense Department was made possible by a recent decision by the U.S. Court of Appeals for the Ninth Circuit in *North-west Agricultural Cooperative Association, Inc. v. Interstate Commerce Commission*, 350 F 2d 252 (1965), cert. denied, 382 U.S. 1011 (1966). This decision established the right of agricultural co-operatives to backhaul non-farm commodities for non-members, such as the Department of Defense. *This means that the Department can take advantage of free and reduced rates under section 22 as well as use farm cooperative trucks, both at the expense of the authorized for-hire motor carriers.*" (Italic added.)

I find it difficult to understand the reasoning in the *italicized* sentence. The for-hire motor carriers have the use of Section 22 to meet the farm co-operatives to the same extent as the railroads. They are far better off in that respect with Section 22 in effect than if denied the flexibilities necessary to meet the unregulated co-operative trucks. However, the truck lines apparently do not want this flexibility, and the reason must be that they think the restrictions on railroad ratemaking will more than offset the restrictions on their own activities. Truck lines operate outside the scope of their bureaus to a greater extent than the railroads and also their vast number makes effective regulation by the Commission exceedingly difficult. Also, they are not subject to the long and short haul clause or other provisions of Section 4 of the Interstate Commerce Act which highly restricts railroad ratemaking operations except that conducted under Section 22.

Turning now to another phase of Section 22 activities, I would like to point out the desirability of permitting the railroads to establish and tender Section 22 rates without the many delays which are legally required in connection with conference ratemaking on commercial traffic. The very nature of a large proportion of Government traffic dictates expedited handling. On military movements, for example, it is impossible to predict very much in advance the points between which transportation will be needed or the commodities which will be handled. If the Government is to have commodity rates on these movements, the volume of which usually warrants it, the cumbersome legal requirements associ-

ated with railroad ratemaking procedures on commercial traffic must be dispensed with. Repeal of Section 22 would oblige the Government either to pay the high class rates or to find alternate means of transportation. Today the armed forces use military-owned transportation to a minimum extent and only where commercial transportation cannot meet the requirements of the particular traffic involved. However, if they are burdened with the cumbersome procedures required by law for commercial ratemaking in order to avoid paying class rates they might find themselves disposed to a great extent to the use of their own vehicles or to use other unregulated modes. The procedures required by law for railroad rate associations are designed to protect the shipping public from hasty and ill-considered action by the carriers which might disrupt commercial competitive balances. On the other hand, according to my knowledge, the military agencies are in competition with no one, and I think it may fairly be said that competition between other Government agencies and commercial entities is minimal. There is no need to subject the Government requests for reasonable rates to public hearings and other procedural safeguards associated with rate-making by railroad rate bureaus. Moreover, there is no need to subject rates for the Government to the 30 day waiting period before rates may become effective or, for that matter, to subject Government rates to suspension upon protest by commercial shippers.

Repeal of Section 22 as proposed in S. 754 and S. 1174 would eliminate retroactive application of rates on emergency and other movements for which rates cannot be established in advance even under present streamlined procedures for negotiation of rates on Government traffic. The current practice in such cases is to make negotiated rates applicable back to the beginning of the movement in question. This retroactive application, however, does not extend back indefinitely, but, as to each movement or series of movements, only to the date of actual commencement of same, which period, in the vast majority of cases, is less than 30 days. However, if these rates were subject to the same rules and regulations as commercial rates, then it would be necessary to go through the prescribed practice of filing special docket applications which, under the Commission's requirements, require a finding that the prior rates were unreasonable in violation of Section 1 and also a commitment on the part of the carrier to amend its tariffs accordingly and to continue the new rates in effect for at least a year even though the movement is completed.

It will be noted that both S. 754 and S. 1174 would retain the privileges of Section 22 ratemaking during war or national emergency as declared by Congress or the President. In my opinion, this would not satisfy the needs of the military agencies who are the principal beneficiaries of the emergency procedures which the carriers follow under Section 22.

There is a definite need for the military authorities to be able to sense a national emergency far in advance of the conditions which would require issuance of a Presidential proclamation. Moreover, the military agencies ought to have the flexibility to anticipate emergencies which may never come to pass. A good example of emergency ratemaking under Section 22 took place during the Cuban crisis. Rates were made in a matter of hours and special trains were dispatched loaded with vital materials and supplies to the Florida peninsula with the complete understanding between the Government and the railroads that reasonable charges would be negotiated in those situations in which commodity rate levels would be warranted.

It is true, of course, that at the time of the Cuban crisis there was in effect, and had been since 1941, a national emergency. Although the World War II proclamations had been cancelled, Presidential Proclamation No. 2914 issued in December, 1950 for the Korean War was in effect at the time of the Cuban crisis.

It is at least arguable, however, that if either of the proposed bills had been in effect at the time, Proclamation No. 2914 would have protected the carriers in their ratemaking for a crisis unrelated to the Korean conflict which had actually terminated some years previously. In any event, the national emergency which has continuously existed since 1941 may not last forever. If and when it does come to an end, there will remain during the ensuing period (which very likely would be equivalent to a "cold war") a genuine need for the flexible and expeditious handling of rate matters for the Department of Defense and other governmental agencies committed to our national welfare.

Repeal of Section 22 would require incorporation of rates established entirely for the United States in published tariffs which are designed primarily for com-

mercial shippers. In the first place, this would enlarge and complicate the tariffs which are already voluminous and highly complex. Tariff printing costs which are extremely high at the present time would be increased measurably and the carriers would, of course, be obliged to distribute the supplements containing Government rates, not merely to the Government, but to all commercial shippers on the tariff mailing lists. The increased handling and postage costs would be a significant amount of money. Also, compliance with tariff publishing rules would increase the bureau clerical expenses of the railroad industry.

In recent years the military authorities together with the common carriers have been conducting rate simplification experiments. Such experimentation is possible only under the flexibility afforded by Section 22. An example of such experimentation was the establishment of a single percentage basis applicable throughout the entire United States on military impedimenta which is a segment of traffic transported from one locality to another in large scale military organizational movements.

The basis agreed upon between the railroads and the Department of Defense for the handling of military impedimenta represented a statistical average of the vast number of rates and charges applicable on a representative sample of past organizational movements. Military impedimenta embraces an extremely wide variety of commodities, and the administrative effort and the paper work incident to billing and rating each organizational movement is extremely costly. This work has been costly not only to the Government authorities but to the railroads who are obliged to audit the Government bills of lading.

The military impedimenta experiment was conducted for a period of one year, at the conclusion of which the military traffic agency was exuberant over its results. The railroads thought, however, another year of experimentation was required before the Section 22 quotation on military impedimenta was made permanent. At the conclusion of the second year, the Western railroads, by reason of the diversity of conditions throughout the large areas in the West, felt that they needed still another year to determine whether the quotation should be made permanent. The quotation was made permanent¹ at the conclusion of the third year and I can state with considerable conviction that the traffic revenues of the railroads have not suffered as a result of this Section 22 tender. On the other hand, there has been a considerable savings in administrative and accounting expense in the handling of large scale military movements.

An experiment comparable to that conducted on military impedimenta is under way in the Southwest in respect to miscellaneous categories of freight carried under a description "freight, all kinds". The point here is to determine if an average rate can be utilized to handle the large variety of ordinary military shipments which lie outside of the military impedimenta category. In other words, there appear to be discernable patterns of movement between various military installations, and an effort was made to develop what the average charges would be over a representative period. A scale of rates on "freight, all kinds" has been established throughout the Southwest based on statistical studies made by the Department of Defense and supported by studies of the Southwestern Freight Bureau. If this experiment proves successful, there will be important savings in administrative expenses and paper work for both the military installations and the railroads.

Although the rate simplification activities of the military authorities might well become adaptable to the operations of other governmental agencies, it is my opinion they are not adaptable for commercial traffic, at least during the present time. However, to the extent these experiments reduce carrier costs and increase carrier tonnage volume, they will operate to the advantage of the shipping public generally. Also, lessons undoubtedly will be learned which can be put to use in handling general traffic. This experimentation would not be possible except for the present flexibility in ratemaking and in rate publication practices which is permitted in connection with carrier rate negotiations with governmental agencies.

At the outset of this presentation I took the position that the rates tendered the Government under Section 22 are not preferential because they are not lower than would be granted to commercial shippers under similar circumstances and conditions. I would like to expand somewhat upon this aspect of Section 22 rate-

¹ Permanent in this sense means published without expiration date. The tender may be terminated by mutual consent or on 30 days' notice.

making in support of the proposition that rates established strictly for Government traffic should not be made vulnerable to attacks predicated upon sections 2, 3 and 4 of the Act.

In the first place, to my personal knowledge, no showing has been made that Section 22 has resulted in discrimination or prejudice against commercial shippers. In the Western rate bureaus there have been very few proposals filed by commercial shippers for commodity rates based upon any quotation submitted to the United States or to any state or municipal agency. None of these as far as I could ascertain have alleged undue prejudice or discrimination as prohibited by Sections 2 or 3. There were applications in which a shipper alleged a change in Government procurement methods which required that a commercial rate be substituted for a Section 22 rate in order that the same delivery cost to the Government would apply. However, even here there were no claims that other sources of supply could ship on lower Section 22 rates or that there was any other form of discrimination involved.

For several years it has been mandatory to file Section 22 rates with the Commission and it would seem logical that if any commercial shippers were suffering material disadvantages, they would have complained to the carriers. As between commercial shippers themselves prejudice and competitive disadvantage are the most common justifications for reduced rates set forth in commercial applications filed in railroad rate bureaus. Whenever prejudice or disadvantage occurs or is imagined the railroads hear about it very quickly.

In public hearings before the rate bureaus and also in litigation concerning rates before the Interstate Commerce Commission published tariff rates furnish the principal basis for allegations by shippers that undue preference and prejudice exist in given situations. Very often a shipper who cites a rate in support of some proposition or other has no concept whatever as to the conditions which brought about the level of the cited rate or the reasons for its publication. If the carriers are obliged through repeal of Section 22 to publish in their tariffs all of the rates contained in their Government tenders there would be created innumerable special situations which would give rise to endless controversy with members of the shipping public. Shippers would have no way of knowing which rates were published for account of military movements or movements of other governmental agencies, nor would they know the special circumstances which dictated the establishment of such rates. Rates published for peculiar situations undoubtedly would be brought to the attention of the carriers as grounds for rate reductions in areas where comparable conditions do not exist. In addition to that, it is not unlikely that the carriers would be embroiled in frequent Commission litigation predicated upon rates established strictly to conform to special conditions attending Government movements. As a result there could develop much reluctance on the part of the carriers to grant commodity rates for the Government even though the volume of tonnage and other transportation conditions warranted a basis lower than the applicable class rates. In my opinion, this reluctance could well result in declinations of rate requests and consequent deflection of tonnage to unregulated modes of transportation.

Section 4 is a special problem. In my opinion, the long and short haul provisions of this section of the Act should not be applied to Government traffic because such traffic moves from one or more established points or origins to points. In negotiating Government tenders the carriers are not obliged to give weight to the effect which the agreed rates might have on traffic to intermediate points. If, however, such rates were to be published in tariffs and, therefore, made equally applicable to commercial traffic, the carriers would have to give consideration to the requirements of Section 4 and a number of complications could well result. As a matter of fact, the carriers might well come to the conclusion that they should not hold the basic terminal rates as the maximum level between intermediate points as required by Section 4. They might, therefore, be disposed to quote higher rates between the basic origin and the basic destination than they would quote except for the requirements of Section 4.

I would like to conclude with this thought—my principal concern, which I believe to be the main concern of the railroad industry in connection with the efforts to repeal Section 22, lies in the potential diversion of substantial tonnages to other forms of transportation, and I have in mind particularly the unregulated modes. The industry allowed its rates on commercial traffic to increase during the Fifties to such a level that unregulated transportation gained

a foothold which may never be dislodged. I would hate to see this happen with respect to Government traffic. The action of the Department of Defense in soliciting transportation prices from the unregulated farm co-operative truckers supports my fears that an increase in common carrier rate levels for Government shipments could well bring about other changes in transportation policy by this Department and other Government agencies which would lead to further losses in tonnage. Repeal of Section 22 would also place the railroads at some disadvantage as against the other regulated forms of transportation because of the greater degree of regulation with which the railroad industry must comply.

Senator LAUSCHE. This will conclude the hearings. The record will be kept open for 10 days. Thanks very much to all of you for your help. I have tried to develop a record that would show both sides of the argument as much as I could.

We will place in the record at this point the letters received from the Secretary of the Army, the General Services Administration, the Secretary of Transportation and the Office of Emergency Planning.

(The letters referred to follow:)

OFFICE OF THE SECRETARY OF THE ARMY,
June 5, 1967.

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

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 754, 90th Congress, a bill "To amend section 22 of the Interstate Commerce Act." The Secretary of Defense has assigned to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

S. 754 would amend section 22 of the Interstate Commerce Act so that the granting of free or reduced rates to the United States, state or municipal governments would be limited to transportation services performed during time of war or national emergency or to transportation of bulk and agricultural commodities which remain exempt from economic regulation under sections 203(b)(6) and 303 of the Act.

The Department of the Army on behalf of the Department of Defense is strongly opposed to enactment of S. 754.

The proposed legislation recognizes the necessity for special provisions for the movement of military traffic in time of war or national emergency but would prohibit such special provisions for the movement of military traffic in peacetime. The same conditions which require special provisions for the handling and movement of military traffic in time of war or national emergency exist in peacetime. It is only the volume that varies.

There are many reasons why laws and regulations applicable to commercial transportation should not be made applicable to military traffic. Some of the principal benefits to both the carriers and the Department of Defense, in the utilization of the provisions of section 22 of the Act are:

a. Reasonable rates, fares and charges, and rules and regulations may be established economically and expeditiously. Military traffic must be responsive to military requirements. It would be impossible to withhold critically needed military supplies until the establishment of reasonable rates through normal regulatory procedures.

b. Retroactive applications may be authorized where justified. Urgency often requires the movement of military traffic prior to completion of negotiations as to the level of rates. Under section 22 those negotiated rates may be made retroactive; however, under tariff provisions this would be prohibited. This provision is beneficial both to the military and the carriers in that shipments may move immediately, and a reasonable rate structure can be established under section 22 during the actual movement, or upon completion of the movement, on a retroactive basis. Obtaining reparations for excessive charges under tariff rates is an administrative and legal burden which both parties escape under section 22.

c. Cancellation of quotations may be accomplished economically when the need for the quotations no longer exists. It is apparent that rates to cover one-time moves can be more readily and less expensively established and canceled through the medium of rate tenders than by costly tariff specifications and procedures.

d. Section 22 permits valuable experimentation in the simplification of rates, a matter which is of growing concern to many shippers and carriers.

Rates negotiated between the carriers and the Department of Defense which are established under section 22 are fully compensatory to the carriers and do not place a burden on commercial shippers. In the *Western Class Rate* cases (296 I.C.C. 555), involving Mountain Pacific Interstate and interterritorial rail traffic, the record shows that the car-mile earnings on commodity and "exception" rates. A study made by the Interstate Commerce Commission in the above-cited cases indicated that section 22 traffic actually had but a negligible impact on the nation's total traffic. Section 22 traffic constitutes only about 1 per cent of the total commercial rail traffic of the nation.

What is often overlooked in considering section 22 is that the rate quoted per hundred pounds is not the decisive factor in determining the compensatory nature of a rate for a particular segment of traffic. The combination of rate and weight per shipment is the significant measurement. Section 22 tenders attract highly desirable traffic. Objective studies conforming to strict statistical standards prove that unit freight revenues under section 22 are higher than national earnings of the same mode for the same units of measure.

Opponents of section 22 have stated that it is "mutually exclusive" for the Department of Defense to assert that (1) section 22 revenue levels are higher than commodity rate levels and (2) to deny the Department the use of section 22 rates would cost millions of dollars. This criticism is fallacious because in the absence of section 22 rates, the military traffic would generally not revert to commodity rates, but to class rates, which are much higher. The commodity rate structure is the product of many years of vigorous effort on the part of industry to reduce rates for established flows of traffic from and to commercial centers; most military activities are outside these centers and commodity rates do not apply. In obtaining this structure, industry has employed weapons not available to military traffic managers, such as the use of private carriage in direct competition with common carriers, the withholding of traffic, and like measures.

The fiscal effects of enactment of S. 754 cannot be estimated with full accuracy. However, a detailed study of military traffic recently conducted by the Military Traffic Management and Terminal Service shows that in the absence of section 22, the added costs to the Department of Defense during CY 1966 would have amounted to \$69,500,000.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

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

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 5, 1967.

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

DEAR MR. CHAIRMAN: Your Committee has requested the views and recommendations of this Department on S. 754 and S. 1174, bills which would restrict the scope of section 22 of the Interstate Commerce Act in certain respects.

S. 754 would amend section 22 so as to permit the performance of transportation services for governmental bodies free or at reduced rates only to the extent such services are performed during war or national emergency or involve transportation which remains exempt from economic regulation under Parts II and III of the Interstate Commerce Act.

S. 1174 is more narrowly drawn. It would limit the authorization of free or reduced transportation services for governmental bodies to a time of war or national emergency as declared by Congress.

As pertinent, section 22 permits the carriage, storage, and handling of property free or at reduced rates for the United States, State, or municipal governments and the transportation of persons for the United States Government at free or reduced rates. This section is applicable to railroads and other common carriers subject to Part I of the Act. This section is also made applicable to motor common carriers by section 217(b), to water common carriers by section 306(c), and to freight forwarders as to transportation or service in the case of property by section 405(c).

The Department of Transportation strongly opposes both bills. Section 22 in its present form has been in a number of important respects extremely beneficial to the Government in its capacity as a shipper. These benefits are shared in, of course, by all of the people of this Nation. The Government has been able to operate as a shipper on an efficient basis. It has been in a position to secure rates appropriately related to its position as the largest shipper in the Nation. It has done so without the burden of costly paperwork and delays. The Government has also been in a position through section 22 to encourage tariff simplification and modernization, and ratemaking innovations, and to improve substantially the very large and complex distribution process involved in its traffic movements.

The principle shipping agencies of Government which avail themselves of section 22 can undoubtedly further justify the statutes' benefits.

It has been maintained that existence of section 22 rates has increased the cost of regulated transportation services to commercial users. We doubt seriously whether there is valid documentation of any detrimental influences on non-Government shippers. It should be emphasized that the rate proposals offered to the Government are wholly voluntary and are reasonably related to both volume and efficient, modernized operation. Responsiveness of delivery service is as important as economical delivery cost. We believe such concepts of rate-making should be furthered rather than discouraged.

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

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., June 5, 1967.

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

DEAR MR. CHAIRMAN: Your letter of March 6, 1967, requested the views of General Services Administration on S. 1174, 90th Congress, a bill "To amend section 22 of the Interstate Commerce Act to restrict certain authorization for free or reduced rate transportation of property or passengers."

S. 1174 would prohibit carriers from offering to the United States Government any reduced or free rates, fares or charges in the transportation of passengers or property other than during war or national emergency as declared by Congress or the President.

The proposed amendment of section 22(1) of the Interstate Commerce Act is of major concern to GSA in its statutory role with respect to traffic management for executive agencies under section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481).

Section 22 rates are in the nature of commodity rates authorized to be published for application to transportation for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition, and for other purposes set forth in the statute. Such rates for the Government are published for application only to Federal agencies. These publications generally are for the purpose of providing rates to meet special transportation needs of the Government. While they may be reduced rates, in many instances they are on the same level as commercial tariff rates between other points. Often such rates are "reduced" only in that they are less than class rates or other "paper" rates which do not move traffic for shippers

generally. It should be noted that section 22 actions taken by the carriers are voluntary, and are for the purpose of providing reasonable rate adjustments to the Government.

Frequently, the Government has need for rates on commodities which are not moving in normal commercial channels, or to or from locations where there is no similar commercial traffic. For example, GSA has need for new rates on stockpiled and surplus commodities being relocated, rehabilitated, or sold. Section 22 of the Interstate Commerce Act provides the carriers with a method of meeting the special needs of the Government without involving the complex system of freight rates in regulated tariffs.

Section 22 rates are advantageous to the Government in that they may be published to become effective immediately, or, under certain conditions, may apply retroactively. Such adjustments are not subject to suspension or regulatory delays, although they must be filed with the Interstate Commerce Commission for public inspection.

Section 22 also permits procedural flexibility in design and establishment of new methods of rate publication which is of prime importance when applying business machine and computer techniques in the movement of Government-controlled shipments. A system of simplified rates (freight all kinds) has been worked out covering shipments of supplies and equipment from GSA supply depots to Government installations throughout the nation. Computer oriented, it permits the automatic preparation and pricing of bills of lading, in coordination with computerized order processing and inventory control requirements. These simplified rates provide economies in administrative cost to the Government, as well as in transportation costs. The commercial system of rates in tariffs, which would apply should S. 1174 be enacted, is too cumbersome and subject to too frequent changes to be generally utilized in connection with the use of automatic data processing equipment in transportation operations programs. The proposed amendment of section 22, therefore, would set back the Government's progress toward efficiency and economy in traffic operations and management under business machine methods and computer techniques.

The proposed amendment to section 22 of the Interstate Commerce Act necessarily would deny Government agencies the operational flexibility presently permitted under this section. It would also remove the immediate availability feature and necessitate onerous adjustments to convert the large body of Government rates into tariff publications. Unreasonableness of rates, increased as a result of the proposed amendment, would require a period of time for extensive negotiations with carriers and for rate conference actions. Further, a sharp increase in GSA's participation in regulatory proceedings affecting Government traffic would be required, particularly if the Commission should suspend any republication of section 22 rates in tariffs as a result of protests of competing carriers.

Should the application of section 22 be restricted to times of war or national emergency, the effects on Federal Government expenditures would be quite substantial. On only that segment of Government traffic controlled by GSA, an expenditure of about \$12 million was avoided in FY 1966 through rate adjustments made by the carriers under section 22 procedure. Comparable figures are not available for other agencies for that year. However, data are available for FY 1959 in a report of the Comptroller General of the United States, prepared in 1961 for the Senate Committee on Commerce and entitled *Statistical Study of the Use of Rates Authorized Under Section 22 of the Interstate Commerce Act and the Effect on Government Freight Transportation Costs*. The summary in this report states (page 3): "On the basis of an analysis of a statistical sample, we estimate that during the fiscal year 1959, the Government paid line-haul transportation charges totaling \$184 million for shipments of 8 million tons of freight at reduced rates tendered under section 22 of the Interstate Commerce Act. These shipments constituted 27 percent of the total tonnage and 28 percent of the related line-haul charges paid on Government bills of lading for the year. Had payment for the same shipments been made on the basis of available tariffs, the cost to the Government would have been increased by an estimated amount of \$57 million." Based on a knowledge of increases in both commercial tariff rates and Government traffic since FY 1959, we believe that current data, if available, would show that the increase would be substantially higher.

Accordingly, GSA is opposed to the enactment of S. 1174.

The effect of the enactment of this measure on the budgetary requirements of GSA is indicated by the data set forth in the ninth paragraph of this letter.

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

Sincerely yours,

ROBERT T. GRIFFIN,
Acting Administrator.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF EMERGENCY PLANNING,
Washington, D.C., June 22, 1967.

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

DEAR MR. CHAIRMAN: This is in reply to your request for comments of this agency concerning S. 1174, 90th Congress, a bill, "To amend section 22 of the Interstate Commerce Act to restrict certain authorization for free or reduced rate transportation of property or passengers."

We are advised that section 22 in its present form has been beneficial to the Government in its capacity as a shipper. The rate adjustments to the Government are reasonable and compensatory, and it does not appear that such rates have a detrimental effect upon non-Government shippers. We feel therefore that section 22 in its present form is a sound provision and is consistent with the national transportation policy to foster sound economic conditions in transportation and to encourage the establishment of reasonable charges.

A sound transportation system is important to the national defense. The Office of Emergency Planning favors section 22 in its present form and is opposed to S. 1174.

From the standpoint of the Administration's program, the Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely,

CHARLES S. BREWTON
(For Farris Bryant, Director).

(Thereupon, at 12:20 p.m., the hearings in the above matter were concluded.)

(The following material was received after the close of the hearings and placed in the record in accordance with the chairman's instructions:)

STATEMENT OF HON. PHILIP A. HART, U.S. SENATOR FROM THE STATE OF MICHIGAN

Mr. Chairman, I urge that early and favorable action be taken on S. 1174, which I introduced to eliminate the preferential treatment accorded governmental bodies in the shipment of their goods.

It is not surprising that those who are obtaining preferential treatment in the law would seek to retain their privileges. Governmental agencies—both federal and state—who enjoy preferential treatment under section 22 of the Interstate Commerce Act are opposed to any change in this section, and no doubt believe their course of action is in the public interest.

The argument of these governmental agencies that they should retain their present preferential treatment overlooks the effect of these reduced rate privileges on our national transportation system, certain regions of this country, and our nation's shippers and consumers.

As the members of this Committee know, the underlying purpose of the Interstate Commerce Act as stated in the 1886 Report of this Committee was to eliminate preference and discrimination in the treatment of shippers:

"The provisions of the . . . (Interstate Commerce Act) are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment . . ." (S. Report No. 46, Forty-ninth Cong., 1st sess. 215-216 (1886))

If the claimed savings of governmental bodies under section 22 are correct, either commercial shippers are paying rates that are higher than necessary, or the Government is being granted uneconomic rates which the shipping and consuming public is forced to make up in the transportation of their goods.

As the report to this Committee of its special study group on transportation policy (commonly called the "Doyle" Report) pointed out, page 505, assuming the government were actually saving \$30 million as a result of section 22 rates, and assuming further the traffic is split equally between motor carriers and railroads, it would be necessary for the railroads to pick up an additional \$75 million in commercial traffic revenues and the truckers an additional \$300 million in revenues to offset these "savings." The reason for this, according to the "Doyle" Report, is that these carriers handling the traffic incur the same 80 percent operating ratio for the railroads, and 95 percent operating ratio for the motor carriers, regardless of how low a rate is charged on government traffic.

If the government is using its vast resources as the nation's largest shipper to obtain preferentially lower rates, it must be that the burden of these rates is being placed on the backs of the nation's commercial shippers who already are paying higher rates, and are faced with paying even higher rates.

In discussing transportation charges paid by shippers, we must never lose sight of the fact that ultimately the consumer pays the freight as part of the cost of the goods he buys. When freight rates on the necessities of life—bread, milk, clothing, etc.—are raised, the burden falls hardest on the low income wage earner and those on a fixed income.

The Interstate Commerce Commission is considering a proposed 3 to 5 percent increase in the rates charged commercial shippers by our nation's railroads. The nation's motor carriers are also seeking higher rates.

Because of the multiplier effect of the operating ratio on any claimed savings of governmental bodies, pointed out in the "Doyle" Report, the amount of any claimed savings by governmental bodies must be offset by vastly greater increased rates on the remaining traffic, including freight rates on the necessities of life.

The unseen tax on consumers from section 22 rates could fall hardest on those least able to afford this additional cost on their necessities of life.

I have received letters, as no doubt other members of this Committee have, from state liquor agencies seeking to retain their present section 22 rate privileges. If these lower freight rates on alcohol are indeed being subsidized by higher freight rates on necessities, certainly it is a cause for concern.

In addition to the broad ramifications resulting from this preferential treatment accorded the government, section 22 also works to lock-in discrimination against certain regions. One of these regions is the Great Lakes. The September 13, 1965, report of the special subcommittee of this Committee to study Great Lakes-St. Lawrence Seaway transportation pointed out that the rates quoted by the railroads for the transportation of government cargoes that originate in the Midwest and travel to the east coast are consistently lower than the rates granted by the railroads to similar types of shipments originating in the Midwest and traveling the much shorter distance to a lake port. The Seaway Report concluded that legislation should be considered to change section 22 to eliminate this preferential treatment accorded to the government.

In May of 1964, I presided over hearings of this Subcommittee on S. 2075, a bill to amend section 22 so as to assure that rates, fares, and charges established under that section for the U.S. Government are free from undue preference and prejudice. The government witnesses testifying at these hearings admitted that acting as shippers of government traffic they were neither competent nor appropriately staffed to weed out unfair section 22 rates.

The weeding out of such preferential and prejudicial and economically unsound rates is not the province of governmental shipping agencies such as the Department of Defense, General Services Administration, or State Liquor Control agencies. It is the province of the Interstate Commerce Commission, which has been established to perform that task.

I fully concur in the following recommendation of the "Doyle" Report:

"The policy of the Government should be that its agencies pay fair and reasonable rates, not as determined by these agencies, but as determined by an impartial judge, the regulatory agency."

I firmly believe that preferential treatment under section 22 should be ended and ended soon. I recognize, however, that there will be opposition to such repeal from those enjoying this special privilege. If the members of this Committee are in doubt as to the wisdom of repeal at this time, let me offer another suggested course of action.

In the Department of Transportation Act, Public Law 89-670, section 4(a), it is made the duty of the Secretary of Transportation to "consult with the heads of other Federal departments and agencies on the transportation requirements of the Government, including the procurement of transportation or the operation of their own transport services in order to encourage them to establish and observe policies consistent with the maintenance of a coordinated transportation system."

The Secretary of Transportation should be encouraged to study the impact on our national transportation system, on the various coasts and regions of the country and on our nation's consumers of section 22 rate privileges, and report to this Committee as soon as practicable.

If it meets with the approval of the Chairman, I would appreciate having copies of my June 1, 1964 and March 3, 1967 Senate Floor remarks on section 22 rates included in the record following this statement.

[From the Congressional Record, June 1, 1964]

EFFORTS TO AMEND SECTION 22 OF THE INTERSTATE COMMERCE ACT TO REMOVE INEQUITIES INVOLVED IN GOVERNMENT TRANSPORTATION RATES

Mr. HART. Mr. President, for some time I have been concerned with the problem of insuring that transportation rates established for the Federal agencies under section 22 of the Interstate Commerce Act do not work to the disadvantage of any region of the country.

Recent hearings held by a special subcommittee of the Senate Commerce Committee on Great Lakes-St. Lawrence Seaway shipping have made even clearer the need for a revised policy to remove inequities which now operate against certain of our Midwestern States and Great Lakes ports.

It is now time to ask who is trying to cover up preferential, prejudicial, and discriminatory Government section 22 rate deals.

On August 23, 1963, I introduced S. 2075, which does repeal section 22, but only subjects these rate deals to Limited Interstate Commerce Commission review to determine if Government traffic is moving under discriminatory, preferential or prejudicial rates.

The Interstate Commerce Commission may now grant relief to citizens and areas that are being unreasonably prejudiced or unduly disadvantaged by unfair rates except rates under which the Nation's largest shipper, the U.S. Government, moves its traffic.

The Government witnesses who appeared and testified at recent hearings before the Surface Transportation Subcommittee admitted that Government shipping agencies are neither competent nor appropriately staffed to weed out unfair section 22 rates, and stated that they had no objection in principle to S. 2075.

Despite this, other representatives of the same Government agencies informed me 10 days later that these agencies were now opposed to Interstate Commerce Commission review to determine if section 22 rate deals are preferential or prejudicial.

Because of complaints received from many areas and groups, the Subcommittee on Surface Transportation of the Senate Committee on Commerce on May 8 and 11, 1964, held hearings on S. 2075, which would allow localities, ports, port districts, gateways, regions, districts, and territories to apply to the Interstate Commerce Commission for relief from discriminatory, preferential, or prejudicial rates accepted or negotiated by Government shipping agencies.

Mr. Charles R. Seal, general counsel, Virginia State Ports Authority, appeared at these hearings on behalf of the American Association of Port Authorities, and on behalf of the North Atlantic Ports Association which represents the ports from Portland, Maine, to Hampton Roads, inclusive. He testified:

"Legislation such as proposed by bill S. 2075 is urgently needed to overcome the present unfair competitive rate practices inherent in section 22 rates."

Mr. Sam Rice, Jr., president, Grain and Feed Dealers National Association, appeared on behalf of that organization which has 2,150 direct memberships, held by individual grain and feed firms in 46 States, plus 53 affiliated State and regional grain and feed associations that represent approximately another 16,000 grain and feed firms. He testified:

"This national association believes that S. 2075 is a step in the right direction in that it would prohibit carriers from making tenders under section 22 which would subject any particular area of unjust discrimination or to undue prejudice or disadvantage, and would empower the Interstate Commerce Commission to hold hearings on complaints of such discrimination."

The committee also received testimony supporting the need for passage of S. 2075 from Abe McGregor Goff, Chairman, Interstate Commerce Commission, and James F. Fort, counsel, public affairs, American Trucking Association.

The committee received statements in support of the bill from Louis C. Purdy, general manager, Toledo-Lucas County Port Authority; A. C. Ingersoll, Jr., chairman of the executive committee, the Common Carrier Conference of Domestic Water Carriers; Terrance J. Hall, president, Colorado Grain and Feed Dealers; Harold W. Barton, chairman of the board, Central Soya; and Fred H. Tolan, freight traffic consultant, Seattle, Wash., on behalf of several hundred shippers in the Pacific Northwest.

In addition, the committee received statements favoring outright repeal of peacetime section 22 rates from S. G. Tipton, president, Air Transport Association; Austin L. Roberts, Jr., general solicitor, National Association of Railroad and Utilities Commissioners; L. James Harmanson, general counsel, National Council of Farm Cooperatives; and the Transportation Association of America.

Even the Government witnesses who appeared at the hearings did not oppose S. 2075, which would not repeal section 22, but rather subject these Government deals to ICC review to assure that they are free from undue preference and prejudice.

Maj. Gen. Rush B. Lincoln, Jr., commander, Defense Traffic Management Service, Department of Defense, testified:

"Therefore, as a practical matter, the Department of Defense has no objection to appropriate provisions with proper procedural remedy to provide that Government rates shall not produce undue geographical discrimination."

He conceded that the Department of Defense is not "functionally competent nor appropriately staffed to make determinations with respect to geographical freight-rate discrimination" in deciding whether to accept or reject a section 22 rate.

Mr. Robert B. Conrad, Commissioner, Transportation and Communications Service, General Services Administration, testified:

"As far as this particular portion of the legislation is concerned (ICC review of rates for discrimination) we would have no strong objection to this particular portion of the act."

He also conceded that the only review that GSA makes as a user of transportation is as to the level of the rate, and no review is made for undue preference or prejudice as far as marketing or shipping areas.

Mr. Edwin W. Cimokowski, Assistant General Counsel, General Accounting Office, testified:

"We have no basic objection to this type of legislation in principle."

Since the Government witnesses who testified had no opposition in principle to S. 2075, I urged them to meet with the ICC to iron out technical objections to certain 15-day notice provisions in the bill. A meeting was held, and a few days later the Commerce Committee staff was notified that the agencies were ready to make a report.

Mr. President, I do not know who determined that there should be a shift in government policy, but between the close of the hearings on May 11 and the meeting on May 20, there appears to me to have been a definite shift. The Government agencies who could not defend preferential, prejudicial and discriminatory rates at a public hearing were very much in favor of such section 22 deals—at least, they opposed the limited ICC review—at the meeting in which the press was not present.

Mr. V. F. Caputo, Director for Transportation and Warehousing Policy, Department of Defense, advised at the meeting that Defense was now opposed to the bill in principle. Mr. Caputo did not disavow General Lincoln's public testimony or explain why there had been a shift in policy. He stated that if certain citizens believed that Government section 22 rail deals were discriminatory, preferential or prejudicial, they should raise the problem with the railroads.

Mr. President, who is afraid of having the complaints of the American Association of Port Authorities, and the National Feed and Grain Dealers submitted to impartial scrutiny by the ICC?

Mr. Frank Barton, Deputy Under Secretary for Transportation—Operations—Department of Commerce, who submitted a statement but did not testify at the hearings, advised at the meeting that the Department of Commerce was now opposed to S. 2075. Mr. Barton did not disavow the written statement of Mr. Law-

rence Jones, Acting General Counsel, submitted to the Commerce Commission on December 23, 1963, supporting S. 2075:

"The principal purpose of the bill appears to be to bring clearly within the purview of the Interstate Commerce Commission any unjust discriminations or undue or unreasonable prejudices or disadvantages to any locality or region which might arise from the quotation of special rates to the Government under section 22 of the Interstate Commerce Act. The Department of Commerce supports this objective and agrees that the Interstate Commerce Commission should have clear authority to correct such discriminations by investigations and orders provided in section 13 of the act."

Mr. Barton stated at the meeting on May 20 that any bill to remove section 22 rate discrimination should await disposition of H.R. 9903. It was his view that all deregulated rail rates under H.R. 9903—not only Government rates—will soon be freed from ICC regulation as to discrimination, preference, and prejudice.

In his transportation message to the Congress, President Kennedy called for a transportation system that means "equality of opportunity for all forms of transportation and their users and undue preference to none."

When Mr. Barton spoke before the Great Lakes Shipowners Association in Elkhart Lake, Wis., on July 8, 1961, he stated that:

"Elimination of a favored position in transportation should provide both the carriers and Government transportation officers with the opportunity further to improve traffic management. With such a change in section 22, the Government would expect all transportation services to be performed more efficiently with benefits spreading throughout the common carrier sector of our transportation system and in turn to the entire economy."

Mr. President, I submit that Mr. Barton's 1961 statement is correct and sound, and that the time has come to submit these privileged Government rates to scrutiny.

Another participant at the meeting on May 20 who did not testify at the hearings was Mr. Gordon Murray, Bureau of the Budget. Mr. Murray summed up the position of the executive agencies as follows: S. 2075 would be an unnecessary harassment of the Government because freight rate discrimination is not a problem anymore. Mr. Murray said the Government agencies would not even set up a committee to hear complaints.

The time has come to end this section 22 skullduggery. S. 2075 is a limited bill designed to end such indefensible conduct. S. 2075 would not repeal section 22. It only allows areas of this country to get the ICC for review of unfair section 22 rate deals—a review job which the Government shipping agencies concede they are not equipped to perform.

There is an obligation on the part of the Government shipping agencies to move Government traffic on rates that are not discriminatory, preferential, or prejudicial. In public, the Government agencies admit that they are not competent or staffed to protect the public from unfair section 22 deals and agree to ICC review. In private, these same Government agencies are adamant in seeking to retain a privileged status for their section 22 rate deals.

Who ordered this switch in policy on the part of the executive agencies? Who is trying to cover up preferential, prejudicial, and discriminatory Government freight rate deals? I call upon the officials of the executive agencies to reconsider their private statements and to adhere to their public testimony.

Mr. President, there will be further hearings on these section 22 rates. If these Government agencies remain adamant on such limited ICC review, this Congress may have to give consideration to subjecting all Government traffic, except emergency or secret shipments, to full and complete Interstate Commerce Commission review.

[From the Congressional Record, Mar. 3, 1967]

AMENDMENT TO SECTION 22 OF THE INTERSTATE COMMERCE ACT

Mr. HART. Mr. President, I am again introducing a bill to eliminate the preferential treatment accorded the U.S. Government in the shipment of its own goods.

Under section 22 of the Interstate Commerce Act, Government agencies may negotiate with rail, motor, water, and freight forwarders for free or reduced rates. Such rate deals are not subject to regulation by the Interstate Commerce Commission or scrutiny by the Department of Justice or Federal Trade Commission. Under an exception to the antitrust laws, carriers may, through the medium of rate bureaus, decide what rates to charge the Government.

Except for a 1957 amendment relating to filing, the provisions of section 22 relating to Government traffic have remained essentially the same since passage of the original act to regulate commerce in 1887. At that time the Government was a comparatively small user of freight or passenger services of the carriers. Today, however, it is the largest single purchaser of transportation services. Moreover, not only have Federal Government shipments under section 22 increased, but the use by State and municipal governments of these reduced rates has mushroomed.

Government agencies claim that they save millions of dollars annually through these rate deals. If that is the case, then other shippers are paying rates that are higher than necessary, or the Government is being granted uneconomic rates which the shipping and consuming public is making up in the transportation cost of other commodities. If the Government rates are too low, this is an unseen tax on shippers.

In August 1963 I introduced S. 2075 to subject these Government deals to the scrutiny of the Interstate Commerce Commission for the limited purpose of determining if Government traffic is moving under discriminatory, preferential or prejudicial rates.

In May 1964, I presided over hearings of the Commerce Committee on S. 2075. Government witnesses testifying at these hearings admitted that Government shipping agencies are neither competent nor appropriately staffed to weed out unfair section 22 rates, and stated that they had no objection in principle to S. 2075.

These hearings demonstrated the widespread support for a change in section 22. Testifying or submitting statements in support of a change or complete repeal of section 22 were the Interstate Commerce Commission, National Association of Railroad & Utilities Commissioners, Transportation Association of America, American Trucking Associations, Air Transport Association, Common Carrier Conference of Domestic Water Carriers, American Association of Port Authorities, Grain & Feed Dealers National Association, the National Industrial Traffic League, and many others.

In its statement to the committee, the National Industrial Traffic League, which is a nationwide organization of shippers, including in its membership chambers of commerce, boards of trade, and similar commercial organizations pointed out:

"For 10 years the League has been urging legal and moral reform of practices which have appeared in the utilization of section 22."

The American Trucking Associations has long urged the complete repeal of section 22. As the late Frederick G. Freund, then traffic director, American Trucking Associations, concisely put it in a sentence which was quoted before the committee:

"The granting of cut rates to the Government, in effect, subsidizes the world's largest shipper, encourages destructive practices between and among the various modes of transportation and, through the encouragement of destructive practices, jeopardizes the financial stability of our transportation system."

At that time, in its 78th annual report to the Congress, the Interstate Commerce Commission recommended that section 22 be amended to limit "22" rate deals only to time of war, and to transportation which remains exempt from economic regulations under parts II and III of the act. The ICC recommended that the Government pay full tariff rates and charges for transportation services because the preferential treatment of Government traffic "has a strong tendency to increase the cost of regulated transportation services to commercial users who, when their rates become too high, resort to private carriage. Such diversions of traffic are clearly detrimental to the maintenance of a sound common carrier system. Moreover, the preferential treatment accorded the various levels of government is, in our view, inconsistent with the national transportation policy which has among its objectives 'to foster sound economic conditions in transportation' and '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.'"

In addition to the broad ramifications resulting from this preferential treatment accorded the Government, the Great Lakes ports are specifically discriminated against in that the section 22 rate deals result in actually diverting cargo that would otherwise logically flow through these ports.

On September 13, 1965, a special subcommittee of the Commerce Committee to study Great Lakes-St. Lawrence Seaway transportation issued its report. This report pointed out that the rates granted by the railroads for the transportation

of Government cargoes that originate in the Midwest and travel to the east coast are consistently lower than rates granted by the railroads for similar types of shipments originating in the Midwest and traveling the much shorter distance to a lake port. The Seaway Report concluded that legislation should be considered to change section 22 to eliminate this preferential treatment accorded to the Government.

As recently as January of this year, during the Commerce Committee hearing on the nomination of Alan Boyd to serve as Secretary of the Department of Transportation, Senator LAUSCHE referred to the work of this special subcommittee which he so ably chaired. Senator LAUSCHE specifically included section 22 rates among the items meriting the attention of the new Transportation Secretary. In referring to the report, Mr. Boyd said:

"This is a matter to which I expect to give priority."

In September 1966 the Great Lakes Task Force, which is composed of the Council of Lake Erie Ports, the Great Lakes Commission, the Great Lakes Terminals Association and the International Association of Great Lakes Ports had this to say about the discriminatory effect of section 22:

"Section 22 quotations have been and are being used to direct traffic from the Great Lakes area to coastal ports to the disadvantage of Great Lakes port. Very few section 22 rates or quotations have been offered or negotiated on traffic to Great Lakes ports.

"An inquiry should be made either by the Congress or the Interstate Commerce Commission to determine whether section 22 rates should be limited as proposed in 1957 [to times of war or national emergency] and whether the present implementation of that authority unduly discriminates against Great Lakes ports."

One of the most ringing denunciations of section 22 and the special hardship to Great Lakes ports that has resulted from its use was given by Mr. Louis C. Purdy, executive director of the Toledo-Lucas County Port Authority. On February 7, 1967, at a breakfast sponsored by the Council of Lake Erie Ports, Mr. Purdy had this to say:

"For purposes of transportation, the United States was chopped into a neat East, West, Gulf Coast pie . . .

"Cargo was rolling past our ports, in one form or another on its way to the coast. Close examination of land rates, in hundreds of cases revealed that charges were less to transport something 700 miles than 200 miles . . .

"We found a little 'hooker' in the Interstate Commerce Act which permits carriers to move Government goods at free reduced rates . . . we tried to amend the Interstate Commerce Act by proving that carriers were frequently hauling Federal goods at a loss, making up the deficiency on commercial shipper."

Mr. Purdy's comments on the 1961 Defense Department task force study concerning the feasibility of moving military goods out of Great Lakes ports points out even more vividly the magnitude of the problem:

"The conclusions of this impartial and indepth report confirmed many of our contentions. Perhaps we were naive, but we confidently expected a sharp increase of military movements as a result of this report. Instead, what has happened? Since 1962, the volume of military cargo flowing through the Great Lakes ports has declined steadily to the point where *more military cargo flowed out of one single East coast port in a two-week period than moved out of all of the Great Lakes ports put together during the entire 1966 season.*

"Doesn't this strike you as a strange situation when you realize that production points for military goods generally lie well within the gathering area of the lakes?"

Because of the exceptionally concise and forceful manner in which Mr. Purdy has outlined the problems and needs of the Great Lakes ports and the St. Lawrence Seaway, I ask unanimous consent to insert his speech in the Record.

I fully concur with the 1961 report to the Committee on Commerce by its special study group on transportation policy—known as the Doyle report—in which it was stated:

"The policy of the Government should be that its agencies pay fair and reasonable rates, not as determined by these agencies, but as determined by an impartial judge, the regulatory agency."

Furthermore, I believe it is unconsonable that the Government should take part in freight rate discrimination against regions, ports, and shippers in the movement of its traffic.

The Department of Transportation Act, Public Law 89-670, section 4(a), makes it a duty of the Secretary of Transportation to "consult with the heads of other Federal departments and agencies on the transportation requirements of the

Government, including the procurement of transportation or the operation of their own transport services in order to encourage them to establish and observe policies consistent with the maintenance of a coordinated transportation system."

Hopefully the new Secretary of Transportation will prevail upon Government shipping agencies to establish and observe policies to carry out our national transportation objectives.

Meanwhile I am again introducing the identical bill I introduced in the 89th Congress so that citizens and regions may be protected from discriminatory and unfair rates given the U.S. Government. This bill would repeal section 22 in its entirety, except in time of war or national emergency.

The chairman of the Senate Commerce Committee has also introduced a bill S. 754, by request of the ICC, dealing with section 22 which differs somewhat from the version I am introducing today. Although there are differences, the Interstate Commerce Commission repeated its statement of 2 years ago, from which I quoted earlier, concerning the need for repealing section 22. I think it is important for both approaches to be considered by the Commerce Committee.

INTERSTATE COMMERCE COMMISSION.

Washington, D.C., June 26, 1967.

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

DEAR CHAIRMAN LAUSCHE: This is in response to your request made during the hearings before your Committee on S. 754 and S. 1174 on June 5, 1967, that I furnish the answers to four questions which Senator Magnuson asked you to submit to me. Each of the questions is restated for convenience before proceeding with the answer.

1. What were the so-called savings claimed by the General Accounting Office and the Department of Defense in the 1961 studies of government traffic moving by rail under section 22 rates?

Answer

The GAO study indicated that a possible savings of \$57 million resulted from the use of section 22 quotations, as compared with tariff rates on traffic moving on Government bills of lading. The study was based on a 1-percent statistical sample of payment vouchers audited by GAO for the fiscal year 1959, projected to reflect annual totals. Approximately 1 million vouchers totaling \$631 million and covering 4.2 million line-haul shipments were embraced in the sample. Excluded from the study were shipments moving on commercial bills of lading for which the Government pays the transportation costs, either direct or indirect, i.e., (1) shipments made by the Tennessee Valley Authority and the Commodity Stabilization Service, (2) shipments of materials purchased f.o.b. destination, or (3) shipments made by Government contractors.

The shipments on which section 22 rates applied represented 14.6 percent of the shipments moving on Government bills of lading and 29.1 percent of the line-haul charges paid thereon. However, \$21 million of the assumed savings (\$57 million) covered transportation of commodities that were unique to the Government, and on which, due to the absence of commercial movement, class rates, the highest level of tariff rates, would have applied. It is reasonable to assume that in the absence of section 22 rates, the carriers would have established lower commodity rates in tariffs as a result of negotiations between the Government agencies and the carriers.

The remaining \$36 (36.1) million covered transportation of commodities that are shipped by both the Government and private shippers. However, all of this amount can hardly be considered as savings to the Government. The Government traffic usually moves in a different direction than commercial traffic and between different points. For that reason, it would ordinarily take the higher class rates, but, in the absence of section 22 rates, the Government probably would request and the carriers would establish tariff commodity rates on a level comparable, very likely, to those available under section 22.

The study contained nothing regarding the claimed savings by the Department of Defense. However, at the hearings that ultimately resulted in Public Law 85-249, which required the filing of section 22 quotations and tenders for the Government, the Defense Department claimed that the elimination of section 22

would cost the Government \$128 million. There were other claims regarding the possibility of higher transportation charges, but there seemed to be no unanimity as to the amounts.

The following is from page 5 of Senate Report No. 410, 85th Congress, first session, to accompany S. 939:

"Your committee is not satisfied with the estimates available on the cost of Government transportation. It is equally dissatisfied with the various estimates on additional cost to the taxpayer in the form of higher transportation charges that might accompany repeal of the free or reduced rates provisions for the Government of section 22, or limitation of its use to time of war or national emergency. Accurate information should be assembled on these points by the agencies concerned."

It was due to these circumstances that the Committee, in favorably recommending amendment of section 22 to require filing of quotations and tenders with the Commission on Government traffic, directed that a study be made. The Commission, other Government agencies, and private groups, endeavored to make the studies requested by the Committee, but were unable to assemble sufficient, satisfactory data to do so. The Committee eventually requested the GAO to make the study and that is the 1961 study entitled Statistical Study of the Use of Rates Authorized Under Section 22 of the Interstate Commerce Act and the Effect on Government Freight Transportation Costs, from which the aforementioned information was obtained.

2. Since 1961 there has been a greatly expanded movement of military traffic, and a greater utilization of section 22 rates by state and municipal government. If a study were to be done today on the same basis as the 1961 studies, would it be fair assumption that the so-called savings on rail traffic claimed through use of section 22 rate privileges could be double or even triple those claimed in the earlier studies?

Answer

We have no information available on which to provide a reasonably accurate answer to this question. We do not know the amount of Government traffic which is moving on section 22 quotations, and have no information whatsoever as to the volume of state and municipal government traffic that moves on section 22 quotations. It is, therefore, impossible to estimate the so-called savings on rail traffic at the present time through the use of section 22 quotations or tenders. However, it is reasonable to assume that traffic managers for the Government, in their negotiations with the carriers, have been able to negotiate rates which would compare favorably with those embraced in the 1961 study.

3. In the 1961 report of the Commerce Committee, special study group on transportation policies in the United States, commonly referred to as the "Doyle" report, it is pointed out that to offset every dollar of government rail traffic so-called savings, it takes five dollars of commercial traffic revenue—assuming an 80 % rail operating ratio. Under today's conditions, would that same assumption as to the burden on other traffic of these so-called savings on government rail traffic be correct?

Answer

We have no information available on which to base an answer to this question. The question is based on the assumption that the rates granted Government traffic are substantially lower than those applicable on commercial traffic and approximate 80 percent thereof. The 1961 study by GAO, however, does not substantiate that assumption. As previously pointed out, the claimed savings on shipments moving on Government bills of lading amounted to \$57 million out of a total transportation bill of \$631 million paid on such shipments. A large portion of the \$57 million represented shipments on which the Government probably would have obtained lower tariff rates in the absence of section 22.

4. What is the amount of additional commercial revenues sought by the nation's railroads in the rate increase proceedings now pending before the Commission?

Answer

According to the verified statements filed with the Commission on June 2, 1967, in Ex Parte 256, *Increased Freight Rates, 1967*, it is estimated that the proposed increases in freight rates and charges will produce \$328 million.

Sincerely yours,

WILLIAM H. TUCKER,

Chairman.

DEPARTMENT OF THE ARMY,
Washington, D.C., July 26, 1967.

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

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 1174, 90th Congress, a bill "To amend section 22 of the Interstate Commerce Act to restrict certain authorization for free or reduced rate transportation of property or passengers." The Secretary of Defense has assigned to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The purpose of S. 1174, which is substantially similar to companion bills, S. 754 and H.R. 6534, 90th Congress, is to amend section 22 of the Interstate Commerce Act so that the granting of free or reduced rates to the United States, state or municipal governments would be limited to transportation services performed during time of war or national emergency. This bill is identical to S. 2714 of the 89th Congress, also introduced by Senator Hart.

The Department of the Army on behalf of the Department of Defense is strongly opposed to enactment of S. 1174.

The proposed legislation recognizes the necessity for special provisions for the movement of military traffic in time of war or national emergency but would prohibit such special provisions for the movement of military traffic in peacetime. The same conditions which require special provisions for the handling and movement of military traffic in time of war or national emergency exist in peacetime. It is only the volume that varies.

There are many reasons why laws and regulations applicable to commercial transportation should not be made applicable to military traffic. Some of the principal benefits to both the carriers and the Department of Defense, in the utilization of the provisions of section 22 of the Act, are:

(a) Reasonable rates, fares and charges, and rules and regulations may be established economically and expeditiously. Military traffic must be responsive to military requirements. It would be impossible to withhold critically needed military supplies until the establishment of reasonable rates through normal regulatory procedures.

(b) Retroactive applications may be authorized where justified. Urgency often requires the movement of military traffic prior to completion of negotiations as to the level of rates. Under section 22 these negotiated rates may be made retroactive; however, under tariff provisions this would be prohibited. This provision is beneficial both to the military and the carriers in that shipments may move immediately, and a reasonable rate structure can be established under section 22 during the actual movement, or upon completion of the movement, on a retroactive basis. Obtaining reparations for excessive charges under tariff rates is an administration and legal burden which both parties escape under section 22.

(c) Cancellation of quotations may be accomplished economically when the need for the quotations no longer exists. It is apparent that rates to cover one-time moves can be more readily and less expensively established and canceled through the medium of rate tenders than by costly tariff specifications and procedures.

(d) Section 22 permits valuable experimentation in the simplification of rates, a matter which is of growing concern to many shippers and carriers.

Rates negotiated between the carriers and the Department of Defense which are established under section 22 are fully compensatory to the carriers and do not place a burden on commercial shippers. In the *Western Class Rate* cases (296 I.C.C. 555), involving Mountain Pacific interstate and interterritorial rail traffic, the record shows that the car-mile earnings of section 22 traffic were considerably higher than the car-mile earnings on commodity and "exception" rates. A study made by the Interstate Commerce Commission in the above-cited cases indicated that section 22 traffic actually had but a negligible impact on the nation's total traffic. Section 22 traffic constitutes only about 1 per cent of the total commercial rail traffic of the nation.

What is often overlooked in considering section 22 is that the rate quoted per hundred pounds is not the decisive factor in determining the compensatory nature of a rate for a particular segment of traffic. The combination of rate and weight per shipment is the significant measurement. Section 22 tenders attract highly desirable traffic. Objective studies conforming to strict statistical

standards prove that unit freight revenues under section 22 are higher than national earnings of the same mode for the same units of measure.

Opponents of section 22 have stated that it is "mutually exclusive" for the Department of Defense to assert that (1) section 22 revenue levels are higher than commodity rate levels and (2) to deny the Department the use of section 22 rates would cost millions of dollars. This criticism is fallacious because, in the absence of section 22 rates, the military traffic would generally not revert to commodity rates, but to class rates, which are much higher. The commodity rate structure is the product of many years of vigorous effort on the part of industry to reduce rates for established flows of traffic from and to commercial centers; most military activities are outside these centers and commodity rates do not apply. In obtaining this structure, industry has employed weapons not available to military traffic managers, such as the use of private carriage in direct competition with common carriers, the withholding of traffic, and like measures.

The fiscal effects of enactment of S. 1174 cannot be estimated with full accuracy. However, a detailed study of military traffic recently conducted by the Military Traffic Management and Terminal Service shows that in the absence of section 22, the added costs to the Department of Defense during CY 1966 would have amounted to \$69,500,000.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

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

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

STATEMENT OF JAMES F. PINKNEY ON BEHALF OF AMERICAN TRUCKING ASSOCIATIONS, INC.

My name is James P. Pinkney and I appear for the American Trucking Associations, Inc., 1616 P Street, N.W., Washington, D.C. 20036.

The American Trucking Associations, Inc., supports S. 1174 which, if enacted, would remove the preferential rates now in use for transportation of goods for the Federal, State and municipal governments. It would place such transportation under the regulated rate structure—just as is the traffic of the private segment of the national economy—except in time of war or national emergency. We also support the Interstate Commerce Commission bill, S. 754, but with reservations because of its exceptions which will be discussed later.

The fundamental rationale underlying opposition to the principle of Section 22 rates for governments can be best explained after a brief examination of the philosophy of the laws regulating common carriers.

The National Transportation Policy set forth by the Congress in the Interstate Commerce Act includes as one of the aims of regulation: "... 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 ..." This, the Commission attempts to do in making a finding that a rate is just and reasonable for the service provided. Therefore, the rates and charges as developed under Commission supervision should properly distribute the cost of the services provided equitably among the users of the service. Among the reasons for regulation have been the desire to remove unhealthy destructive competitive practices, the need for a sound adequate nationwide common carrier system, and, above all, the requirement that the rates and charges for services be reasonable, non-discriminatory and non-preferential. The present application and use of Section 22 violates all of these concepts and policies.

The tremendous growth of governmental traffic which need not move at established just and reasonable rates has tended to undermine the very principles of the regulated common carrier system. As competitive rates develop for government traffic, the commercial segment of the carrier's traffic must bear a disproportionate share of the expense. It follows as the night the day to me. When this disproportionate share gets too great, one result is private carriage. Indeed, the shipper may be forced into private carriage to maintain competitive

prices with other producers. The end result is less traffic from the private sector for the regulated common carrier and increased costs which must be borne by the remaining segment of the private shipper's traffic. The overall effect may soon be felt by the governments as well because as governmental traffic becomes a greater and greater percentage of total traffic moved by the regulated common carrier, the cost to the governments will necessarily increase proportionately. Will the government as well be forced into private carriage?

Consideration of Section 22 rates merely from the point of policy clearly indicates their impropriety. They provide a statutorily-sanctioned discrimination in favor of governmental bodies and against the shipping public. And, indeed, discrimination does take place as the government shipping agencies feel constrained to seek and accept the lowest rate they can get. They feel that they are not bound by the same limitations that apply to commercial shippers. They feel they do not have to adhere to the provisions of the national transportation policy of the Congress.

Yet, government shipping agencies should be the first to admit that they cannot control the downward spiral of rates which they request or which are voluntarily tendered to them by the carriers under section 22. They should also be the first to admit that they cannot prevent carriers from injuring themselves through destructive rate cutting. Yet, while these uncontrolled, destructive Section 22 practices can be corrected only through legislation, government shipping agencies strongly resist any attempts at correction.

Section 22 rates are fundamentally a violation of the Interstate Commerce Act and do not follow the intent of the National Transportation Policy.

The United States Government is now the country's largest shipper and continues to grow in size. The tremendous pool of freight controlled by the government must be included in the total of all freight moved by common carriage for ratemaking purposes and for constructive legislation and procedures. The constantly increasing labor and total operating costs of the motor carriers on the one hand must be compensated for by increased tonnage being handled under reasonable, compensatory rates in accordance with the provisions of the Interstate Commerce Act without regard to whether the shipper is the Government or a private concern.

The motor carriers are faced with the necessity of handling ever increasing volumes of small shipments, including an increasing percentage of light and bulky ones brought about by new materials and packaging methods on a less-than-truckload basis. This total also includes less-than-truckload shipments previously handled by the railroads that they are now permitted to avoid because they have found it uneconomical to make these small, costly deliveries. The carriers must obtain a proper amount of revenue on government freight if they are to be expected to furnish necessary service in other areas. The constant increase in private carriage indicates that the general public is no longer willing to subsidize government shipments whether they be under the protection of Section 22 or any other device of law which permits the charging of rates other than those in the published common carrier tariffs.

The government has previously contended that the I.C.C. ratemaking procedures are too rigid, too time consuming and too complicated to meet their needs. If government traffic were brought under regulation the same as the traffic of all other shippers, government shippers could exert constructive influence in all areas where transportation research would open new doors for all shippers and carriers alike. The fear that the government transportation bill would be substantially increased is not necessarily true. However, it is an undeniable fact that the increasing amount of government freight moving in interstate commerce at rates below those offered the general public is weakening the common carrier system. Experience has shown that common carriers can operate most successfully where all shippers are treated alike and we believe the government has men of ability, transportation experience and knowhow sufficient to adequately protect their interests in an open transportation market. The best interests of the government are protected by a strong common carrier system, which is being systematically destroyed by cut-throat competition, sanctioned by law for their largest single customer.

No reasons exist which rationally support the continuation of these unwarranted rate concessions to the governments. And, S. 1174 clearly and succinctly removes these rate concessions, except in the time of war and national emergency. S 754 does so as well, but it continues the Section 22 rate practices on agricultural commodities and bulk commodities, regardless of war or national

emergency—these continued concessions seem unnecessary and are not substantially explained in the I.C.C. justification sent to the Congress with S. 754. If the evils of Section 22 are to be erased, there is no reason to continue them in a limited way.

Finally, let me point out that far more than defense and other Federal Government traffic is involved. There is a tremendous amount of state, county and municipal traffic being moved under so-called Section 22 rates. Good examples are liquor for state sales systems, building materials, etc. These movements are routine and the federal arguments about emergency military movements do not apply.

PORT OF TOLEDO,
Toledo, Ohio, June 15, 1967.

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

DEAR MR. CHAIRMAN: At the close of the recent Senate hearings on S. 754 and S. 1174 before the Surface Transportation Subcommittee of the Senate Commerce Committee, Senator Lausche announced the record would be held open for 10 days for filing of any additional material or comments by interested parties. I, therefore, wish to make the following additional comments with regard to this legislation.

Frankly, we were astounded at some of the views submitted for the record on this hearing. This is especially true of the statement from the Office of the Secretary of Transportation to the effect that the Government has been able to operate as a shipper on an efficient basis because it has been in a position to "secure rates appropriately related to its position as the largest shipper in the nation." (Emphasis added.) Can it be that the United States Department of Transportation is taking the position that the yardstick by which proper rates are set is the size and economic power of the shipper . . . that the bigger the shipper the lower the rates . . . ? If our understanding of the Department's position is correct, it would then be in direct contradiction to the Supreme Court when it stated the following:

"The great purpose of the Act to Regulate Commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure *equality of rates as to all* and to *destroy favoritism*, those last being accomplished by requiring the publication of tariffs, and by prohibiting secret departures from such tariffs, and forbidding rebates, *preferences*, and all other forms of *undue discrimination*." NYNH&H RR v. I.C.C., 200 U.S. 361. (Emphasis mine.)

We do not believe that Congress ever intended that the Government, or any large shipper should be able to negotiate special or preferential rates by virtue of its size and economic power, particularly where such rates are obviously discriminatory. If such had been their intent, then the Interstate Commerce Commission would never have been established.

Taken as a whole, it seems to me that the views of the various agencies opposing this legislation center on two main arguments.

1. If Section 22 is modified, the Government will have to pay substantially more for its transportation than it is now paying.

2. The Government's transportation mechanics would become too involved and costly because of the "cumbersome" system of commercial rates in tariffs.

With regard to the first argument, G.A.O. has taken the position that the Government is not now paying substantially more for its transportation. If this be so, then the argument of increased costs becomes meaningless. Commodity rates could be negotiated by the Government, which would not result in increased costs but which *would* remove the discrimination by making these rates available to all.

We have every reason to support rates based on volume movements for the Government, when such rates are available to all without discrimination. In the testimony of Mr. Souby, who represented the Western Railroad Traffic Association, he states without qualification that before the railroads provide an affirmative answer to Section 22 rate requests, they scrutinize the rate in the same manner as they would a commercial proposal for a commodity rate. He further states that the railroads are careful to quote rates which not only meet out-of-pocket costs but also make a contribution to overhead and return on investment, in precisely the same manner as commercial rates. If this is correct, and we are in no position to question the validity of this statement,

then the Government would have to concede what is common knowledge in the industry, that they do in fact have the power to readily negotiate appropriate rates under the commodity structure. These commodity rates would be just as effective as they claim Section 22 to be in their testimony.

Attention must also be drawn to the remarks of G.S.A. as to the need for rates on commodities not moving in normal commercial channels. Here again, it must be emphasized that any new commodity rate can be negotiated as readily as a Section 22 rate. Under these circumstances the chief difference between the commodity rate and the Section 22 rate would lie in the need for putting the negotiated commodity rate into the commodity tariff and making it available to all comers . . . with the opportunity for review by the regulatory agency charged with just such responsibility, the Interstate Commerce Commission.

Concerning the second argument, if our Government, the major shipper in the United States, is not constrained to utilize what one of its agencies terms the "cumbersome" systems of rates and tariffs, then it is *again setting itself apart from the very heart of the regulatory process* established by Congress and administered by one of its own agencies. There isn't a single shipper in the United States who would not like simplification of the existing tariff system. We submit that the full energies of the various agencies, including D.O.T., should be directed toward revising and improving the existing tariff system within its true framework rather than toward advocating and attempting to justify circumvention of established tariffs (through Section 22) in the name of progress or simplification.

Mr. Chairman, the fundamental point that areas and taxpayers of this nation are subject to gross discrimination by Section 22 remains a fact . . . not an argument. We urge that your Committee support this legislation and that the inequalities and discrimination arising out of the continued and ever expanding use of Section 22 by the Federal Government be eliminated.

Sincerely yours,

LOUIS C. PURDEY,
Executive Director.

STATEMENT OF THE CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY

The Chicago Association of Commerce and Industry is an organization of individuals, firms, and corporations, organized and existing under the laws of the State of Illinois with the object of protecting and promoting industry, trade, and the public good. The Association represents 5,854 members, including manufacturers, distributors, shippers and receivers of freight, and carriers engaged in all modes of transportation. The Association works to promote business of the Chicago area and for the development and maintenance of adequate and efficient transportation services at just and reasonable and nondiscriminatory rates and charges. The Association has been active in transportation matters for many years and has followed closely the changes which have taken place in the Interstate Commerce Act since its enactment.

Chicago is the center of transportation and vitally interested in all modes of transport. Because of the national and international distribution enjoyed by many Chicago industries, our own self-interest dictates an efficient and adequate national transportation system. We have, however, attempted to approach all transportation problems from a national viewpoint and what may be necessary for the entire economy.

S. 754 and S. 1174 are designed to eliminate or substantially reduce the use of free or reduced rates by federal, state, and municipal governments. Our Association favors the objective of this legislation and considers it important for the Congress to establish the policy that Government agencies pay fair and reasonable rates and not receive the preferential treatment that exists under the present law.

Action to eliminate or sharply reduce the use of free or reduced rates under Section 22 of the Interstate Commerce Act is long past due. Various reports and studies over the years have recognized the inconsistency of treating government shipments any different from commercial shipments. The recommendations of Dr. Ernest W. Williams and Dr. David W. Bluestone, contained in "Rationale of Federal Transportation Policy" published by the U.S. Department of Commerce in April, 1960, state:

"The Government should not put its traffic up for bid when there are established carriers serving the required routes and points. In the short run, it may receive cheaper rates that help balance each Government agency's current budget. In the long run, it helps destroy the common carrier system which it should maintain, promotes cutthroat competition, inhibits modernization of equipment that requires some assurance of future traffic for adequate financing, and therefore costs more."

"Government shipments should be at rates lower than that to other shippers if they are justified by the lower costs of volume movement and other cost-related factors. Minimum rates should be as determined by the transportation regulatory agencies on the basis of transportation economics, not by Government procurement officers pitting carriers against each other in sporadic rate cutting."

The so-called Doyle report on National Transportation Policy, dated January 3, 1961, in referring to abuses under Section 22, points out that these abuses will tend to increase as competition for the government's traffic increases.

The preferential treatment that is accorded the various Government agencies under the present Section 22, is inconsistent with the national transportation policy which has among its objectives to "foster sound economic conditions in transportation," and "to encourage the establishment and the maintenance of reasonable charges for transportation services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices." A set of rules that discriminates in favor of the Government is directly contrary to this philosophy. In the interest of fair and impartial regulation of transportation, the opportunities for abuses should be eliminated by amendment to Section 22. We agree with the Doyle report when it concludes:

"The Policy of the Government should be that its agencies pay fair and reasonable rates, not as determined by these agencies themselves, but as determined by an impartial judge, the regulatory agency."

We believe the studies mentioned earlier have clearly established that granting of cut rates to the Government has the effect of subsidizing the world's largest shipper, encouraging destructive practices between and among the various modes of transportation, thereby jeopardizing the financial stability of the nation's transportation system.

Enactment of either S. 754 or S. 1174 would be an important step toward fair and equitable treatment of all who use the nation's transportation system.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., June 16, 1967.

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

DEAR SENATOR LAUSCHE: The Chamber of Commerce of the United States urges that rates, fares and charges for transportation services performed for government should be subject to the same regulatory controls and rate policies as those which apply to the general public, except when otherwise authorized by the appropriate regulatory agency because of an emergency.

The Chamber feels that all traffic that flows in normal transportation channels, whether government or commercial, should be governed by the same rate-making standards.

We believe that use of the Section 22 privilege of the Interstate Commerce Act by government has grown to the extent where it increases the cost to commercial shippers, plays one carrier off against another, and disrupts the national rate structure.

The National Chamber, therefore, urges your Subcommittee to give favorable consideration to the basic objective of S. 754 and S. 1174, which is to cure this situation.

We will appreciate insertion of this letter in the record of your current hearings.

Cordially,

DON A. GOODALL,
General Manager, Legislative Action.

DEPARTMENT OF ADMINISTRATION,
Montpelier, Vt., June 6, 1967.

HON. WINSTON L. PROUTY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROUTY: It is my understanding that Senate Bills 1174 and 754 would, in effect, do away with the existing authority under ICC regulations for Section 22 quotations.

I would like to urge you to take whatever action is necessary to defeat these bills in that there might be serious cost repercussions for the State of Vermont if Section 22 quotations are no longer available.

Although we do not now purchase salt via rail, the possibility still exists that we may in the future. Based on this year's requirements of 90,000 tons for the coming winter season, the additional cost to the State could be \$90,000.00. In the past, we have received a Section 22 quotation of \$1.00 per ton lower than the published tariff.

There are other commodities which are affected—liquor and calcium chloride—for which the State has enjoyed Section 22 quotations for a number of years.

Any effort you can make to see that these bills do not successfully pass into law will be greatly appreciated.

Sincerely yours,

RICHARD C. RAYMOND,
Purchasing Director.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., June 13, 1967.

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

DEAR SENATOR LAUSCHE: In his letter of June 8, 1967, to you, Mr. Robert L. Wright, General Counsel of the National Alcoholic Beverage Control Association, Inc., suggests that I made a misleading statement on behalf of the American Trucking Associations. Specifically, Mr. Wright said: "What Mr. Pinkney said was that these state control authorities were using Section 22 quotations to obtain competitive advantages."

He is in error. On pages 182 and 183 of the transcript of the hearing on June 6, 1967, appears the testimony to which he refers. It is as follows:

"Mr. PINKNEY. I would like to comment briefly on that and say that I was somewhat astonished at some of the testimony we heard this morning coming from the states.

"It seems to me first that they were asserting they need Section 22 rates so as to compete with private enterprise. That is what the Michigan witness stated in effect.

"As I say that comes to me as a sort of a shocking idea. And second, both the Michigan witness and—

"Senator LAUSCHE. Why?

"Mr. PINKNEY. It seems to me that if a state is going into business, it should be willing to compete on an equal basis with private industry. It should not be given any undue advantages and should not ask any or seek them.

"Senator LAUSCHE. What is the undue advantage it is getting or that it asks?

"Mr. PINKNEY. Section 22 rates. And the second thing, both the Michigan and the Virginia witness talked of back-hauls, that this wasn't costing the carriers anything because these movements were back-hauls.

"Well, there is an old saying in the trucking industry that everybody's back-haul is somebody's forward haul and if everything becomes a back-haul—and that is what this type of ratemaking will lead to—you are going to destroy your carrier system.

"We have gotten away from the old value-of-service theory of ratemaking. People say it is dead. Well, it is not yet dead. It is still necessary for public carriers to haul certain traffic at rates that do not pay their way.

"The best example I know of is these small shippers. Some other traffic has to pay, those who can afford to pay have to pay more so the carrier may take care of the poor traffic as well as the good traffic. The best traffic, because it is a luxury item, is the liquor traffic. It has always had high rates. This proposal

of the states, and what they are doing is driving those rates down down, throwing more and more burden on, for example, the small shipments area and that is why we have a problem there, we are having to ask for more money to balance the loss of rate on the commodities that can afford to pay the higher rates. * * *

I can understand Mr. Wright's error, as I failed to state which Michigan witness I referred to in my first remark. It was to the testimony of Mr. Donald Potter on behalf of the Michigan Municipal Utilities Association, who testified that public power in Michigan could not compete with private power without Section 22 rates.

Only the second part of my testimony as set forth above had to do with Section 22 rates on liquor.

I regret I failed adequately to identify the witness and trust this letter will set the record straight.

Sincerely,

JAMES F. PINKNEY.

NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION, INC.,
Washington, D.C., June 8, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee of the Senate Committee on Commerce, Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: After witnesses had testified on behalf of state alcoholic beverage control authorities at your hearing on June 6, Mr. James F. Pinkney made a misleading statement on behalf of the American Trucking Association that I should like to correct. The statement in question does not appear in his prepared testimony and was evidently volunteered in an effort to show discrimination against truckers in connection with the use of Section 22 quotations on state shipments of wine and distilled spirits.

What Mr. Pinkney said was that these state control authorities were using Section 22 quotations to obtain competitive advantages. What the prior state witnesses had said was that they used Section 22 quotations to permit truckers to share equally with railroads in supplying transportation service to their states, when the commercial rail tariffs were lower than commercial truck tariffs. In other words, Section 22 quotations enable truckers to share in traffic that would otherwise have moved exclusively by rail on ordinary published tariffs. I am sure that Mr. Pinkney did not mean to complain about this use of Section 22 to permit truckers to meet lower commercial rail tariffs and that if he did, his members would repudiate the complaint.

If Mr. Pinkney knows of some case in which Section 22 rates were, in fact, used by a state to obtain a competitive advantage over another shipper or against any of his members, he should be able to cite a specific example. If not, he should join in this correction of what was apparently an inadvertent charge. A copy of this letter has been sent to Mr. Pinkney.

Sincerely yours,

ROBERT L. WRIGHT,
General Counsel.

OREGON LIQUOR CONTROL COMMISSION,
Portland, Ore., May 26, 1967.

HON. MARK O. HATFIELD,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR HATFIELD: We have been advised that a hearing has been scheduled June 5 and June 6, 1967, before the subcommittee of the Interstate Commerce Commission on Section 22 of the law regarding freight rates. The hearing involves the Hart Bill, S. 1174 and the Magnuson Bill, S. 754.

Please be advised that the Oregon Liquor Control Commission is opposed to the passage of these two Bills as they would deprive our State of the right to utilize Section 22 and receive preferential freight rates. We find that we save between \$4,500 and \$5,000 per month in freight costs through utilization of Section 22.

Thank you for any consideration or help you can give us in this matter.

Very truly yours,

JOHN E. MARTIN,
Administrator.

MANUFACTURING CHEMISTS' ASSOCIATION, INC.,
Washington, D.C., June 13, 1967.

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

DEAR SENATOR LAUSCHE: We appreciate this opportunity to submit the following comments with respect to S. 1174 and S. 754, bills to amend Section 22 of the Interstate Commerce Act. We respectfully request that these views be given your consideration, and further that they be entered into the record of the hearings on this legislation.

The Manufacturing Chemists Association is a nonprofit trade association of chemical manufacturers, founded in 1872. Its members comprise over ninety per cent of the productive capacity of the chemical industry within the United States. They have more than one thousand plants in the United States with a representation in almost every state. They have a vital interest in all types of transportation in connection with the assembly of raw materials to be used in manufacturing processes and in the distribution of manufactured products. All agencies of transportation are used by them for the movement of numerous commodities inbound to and outbound from their plants and warehouses.

Members of the Association support the objectives of S. 1174 and S. 754 because they would make applicable to government traffic, except in time of war or national emergency as declared by Congress, the same regulatory requirements with respect to establishment of freight rates as apply to traffic of industry, including that of members of the Manufacturing Chemists Association. It is patently anomalous and obviously inequitable for one set of rules to apply to movement of commodities when for account of the government as a shipper and a different set of rules to apply when like commodities are shipped by the chemical industry.

While both S. 1174 and S. 754 would promote the endorsed objective of making government traffic subject to the same rules and regulations as applied to commercial traffic with respect to establishment of rates, S. 754 would exempt from regulations via all modes of transportation certain commodities which are exempt only when transported by truck or water respectively in commercial movement. It is considered inappropriate to make such a substantive change in the Act by the Amendment of Section 22 and for this reason, we support S. 1174 in preference to S. 754.

The Manufacturing Chemists Association supports the view of the Interstate Commerce Commission that the government should pay the full tariff rates and charges for transportation services the same as any other shipper or user of for-hire carrier services. A substantial percentage of government traffic presently moves at rates reduced under Section 22 which are not available to the commercial shipper. This preferential treatment not only results in inequities but can tend to increase the cost of regulated transportation services to commercial users.

We concede that in time of war or national emergency as declared by the Congress there can be need for the simplified rate-making procedures which may be carried out under Section 22 of the Interstate Commerce Act. We also concede that there may be reason for preferential treatment of military traffic handled by the for-hire carriers during time of war or national emergency, but such preferential treatment does not appear necessary, nor is it desirable, under peacetime conditions.

We trust that these comments will be of help in developing the findings of the Committee on Commerce.

Sincerely,

G. H. DECKER.

HOUSEHOLD GOODS CARRIERS' BUREAU,
Washington, D.C., June 13, 1967.

Senator FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Office Building,
Washington, D.C.

DEAR SENATOR LAUSCHE: Mr. E. W. Schumacher, President of the Household Goods Carriers' Bureau, and the writer, its Executive Secretary, appeared as witnesses before the Surface Transportation Sub-Committee of the Senate Commerce Committee on June 5 in support of S. 754 and S. 1174. It was announced that the record would be held open for ten days to receive further comments.

The two bills with certain exceptions would prohibit carriers from offering to the government reduced rates except in times of war or national emergency.

Those presenting testimony or written statement in opposition to the two bills emphasized that the government required procedural flexibility now permitted under Section 22, that Section 22 rates must be published to become effective immediately and that for the most part the rates filed under Section 22 produced revenue to the carriers equal to their commercial rates.

The argument that Section 22 rates are in many instances on the same level as commercial tariff rates is certainly not true insofar as the moving industry is concerned. It would be a rare occasion indeed, if a household goods shipment, the personal effects of military personnel, is transported at the commercial rates. The minimum reduction in household goods Section 22 rates is 8½%, and in numerous instances, applicable from certain installations, the reduction is as high as 35% from the carrier's published tariff rate.

Section 22 of the Interstate Commerce Act perpetuates a state of financial instability in the moving industry to the detriment of the 2,800 I.C.C. certificated movers as well as to the detriment of the general shipping public. The provisions of Section 22 permit destructive rate practices which are beyond the control of the I.C.C.

The argument that Section 22 is needed to provide flexibility is not true. The Interstate Commerce Commission permits publication of tariff changes on one-day's notice, where the need for departure from their regular tariff procedures is justified. Our members have been successful in protesting and effecting suspension of commercial rates that were considered destructive rate practices and which would result in a rate war within the industry. The amendment of Section 22, which would in effect give control of all rates to the I.C.C., would not preclude special rates and tariff provisions for the United States Government if such can be substantiated. If the circumstances are of such a nature, as to warrant special tariff conditions needed in the handling of particular types of traffic for the government, the Interstate Commerce Commission would, even with the amendment of Section 22, have the authority to approve such special rates and tariff provisions.

The primary concern of the I.C.C. certificated movers, members of this Bureau, is that there is no regulatory body that now has the authority to regulate rates offered to the government.

On behalf of members of this Bureau, we strongly urge an amendment of Section 22 of the Interstate Commerce Act, to give to the Interstate Commerce Commission the power and authority to regulate rates extended to the government under Section 22, to determine their reasonableness and to be in a position to control destructive rate practices. In other words, we urge that the I.C.C. have the same control over Section 22 rates as they now have over rates applicable to the general shipping public, so that non-compensatory rates could be protested and suspended if the proponents could not justify such rates. This would not in any way preclude special rates for the government or any other shipper where special circumstances warrant a departure from the rates, rules and regulations applicable to the average shipper.

Respectfully submitted.

F. L. WYCHE,
Executive Secretary.

HARLAN COUNTY COAL OPERATORS' ASSOCIATION,
Harlan, Ky., June 1, 1967.

HON. PHILIP A. HART,
*Old Senate Office Building,
Washington, D.C.*

DEAR SENATOR HART: As you perhaps know the railroads have appealed to the Interstate Commerce Commission for an increase in freight rates including bituminous coal for which they have asked a five to twenty-five cents per ton increase. It seems to us that an increase of this kind would be most inappropriate and unnecessary since many railroads are making unprecedented profits at this time. Most of the coal carrying railroads are showing greater profits now than ever before and it seems that an increase in freight rates is not needed and would only serve to depress the coal industry, which is just now beginning to make some economic gains.

Another reason we feel that an increase in coal rates is unjustified is that all of the railroads are using Section #22 rates to reduce freight rates on shipments of coal to government owned plants and institutions; such as T. V. A., at the expense of private industry. If the railroads can afford to reduce rates to government institutions below the normal rates to private industry it would appear that they are not suffering from a loss of revenue from the shipment of bituminous coal. We are very much in accord with your views on Section #22 rates and certainly hope that your Bill before the Senate will be passed to eliminate these rates.

We will appreciate anything you can do to help us in our efforts to keep freight rates on bituminous coal from being increased.

With kindest regards, I am,

Yours very truly,

CLOYD McDOWELL,
President.

STATEMENT OF ILLINOIS MANUFACTURERS' ASSOCIATION

The Board of Directors of the Illinois Manufacturers' Association composed of some 5,500 members who account of 95% of the industrial production in the State of Illinois approves S. 754 and favors passage of this legislation because the carriage, storage, and handling of property free or at reduced rates for the United States, State or municipal governments and the transportation of persons for the United States Government at free or reduced rates has a strong tendency to increase the cost of regulated transportation services to commercial users and thus, should be limited only to time of war or national emergency.

HARRY G. WESTERFIELD,
Director of Transportation.

PORT OF GRAYS HARBOR,
Aberdeen, Wash., May 18, 1967.

Senator WARREN G. MAGNUSON,
*U.S. Senate,
Senate Office Building,
Washington, D.C.*

DEAR SENATOR MAGNUSON: We respectfully submit to you a Resolution adopted by the Port of Grays Harbor's Board of Commissioners at their last regular meeting.

This Resolution No. 1057 indicates their support to Senate Bill 1174, which would amend Section 22 of the Interstate Commerce Act.

We hope you will seriously consider supporting this legislation.

Respectfully,

E. W. CLOCKSIN,
Manager.

RESOLUTION No. 1057

Whereas, Senator Hart introduced a Bill on March 3, 1967 in the United States Senate, and

Whereas, This Bill, S 1174, has been read twice and referred to the Committee on Commerce, and

Whereas, S. 1174 provides that Section 22(1) of the Interstate Commerce Act be amended to provide for carriage, storage, or handling of property free, or at reduced rates, for the United States, State, or Municipal Governments during time of war or national emergency only, and

Whereas, The enactment of this legislation will have a beneficial effect on the transportation industry,

Now, therefore, be it resolved, That the Commission of the Port of Grays Harbor urges the Committee on Commerce of the Senate to make an early consideration, and to recommend favorable action by the Senate and House of Representatives.

Adopted May 15, 1967.

Attest:

E. W. CLOCKSIN,
Manager.

[S. 1174, 90th Cong., first sess.]

A BILL To amend section 22 of the Interstate Commerce Act to restrict certain authorization for free or reduced rate transportation of property or passengers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 (1) of the Interstate Commerce Act is amended by striking that part of the first sentence which precedes the first semicolon and inserting in lieu thereof the following: "Nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments during time of war or national emergency as declared by Congress or the President, or for charitable purposes, or to or from fairs and expositions for exhibition the thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates during time of war or national emergency as declared by Congress or the President, or the issuance of mileage, excursion, or commutation passenger tickets".

STATE LIQUOR COMMISSION,
Concord, N.H., June 1, 1967.

Senator NORRIS COTTON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR COTTON: Thank you very much for your offer to make the necessary arrangements for the New Hampshire State Liquor Commission to testify before the Committee on Interstate and Foreign Commerce beginning June 5, 1967. As it will be impossible for the Commission to be in Washington at the time hearings are to be held, we would very much appreciate your filing the following statement in our behalf:

The proposed legislation, S-1174 and S-754, which would eliminate the provisions of Section 22, Part 1, of the Interstate Commerce Act, enabling a state government agency to move freight at less than the published rates, either by negotiation or competitive bid, would work an extreme hardship on the New Hampshire State Liquor Commission and, in turn, the State of New Hampshire generally.

Our entire budgetary process, our pricing structure, our revenue estimates, and our distribution system have all been predicated upon the continuation of the provisions of Section 22. It is the policy of the State of New Hampshire to award all contracts whenever possible for goods and services upon the basis of competitive bidding. The elimination of this provision would cost the State of New Hampshire in excess of \$92,000 annually, based on the current year's operation and, obviously, as business increases the figure would be greater each year. Any change in the Section 22 provisions would require modification of our price structure which would affect our competitive position and, in turn, would have a serious effect on the amount of General Fund Revenue produced for the State by this Agency.

In conclusion, both the State Liquor Commission and the State of New Hampshire wish to be recorded as opposing any amendment of Section 22, Part 1, of the Interstate Commerce Act, which would eliminate or in any way impair the State's ability to continue to negotiate freight rates under the Act as presently constituted.

Thank you again for your excellent cooperation in this matter which is of vital importance to the people of New Hampshire.

Sincerely yours,

ARNOLD T. CLEMENT,
Chairman.
COSTAS S. TENTAS,
Commissioner.
JAMES P. NADEAU,
Commissioner.

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Washington, D.C., June 2, 1967.

Hon. FRANK LAUSCHE,

Chairman, Surface Transportation Subcommittee of the Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: The National Association of Motor Bus Owners (NAMBO) respectfully requests that this statement of position be considered and made a part of the printed record of the hearings on S. 754 and S. 1174, bills to amend Section 22 of the Interstate Commerce Act.

NAMBO would have no objection to these bills if the scope thereof were confined to the transportation of property. However, for the reasons hereinafter indicated, our Association is opposed to S. 754 and S. 1174 insofar as they limit the right to transport passengers at free or reduced rates.

NAMBO is the national trade association for the intercity bus industry. Its members include Greyhound Lines, some of the carriers affiliated with the Continental Trailways System, and numerous independent operators, both large and small. Collectively, these carriers account for more than three-fourths of the total volume of intercity bus transportation.

Both S. 754 and S. 1174 would limit the right to transport property and passengers for the government free or at reduced rates to time of war or national emergency as declared by Congress or the President. The principal difference between the two bills is that the bill introduced at the request of the Interstate Commerce Commission (S. 754) would not alter Section 22 rate authority with respect to the transportation of agricultural commodities or commodities in bulk. The comments which follow are directed mainly to the provisions of S. 754 but are generally applicable to S. 1174.

If Section 22 were amended as proposed, motor carriers of passengers would not be permitted to perform service for the government at reduced fares but air carriers would not be similarly restricted. Buses and airlines compete vigorously for intercity passenger traffic, including travel made at government expense. Thus, enactment of S. 754 in its present form would create inequality of regulation to the detriment of the intercity bus industry.

In urging that Section 22 be amended, the Commission has recognized that regulatory inequality should be avoided. By letter dated January 23, 1967, Chairman Tucker transmitted to Chairman Magnuson the Commission's draft bill to amend Section 22 which was later introduced as S. 754. In explaining the Commission's legislative proposal, Chairman Tucker stated:

"In addition, our recommendation contains a specific provision retaining reduced rate privileges in situations involving the transportation of bulk or agricultural commodities for governmental bodies. This provision is necessary in order not to aggravate existing competitive inequalities between carriers of different modes arising from the exemption in sections 203(b)(6) and 303 of the Act. However, we recognize that any change in the law respecting these inequalities may require a corresponding change in the proposed amendment to section 22."

Apparently, the Commission was unaware that the language of its proposal would create serious competitive inequality as between passenger carriers of different modes.

Accordingly, if S. 754 is favorably considered, NAMBO urges that the following amendment be adopted:

On page 2, lines 14-16—strike the words "during time of war or national emergency as declared by Congress or the President"

If S. 1174 is favorably considered, we urge that the same language appearing in that bill on page 2, lines 5-7, be stricken.

If S. 754 and S. 1174 were so amended, NAMBO would have no objection to the proposed legislation.

Sincerely yours,

CHARLES A. WEBB,
President.

AIR TRANSPORT ASSOCIATION,
Washington, D.C., June 9, 1967.

Re S. 754 and S. 1174.

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

DEAR MR. CHAIRMAN: The Air Transport Association supports the proposals pending before your Subcommittee which would restrict the use by the Government of Section 22 of the Interstate Commerce Act to times of war or national emergency.

The airlines have long supported repeal of Section 22 in its entirety, as have many others in Government and the transportation industry. Thus, any proposal which would substantially restrict the application of Section 22 would be a step in the right direction.

Section 22 permits the granting of preferential treatment to the Government by surface carriers without regulation or control by the ICC as to the reasonableness or justness of the special rates. Under Section 22, there is no requirement that rates offered to the Government cover the cost of providing the service. These special rates, which are not available to the commercial shipper, result in destructive and unfair competitive practices, and have a tendency to work to the prejudice of the public who must pay higher rates as a result of the special treatment given to the Government.

Subsection 2 of Section 22 which was adopted in 1957, required only that the carrier tendering free or reduced rates to the Government furnish a copy of the tender to the ICC for information purposes. The Commission has no control over the offering and the regulatory process is rendered ineffective in these cases.

The existence of a statute which permits surface carriers to grant special rates for government traffic without any regulation could result in unfair competition with air carriers for such traffic. We believe that this situation would best be rectified by strengthening the Interstate Commerce Act through enactment of S. 754 or S. 1174.

While we would urge the Subcommittee to act favorably on either of these bills, we would prefer S. 1174, introduced by Senator Hart, since it is the more restrictive measure.

We would appreciate it if this letter may be included in the record of the hearings on S. 754 and S. 1174.

Cordially,

S. G. TIPTON, *President.*

STATEMENT OF NATIONAL GRAIN TRADE COUNCIL

I am William F. Brooks, President and General Counsel of the National Grain Trade Council. The Council's offices are at 725 15th Street, Northwest, Washington, D.C. A list of the Council's members, organized grain exchanges and national grain industry associations, is attached to this statement and made a part thereof.

The Council favors the enactment of S. 1174. The Council does not favor the enactment of S. 754 since under its terms the Department of Agriculture might continue to avail itself of Section 22 rates to the disadvantage of the grain marketing industry, grain producers and grain consumers.

Recently the Department of Agriculture has not had occasion to take advantage of Section 22 rates. This has been due in part to the rather low inventory of government-owned grain and in part to the resale price restrictions for government-owned grain which were set down in the extension of Public Law 480 in the last Congress. We believe, however, that this Congress should limit the use by the Department of Agriculture of Section 22 rates in order that at a later date or later dates, the Department will not again be able to obtain concessional rates to the detriment of the producers, consumers and handlers of grain.

In our judgment, the use of Section 22 rates by the Department of Agriculture, gives to the Department an unfair advantage amounting to the sort of discrimination which the Interstate Commerce Act was enacted not only to prohibit but to make illegal. The grain industry has consistently contended that Section 22 rates should not be granted to the Department of Agriculture, that the Department of Agriculture should not seek them, and to the extent that railroads attempt to grant them, then the Department of Agriculture should not accept

them. On those occasions when the Government has availed itself of Section 22 rates, a relatively small number of people, if any, have benefited for a short time as compared to many others who have suffered after they had taken a calculated risk on market conditions without recognizing that the Department of Agriculture might lower a boom on their operations by making use of Section 22 rates.

The Department of Agriculture made a rather substantial use of Section 22 rates early in 1962.

These rates were used to move corn from a number of river points such as Cincinnati, Louisville and Evansville, into a substantial number of destinations served by the Southern Railroad. The decision to use these rates was made without any warning to persons whose customary business it is to sell and to move corn into the Southeast. The decision, incidentally, was made at a time when the Interstate Commerce Committee had under study the propriety of rates which had been proposed to move corn into these areas and the Section 22 rates accepted by the government were identical to those then under study by the Commission.

Attached is a copy of the March 30, 1962 Council Newsletter commenting on these rates; on their adverse affect on producers, consumers and the grain marketing system; and on a meeting at the Department of Agriculture to protest the use of Section 22 rates.

Our experience has been that when the Department of Agriculture uses Section 22 rates to the apparent benefit of one section of the country or of one sector of the economy, requests mount from other sections and sectors that similar rates be obtained to move Department-owned grain to equalize apparent benefits. It is to avoid any requests for special treatment that we recommend that the ability of the Department of Agriculture to obtain Section 22 rates be severely limited.

RESOLUTION OF THE ARKANSAS COMMERCE COMMISSION, LITTLE ROCK, ARK.

Whereas, The Arkansas Commerce Commission is the body politic in the State of Arkansas charged with the responsibility of the economic and safety regulation of all forms of transportation; and

Whereas, The State transportation policy adopted by the General Assembly declares it necessary in the Public interest to foster sound economic conditions, without unjust discriminations, undue preferences or advantages and unfair or destructive competitive practices; and

Whereas, It is the considered opinion of the Arkansas Commerce Commission that freedom of the transportation industry to offer free or reduced rates on government traffic provides an opportunity for undue preferences or advantages, and to promote unfair or destructive competitive practices which is contrary to the public interest; and

Whereas, There is now pending before the Senate of the United States S. 1174 which would limit the transportation of government traffic, including passengers, at free or reduced rates to times of war or national emergency.

Therefore, be it resolved, That the Arkansas Commerce Commission strongly urges the enactment of S. 1174; and

Resolved further, That a copy of this resolution be transmitted to the U.S. Senate Committee on Commerce, to members of the Arkansas Congressional Delegation, and to the National Association of Railroad and Utilities Commissioners.

This 26th day of May, 1967.

J. ORVILLE CHENEY,
Chairman.

D. D. PANICH,
Commissioner.

EDWARD H. BOYETT,
Commissioner.

